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LUXEMBOURG LEGAL UPDATE
MARCH 2021

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Dear Reader,

We are pleased to provide you with the latest edition of our Luxembourg Legal Update.

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.

You can also refer to some of the "**Topics Guides**" on our website to keep you up to date with the most recent developments:

Coronavirus: What are the legal implications?

Financial Toolkit

Fintech guide

Green and Sustainable Finance Topic Guide

Brexit Hub

ONLINE RESOURCES

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CSSF ISSUES: A COMMUNIQUÉ ON ITS COVID-19 THEMATIC REVIEW OF ISSUERS' REPORTING

CSSF Communiqué of 13 November 2020[1]

On 13 November 2020, the CSSF issued a Communiqué on the thematic review it has conducted with respect to the information provided by a certain number of issuers under its supervision on the impact of COVID-19 on their operations and financial performance as of 30 June 2020.

For this review, the CSSF selected interim and annual financial reports published for the periods ending March 2020 or after and prepared in accordance with IFRS for 16 issuers for which the COVID-19 outbreak had a significant effect on the first half-year 2020 based on several criteria. The topics reviewed by the CSSF were notably those identified by ESMA in its public statement of 20 May 2020 concerning the implications of the COVID-19 outbreak on the half-yearly financial reports.

Although the CSSF notes that the information provided in such financial reports regarding the effects of the COVID-19 pandemic was generally sufficiently entity-specific and detailed, the CSSF considers that there are several areas for improvement that issuers should consider when preparing their future financial information regarding the impacts of this pandemic. The aim of this thematic review is to assist issuers in preparing such information and, therefore, the CSSF encourages issuers to carefully consider its findings and recommendations and to enhance the disclosures in their year-end reports.

The main issues for improvement identified by the CSSF concern:

- the impairment of non-financial assets (notably insufficient disclosure in the interim financial reports and inconsistent assessment with regard to the recoverable value of non-financial assets with the impacts of the COVID-19 pandemic described elsewhere in the financial reports); and
- the measurement and disclosure of expected credit losses (ECLs), especially on trade and lease receivables for corporates.

Based on its findings, the CSSF stresses that it has the following expectations from the issuers for their future financial reports:

- to enhance their disclosures regarding going concern, by clearly indicating whether there are any material uncertainties likely to arise and explaining the key assumptions and judgements;
- to disclose detailed and updated information on their liquidity situation and its expected evolution, and to improve disclosure by providing quantitative information on covenants, even when they comply with their requirements;
- to provide precise information on their credit risk management in response to COVID-19 and on any significant adjustments made to the impairment models as well as on the impairment losses recognised;
- to provide a clearly explained assessment of an indication of impairment which is consistent with the analysis of the impacts of the COVID-19 pandemic in the financial report. Intangible assets with an indefinite useful life must be tested for impairment annually, regardless of any indication of impairment;
- to provide clear disclosures about how they have incorporated COVID-19 risks into their cash flow projections, discount rates and long-term growth rates. Use of multiple scenarios is encouraged in order to better assess the recoverable values despite the uncertainties related to the COVID-19 pandemic;
- to disclose the sensitivity analysis as required by IAS 36 and to take into account that, due to the current uncertain environment, the range of reasonably possible changes in key assumptions may be rather wide;
- where applicable, to consider the relevant disclosure requirements in the individual IFRSs,

1 CSSF Communiqué-13.11.2020

based on which the relief and support measures granted by public authorities are accounted for; and

- to continue to disclose the impact of the COVID-19 pandemic by explaining it in the notes to their financial statements (any separate presentation of such impact in the statement of profit or loss could be misleading to users of the financial statements).

The CSSF further encourages issuers to enhance management reports by also providing information on measures taken to address or mitigate the impacts of the COVID-19 pandemic on their operations and performance, and the progress/state of completion of such measures to date. The CSSF also considers that it is good practice not to disclose any new Alternative Performance Measures (APM) in relation to COVID-19, and considers that such APMs would be inappropriate in most cases.

CORONAVIRUS: MEASURES CONCERNING HOLDING OF MEETINGS IN LUXEMBOURG COMPANIES AND OTHER ENTITIES EXTENDED UNTIL 30 JUNE 2021

The law of 23 September 2020, as amended by the law of 25 November 2020

On 20 March 2020, the Luxembourg government adopted a new regulation introducing measures regarding the remote adoption of corporate approvals so as to ensure both the safety of the participants and the business continuity of Luxembourg companies and other entities in response to the Coronavirus (COVID-19) sanitary crisis.

The legislator extended for the first time the application of these measures pursuant to the law of 20 June 2020 for the period provided for in article 3 of the law of 22 May 2020, extending the deadlines for the filing and publication of annual accounts. The law of 23 September 2020, implementing measures concerning the holding of meetings in companies and other legal entities, entered into force on 1 October 2020. This repealed the law of 20 June 2020 while retaining the same measures and extending them initially until 31 December 2020. More recently, the law of 25 November 2020 amended this law to, *inter alia*, further extend the application of these measures until 30 June 2021.

Accordingly, the companies and other legal entities have the option to convene meetings without the physical presence of the participants, both at the shareholder and management body levels until 30 June 2021.

For more information on the options available for companies to adopt resolutions remotely, check our client briefing.

CSSF UPDATES ITS FAQ ON COVID-19: EXCLUSION OF CERTAIN EXPOSURES TO CENTRAL BANKS FROM THE LEVERAGE RATIO CALCULATION

CSSF Update to COVID-19 FAQ of 4 December 2020[2]

On 4 December 2020, the CSSF updated its COVID-19 FAQ to clarify the regime applicable to Less Significant Institutions (LSIs) with respect to the temporary exclusion of certain exposures to central banks from the leverage ratio calculation.

In its updated FAQ, the CSSF states that the conditions required for exercising the discretionary powers provided for in Article 500b Regulation (UE) 575/2013 (CRR), as amended, in the context of the COVID-19 pandemic are also warranted for LSIs established in Luxembourg.

The CSSF therefore authorises LSIs placed under its direct supervision, by way of derogation from Article 429(4) CRR, to exclude on a temporary basis in the calculation of the regulatory Leverage Ratio, coins and banknotes in EUR as well as exposures to the central banks of the Eurosystem referred to in Article 500b(1)(b) CRR as specified by the decision of the European Central Bank (ECB) of 16 September 2020 (ECB/2020/44):

- deposits held at the deposit facility, as defined in the Guidelines (EU) 2015/510 of the ECB; and
- balances held on reserve accounts, as defined in Regulation (EC) 1745/2003 of the ECB, including funds held in order to meet minimum reserve requirements.

The CSSF further states that this exemption is applicable until 27 June 2021 (included).

Finally, an institution that excludes exposures to central banks of the Eurosystem from the total exposure measure pursuant to Article 500b(1) CRR is required to also disclose the leverage ratio computed without excluding those exposures.

LUXEMBOURG LAW AMENDING THE LAW OF 4 DECEMBER 2019 ON THE LUXEMBOURG EXPORT CREDIT AGENCY

Law of 15 December 2020[3]

On 17 December 2020, the law of 15 December 2020 amending the law of 4 December 2019 on the Luxembourg Export Credit Agency (ODL) (ODL Law) was published in the Luxembourg official journal (*Mémorial A*).

To make the ODL support more flexible *vis-à-vis* Luxembourg companies during the COVID-19 pandemic, the ODL Law was initially amended by the law of 18 June 2020 (and in particular its Article 38 relating to the ODL's own funds) to increase the multiplier of its own funds for its commitments made in 2020.

This amendment enabled the ODL to meet the expectations of the European Commission for economic support, which temporarily removed all countries from the list of "marketable risk" countries appearing in the Communication on Short-Term Export Credit Insurance (STEC), which the ODL is subject to. This temporary withdrawal has enabled European public credit insurers with their respective governments to set up reinsurance programmes for the private insurance sector to remedy certain shortcomings and thus enable companies to maintain their competitiveness.

Given that the European Commission has decided to extend the above-mentioned temporary withdrawal regime until 30 June 2021, this new law further modifies the amended ODL Law, and in particular its Article 38(4), section 3 setting out the commitment taken by the ODL for the account of the Luxembourg State, in order to include the ODL's 2021 commitments.

The Law entered into force on 1 January 2021.

2 CSSF COVID-19 FAQ

3 Law of 15-12-2020

LUXEMBOURG LAW EXTENDING THE APPLICATION PERIOD OF THE BUSINESS AID SCHEMES ADOPTED IN THE CONTEXT OF THE COVID-19 PANDEMIC

Law of 19 December 2020[4]

On 21 December 2020, the law of 19 December 2020 amending (i) the law of 18 April 2020 establishing a guarantee scheme supporting the Luxembourg economy, (ii) the law of 20 June 2020 setting up an aid scheme for projects related to the fight against the COVID-19 pandemic, and (iii) the law of 24 July 2020 aiming at stimulating business investment in the COVID-19 era, was published in the Luxembourg official journal (*Mémorial A*).

The main purpose of the law is to extend the period of application of the business aid schemes adopted for the purpose of combating the economic and financial consequences of the COVID-19 pandemic, following the latest amendment by the European Commission of its communication on the temporary framework for state-aid measures aimed at supporting the economy in the current context of the COVID-19 outbreak.

Therefore, the aid schemes instituted by the laws referred to above (i.e. guarantees on loans granted by credit institutions, aid to stimulate investments in favour of certain projects to companies affected by COVID-19, and aid for research and development projects and investment related to the fight against COVID-19) may be granted to eligible companies until 30 June 2021.

The law entered into force with effect as of 1 December 2020.

4 Law of 19-12-2020

CSSF UPDATES ITS CSSF FAQ ON COVID-19: RECOMMENDATION ON RESTRICTION OF DISTRIBUTIONS DURING THE COVID-19 PANDEMIC

CSSF Update of COVID-19 FAQ of 22 December 2020[5]

On 22 December 2020, the CSSF updated its COVID-19 FAQ and published a circular letter to clarify to all credit institutions (that are not Significant Institutions under the SSM) its policy stance as regards banks' distribution policies aimed at remunerating shareholders, as well as on variable remuneration in the COVID-19 context.[6]

In its updated FAQ (i.e. Question 13), the CSSF states that it intends to comply with:

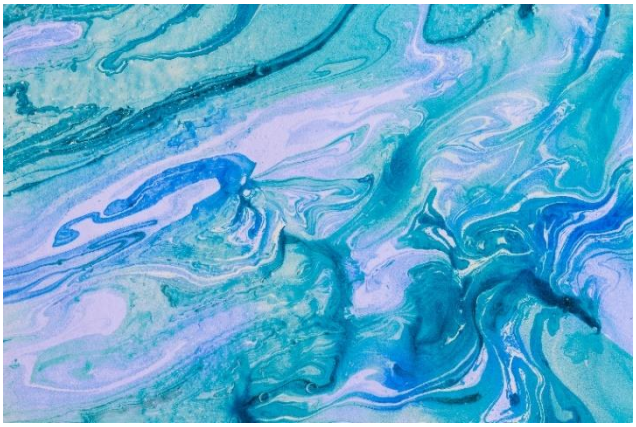
- the European Banking Authority (EBA) statement of 15 December 2020 on banks' distribution policies;
- the European Central Bank (ECB) Recommendation of 15 December 2020 on dividend distributions during the COVID-19 pandemic (ECB/2020/62); and
- the European Systemic Risk Board (ESRB) Recommendation of 18 December 2020 on the restriction of distributions during the COVID-19 pandemic (ESRB/2020/15).

The Luxembourg regulator stresses that it remains committed to the aim of ensuring a globally coordinated response to the COVID-19 pandemic under the umbrella of the Basel Committee on Banking Supervision and the Financial Stability Board.

In this context, the CSSF recommends that Luxembourg credit institutions apply the principles set out in the updated FAQ and the circular letter, which set out, in particular, that:

- with respect to dividends distribution and share buy-backs, management bodies of Luxembourg credit institutions should consider not distributing any cash dividends or conducting share buy-backs until September 2021, or to limit such distributions; and
- with respect to variable remuneration, credit institutions should adopt extreme moderation with regards to variable remuneration payments until 30 September 2021, especially those to material risk-takers.

The CSSF's recommendations enter into force as of 1 January and apply until 30 September 2021. In the absence of materially adverse developments, the CSSF intends to repeal these recommendations on 30 September 2021 and return to assessing banks' capital and distribution plans as well their remuneration policies and practices in the context of the normal supervisory cycle.



5 CSSF COVID-19 FAQ

6 CSSF Circular Letter Distribution Restrictions COVID-19

CAA CIRCULAR LETTER REGARDING ESRB RECOMMENDATION OF 15 DECEMBER 2020 ON RESTRICTION OF DISTRIBUTIONS DURING THE COVID-19 PANDEMIC

CAA Circular Letter 21/1 of 20 January 2021[7]

The CAA issued on 20 January 2021 circular letter 21/1 regarding Recommendation of the European Systemic Risk Board (ESRB) of 15 December 2020 (ESRB/2020/15) amending Recommendation ESRB/2020/07 on restriction of distributions during the COVID-19 pandemic.

In this circular letter, the CAA recommends that Luxembourg (re)insurance companies refrain until 30 September 2021 from undertaking any of the following actions:

(a) make a dividend distribution or give an irrevocable commitment to make a dividend distribution;

(b) buy-back ordinary shares; and

(c) create an obligation to pay variable remuneration to a material risk-taker,

which has the effect of reducing the quantity or quality of own funds, unless the companies apply extreme caution in carrying out any of those actions, and the resulting reduction does not exceed the approved risk tolerance thresholds. This recommendation is applicable at the EU group level, or, as the case may be, at the individual level for companies which are not part of an EU group.

The CAA further specifies that, in practice, the following approach should be followed for companies wishing to take one of the abovementioned measures:

In case of compliance with the rules set out in the circular letter, companies are invited to send a notification file to the CAA (with some additional information set out in the circular letter) at least 15 days before the date of the decision with respect to the planned measure.

In case of non-compliance with the rules set out in the circular letter, companies are invited to send an exemption file to the CAA (containing additional information set out in the circular letter) at least 30 days before the date of the decision on the planned measure.

The CAA has stressed that these recommendations apply until 30 September 2021, and that it will further evaluate the economic situation and, in light of potential future recommendations by European authorities, consider whether this deadline should be extended after 30 September 2021.

7 CAA Circular Letter 21/1

FINANCIAL INSTITUTIONS

CSSF ISSUES A NEW FINAL TERMS SUBMISSION FORM APPLICABLE AS OF 30 NOVEMBER 2020

CSSF Publication of 2 November 2020[8]

On 2 November 2020, the CSSF published a new Final Terms submission form applicable as of 30 November 2020, in the context of compliance with the Prospectus Regulation and the launch of the new ESMA register.

The CSSF is the national competent authority in Luxembourg for the application of Prospectus Regulation and the Luxembourg law of 16 July 2019 on prospectuses for securities, which implements certain provisions of the Prospectus Regulation and provides for requirements covering the national prospectus regime.

The Prospectus Regulation entered into force in July 2019 and led to a number of changes. In particular, the Commission Delegated Regulation (EU) 2019/979 of 14 March 2019 (Delegated Regulation), requires the national competent authorities to provide ESMA with an increased quantity of data on the approved prospectuses and supplements and the related Final Terms. The objective of this new Final Terms submission form is therefore to collect such data.

The user guide published by the CSSF[9] alongside the new submission form describes in detail the information which issuers have to submit together with the Final Terms.

The CSSF stresses that it will only accept Final Terms submitted through the current form until 25 November 2020 16:00 CET. Therefore, the Final Terms for 26 and 27 November must be kept and submitted via the new form on 30 November 2020 with the new data required by annex VII of the Delegated Regulation.

8 CSSF Final Terms Form

9 CSSF Final Terms Submission User Guide

CSSF ADOPTS EBA GUIDELINES ON DETERMINATION OF THE WEIGHTED AVERAGE MATURITY OF THE CONTRACTUAL PAYMENTS DUE UNDER THE TRANCHE IN ACCORDANCE WITH ARTICLE 257(1)(A) CRR

CSSF Circular 20/756 of 9 November 2020[10]

The CSSF issued circular 20/756 on 9 November 2020 to inform the relevant stakeholders that it complies with and applies the EBA Guidelines on determination of the weighted average maturity (WAM) of the contractual payments due under the tranche in accordance with point (a) of Article 257(1) of Regulation (EU) No 575/2013 (CRR) (EBA/GL/2020/04).

The CSSF reminds that the calculation of risk-weighted exposure amounts of securitisation positions is subject to the requirements laid down in Chapter 5 of Part Three of the CRR. Chapter 5 introduces notably a hierarchy of methods and common parameters for the calculation of risk-weighted exposure amounts of securitisation positions.

When determining their credit risk mitigation for securitisation positions subject to the standardised approach, institutions may measure the maturity of a tranche (MT) in accordance with the methods laid down in Article 257 CRR. In accordance with the mandate in Article 257(4) CRR, the EBA Guidelines specify the methodology for measuring the WAM of the contractual payments due under the tranche referred to in point (a) of Article 257(1) of the CRR.

The CSSF circular applies to credit institutions and CRR investment firms incorporated under Luxembourg law as well as to Luxembourg branches of third-country credit institutions and CRR investment firms in case they opt for the use of the WAM approach instead of the final legal maturity approach when calculating the risk-weighted exposure amounts for the specific purpose of determining the capital requirement of a securitisation position.

The new circular has become immediately applicable.

10 CSSF Circular 20/756

CSSF ISSUES A PRESS RELEASE ON ESMA STATEMENT ADDRESSING UPCOMING END OF TRANSITION PERIOD WITH RESPECT TO DERIVATIVES REPORTED UNDER ARTICLE 9 OF EMIR AND ARTICLE 4 OF SFTR

CSSF Press Release 20/22 of 10 November 2020[11]

On 10 November 2020, the CSSF issued its press release 20/22 on ESMA's statement of 10 November 2020 (ESMA74-362-881) to address issues affecting reporting, recordkeeping, reconciliation, data access, portability and aggregation of derivatives reported under Article 9 of EMIR and Article 4 of SFTR, following the end of the transition period on 31 December 2020 provided for in the UK-EU Withdrawal Agreement.

The CSSF stresses that it expects counterparties to follow the clarifications provided in ESMA's statement, and draws their attention to the following specific elements stated therein:

- For counterparties falling under the scope of EMIR:
  - EU counterparties and CCPs should report the conclusion of derivatives to an EU trade repository (TR) or an EU-recognised TR when they have a reporting obligation in accordance with Article 9 of EMIR.
  - Following the end of the transition period, UK financial counterparties are no longer responsible for the reporting of OTC derivatives subject to mandatory allocation of responsibility for reporting under Articles 9(1a) to 9(1d) of EMIR. From 1 January 2021, the EU counterparties become responsible for the reporting of those derivatives. EU non-financial counterparties are required to do so, unless the condition relating to equivalence in the last sub-paragraph of Article 9(1a) of EMIR with regards to the UK counterparty becomes applicable.
- For counterparties falling under the scope of SFTR:
  - EU counterparties and EU branches of third-country counterparties should report the conclusion of securities financing transactions (SFTs) to an EU TR or an EU-recognised TR when they have a reporting obligation in accordance with Article 4 of SFTR.
  - Following the end of the transition period, UK counterparties and UK branches of third-country counterparties are no longer responsible for the reporting of SFTs subject to mandatory allocation of responsibility for reporting under Article 4(3) of SFTR. From 1 January 2021, the EU counterparties and EU branches of third-country counterparties become responsible for the reporting of those SFTs.

Finally, the CSSF recommends in its press release that:

- counterparties currently reporting to UK TRs are ready to ensure continuity of their reporting obligation by reporting to a TR registered or recognised in the EU, at the latest by 31 December 2020, in accordance with the principles laid down in the ESMA's statement; and
- counterparties currently benefiting from the mandatory allocation of responsibility for reporting under Articles 9(1a) to 9(1d) of EMIR or Article 4(3) of SFTR, towards UK entities, are ready to assume their reporting obligation as from 1 January 2021.

11 CSSF Press Release 20/22

CSSF ISSUES A COMMUNIQUÉ ON THE SECOND EBA REPORT ON THE APPLICATION OF THE GUIDELINES ON PRODUCT OVERSIGHT AND GOVERNANCE ARRANGEMENTS

CSSF Communiqué of 11 November 2020[12]

On 11 November 2020, the CSSF issued a Communiqué to draw the attention of the public to the publication of the second EBA Report on the application of the Guidelines on Product Oversight and Governance (POG) arrangements (EBA/REP/2020/28)[13].

In its Communiqué, the CSSF states that the EBA report:

- highlights findings from the EBA's second assessment of the way in which financial institutions have applied the EBA Guidelines on POG arrangements (EBA/GL/2015/18) (POG Guidelines) and includes a number of good practice examples; and
- concludes that many financial institutions do not sufficiently put the required focus on ensuring that consumers' needs are met in line with the POG Guidelines.

Therefore, the EBA as well as the CSSF encourage financial institutions to ensure that the interests, objectives and characteristics of consumers are taken into account when applying POG arrangements, in order to avoid consumer detriment.

The CSSF expects all entities subject to the supervision of the CSSF and which act as manufacturers of retail banking products to consider the good practices identified by the EBA in the report and, where applicable, to improve their application of the POG Guidelines accordingly.

CSSF ISSUES A PRESS RELEASE ON THE COMMUNICATION BY THE FCA TO LUXEMBOURG-BASED ENTITIES REGARDING THE UK TEMPORARY PERMISSIONS REGIME

CSSF Press Release 20/23 of 19 November 2020[14]

On 19 November 2020, the CSSF issued its press release 20/23 on the communication by the UK Financial Conduct Authority (FCA) to Luxembourg-based entities regarding the UK Temporary Permissions Regime (TPR).

This press release follows the FCA request to the CSSF to channel to Luxembourg-based entities the FCA's communication regarding the TPR in the context of Brexit. In its communication, the FCA reminds firms, in particular, that:

- for firms that passport into the UK, the notification window for the TPR reopened on 30 September;
- if firms hold a passport and have already notified to be in the TPR, but do not require a UK authorisation (e.g. they are not doing any UK business), they should withdraw their TPR notification and, if they have no existing contracts, also cancel their passport;
- any firms with a passport to the UK that do not enter the TPR, and that require permission to perform an existing contract, will automatically enter the UK's Financial Services Contracts Regime (FSCR), to allow them to wind down their UK business in an orderly fashion. Firms in the FSCR will not be able to write new business in the UK; and
- the FCA has published a consultation paper on the general expectations for international firms that require FCA authorisation which closes on 27 November 2020.

Finally, the CSSF stresses that any questions relating to TPR notifications should be addressed directly to the FCA.

12 CSSF Communiqué 11-11-2020

13 Second EBA Report on EBA Guidelines and POG

14 CSSF Press Release 20/23

CSSF ISSUES A COMMUNIQUÉ ON THE EBA COMMUNICATION REGARDING THE END OF THE BREXIT TRANSITION PERIOD

CSSF Communiqué of 23 November 2020[15]

On 23 November 2020, the CSSF issued a Communiqué on the EBA's reminder dated 9 November 2020 of the need for readiness in view of the Brexit transition period ending on 31 December 2020.[16]

In its communication, the CSSF stresses the EBA's reminders to the financial institutions and, in particular, that:

- they should finalise the full execution of their contingency plans before the end of the transition period on 31 December 2020;
- from 1 January 2021, the provision of financial services from UK-authorised institutions to EU customers on a cross-border basis will no longer be possible;
- if such UK entities wish to continue providing their services to EU customers, an authorisation from EU competent authorities as well as an effective establishment in the EU is required before the end of the transition period;
- they should ensure timely and adequate communication regarding their preparations and possible changes affecting the availability and continuity of the services they provide, or whether institutions plan to cease offering services to EU-based customers;
- any eIDAS certificates issued to the UK-based account information service providers and payment initiation service providers should be revoked and no longer supported; and
- payment service providers are required to provide additional information regarding the payer and the payee for the transfer of funds between the EU and the UK.

15 CSSF Communiqué 23-11-2020

16 EBA Reminder

CSSF ISSUES A REGULATION CONCERNING SYSTEMICALLY IMPORTANT INSTITUTIONS AUTHORISED IN LUXEMBOURG

CSSF Regulation 20-07 of 25 November 2020[17]

On 25 November 2020, the CSSF issued a regulation 20-07 (Regulation) concerning systemically important institutions (SIIs) authorised in Luxembourg.

The Regulation identifies seven SIIs authorised in Luxembourg, all qualifying as other systemically important institutions (O-SIIs). There is no global systemically important institution (G-SII) authorised in Luxembourg.

Four of these institutions qualify as O-SIIs based on the score obtained by application of the EBA standard methodology (i.e. exceeding the threshold laid down in accordance with the relevant EBA guidelines (EBA/GL/2014/10)).

One other institution is identified as an O-SII based on the relevant authority's judgement and the score obtained by application of the enriched methodology. This classification is justified by the contribution of this institution to the Luxembourg economy, notably due to its exposure to the real estate market and the importance of its Luxembourg deposits.

Two other institutions qualify as O-SIIs by application of the prudential judgement and due to their scores, which fall below the relevant threshold but remain very close thereto. The identification of the first institution is justified by its role as market infrastructure, and the second, by its importance for the investment fund sector or the asset management industry.

The authorised SIIs in Luxembourg are *Banque et Caisse d'Epargne de l'Etat Luxembourg*, *Banque Internationale à Luxembourg*, *BGL BNP Paribas*, *Clearstream Banking S.A.*, *J.P. Morgan Bank Luxembourg S.A.*, *RBC Investor Services Bank S.A.* and *Société Générale Luxembourg*. *Deutsche Bank Luxembourg S.A.* is no longer identified as an O-SII.

The Regulation maintains the capital buffer rates for these O-SIIs set on 1 January 2020 by CSSF regulation 19-09, which is abrogated by the new Regulation.

The Regulation entered into force on 1 January 2021.

17 CSSF Regulation 20-07

CSSF ISSUES AN FAQ ON THE INVESTOR COMPENSATION SCHEME LUXEMBOURG

CSSF FAQ of 26 November 2020[18]

On 26 November 2020, the CSSF issued a new FAQ to clarify the regime of the Investor Compensation Scheme Luxembourg (*Système d'indemnisation des investisseurs Luxembourg* (SIIL)).

In its FAQ, the CSSF, acting in its function as Depositor and Investor Protection Council (*Conseil de Protection des Déposants et des Investisseurs*) (CPDI), clarifies the definition of "other professional investors" that are excluded from the SIIL's coverage pursuant to point 7 of Article 195(2) of the amended law of 18 December 2015 on the failure of credit institutions and certain investment firms (2015 Law).

The CPDI states that it has decided to refer to the definition of "professional clients" (provided for in Annexe II of MiFID 2) in order to define the "professional investors" that are excluded from the SIIL's guarantee. This definition comprises (i) clients who are considered to be professionals and (ii) clients who may be treated as professionals on request; both categories are therefore excluded from the SIIL's guarantee.

However, the CPDI emphasises that a client who is considered to be a professional may enter into a written agreement with the SIIL member specifying that such client should not be treated as a professional for the purposes of the applicable conduct of business regime. This agreement should further set out the particular services or transactions, or the types of products or transactions to which it applies, and therefore, claims resulting from such services, transactions or products will be covered by the SIIL, provided that they are not excluded from the SIIL's coverage pursuant to Article 195(2) of the 2015 Law (other than point 7).

18 CSSF FAQ Investor Compensation Scheme

LUXEMBOURG BILL IMPLEMENTING INVESTMENT FIRMS DIRECTIVE AND INVESTMENT FIRMS REGULATION AND CERTAIN OTHER PROVISIONS

Bill No 7723 of 27 November 2020[19]

On 27 November 2020, a bill No 7723 implementing Directive (EU) 2019/2934 on the prudential supervision of investment firms (IFD), certain provisions of Directive (EU) 2019/2177, Regulation (EU) 2019/2033 on the prudential requirements of investment firms (IFR) as well as Article 4 of Regulation (EU) 2019/2175 was lodged with the Luxembourg Parliament.

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

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

Additionally, the bill proposes to modernise the types of certain professionals of the financial sector, notably (i) the existing Luxembourg investment firm types are intended to be replaced by investment firm types purely based on the class of the MiFID investment service or investment activity carried out by the firm, (ii) the licence type of "persons carrying out operations of cash exchange" will be deleted, such activity becoming an activity reserved to credit institutions, and (iii) the statuses of primary and secondary IT systems operators are intended to be merged into one single licence type.

Finally, the bill proposes to amend the Luxembourg law of 5 April 1993 on the financial sector in order to implement Article 1 and 2 of Directive 2019/2177, whose objective is to transfer certain authorisation and supervision powers in relation to the data reporting service providers from the national competent authority to the European Securities and Markets Authority. The bill also facilitates the exchange of information between competent authorities, including with national regulators and the European supervisory authorities.

The publication of the bill constitutes the start of the legislative procedure.

19 Bill n°7723

CSSF ISSUES A REGULATION SETTING CONDITIONS FOR THE GRANTING OF LUXEMBOURG RESIDENTIAL PROPERTY LOANS

CSSF Regulation 20-08 of 3 December 2020[20]

On 3 December 2020, the CSSF issued Regulation 20-08 (Regulation) setting conditions for the granting of loans relating to residential property located in the territory of Luxembourg.

The Regulation is addressed to credit institutions, insurance companies and professionals carrying out lending transactions, and covers loan agreements relating to residential real estate located in Luxembourg, including the repurchase of such contracts, concluded from 1 January 2021. However, excluded from the scope of this new instrument are loan agreements signed until 28 February 2021 on the basis of firm and individual offers that lending institutions have submitted to potential borrowers before the date of publication of the Regulation in the Official Journal (i.e. 7 December 2020).

The Regulation sets out the following maximum limits:

- 80% for the ratio between the sum of all loans or loan tranches guaranteed by the borrower concerning residential real estate at the time of loan origination and the value of the property at that same time (LTV ratio), which also applies to mortgage loans on property intended for rental ("buy-to-let");
- 90% for the LTV ratio with respect to the principal residence of the borrower (other than first-time acquirers). However, institutions may grant individual loans with an LTV ratio of up to 100%, provided that the aggregated amount of credits benefiting from this derogation represents, at most, 15% of the annual aggregate amount of this category of credit; and
- 100% for the LTV ratio with respect to first-time acquirers of a principal residence.

The Regulation entered into force on 7 December 2020.

[20] CSSF Regulation 20-08

CSSF ISSUES NEW AND REVISED CSSF CIRCULARS ON CENTRAL ADMINISTRATION, INTERNAL GOVERNANCE AND RISK MANAGEMENT

Circular 20/759 of 7 December 2020[21]
Revised consolidated Circular 12/552 of 7 December 2020[22]
Circular 20/757 of 7 December 2020[23]
Circular 20/758 of 7 December 2020[24]

On 7 December 2020, the CSSF issued the following circulars:

- Circular 20/759 amending Circular 12/552 on central administration, internal governance and risk management (as amended);
- Revised consolidated Circular 12/552 (as amended in particular by Circular 20/759) (Revised Circular 12/552) (the track-changes version is attached to Circular 20/759);
- Circular 20/757 introducing Circular 20/758 on central administration, internal governance and risk management for investment firms; and
- Circular 20/758 on central administration, internal governance and risk management for investment firms, which repeals and replaces Circular 12/552 for such firms.

The Circular 20/759 incorporates certain European Banking Authority (EBA) guidelines (i.e. EBA/GL/2017/11, EBA/GL/2017/12, EBA/GL/2016/07, EBA/GL/2018/02, and EBA/GL/2016/09) into the Circular 12/552, one of the central CSSF Circulars for banks in Luxembourg, and introduces, *inter alia*, the following amendments to such Circular:

- With respect to the scope of application: the Revised Circular 12/552 applies to credit institutions and professionals performing lending operations. It no longer applies to investment firms, which are now covered by a separate circular: the new Circular 20/758. Furthermore, the scope has been extended to cover financial holding companies and mixed financial holding companies.
- With respect to the proportionality principle: it introduces a more precise articulation of this principle by its attachment to the concept of systemic institution, and provides clarifications on its application for the purpose of the implementation concerning internal control functions.
- Strengthening the management body in its monitoring function through reinforced diversity and independence provisions.
- Inclusion of environmental, societal and governance (ESG) factors to ensure the viability of the business model.
- Introduction of a summary chapter dedicated to the risk arising from the custodian bank activity.

By its Circular 20/757, the CSSF repeals Circular 12/552 and replaces it by Circular 20/758 with respect to investment firms.

It also provides a list of key changes, which cover, in particular, the amendments resulting from the incorporation into Circular 20/758 of certain EBA guidelines (i.e. EBA/GL/2017/11, EBA/GL/2017/12, EBA/GL/2018/02, and EBA/GL/2016/09), covering, similar to the Revised Circular 12/552, the extension of scope to financial holding companies and mixed financial holding companies, clarifications on the proportionality principle, reinforced diversity and independence provisions as well as the inclusion of the ESG factors.

The Circulars 20/757, 20/758, 20/759 and the Revised Circular 12/552 apply as from 1 January 2021.

21 CSSF Circular 20/759

22 Revised consolidated Circular 12/552

23 CSSF Circular 20/757

24 CSSF Circular 20/758

CSSF ISSUES A COMMUNIQUÉ ON THE ENFORCEMENT OF THE 2020 FINANCIAL INFORMATION PUBLISHED BY ISSUERS SUBJECT TO THE TRANSPARENCY LAW

CSSF Communiqué of 9 December 2020[25]

On 9 December 2020, the CSSF issued a Communiqué on the enforcement of the 2020 financial information published by issuers subject to the amended law of 11 January 2008 on transparency requirements for issuers (Transparency Law).

Under the Transparency Law, the CSSF is monitoring that financial information published by issuers is drawn up in compliance with the applicable accounting standards. As issuers are now preparing their financial information for the 2020 fiscal year, the CSSF wishes to draw the attention of those issuers preparing their financial statements in accordance with the International Financial Reporting Standards, as well as of their auditors, to a number of topics and issues that will be the subject of a specific monitoring during its enforcement campaign planned for 2021.

When establishing its enforcement campaign for next year, the CSSF considered the 2020 particular context in relation to the COVID-19 pandemic, and has decided not to add priorities other than those identified at European level by ESMA and the European national accounting enforcers, i.e. European common enforcement priorities (ECEPs).

The 2020 ECEPs focus on the need to provide adequate transparency regarding the consequences of the COVID-19 pandemic in relation to several standards (e.g. IAS 1 Presentation of Financial Statements, IAS 36 Impairment of Assets, etc.).

Therefore, the CSSF intends to focus on the ECEPs and the related issues, already identified during its COVID-19 thematic review performed in October 2020[26], that are considered as the most relevant for the issuers under its jurisdiction, namely:

- impairment testing of non-financial assets;
- change in credit risk and expected credit losses;
- fair value measurement of investment properties; and
- recognition and measurement of deferred tax assets.

25 CSSF Communiqué 9-12-2020

26 CSSF COVID-19 Thematic Review

CSSF ISSUES A CIRCULAR ON LIQUIDITY RISKS ARISING FROM MARGIN CALLS

CSSF Circular 20/761 of 11 December 2020[27]

On 11 December 2020, the CSSF issued CSSF Circular 20/761 on liquidity risks arising from margin calls.

The CSSF, as competent authority in charge of the supervision of clearing members and of financial and non-financial counterparties in Luxembourg, informs in the new circular that it intends to comply with the European Systemic Risk Board (ESRB) recommendation dated 25 May 2020 (with reference ESRB/2020/6) (Recommendation) whose aim is to address liquidity risks stemming from margin calls in the context of volatile markets and uncertain collateral valuation.

The CSSF reminds that the outbreak of the COVID-19 pandemic resulted in significant margin calls across centrally cleared and non-centrally cleared markets. Looking ahead, the ability of market participants to cover margin calls will depend on volatility levels and on the resilience of their liquidity management.

In this context, sudden and significant changes and cliff-edge effects relating to initial margins and collateral must be limited: i) by CCPs *vis-à-vis* their clearing members, ii) by clearing members *vis-à-vis* their clients, and iii) in the bilateral sphere. It further implies that CCPs, while maintaining their financial resilience, avoid excessive liquidity constraints for clearing members and that clearing members do so for clients.

The CSSF draws the attention of Luxembourg clearing members and Luxembourg based financial and non-financial counterparties on a series of recommendations, which comprise, *inter alia*, the following:

- When providing clearing services to their clients, it is recommended that clearing members apply risk management procedures that do not result in sudden and significant changes and cliff-edge effects in margin calls and in the collection of margins, unless these sudden and significant changes are an inevitable result of market events.
- In the event of downgrades, it is recommended that clearing members' collateral practices do not materially curtail the soundness of the risk management practices adopted by the clearing members or affect their resilience.
- When clearing members issue margin calls to and collect initial and variation margins from their clients, including financial and non-financial counterparties, in order to limit their credit exposures, it is recommended that they aim to avoid unnecessary liquidity constraints for their clients.
- For financial and non-financial counterparties, it is recommended that, when entering into non-centrally cleared OTC derivative contracts and securities financing transactions, they seek to ensure that their risk management procedures do not result, in the event of downgrades of credit ratings, in sudden and significant changes and cliff-edge effects in margin calls and collection and in collateral practices.

The CSSF Circular further clarifies each of the above recommendations and provides some guidelines as to how these objectives could be achieved.

[27] CSSF Circular 20/761

CSSF ADOPTS THE EBA GUIDELINES ON THE MANAGEMENT OF INTEREST RATE RISK ARISING FROM NON-TRADING BOOK ACTIVITIES

CSSF Circular 20/762 of 11 December 2020[28]

On 11 December 2020, the CSSF issued CSSF Circular 20/762 amending CSSF Circular 08/338[29] on the implementation of a stress test in order to assess the interest rate risk arising from non-trading book activities, following the adoption of the guidelines of the EBA on the management of interest rate risk arising from non-trading book activities (EBA/GL/2018/02), that the CSSF undertakes to comply with and applies in its capacity as competent authority in Luxembourg. Consequently, the CSSF has integrated these guidelines into its administrative practice.

The circular encloses a track changes version of the amended Circular 08/338. The changes concern mainly the nature and specification of the resistance test by reference to the guidelines.

The CSSF reminds that, in accordance with the guidelines, when measuring their exposure to the interest rate risk arising from non-trading book activities, institutions should not only rely on the changes in the economic value of equity, but also on the effects on interest income.

The CSSF circular applies to credit institutions and CRR investment firms incorporated under Luxembourg law as well as to Luxembourg branches of third-country credit institutions and investment firms.

The new circular has become immediately applicable. For the first submission, relating to the financial situation as on 31 December 2020, the CSSF specifies that, by way of derogation from point 14 of CSSF circular 08/338, as amended, the deadline for transmission is 15 March 2021.

28 CSSF Circular 20/762

29 CSSF Circular 08/338

CSSF PUBLISHES THE LUXEMBOURG MINISTRY OF JUSTICE'S PRESS RELEASE ON THE UPDATE OF THE NATIONAL RISK ASSESSMENT OF MONEY LAUNDERING AND TERRORIST FINANCING

Luxembourg Ministry of Justice's press release of 14 December 2020[30]

On 16 December 2020, the CSSF published a press release of the Luxembourg Ministry of Justice of 14 December 2020 regarding the 2020 national risk assessment of money laundering (ML) and terrorist financing (TF) (2020 NRA).

The 2020 NRA stresses that, in the context of increasing and evolving ML and TF risks and pursuant to the FATF recommendations, Luxembourg has committed to better understand its specific threats and vulnerabilities by carrying out its first national risk assessment in 2018. The 2020 NRA updates the previous report with respect to the latest information on ML/TF threats, vulnerabilities and mitigation factors faced by Luxembourg since 2018.

The 2020 NRA also highlights that, in accordance with a risk-based approach, special consideration is given to risks arising from Luxembourg's role as an international finance centre. This is particularly important, given that the financial sector is the largest economic sector in the country, with numerous foreign institutions, assets held by non-residents, and a leading hub for a variety of international financial services companies in the Eurozone.

On the evaluation of inherent risk, threats and vulnerabilities, the 2020 NRA notes, in particular, that:

- The threats weighing on Luxembourg mainly stem from the laundering of proceeds of foreign crime.
- National exposure to money laundering (i.e. the proceeds of primary offences perpetrated in Luxembourg likely to be laundered there) is low.
- Threats from terrorism and terrorist financing are rated as moderate overall.
- The vulnerabilities come from sectors that may be exposed to abuse or diversion for ML/TF purposes.
- The banking sector is naturally vulnerable to ML/TF risks due to various factors such as a diverse customer base, high transaction speed and high volume of financial flows.
- Investment funds are particularly susceptible to abuse or misuse for different types of fraudulent practices, including, for example, Ponzi schemes, scams or pressure selling and use of shell companies.
- Within the insurance sector, considered moderately vulnerable in Luxembourg, the life insurance sub-sector appears to be more vulnerable due to its large size and fragmentation.
- The real estate and construction sectors are generally considered to be sectors with high risk at global level, which corresponds to the risk rating in Luxembourg.
- Legal persons and legal arrangements (including non-profit ones) are also considered very vulnerable to ML/TF.
- Company and Trust Service Providers constitute an inherent high-risk cross-cutting vulnerability.
- There are specific vulnerabilities that are particularly relevant in the context of the COVID-19 pandemic – detailed assessment of the impact of COVID19 on vulnerabilities is provided in the emerging risks section of the 2020 NRA.

The executive summary of the 2020 NRA's is also available on the Ministry of Justice's website.

30 Ministry of Justice Press Release 14-12-2020

CSSF ISSUES REGULATION ON THE EQUIVALENCE OF THE UNITED KINGDOM FOR THE PURPOSE OF THE MIFIR THIRD-COUNTRY NATIONAL REGIME AND RELATED PRESS RELEASE

CSSF Regulation No 20-09 of 14 December 2020[31]

On 1 January 2021, CSSF Regulation No 20-09 of 14 December 2020, amending CSSF Regulation No 20-02 of 29 June 2020 on the equivalence of certain third countries with respect to supervision and authorisation rules for the purpose of providing investment services or performing investment activities and ancillary services by third-country firms (Regulation No 20-09), entered into force.

Regulation No 20-09 includes the United Kingdom of Great Britain and Northern Ireland in the list of jurisdictions which are deemed equivalent for the application of the national third-country regime.

The CSSF also published on 24 December 2020 press release 20/30 with respect to Regulation 20-09.[32]

In this press release, the CSSF reminds the public that, in the absence of an equivalence decision by the European Commission in accordance with Article 47(1) of Regulation (EU) 600/2014 (MiFIR), a third-country firm may, subject to certain conditions set forth in Circular CSSF 19/716 as amended by Circular CSSF 20/743 (Circular CSSF 19/716), including the recognition of national equivalence of the third country, provide investment services or activities as well as ancillary services in Luxembourg to eligible counterparties and professional clients *per se*, without setting up a branch in Luxembourg (the national third-country regime).[33] In particular, a third-country firm must be subject to supervision and authorisation rules that the CSSF deems equivalent to those laid down in the Luxembourg law of 5 April 1993 on the financial sector, as amended.

It is to be noted that, in accordance with Article 2(2) of Regulation No 20-02, the equivalence decisions made by the CSSF may be revoked where one or several conditions on which the decision was based are no longer met. To that effect, the CSSF will continue to monitor the applicable regulatory framework in the United Kingdom regarding the supervision and authorisation of firms providing investment services and activities.

In order to benefit from the national third-country regime, a third-country firm must submit a complete application file to the CSSF without any delay. More details on this are available in Circular CSSF 19/716.

31 CSSF Regulation 20-09

32 CSSF Press Release 20/30

33 CSSF Circular 19/716

CSSF ISSUES A CIRCULAR ON THE MANDATORY USE OF THE IMAS PORTAL FOR FIT AND PROPER APPLICATIONS SUBMITTED BY SIGNIFICANT CREDIT INSTITUTIONS

CSSF Circular 20/763 of 15 December 2020[34]

On 15 December 2020, the CSSF issued CSSF Circular 20/763 on the mandatory use of the IMAS Portal for fit and proper applications submitted by significant credit institutions. The IMAS Portal is a new digital gateway for supervisory processes which were launched by the ECB and the CSSF on 27 January 2021.

As of that date, significant credit institutions shall use the IMAS Portal to submit the applications for fit and proper assessment regarding members of the management body (both in their management function and supervisory function), track the status of these assessments and exchange related information with supervisors. Applications sent by mail or email will no longer be accepted.

The IMAS Portal should however not be used in the following cases:

- Notification of key function holders (who are not expected to also become members of the management body);
- Notification of renewals (without any change in the executive or non-executive nature of the mandate); and
- Communication of new material facts regarding appointees previously assessed and approved.

In its Circular, the CSSF reminds that the use of the IMAS Portal does not change the legal environment and the allocation of legal responsibilities between the CSSF and the ECB. The CSSF further specifies that it remains the entry point in line with the SSM Framework Regulation and will have primary availability to all information received via the IMAS Portal.

The Circular applies to all significant credit institutions incorporated under Luxembourg law.

Further technical details and practical guidance on the use of the IMAS Portal and planned online ECB training sessions can be found in the CSSF Circular.

34 CSSF Circular 20/736

LUXEMBOURG LAW IMPLEMENTING RESTRICTIVE MEASURES IN FINANCIAL MATTERS AND REPEALING THE LAW OF 27 OCTOBER 2010

Law of 19 December 2020[35]

On 23 December 2020, the law of 19 December 2020 implementing restrictive measures in financial matters in respect of certain countries, persons, entities and groups was published in the Luxembourg official journal (*Mémorial A*).

The law implements in Luxembourg restrictive measures in financial matters adopted by the United Nations Security Council resolutions in application of Chapter VII of the United Nations Charter and decisions, common positions and regulations adopted by the European Union since 1 December 2009 concerning prohibitions and restrictive measures in financial matters in respect of certain persons, entities and groups.

Financial sanctions in the context of the combat against terrorist financing have been previously addressed in Luxembourg by the law of 27 October 2010 implementing United Nations Security Council resolutions as well as acts adopted by the European Union concerning prohibitions and restrictive measures in financial matters in respect of certain persons, entities and groups (2010 Law). The latter has been repealed by the new law.

The new instrument extends the scope of the 2010 Law beyond the initial objective of counter terrorism financing to also cover actions against the proliferation of weapons of mass destruction, protection of peace and international security and violations of international law. Furthermore, it includes additional provisions to mirror those contained in the law of 27 June 2018 on export controls.

The following restrictive measures are foreseen in the law:

- prohibition or restriction of any financial activities;
- freezing of funds, assets or other economic resources held or controlled, directly, indirectly or jointly with or by a person, entity or group in the scope of this law or by a person acting in their name or upon their instructions; and
- prohibition or restriction of providing financial services, training, advice or technical assistance in respect of a country, natural or legal person, entity or group in the scope of the law.

The restrictive measures in financial matters apply to (i) natural persons with Luxembourg citizenship who reside or operate in or from the territory of Luxembourg or from abroad, (ii) legal persons having their registered office, permanent establishment or centre of main interests in the territory of Luxembourg and who operate in or from the territory of Luxembourg or from abroad, (iii) branches of Luxembourg legal persons established abroad and Luxembourg branches of foreign legal persons and (iv) any natural or legal person who operates in or from Luxembourg.

The law foresees that the necessary execution measures in relation to the restrictive measures will be implemented by a Grand Ducal Regulation, which will specify which type of restrictive measure shall apply to which person, entity or group. The law further foresees a possibility to implement temporary restrictive measures pending the referral of the matter by the Luxembourg Foreign Affairs Minister to the United Nations or European Union.

The natural or legal persons which are required to execute the restrictive measures shall inform the Luxembourg Finance Minister of the execution of each measure. The supervisory authorities (i.e. CSSF, the CAA and Luxembourg Registry (*Administration de l'Enregistrement et des Domaines*)) and self-regulatory bodies are competent for monitoring the compliance of the professionals falling within their respective supervision with the provisions of the law. They may apply in this respect any measures and exercise any powers conferred on them by the amended law of 12 November 2004 on the fight against money laundering and terrorist financing, including sanctions.

35 Law of 19-12-2020

The sanctions foreseen by the law for responsible individuals include the imprisonment from eight days to five years and/or criminal fines ranging from EUR 12,500 to EUR 5,000,000. Criminal fines for legal persons may reach certain multiples of the range of fines foreseen for individuals. If the breach results in an important financial gain, the fine may amount to the quadruple of the sum gained by such breach.

The application of restrictive measures and the disclosure to authorities made in good faith as foreseen in the law will not result in any liability for the persons applying the restrictive measures (except in case of gross negligence) or the disclosing persons, including in terms of such persons' professional secrecy obligations.

The Law entered into force on 27 December 2020.

AMENDMENT TO THE GRAND DUCAL REGULATION REGARDING THE FEES TO BE LEVIED BY THE CSSF

Grand Ducal Regulation of 19 December 2020[36]

On 23 December 2020, Grand Ducal Regulation dated 19 December 2020 amending the Grand-Ducal Regulation of 21 December 2017 (2017 Regulation) regarding the fees to be levied by the financial sector supervisory authority, the *Commission de Surveillance du Secteur Financier* (CSSF) was published in the Luxembourg official journal (*Mémorial A*).

This new text modifies the 2017 Regulation to take account of the new tasks and missions conferred on the CSSF regarding:

- third-country firms wishing to provide investment services in Luxembourg or carry out investment activities under paragraph 2 of Article 32-1 (1) of the amended law of 5 April 1993 on the financial sector; and
- virtual asset service providers and agents of foreign payment or electronic money institutions following the modifications made to the amended law of 12 November 2004 on the fight against money laundering and the financing of terrorism by the law of 25 March 2020 establishing a central electronic data retrieval system for IBAN accounts and safe-deposit boxes.

The new Regulation entered into force on 27 December 2020.

36 Grand Ducal Regulation 19-12-2020

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

CSSF Technical FAQ of 21 December 2020[37]

On 21 December 2020, the CSSF issued a new technical FAQ on CSSF Regulation No 20-08 on borrower-based measures for residential real estate credit.

The Loan-To-Value (LTV) limits introduced by CSSF Regulation No 20-08 require borrowers to satisfy specific own-funds requirements in order to qualify for mortgage loans granted for the purchase of real estate in Luxembourg.

In its Technical FAQ, the CSSF provides clarifications with respect to these requirements, in particular, on:

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

CSSF ISSUES A REGULATION ON THE SETTING OF THE COUNTERCYCLICAL BUFFER RATE

CSSF Regulation 20-11 of 29 December 2020[38]

On 29 December 2020, the CSSF issued a new regulation 20-11 (Regulation) on the setting of the countercyclical buffer rate for the first quarter of 2021. The Regulation was published in the Luxembourg official journal (*Mémorial A*) on 29 December 2020.

The Regulation follows the Luxembourg Systemic Risk Committee's recommendation of 8 December 2020 (CRS/2020/006) and maintains the countercyclical buffer rate for relevant exposures located in Luxembourg at 0.5% for the first quarter of 2021. The new rate will apply as of 1 January 2021.

The Regulation entered into force on 29 December 2020.

37 CSSF FAQ on CSSF Regulation 20-08

38 CSSF Regulation 20-11

BCL AMENDS ITS REGULATION 2014/NO 18 IMPLEMENTING ECB GUIDELINES ON ADDITIONAL TEMPORARY MEASURES RELATING TO EUROSYSTEM REFINANCING OPERATIONS AND ELIGIBILITY OF COLLATERAL

BCL Regulation 2020/No 29 of 31 December 2020[39]

On 31 December 2020, the BCL has adopted a Regulation 2020/No 29 to amend BCL Regulation 2014/No 18 of 21 August 2014 implementing ECB Guidelines of 9 July 2014 on additional temporary measures relating to Eurosystem refinancing operations and eligibility of collateral (Guidelines ECB/2014/31).

The purpose of this Regulation is to reflect the amendments made to the Guidelines ECB/2014/31 by the ECB Guidelines of 25 September 2020 (ECB/2020/45). Therefore, under the revised regime:

- asset-backed securities (ABS) whose underlying assets include residential mortgages or loans to SMEs or both and which do not fulfil certain credit assessment requirements specified in Article 3(5) of the Guidelines ECB/2014/31, are no longer eligible as Eurosystem collateral, given that this asset class has never been used; and
- the method for calculating financial penalties in cases where credit claims not complying with Article 154 (1) (c) of Guidelines (EU) 2015/510 of the European Central Bank (ECB/2014/60) are included in a portfolio of other credit claims, in accordance with Article 4 of Guidelines ECB/2014/31, has been amended to avoid the imposition of disproportionate financial penalties.

The new Regulation entered into force on 1 January 2021.

39 BCL Regulation 2020/N°29

CSSF ISSUES A PRESS RELEASE ON THE DELAY BY ONE YEAR OF ESEF REQUIREMENTS FOR LISTED COMPANIES

CSSF press release of 20 January 2021[40]

On 20 January 2021, the CSSF issued a press release to inform listed companies that, following the agreement of the European Parliament and the Council to an amendment of the Directive 2004/109/EC, Member States are allowed to delay by one year the application of the European Single Electronic Format (ESEF) requirements in relation to annual financial reports. Therefore, the CSSF specifies that, for issuers subject to the Luxembourg law of 11 January 2008 on transparency requirements (as amended) (Transparency Law), use will be made in Luxembourg of the one-year postponement option of the ESEF requirements. These requirements thus apply to the annual financial reports for periods beginning on or after 1 January 2021. For periods preceding that date, issuers may apply the ESEF requirements on a voluntary basis.

Initially, the regulatory technical standards (RTS) on the ESEF (Commission Delegated Regulation (EU) 2019/815) were intended to apply to all annual financial reports drawn up in accordance with article 3 of the Transparency Law for financial years beginning on or after 1 January 2020. Further to the above-mentioned decision, Member States have been granted the option to defer the mandatory application to the annual financial reports for periods beginning on or after 1 January 2021.

In this context, the CSSF reminds issuers that, as from the application of the ESEF requirements, the entire annual financial report shall be drawn up in accordance with the RTS on ESEF. As such it shall be prepared in XHTML format and, where annual financial reports include IFRS consolidated financial statements, issuers shall mark up those consolidated financial statements using eXtensible Business Reporting Language (XBRL).

The CSSF further states that statutory auditors are required to check the compliance of the financial statements with the mentioned requirements, and to provide an auditor's opinion on whether the financial statements comply with these requirements.

40 CSSF Press Release 21/01

CSSF LAUNCHES ITS AML/CTF CROSS-SECTOR SURVEY FOR THE YEAR 2020

CSSF Circular Letter of 27 January 2021[41]

As previously announced in a communication of 24 December 2020[42], the CSSF, published a circular letter (Circular) on 27 January 2021 to remind the professionals under its supervision that its annual AML/CTF cross-sector online survey for the year 2020 (2020 Survey) will be launched on 15 February 2021.

By way of this survey, the CSSF is collecting standardised key information concerning money laundering and terrorist financing risks to which these professionals are exposed, and the implementation of related risk mitigation and targeted financial sanctions measures.

The Circular is addressed to the board of directors and management board of the following Luxembourg-based professionals which are under the CSSF's supervision for AML/CTF purposes:

- credit institutions;
- investment firms;
- payment institutions and electronic money institutions;
- specialised professionals of the financial sector;
- central securities depositories; and
- investment fund managers (including registered AIFMs and self-managed UCITS/internally managed AIFs and investment funds which have not designated an investment fund manager).

It is also addressed to Luxembourg branches of the above professionals having their registered office in the EU or in a third country.

The CSSF indicates that the 2020 Survey remains generally unchanged in substance compared to the previous year, but that a few new questions have been added due to Luxembourg legislative and regulatory changes that occurred in 2020 (e.g. the new law of 19 December 2020 regarding financial restrictive measures and the amendments introduced in the law of 12 November 2004 on AML/CTF with a view to implementing certain provisions of the AMLD5).

The CSSF requires that the answers to the questions of the 2020 Survey are submitted through the CSSF eDesk portal by 15 March 2021 by (i) the compliance officer in charge of control of compliance with the professional obligations (RC), or (ii) the person responsible for compliance with the professional obligations (RR). The CSSF however accepts that the completion of the 2020 Survey may be assigned within the CSSF eDesk portal to another employee of the relevant professional or to a third party, but reminds that the ultimate responsibility for the adequate completion of the 2020 Survey shall remain with the RC or RR of the relevant professional.

In practice, the professionals concerned, or their potential delegates, must thus have an eDesk account with a LuxTrust authentication to access and submit the 2020 Survey to the CSSF. Reference is made by the CSSF to the "Authentication and user account management" user guide in the dedicated section of the CSSF eDesk portal homepage for further details on the logistics aspects.

41 CSSF Circular Letter 27-01-2021

42 CSSF Communiqué on AML Survey

LUXEMBOURG BILL IMPLEMENTING REGULATION (EU) 2018/1805 ON THE MUTUAL RECOGNITION OF FREEZING ORDERS AND CONFISCATION ORDERS

Bill No 7758 of 2 February 2021[43]

On 2 February 2021, a bill No 7758 implementing Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders was lodged with the Luxembourg Parliament.

The bill aims to adapt Luxembourg law to the obligations deriving from the Regulation (EU) 2018/1805 constituting a further instrument to the system of judicial cooperation in criminal law matters within the European Union and based on the cornerstone principle of mutual recognition of judicial decisions.

The new Luxembourg law provisions feed into the current legal regime, which is mainly composed of the law of 8 August 2000 on international judicial cooperation in criminal law matters and the law of 1 August 2018, notably with regards to the provisions on judicial remedies.

The bill sets out the conditions that need to be fulfilled for the recognition and execution by Luxembourg authorities of a foreign freezing order or a foreign confiscation order. It also establishes the relevant authorities presiding over the recognition and implementation proceedings, as well as the different judicial remedies available to persons or entities subject to the orders in question.

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

Bill No 7761 of 2 February 2021[44]

On 2 February 2021, a bill No 7761 modernising the authorisation regime for entities in the financial and insurance sector was lodged with the Luxembourg Parliament.

The bill modernises the authorisation regime, in particular, by granting the *Commission de surveillance du secteur financier* (CSSF) and the *Commissariat aux assurances* (CAA) directly the power to grant and withdraw the authorisation of entities subject to their respective supervision. The authorisation for these entities would hence no longer be granted by the Minister in charge of the financial sector (i.e. currently the Minister of Finance).

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

The bill aims to reflect the change in approach in a series of sectoral laws relating to the financial sector, including the financial sector law, the CSSF law, the payment services law, the insurance sector law and the markets in financial instruments law.

The bill foresees a transitory provision according to which already authorised entities continue to benefit from their existing ministerial authorisation.

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

43 Bill N°7758

44 Bill N°7761

CSSF UPDATES ITS CIRCULAR LETTERS IN RESPECT OF THE LONG-FORM REPORTS OF THE EXTERNAL AUDITOR OF LUXEMBOURG ESTABLISHED CREDIT INSTITUTIONS

CSSF Circular 21/765 of 4 February 2021[45]

On 4 February 2021, the CSSF issued Circular 21/765 which amends:

- the provisions pertaining to the long-form report foreseen in CSSF circular 01/27 concerning the role of the external auditor and applicable to Luxembourg incorporated credit institutions and Luxembourg branches of third-country credit institutions; and
- the provisions on external auditors' reports foreseen in CSSF circular 07/325 relating to credit institutions and investment firms of EU origin established in Luxembourg by way of branches or exercising activities in Luxembourg by way of free provision of services.

In the circular 01/27, new requirements have been introduced for external auditors' long-form reports for financial years ending on 31 December 2020 or later and addressing recent AML/CTF law changes. The CSSF also plans to fundamentally revise the rest of its circular 01/27 over the course of this year.

In the circular 07/325, the requirements for external auditors' reports for Luxembourg branches of credit institutions licensed in other EU member states are also updated to include a more detailed provision on reviewing the compliance with AML/CTF rules.

The changes to the above two circulars were necessitated by the recent amendments made by the CSSF to its Regulation 12-02 of 14 December 2012 on the fight against money laundering and terrorist financing (AML/CTF).

45 CSSF Circular 21/765

CSSF ISSUES A PRESS RELEASE ON TRANSACTION REPORTING OBLIGATION

CSSF press release of 11 February 2021[46]

On 11 February 2021, the CSSF issued a press release on the monitoring of the obligation for credit institutions and investment firms to report transactions in financial instruments as set out in Article 26 of MiFIR and the quality of the transaction reporting data.

In its press release, the CSSF informs on the number of reporting entities (134 Investment Firms as of 1 January 2021) as well as the number of reports received by the CSSF in 2020 (30,346,915 reports). The CSSF press release aims more particularly to inform all reporting entities on the quality and completeness campaigns that the CSSF conducted during the year 2020. In this context, the CSSF highlights notably the following observations:

- Several sources of error and inconsistencies have been detected in the context of the transmission of an order pursuant to Article 4 of RTS 22 (e.g. overly broad interpretation of the exemption in Article 2(5)(m) of RTS 22, confusion between a delegation of the reporting obligation and an order transmission in accordance with Article 4 of RTS 22 or transmission agreements with companies which do not fall within the scope of Article 26 of MiFIR (in particular, entities from third countries) and which are therefore not in line with Article 4(1)(c) of RTS 22).
- Some inconsistencies have been detected regarding the trading venue transaction identification codes.
- As far as the field 5 is concerned, the CSSF reminds as a general rule that, apart from the transaction reports that an operator of a trading venue must submit to the CSSF in relation to transactions executed by its members not falling within the scope of MiFIR, all other transaction reports submitted to the CSSF by investment firms must include "true" in field 5.
- The CSSF points out the importance of timely reporting.
- Some inconsistencies have been detected regarding trading capacity (field 29).
- Some discrepancies have been noted between the number of reports submitted by one reporting entity and the number of reports submitted by its counterparty for the same traded quantity (in aggregate) of the same instrument at the same date.

Where inconsistencies and/or discrepancies have been detected, the CSSF has contacted the relevant entities in order to remedy the situation.

The CSSF further emphasises the topics that will be the subject of dedicated campaigns during the year 2021. Such topics comprise the use of the aggregated client account "INTC", the identification of natural persons in the context of transaction reports, prices and the quantities reported.

The CSSF further introduces the new template that should be used to notify the CSSF of any errors, omissions or failures with respect to the reporting obligation as required under Article 15(2) of Commission Delegated Regulation (EU) 2017/590 (RTS 22). This template may be found following this link.

The CSSF concludes its press release by referring to topics that have already been the subject of a specific campaign and for which details are available in previous communications.

46 CSSF Press Release 21/04

CSSF ISSUES RESULTS OF STOR SURVEY (2019-2020) ON MARKET ABUSE

CSSF STOR Survey of 15 February 2021[47]

On 15 February 2021, the CSSF published the general findings and observations of its STOR Survey (2019-2020) on more than 70 Luxembourg banks and investment firms in relation to their systems and procedures to detect and notify orders and transactions in financial instruments that could constitute market abuse.

The review covers the period from 2017 to 2018. Although resulting in a positive outcome in the sense that no major industry-wide shortcomings were identified, the CSSF notes that a limited number of surveyed entities of different sizes indicated a need to engage in further work to strengthen their systems and procedures or to bring them fully into line with the technical standards.

47 CSSF Revue STOR
CSSF Communique 15-02-2021

CSSF PUBLISHES THE VIDEO RECORDING OF THE WEBINAR AND RELATED Q&A DEDICATED TO THE AMENDED CIRCULAR CSSF 12/552

Webinar dedicated to the amended Circular CSSF 12/552 of 16 February 2021[48]
Q&A dedicated to the amended Circular CSSF 12/552 of 16 February 2021[49]

On 16 February 2021, the CSSF published the video recording of a webinar and the related Q&A dedicated to the recently amended Circular CSSF 12/552[50] on central administration, internal governance and risk management which is applicable to credit institutions and – to a certain extent – other lending professionals.

The webinar took place on 9 February 2021 in the form of a Q&A based on questions collected beforehand via the Luxembourg Bankers' Association (ABBL). The speakers included Claude Wampach (Director, CSSF), Frédéric Christophe (Banking Supervision, CSSF), Gilles Pierre (Head of Banking Regulation & Financial Markets, ABBL) and Bertrand Parfait (Partner, Deloitte Luxembourg).

The webinar and the related Q&A cover notably the following themes in relation to the revised Circular 12/552:

- Scope of applicable and proportionality principle (i.e. applicability to non-financial and non-regulated entities, expectations on the oversight from the parent and proportionality documentation);
- Internal governance framework (i.e. requirements in terms of risk and compliance cultures and the robustness of the tone from the top);
- Management body in its supervisory function (i.e. expectations in terms of ESG risks, diversity and independent members);
- Risk committee (i.e. stress testing and assessment of remuneration framework);
- Management body in its management function (i.e. assessment of the permanent feature of the management body and remote working);
- Internal control framework (i.e. composition of the second line of defence, definition and rules regarding support functions);
- Risk control function (i.e. assessment of the independence criteria and the veto right of the CRO);
- Compliance function (i.e. delegation, role of finance and or legal functions and expectations regarding limits on the compliance risk appetite);
- Internal audit function (i.e. internal audit plan and coverage for AML/CTF and new product approval procedure);
- Risk management (i.e. loans to real estate developers and default classification and rules on private portfolio management); and
- Administrative, accounting and IT organisation (i.e. electronic group solutions for archiving purposes).

The CSSF has also published the English version of its revised Circular 12/552.

48 Video recording webinar Circular 15/552

49 Q&A ABBL webinar Circular 15/552

50 CSSF Circular 15/552

CSSF UPDATES ITS CIRCULAR 19/724 ON TECHNICAL SPECIFICATIONS REGARDING THE SUBMISSION TO THE CSSF OF DOCUMENTS UNDER PROSPECTUS REGULATION AND PROSPECTUS LAW

CSSF Circular 21/766 of 26 February 2021[51]

On 26 February 2021, the CSSF issued the Circular 21/766 which amends, as of 1 March 2021, its Circular 19/724 on technical specifications regarding the submission to the CSSF of documents under the Prospectus Regulation and the Prospectus Law.

These amendments reflect the launch of the e-Prospectus application, which entails changes in relation to technical specifications for the submission of documents to the CSSF for approval, notification or filing where securities are offered to the public or are admitted to trading on a regulated market.

The new circular applies to all persons and entities under the CSSF supervision and all persons falling within the scope of the Prospectus Regulation and Chapter 1 of Part III of the Prospectus Law.

The amended versions of the CSSF Circular 19/724 are annexed to the CSSF Circular 21/766, with the track-changes version in Annex 1 and the clean version in Annex 2.

CSSF E-PROSPECTUS – A NEW INTERACTIVE DIGITAL PORTAL

01 March 2021

As of 1st March 2021, the CSSF launched its new digital platform, e-Prospectus, which allows issuers to submit their prospectus and to intuitively follow and track their requests under the Prospectus Regulation and the Prospectus Law

The CSSF is responsible of the application of both the Prospectus Law and the Prospectus Regulation and is therefore in charge for the approval of prospectuses in Luxembourg.

This new web application from the CSSF replaces the current notification system, consisting in the submission of prospectuses and relating documents, as well as notification requests, to the CSSF by email.

The platform e-Prospectus has been developed with the aim to facilitate the submission, treatment and follow-up of prospectus approval files, allowing an easier and better overview of the status of the application, whilst assuring the appropriate level of security to the issuers.

For more information, please refer to our Client Briefing.

51 CSSF Circular 21/766

UPDATE OF THE CSSF CIRCULAR 03/113 ON THE PRACTICAL RULES CONCERNING THE ROLE OF STATUTORY AUDITORS IN INVESTMENT FIRMS AND STRESSING RECENT CHANGES MADE TO CSSF CIRCULAR 07/325

CSSF Circular 21/768 of 12 March 2021[52]

On 12 march 2021, the CSSF issued CSSF Circular 20/768 to (i) update the amended CSSF Circular 03/113 on the practical rules concerning the role of *réviseurs d'entreprises* (statutory auditors) in investment firms, and (ii) to draw the attention of investments firms and Luxembourg branches of investments firms from other Member States to its communication relating to the amended CSSF Circular 07/325 on the provisions relating to credit institutions and investment firms of EU origin established in Luxembourg by way of branches or exercising activities in Luxembourg by way of free provision of services following the amendments made to CSSF Regulation No 12-02.

The main objective of this circular is to amend section 8 (Professional obligations with regard to the prevention of money laundering and terrorist financing) of the audit summary report, as defined in CSSF Circular 03/113 on the practical rules concerning the role of statutory auditors with investment firms, to take into account the modifications made to Articles 49 (2) and 49 (3) of the revised CSSF Regulation N°12-02 on the fight against money laundering and the financing of terrorism (AML/CTF). The revised requirements apply from the financial year ending on 31 December 2020.

A mark-up version of CSSF Circular 03/113 showing the changes to it is annexed to the CSSF Circular 21/768.

The CSSF specifies that this update of CSSF Circular 03/113 only concerns the AML/CTF aspects, while it is foreseen that the remainder of this circular will be fundamentally revised.

The CSSF finally draws the attention of Luxembourg investment firms and Luxembourg branches of investment firms originating from another Member State to the adding of a paragraph to point 29 of the amended CSSF Circular 07/325 to the effect that in order to prepare its report, the statutory auditor applies *mutatis mutandis* the relevant provisions for the establishment of the annual analytical audit report with regard to compliance with AML/CTF professional obligations and the conduct rules for the provision of investment services. The statutory auditor's report has to include a description of the procedures and controls in place within the branch as well as the statutory auditor's assessment. The descriptive parts of the report are made available by the branches to the statutory auditor.

52 CSSF Circular 21/768

INSURANCE

CAA PUBLISHES FORMS FOR FREEDOM TO PROVIDE SERVICES NOTIFICATIONS

CAA Forms of 30 October 2020[53]

The CAA published on its website forms for freedom to provide services (FoS) notifications both for life[54] and non-life insurance undertakings[55].

The publication of the forms follows EIOPA's decision of 30 January 2017 relating to the collaboration of the insurance supervisory authorities of the Member States of the European Economic Area (EIOPA-BOS-17/014) under the Solvency II Directive.

The information to be provided in the notifications includes, *inter alia:*

- contact details of the head office of the insurance undertaking intending to pursue business under FoS and the identification of the host Member State;
- the name and address of the establishments (other than the head office of the insurance undertaking), situated in the Member States from which it plans to provide services;
- details of the activities (i.e. classes of insurance, nature of the risks or commitments, etc.); and
- information on the awareness of the general good conditions applicable in the host Member State and their implementation in product oversight and governance arrangements, as well as in the insurance product documentation.

CAA ISSUES A CIRCULAR LETTER SETTING TECHNICAL INTEREST RATES APPLICABLE TO REINSURANCE COMPANIES

CAA Circular Letter 20/16 of 3 November 2020[56]

The CAA issued on 3 November 2020 circular letter 20/16 modifying its circular letter 16/10 on technical interest rates applicable to reinsurance companies.

Technical interest rates have to be used by reinsurance undertakings for drawing up the financial balance as provisioned for fluctuations in claims rates.

Given the prolonged period of interest rates at historically low levels, the CAA deemed it necessary to review the rate techniques. Therefore, the interest rate for Euro will be lowered to 1% (from 1.25% currently), that of the Danish Krone to 0.75% (from 1% currently), that of the Norwegian Krone to 1.75% (from 2.25% currently), that of the Pound Sterling to 0.5% (from 2% currently) and that of the US Dollar to 1.75% (from 2.25% currently). For other currencies, the interest rates remain unchanged.

The new technical interest rates are applicable for account closings as of 1 October 2020.

53 Please refer to the CAA website

54 Please refer to the CAA website

55 Please refer to the CAA website

56 Please refer to the CAA website

CAA CIRCULAR LETTER ON SERVICE PROVIDERS TO COMPANIES AND TRUSTS (AML/CTF)

CAA Circular Letter 20/19 of 8 December 2020[57]

The CAA issued on 8 December 2020 circular letter 20/19 on service providers to companies and trusts (AML/CTF).

The circular letter provides clarifications on Article 7-2 of the AML Law which requires trust and company service providers to register with the relevant supervisory authority or self-regulatory body.

The circular letter specifies that the second paragraph of Article 7-2 of the AML Law allows the supervisory authorities to exempt trust and company service providers that are under their prudential supervision from such registration obligation, if the providers are already approved or authorised to perform the activity of trust and company service provider.

The CAA therefore clarifies in this circular letter that:

- only professionals of the insurance sector (PSAs) approved as directors of reinsurance companies or pension funds, or whose authorisation allows them to act as domiciliation agents of companies, are service providers to companies and trusts falling under the supervision of the CAA (pursuant to the amended law of 7 December 2015 on the insurance sector and Article 2-1 (2) of the AML Law);
- it has decided to grant the abovementioned PSAs an exemption from the registration obligation under Article 7-2 of the AML Law; and

With respect to both the PSAS listed above and any other natural or legal persons falling under its supervision, in the event that they also have an approval or an authorisation issued by another supervisory authority or self-regulatory body enabling them to exercise one or more services as a service provider to companies and trusts, this circular letter does not exempt them from taking the necessary measures in order to register, if necessary, with such supervisory authority or self-regulatory body.

CAA CIRCULAR LETTER ON GRANTING OF LOANS RELATING TO RESIDENTIAL PROPERTY LOCATED IN THE TERRITORY OF LUXEMBOURG

CAA Circular Letter 20/20 of 17 December 2020[58]

The CAA issued on 17 December 2020 circular letter 20/20 on granting of loans relating to residential property located in the territory of Luxembourg.

In response to the Systemic Risk Committee's recommendation, the Luxembourg financial sector supervisory authority, the CSSF, adopted on 3 December 2020 regulation No 20-08 setting limits for the granting of credits relating to real estate for residential use located in Luxembourg. These limits are applicable for credit agreements concluded from 1 January 2021[59].

By this circular, the CAA wishes to draw the attention of insurance companies under its supervision that this CSSF regulation also applies to them as they are explicitly mentioned in its scope and to the extent they grant such credits.

However, given that the principle of specialisation set out in Article 49 paragraph 1, point a) of the amended law of 7 December 2015 on the insurance sector should be interpreted as prohibiting insurance companies to engage in such type of credit activities (other than in exceptional cases), the CAA considers that the application of this regulation will have only limited consequences for insurance companies.

The CAA therefore requires operators which could be affected by these occasional credit activities to prepare for a possible data collection by the CSSF on compliance with the limits introduced by the above-mentioned regulation.

57 Please refer to the CAA website

58 Please refer to the CAA website

59 Please refer to the CAA website

CAA CIRCULAR LETTER REGARDING COLLECTION OF INFORMATION ON CONTINUING EDUCATION IN INSURANCE AND REINSURANCE DISTRIBUTION

CAA Circular Letter 20/22 of 17 December 2020[60]

The CAA issued on 17 December 2020 circular letter 20/22 regarding collection of information on continuing education in insurance and reinsurance distribution.

The circular is addressed to insurance and reinsurance brokers, natural persons and legal persons with agents, executives of insurance brokerage firms (*dirigeants de société de courtage*) and sub-brokers (*sous-courtiers*) authorised in the Grand Duchy of Luxembourg and registered with the insurance distributors' register (Responsible Entities).

It implements Article 47 of the amended CAA Regulation No 19/01 of 26 February 2019 on insurance and reinsurance distribution, which requires Responsible Entities to provide the CAA with the list of intermediaries, in office on 31 December of the previous year, who have not met their annual training obligation.

For the purpose of this data collection, the CAA has established an Excel file which should be completed and returned to the CAA by the Responsible Entities by 31 January 2021.

This new circular provides further explanations on what information is required and how this Excel file should be completed.

CAA CIRCULAR LETTER ON ESRB RECOMMENDATIONS OF 25 MAY 2020 ON LIQUIDITY RISK ARISING FROM MARGIN CALLS

CAA Circular Letter 20/21 of 18 December 2020[61]

The CAA issued on 18 December 2020 circular letter 20/21 on the ESRB recommendations of 25 May 2020 on liquidity risk arising from margin calls.

By this circular letter, the CAA recommends to Luxembourg insurance and reinsurance companies which conclude over-the-counter derivative contracts and non-centrally cleared securities financing transactions to ensure that their risk management procedures do not lead, in the event of a downgrade in credit ratings, to sudden and significant changes and cliff-edge effects in margin calls, collection of margin and collateral practices.

This could be achieved, for example, by encouraging counterparties to use a progressive and granular sequence when they implement downgrades in credit ratings, in their overall risk management practice and in maintaining a holistic approach to limit pro-cyclical characteristics in accordance with Article 11 of the EMIR, in particular, with regard to rating downgrades.

60 Please refer to the CAA website

61 Please refer to the CAA website

GRAND DUCAL REGULATION ON CONTRIBUTIONS TO THE STAFF AND OPERATING COSTS OF THE CAA

Grand Ducal Regulation of 19 December 2020[62]

On 23 December 2020, a new Grand Ducal Regulation of 19 December 2020 amending the Grand Ducal Regulation of 28 April 2014 on contributions to the staff and operating costs of the Luxembourg insurance sector supervisory authority, the Commissariat aux Assurances (CAA) (as amended) was published in the Luxembourg official journal (*Mémorial A*).

The Regulation specifies the fees that the CAA is authorised to levy on the entities subject to its prudential supervision.

The last re-fixing of the contributions to costs of the CAA dates back to 2017 and, at the time, it only concerned insurance and reinsurance companies.

The Regulation entered into force on 1 January 2021.

CAA INFORMATION NOTICE ON RESTRICTIVE MEASURES IN FINANCIAL MATTERS

CAA Information Notice of 5 January 2021[63]

The CAA issued on 5 January 2021 an information notice to draw the attention of natural and legal persons under its supervision to the publication of the law of 19 December 2020 implementing restrictive measures in financial matters which entered into force on 27 December 2020.

The CAA reminds that the main objective of this law is to adapt the national legal and regulatory framework which previously only targeted the fight against the financing of terrorism in order to meet the requirements of a holistic implementation of financial sanctions in accordance with Luxembourg's international obligations. The law of 19 December 2020 also replaces and repeals the law of 27 October 2010 implementing United Nations Security Council resolutions as well as acts adopted by the European Union concerning prohibitions and restrictive measures in financial matters in respect of certain persons, entities and groups.

The notice further stresses that the new law expressly confers on the CAA powers of supervision and sanctions like those provided for in the amended law of 12 November 2004 on the fight against money laundering and financing of terrorism.

The CAA finally emphasises that the measures set out in its Circular Letters 20/12 and 11/9 remain on the application of international financial sanctions and restrictive measures valid in the context of the application of this new law.

62 Grand Ducal Regulation of 19-12-2020

63 Please refer to the CAA website

FINTECH

LUXEMBOURG LAW REGULATING THE USE OF DISTRIBUTED LEDGER TECHNOLOGY FOR SECURITIES ISSUANCES

Law of 22 January 2021[64]

On 22 January 2021, the law of 22 January 2021 (DLT Law) amending the law of 6 April 2013 on dematerialised securities (2013 Law) and the law of 5 April 1993 on the financial sector was published in the Luxembourg official journal (*Mémorial A*).

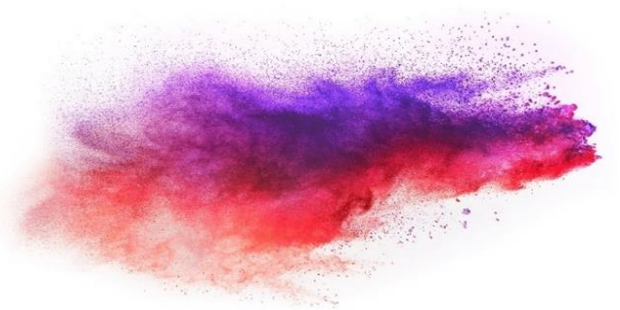
The 2013 Law organises the issuance of dematerialised debt or equity securities under Luxembourg law, and, in particular, provides for the use of a single issuance account (*compte d'émission*) to record the issuance (or conversion) of such securities. The issuance account-holding institution (so-called central account holder (*teneur de compte central*) or liquidation institution (*organisme de liquidation*)) then opens securities accounts (*comptes-titres*) for its clients and the registration in such securities accounts represents the relevant security. The security can then be transferred by way of book entry from one securities account to another. The issuance account serves to reconcile the securities held in the securities accounts with the number of securities registered in the issuance account.

The DLT Law modernises the 2013 Law by expressly recognising the possibility to use secured electronic recording systems (*dispositifs d'enregistrement électroniques sécurisés*), including distributed electronic ledgers or databases, for dematerialised securities. In particular, the DLT Law defines the term issuance account (*compte d'émission*) by specifying that such account may be held and the securities records therein may be effected within or by virtue of a secured electronic recording system (*dispositif d'enregistrement électronique sécurisé*).

The DLT Law thereby asserts Luxembourg's endeavours to promote financial sector innovation, and is a continuation of the law of 1 March 2019 modifying the law of 1 August 2001 on the circulation of securities which already explicitly recognised the possibility to hold and register securities in securities accounts (*comptes-titres*) and record transactions on such securities within or by virtue of a secured electronic recording system, including distributed electronic ledgers or databases.

The DLT Law also widens the possibilities of credit institutions and investment firms to act, for the purposes of the 2013 Law, as a central account holder in relation to non-listed debt securities, and creates certain requirements for the operation of issuance accounts by such entities, in particular, for the purpose of ensuring the integrity of the issuance.

The DLT Law entered into force on 26 January 2021.



64 Law of 22-01-2021

CSSF ISSUES A PRESS RELEASE ON FINANCIAL INNOVATION

CSSF press release of 8 February 2021[65]

On 8 February 2021, the CSSF issued a press release on the CSSF's work and involvement regarding financial innovation, which aims to raise awareness and communicate the position of the CSSF on financial innovation to the public and the industry.

The CSSF announces the creation of a new division dedicated to financial innovation within its Innovation, Payments, Market Infrastructures and Governance Department, constituting the "Innovation Hub" of the CSSF. The Innovation Hub is the single point of contact within the CSSF for any person seeking to present an innovative solution, initiate an open dialogue or raise any question related to financial innovation. The Innovation Hub can be contacted via the following email address: innovation@cssf.lu. Detailed information on the dialogue with the CSSF and the various stages of assessment of a financial innovation project is further set forth in the press release.

The CSSF further explains the approaches it relies upon to embrace the challenges faced by the technological innovation in financial services and markets, namely a proactive open regulatory approach, a prudent risk-based regulatory approach as well as a technology-neutral approach.

The CSSF also describes the areas related to new technologies in which it currently conducts research and evaluates their concrete application in the financial sector. These areas include distributed ledger technologies, virtual/crypto assets and virtual/crypto asset service providers, emergence of new payment services providers, use of artificial intelligence, provision of robo-advice and crowdfunding services. See CSSF press release of 8 February 2021.

CSSF PODCAST ON THE EU COMMISSION'S DIGITAL FINANCE PACKAGE

CSSF Podcast of 15 March 2021[66]

On 15 March 2021, the CSSF published a podcast by Natasha Deloge, head of the CSSF's Financial innovation division, analysing the EU Commission's Digital Finance Package impact on the market. The recording covers in particular DORA, MICA, DLT and crypto assets regulation.

65 CSSF: Financial Innovation

66 CSSF Podcast: The EU Commission's Digital Finance Package

CSSF UPDATED FAQS ON CLOUD COMPUTING CIRCULAR AND ASSESSMENT OF IT OUTSOURCING MATERIALITY AND RELATED DOCUMENTS

FAQs and related documents of 5 March 2021

In the course of March 2021, the Luxembourg financial sector supervisory authority, *Commission de Surveillance de Secteur Financier* (CSSF) published updated versions the following documents:

- FAQs on Cloud Computing Circular[67];
- FAQs on the assessment of IT outsourcing materiality;[68]
- Summary of the information to be transmitted to the competent authority relating to outsourcing to a cloud computing infrastructure under Cloud Computing Circular;[69] and
- Authorisation request for IT outsourcing of material activities.[70]

The sole change introduced by the CSSF into these documents is to add references to the recently introduced Circular CSSF 20/758 on central administration, internal governance and risk management which applies to investment firms.

67 FAQs on Cloud Computing Circular

68 FAQs on the assessment of IT outsourcing materiality

69 CSSF: Information to be transmitted relating to outsourcing to a cloud computing infrastructure under Cloud Computing Circular

70 Authorisation request for IT outsourcing of material activities

ESG

CSSF ISSUES A COMMUNIQUÉ CALLING ON ITS THEMATIC REVIEW ON ISSUERS' CLIMATE-RELATED DISCLOSURES

CSSF Communiqué of 22 December 2020[71]

On 22 December 2020, the CSSF issued on a Communiqué on Thematic Review on issuers' climate-related disclosures.

The objective of this thematic review was to examine the current status of climate-related information reported by issuers, by comparing it with the recommendations made in the updated guidance on non-financial reporting for companies on how to report the impacts of their business on the climate and the impacts of climate change on their business (Recommendations), which is part of the guidance of the key aspects of the Directive 2014/95/EU (NFI Directive).

Further to its review, the CSSF notes that in general, only a small and unsatisfactory percentage of issuers address the questions in relation to climate-change beyond the basic requirements of the NFI Directive.

The CSSF further states that the results of the thematic review have shown that there are still significant gaps to fill and that further improvements in the quality and comparability of climate-related disclosures are urgently required to meet the needs of investors and other stakeholders.

Thus, even though the Recommendations remain non-binding, the CSSF urges issuers to review this new guidance which provide practical recommendations on how to better report the impact that their activities have on the climate as well as the impact of climate change on their business. The regulator further recommends the issuers to already assess on a voluntary basis their level of compliance with the proposed Recommendations and other guidance, given that these matters are of an increasing importance and disclosures in that context will be required in the near future, whether by investors, users of information, other stakeholders, and/or regulations.

Finally, the CSSF stresses that it will carry out a follow up of this examination and of the European priorities in relation to the enforcement of financial and non-financial information (climate-change being an integral part thereof) in order to continue providing issuers with recommendations and good practices.

[71] CSSF Communiqué-22.12.2020

LUXEMBOURG BILL IMPLEMENTING PEPP REGULATION, SFDR AND TAXONOMY REGULATION

Bill No. 7774 [72]

A new bill of law (Bill N°7774) implementing certain provisions of the following EU Regulations was lodged with the Luxembourg Parliament on 26 February 2021:

- Regulation (EU) 2019/1238 of European Parliament and of the Council of 20 June 2019 on a pan-European Personal Pension Product (PEPP) (PEPP Regulation);
- Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (SFDR); and
- Regulation (EU) 2020/852 of the European Parliament and the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment and amending SFDR (Taxonomy Regulation).

The above implementation of the PEPP Regulation, SFDR and Taxonomy Regulation in the Luxembourg legal framework is made through proposed amendments to the Luxembourg law of 16 July 2019 implementing the EuVECA, EuSEF, ELTIF, Money Market Fund and STS Securitisation Regulations, in order notably to:

- appoint the CSSF respectively the CAA, as Luxembourg competent authorities for monitoring the application of the PEPP Regulation, SFDR and Taxonomy Regulation by the Luxembourg entities subject to their respective supervision; and
- specify the supervision and investigation powers of the CSSF and the CAA for the purpose of the PEPP Regulation, SFDR and Taxonomy Regulation as well as the sanctions and other administrative measures that may be applied by the CSSF and the CAA as Luxembourg competent authorities in the context of the abovementioned EU Regulations. As an example, the sanctions that may be applied by the CSSF and the CAA in case of non-compliance by the entities subject to their respective supervision with the relevant requirements of the PEPP Regulation, SFDR and Taxonomy Regulation include, amongst others, a ban against the responsible persons from exercising management functions, pecuniary fines on both natural and legal persons, as well as publication of decisions in relation thereto on the CSSF's and CAA's websites.

The lodging of Bill 7774 with the Luxembourg Parliament constitutes the start of the legislative procedure.

[72] Bill No.7774

CSSF ISSUED COMMUNIQUÉS CALLING ON THE APPLICATION OF SFDR AND RELATED RTS

CSSF Communiqué of 12 March 2021[73]

On 12 March 2021, the CSSF issued a communication (Communiqué) concerning the application of SFDR[74] and its draft regulatory technical standards (RTS).

In its Communiqué, the CSSF reminds that the ESAs issued, on 25 February 2021, a joint supervisory statement on the effective and consistent application and national supervision of SFDR[75]. In particular, the CSSF draws the attention of Luxembourg financial market participants (e.g. AIFMs and UCITS management companies as well as credit institutions and investment firms providing portfolio management) and Luxembourg financial advisers (e.g. credit institutions, investment firms, AIFMs and UCITS management companies providing investment advice) to the following points addressed by ESAs in their Joint supervisory statement:

- The recommendation made to national competent authorities, financial market participants and financial advisers to use the draft RTS (as published on 4 February 2021) as a reference when applying the provisions of SFDR in the interim period between the application of SFDR (as of 10 March 2021) and the application of the RTS at a later date (i.e. 1 January 2022, which is the application date proposed by ESAs for the RTS).
- The application timelines (and summary table) as clarified for some specific provisions of the SFDR, the Taxonomy Regulation and the related RTS, including more particularly:
- the application timeline for the entity-level principal adverse impact statement to be published on the website of financial market participants and financial advisers, for which ESAs have indicated that the information that must be published for the first time does not require the disclosure of information relating to a previous reference period, and that such information to be published by financial market participants and financial advisers in their first statement not related to reference periods should include the following sections in Table 1 of Annex I of the RTS: "Summary", "Description of policies to identify and prioritise adverse sustainability impacts", "Engagement policies" and "References to international standards". This means that the earliest information relating to a reference period to be disclosed in accordance with the RTS would not be made until 2023 in respect of a reference period relating to 2022;
- the application timeline for products-level periodic reporting, for which ESAs have recommended to the European Commission to specify that Chapter V of the RTS applies to periodic reports with reference periods starting from 1 January 2022. In that way, the requirements of Chapter V of the RTS would only apply to periodic reports published in 2022 in relation to reference periods starting from 1 January 2022, while the periodic reports published in 2022 in relation to reference periods starting before 1 January 2022 would apply the high level and principle-based requirements in Article 11(1) of SFDR.

In line with the ESAs' Supervisory Statement, and even if the final RTS must still be adopted by the European Commission and could thus be different from the draft RTS published on 4 February 2021, the CSSF encourages Luxembourg financial market participants and financial advisers:

- to use the interim period from 10 March 2021 to 1 January 2022 to prepare for the application of the RTS; and
- to use the draft RTS as a reference for the purposes of applying the provisions of Articles 2a, 4, 8, 9, and 10 of SFDR in the interim period until the final RTS are adopted by the European Commission.

The CSSF also specifies in its Communiqué that it will await the answer from the European Commission to the

73 CSSF Communiqué 12-03-2021

74 SFDR

75 ESAs Joint Supervisory Statement

letter published by the ESAs on 7 January 2021 in respect of the priority areas in relation to the interpretative uncertainties of SFDR, which cover (i) the application of SFDR to non-EU AIFMs and registered AIFMs, (ii) the application of the 500-employee threshold for principal adverse impact reporting on parent undertakings of a large group, (iii) the meaning of "promotion" in the context of Article 8 products promoting environmental or social characteristics, (iv) the application of Article 9 of SFDR, and (v) the application of SFDR product rules to portfolios and dedicated funds.

CSSF Communiqué of 6 November 2020[76]

On 6 November 2020, the CSSF issued a communication (Communiqué) concerning the application dates of SFDR[77] and its related regulatory technical standards (RTS).

In its Communiqué, the CSSF reminds that the Level 1 SFDR lays down harmonised rules for financial market participants (including, but not limited in Luxembourg to, AIFMs, UCITS management companies, credit institutions or investment firms which provide portfolio management, and institutions for occupational retirement provision (IORP)) and financial advisers (including, but not limited in Luxembourg to, credit institutions, investment firms, AIFMs and UCITS management companies providing investment advice) on the transparency with regard to the integration of sustainability risks and the consideration of adverse sustainability impacts in their investment decision-making and/or investment advisory processes and the provision of sustainability-related information with respect to financial products.

The CSSF also stresses that the European Commission has confirmed, in its letter to the ESAs of 20 October 2020[78], that, despite the delay in the availability of the Level 2 RTS relating to the SFDR (initially set for 30 December 2020), the application dates as laid down by the SFDR are being maintained with effect from 2021.

Consequently, the above financial market participants and financial advisers subject to the SFDR will therefore need to comply with the Level 1 SFDR's high-level and principle-based requirements as from 10 March 2021. The Level 2 RTS will then be issued and become applicable at a later stage (which has not yet been clarified).

The CSSF further reminds the following other clarifications on the SFDR's application provided by the European Commission in its letter of 20 October 2020:

- No further RTS are foreseen for disclosure obligations on the integration of sustainability risks at product level, or sustainability risks policies and remuneration policies at entity level.
- With regard to the integration of sustainability risks in the investment decision-making process, financial market participants must, in accordance with the applicable sectoral legislation, already consider sustainability risks in their internal processes.
- In the context of financial products that promote environmental and social characteristics or have a sustainable investment as their objective and qualify under Articles 8 and 9 of the SFDR, in accordance with applicable sectoral legislation, product manufacturers must already describe in the product documentation how the levels of sustainability are achieved. This means that the manufacturers must comply with the disclosure principles set out in Articles 8 and 9 of the SFDR.

In relation to transparency of adverse sustainability impacts, numerous financial market participants currently comply with the non-financial reporting requirements under the Accounting Directive 2013/34/EU or adhere to international standards and might consider using that information. Even without the full Level 2 RTS, there are no impediments to financial market participants and financial advisers complying with the Level 1 requirements laid down in the SFDR.

76 CSSF Communiqué 06-11-2020

77 SFDR

78 EU Commission's Letter

ASSET MANAGEMENT

CSSF UPDATED FAQs CONCERNING PROFESSIONAL SECRECY OBLIGATION IN CASE OF TRANSFER OF INFORMATION ON INVESTMENT FUNDS' INVESTORS

Updated CSSF FAQs of November 2020

In the course of November 2020, the CSSF published updated versions of its following FAQs:

- FAQs on the UCI Law[79];
- FAQs on the AIFM Law[80];
- FAQs on SIFs and SICARs that do not qualify as AIFs[81];
- FAQs (Part II) on the status of PFS[82];
- FAQs on CSSF Circular 12/552 on the internal governance, central administration and risk control of banks and PFS.[83]

The sole change introduced by the CSSF into these FAQs relates to the professional secrecy obligation, as set out in the Financial Sector Law, of Luxembourg service providers acting as central administration agents or depositaries of Luxembourg UCITS, AIFs and SIFs/SICARs that do not qualify as AIFs (Funds), and the application of this professional secrecy obligation in case of outsourcing of certain services with transfer of information by the relevant Fund's administration agent or depositary to other third-party service provider(s).

In particular, the CSSF reminds that, in case of outsourcing of their services implying a transfer of information to other service provider(s), the administration agents or depositaries of Funds must ensure, as professional of the financial sector and in accordance with article 41(2a) of the Financial Sector Law, that their clients (i.e. the respective management body of the Funds) has accepted the contemplated outsourcing, and this acceptance must cover (i) the outsourcing of the relevant services, (ii) the type of information transmitted in the context of the outsourcing, and (iii) the country of establishment of the entities providing the outsourced services.

However, in case of outsourcing of services by administration agents or depositaries with a transfer of information related to the Funds' investors, the CSSF has now clarified that the Funds (or the management company for mutual funds) should only inform the investors prior to such transfer of their information, but the CSSF FAQs no longer require the investors' consent in this respect. According to the CSSF, the Funds' investors should be informed of the envisaged transfer of their information through appropriate means, namely the prospectus and the application form combined, if appropriate, with a reference to a website. Existing investors should also be informed by the Funds (or the management company for mutual funds), prior to the transfer of their information, about any update of the Funds' documents aiming at the aforesaid disclosure by means of a letter, email or any other means of communication provided for by the prospectus.

The same conditions apply to UCITS management companies and AIFMs which are authorised by the CSSF to act as central administration and which effectively perform this function for Funds.

Finally, for the avoidance of any doubt, the CSSF has also clarified that the application of the above requirements related to the professional secrecy obligation in case of transfer of information by an entity acting as central administration or depositary of Funds to other service provider(s) is independent of the requirements of the General Data Protection Regulation (EU) 2016/679, if applicable.

79 CSSF FAQs on UCI Law

80 CSSF FAQs on AIFM Law

81 CSSF FAQs on SIFs and SICARs

82 CSSF FAQs on PFS (Part II)

83 CSSF FAQ on Circular 12/552

CSSF UPDATED FAQS ON AML/CTF FOR INDIVIDUALS INVESTORS AND ON THE RR/RC FOR FUNDS AND THEIR MANAGERS

CSSF updated FAQs of March 2021

In the course of March 2021, the CSSF, published updated versions of its following FAQs regarding the fight against money laundering and terrorist financing:

- FAQs regarding AML/CTF for individuals investors (CSSF FAQs on AML/CTF for Individual Investors)[84] and
- FAQs regarding the persons involved in AML/CTF for Luxembourg investment funds or investment fund managers supervised by the CSSF for AML/CTF purposes (CSSF FAQs on RR/RC for Funds and Investment Fund Managers)[85].

As regards the CSSF FAQs on AML/CTF for Individual Investors, the changes introduced concern (i) the meaning of, and (ii) the latest developments in relation to, international financial sanctions, in particular within the context of the fight against terrorist financing. Thus, the references made in those FAQs to the law of 27 October 2010 concerning financial restrictive measures have been removed and replaced by appropriate references to the law of 19 December 2020, which has repealed the law of 27 October 2010 with effect as of 27 December 2020 and has implemented in Luxembourg the restrictive measures in financial matters adopted by the United Nations Security Council resolutions in application of Chapter VII of the United Nations Charter and decisions, common positions and regulations adopted by the European Union since 1 December 2009 concerning prohibitions and restrictive measures in financial matters in respect of certain persons, entities and groups.

New questions and answers have also been added to further clarify the scope of the law of 19 December 2020, respectively the obligations of a professional subject to the CSSF's supervision for AML/CTF purpose in case where a natural or legal person amongst its business relationships is registered on the Office of Foreign Assets Control (OFAC) lists.

As regards the CSSF FAQs on RR/RC for Funds and Investment Fund Managers, the sole change consists into clarifying that the entry into force on 24 August 2020 of the revised version of CSSF Regulation n° 12-02 on AML/CTF (as amended by CSSF Regulation n° 20-05) does not change the content of the CSSF FAQs on RR/RC for Funds and Investment Fund Managers.

This clarification is, for instance, relevant concerning the possibility granted by the CSSF in its FAQs to Luxembourg UCITS management companies and AIFMs to appoint their RR (i.e. the person responsible for compliance with their AML/CTF professional obligations) among the members of their management body. Accordingly, the RR of Luxembourg UCITS management companies and AIFMs can continue to be the members of the relevant management body acting collegially (or alternatively one of these members only), and such RR does not necessarily have to be appointed among the conducting officers of the relevant UCITS management company or AIFM (as provided for by CSSF Regulation 12-02 in respect of professionals which have an authorised management).

84 CSSF FAQs on AML/CTF for Individual Investors

85 CSSF FAQs on RR/RC for Funds and Investment Fund Managers

AED FAQs REGARDING THE PERSONS INVOLVED IN AML/CTF FOR RAIFs AND CORRELATIVE IDENTIFICATION FORM

AED FAQs of December 2020[86]

In December 2020, the Luxembourg indirect tax authorities, the *Administration de l'enregistrement et des domaines et de la TVA* (AED), published FAQs regarding the persons involved in AML/CFT for Luxembourg RAIFs, which are supervised by the AED for AML/CTF purposes.

As a reminder, although RAIFs are not subject to prior authorisation and ongoing prudential supervision by the CSSF, they nevertheless qualify as professionals falling within the scope of the AML/CTF Law, and are thus under the supervision of the AED (not of the CSSF) for AML/CTF purposes in accordance with article 2-1(8) of the AML/CTF Law.

The FAQs published by the AED aim at clarifying the requirements of article 4(1) of the AML/CTF Law concerning the persons involved in AML/CTF for RAIFs subject to its supervision for AML/CTF purposes. These clarifications are, to a large extent, similar to the clarifications introduced by the CSSF in its FAQs concerning the RR and RC of Luxembourg-regulated investment funds and their managers (which entities are supervised by the CSSF for AML/CTF purposes). Thus, the AED takes into account the similarities between RAIFs and regulated investment funds supervised by the CSSF to remind that, according to article 4(1) of the AML/CTF Law, RAIFs must also appoint the following two persons to be involved in AML/CTF:

- a person responsible for compliance with AML/CTF obligations to be appointed among the members of the management body (also defined as "RR" by the AED), it being understood that such RR can be the relevant RAIF's management body, i.e. the members of the board of directors/managers, general partner or management company (depending on the legal form of the RAIF) acting collegially or alternatively one of these members only; and
- a person responsible for control of compliance with AML/CTF obligations to be appointed at an appropriate hierarchical level (defined as "RC" by the AED), it being understood that such RC must be mandated *intuitu personae* by the relevant RAIF's management body, and may be one of the members of the relevant RAIF's management body with appropriate experience, or a third-party delegate, which may, for example, be chosen among the staff of the relevant RAIF's AIFM. In the case of a third-party delegate, the AED requires that (i) the RAIF enters into a contractual relationship with the RC personally, or (ii) where the contract is concluded with the employer of the RC, then the contract must name the RC, any replacement of the RC must be subject to the RAIF's approval and the RC must acknowledge its appointment in writing. According to the AED, the RC must, in principle, be available in Luxembourg for the accomplishment of its tasks, but may be located abroad under certain conditions.

The AED FAQs also specify the conditions (e.g. knowledge, expertise and availabilities, etc.) to be complied with by the RR and the RC of RAIFs and insist, in particular, on the fact that the RAIFs' RC will be the primary contact of the RAIFs for the AED for AML/CTF purposes and will have to ensure the quality of the AML/CTF controls performed with regards to its professional obligations.

The AED has started to contact directly Luxembourg RAIFs which are under its supervision for AML/CTF purposes to inform them of the publication of the above FAQs, and to ask them to comply with their obligations in terms of RR/RC appointment. In a first stage, the AED requires that RAIFs complete and return the duly signed "RAIF RR/RC Identification Form"[87].

86 AED FAQs on RR/RC (December 2020)

87 RR_RC Identification Form

NEW EDESK MODULE FOR SUBMISSION OF CERTAIN INFORMATION WITH THE CSSF

CSSF Communiqué of 8 December 2020

On 8 December 2020, the CSSF issued a communication indicating that the reception and processing by the CSSF of a series of requests will be progressively digitised via a new "eDesk/Generic Request Management Module", which will allow the users thereof to submit their requests online via the CSSF eDesk Portal.[88]

The CSSF indicates that two types of requests are concerned by the new eDesk module, i.e. (i) those submitted at the initiative of the interested parties, and (ii) those submitted on an *ad hoc* basis further to a specific demand initiated by the CSSF via email.

The CSSF further specifies that the following two requests for information will be in scope of the new eDesk module as of 8 December 2020:

- Information to be submitted to the CSSF under Circular 15/612 by and at the initiative of all Luxembourg AIFMs, thus including AIFMs authorised and AIFMs registered with the CSSF, in relation to the EU/non-EU unregulated AIFs and/or the non-EU regulated AIFs managed by them;
- Information to be submitted to the CSSF (on an *ad hoc* basis) in relation to anti-money laundering supervisory measures by all Luxembourg investment managers (e.g. Luxembourg UCITS management companies/AIFMs and their Luxembourg branches), internally managed UCITS/AIFs and internally managed SIFs and SICARs that do not qualify as AIFs, it being understood that such information will have to be submitted further to a specific demand initiated by the CSSF.

For the avoidance of doubt, the CSSF indicates that, as from 8 December 2020, the only possible channel to submit the above two requests will be via the eDesk Portal, meaning that submission by email, for instance, will no longer be accepted by the CSSF going forward. Other type of requests to be submitted via eDesk Portal will follow, and the CSSF will communicate accordingly in due course.

A user guide providing additional information and guidance for the online submission of these requests via the new eDesk Portal is available in the dedicated section of the CSSF eDesk Portal, and all information related to the creation of user account(s) is detailed in the lower section of the eDesk Portal homepage.[89]

88 CSSF Communiqué 08-12-2020

89 eDesk – CSSF digital portal

ESMA GUIDELINES ON PERFORMANCE FEES IN UCITS AND CERTAIN TYPES OF AIFS

CSSF Circular of 18 December 2020[90]

On 18 December 2020, the CSSF, published Circular 20/764 concerning the application of ESMA guidelines on performance fees in UCITS and certain types of AIFs, i.e. only those AIFs in Member States allowing for the marketing of AIFs to retail investors in accordance with Article 43 of AIFMD and with the exception of (i) closed-ended AIFs and (ii) open-ended AIFs that that are EuVECAs (or other types of venture capital AIFs), EuSEFs, private equity AIFs or real estate AIFs.

As a reminder, ESMA guidelines on performance fees in UCITS and certain types of AIFs [91] were published on 5 November 2020 with a view to establishing harmonised common standards in relation to the manner in which investment fund managers charge performance fees to retail investors in UCITS/AIFs, and the circumstances in which performance fees can be paid in such a way as to prevent undue costs being charged to the relevant UCITS/AIF and its investors. In particular, ESMA set out common standards and criteria in relation to the following items: (i) performance fee calculation method, (ii) consistency between the performance fee model chosen and the fund's investment objectives, strategy and policy, (iii) frequency for crystallisation of the performance fee (and for the subsequent payment of the performance fee), (iv) circumstances where a performance fee should be payable, (v) duration of the performance reference period and (vi) disclosure of the performance fee model.

The purpose of CSSF Circular 20/764 is to inform all investment fund managers of UCITS and AIFs marketed to retail investors in Luxembourg that the CSSF, in its capacity as competent authority, will apply ESMA guidelines on performance fees in UCITS and certain types of AIFs and integrate them in its administrative and regulatory practices as of the date of application of these guidelines, i.e. on 6 January 2021.

In this respect, the CSSF further indicates, in line with EMSA, that:

- investment fund managers of new UCITS/AIFs created after the date of application of the guidelines with a performance fee, or any UCITS/AIFs existing before the date of application that introduce a performance fee for the first time after that date, should comply with the guidelines immediately; and
- investment fund managers of UCITS/AIFs with a performance fee existing before the date of application of the guidelines should only comply with these guidelines in respect of those UCITS/AIFs by the beginning of the financial year following six months from 6 January 2021.

As regards umbrella UCITS/AIFs with multiple compartments, the CSSF considers that ESMA guidelines ESMA guidelines on performance fees in UCITS and certain types of AIFs will also be applicable as of 6 January 2021 for any newly created compartments, i.e. in relation to any new compartment setting up a performance fee at the compartment or classes of units/shares level.

For further information on ESMA guidelines on performance fees in UCITS and certain types of AIFs, please refer to the July 2020 edition of our Legal Update.

CSSF Communiqué of 5 March 2021[92]

On 5 March 2021, the CSSF issued a communication reminding that ESMA launched a common supervisory action (CSA) with NCAs on 6 February 2021 in relation to the supervision of costs and fees of UCITS across the EU[93].

The aim of this CSA is to assess the compliance of supervised entities with the relevant cost-related provisions in the UCITS framework and the obligation of not charging investors with undue costs. For this purpose, the NCAs (including the CSSF) are required by ESMA to take into account the supervisory briefing on the

90 CSSF Circular 20/764

91 ESMA Guidelines on performance fees

92 CSSF Communiqué 05-03-2021

93 ESMA CSA 06-02-2021

supervision of costs published by ESMA in June 2020[94], which is designed to provide guidance to NCAs as regards the supervision of how costs are charged to investors by UCITS and their managers. It is also meant to give market participants indications of NCAs' expectations and compliant practices regarding the cost-related provisions of the UCITS frameworks.

In this context, the CSSF has started to launch in March 2021 the first phase of the CSA by asking a sample of Luxembourg-based UCITS management companies to complete a dedicated questionnaire for all UCITS managed, i.e. Luxembourg domiciled UCITS and foreign domiciled UCITS.

In order to benefit from a secured exchange platform and pre-submission data quality checks, the response questionnaire will have to be submitted by UCITS management companies through the CSSF's eDesk Portal. For that purpose, a dedicated section to complete this questionnaire will be accessible on the eDesk Portal.

94 ESMA supervisory briefing on the supervision of costs (34-39-1042)

CSSF FAQs ON THE USE OF SECURITIES FINANCING TRANSACTIONS BY LUXEMBOURG UCITS

CSSF FAQs of 18 December 2020[95]

On 18 December 2020, the CSSF published a set of FAQs in relation to the use by Luxembourg-domiciled UCITS of the following securities financing transactions (SFTs): (i) securities lending transactions, (ii) reverse repurchase agreement transactions and (iii) repurchase agreement transactions.[96]

The objective of the FAQs published by the CSSF is to bring further clarity to the following requirements concerning the use by UCITS of these SFTs, thereby taking into account the applicable European and Luxembourg regulatory frameworks (e.g. the UCITS framework and EU Regulation 2015/2365 on transparency of securities financing transactions and of reuse (SFTR)) and the supervisory experience gained by the CSSF over the last years:

- requirements on prospectus disclosure to investors regarding the use of SFTs;
- requirements on direct and indirect operational costs/fees arising from SFTs and on the policy on sharing of returns on SFTs; and
- requirements on conflicts of interests and best execution in the context of the use of SFTs.

The CSSF specifies that the FAQs only apply to the SFTs defined above, and do not intend to deal with financial derivative instruments, including total return swaps (TRS), used by UCITS for the purpose of efficient portfolio management. However, having regard to the fact that SFTR also sets forth provisions on the use of TRS, the CSSF invites the entities covered by the FAQs to also take into account the provisions of the FAQs for the TRS they conclude.

Regarding these entities, it has to be noted that the FAQs are addressed primarily to Luxembourg UCITS. However, the CSSF considers that SFTR also applies to the disclosure to investors by AIFMs as laid down in Article 23 of AIFMD, and consequently expects that:

- Luxembourg AIFMs authorised under the AIFM Law give due consideration for their managed AIFs to the clarifications given in the FAQs;
- non-Luxembourg AIFMs authorised under the AIFMD consider the clarifications brought in the FAQs with regards to the Luxembourg-domiciled AIFs they manage, while those non-Luxembourg AIFMs should also give consideration to the relevant regulatory provisions and clarifications given in their respective home Member State; and
- Luxembourg-domiciled regulated AIFs (Part II UCIs and SIFs) managed by a registered sub-threshold AIFM, as well as Luxembourg-domiciled regulated UCIs (Part II UCIs and SIFs) which do not qualify as AIFs, also consider the clarifications of the FAQs, where relevant.

The CSSF expects the disclosure clarifications given in the FAQs to be included in the UCITS prospectus, and the case being in the disclosure to investors under the requirements of Article 23 AIFMD for AIFs, by 30 September 2021.

95 CSSF FAQ Use of Securities Financing Transactions by UCITS

96 CSSF Communiqué 18-12-2020

NEW CSSF REGULATION ON THE MARKETING OF FOREIGN UCIs TO RETAIL INVESTORS IN LUXEMBOURG

CSSF Regulation of 23 December 2020[97]

The CSSF has adopted Regulation No 20-10 (Regulation 20-10) outlining the modalities of application of Article 100(1) of the UCI Law concerning the marketing of non-Luxembourg based undertakings for collective investments other than the closed-ended type (Foreign UCIs) to retail investors in Luxembourg.

According to Article 100(1) of the UCI Law and Regulation 20-10, a Foreign UCI (or the compartment(s) thereof) intending to market its units/shares to retail investors in Luxembourg must be authorised by the CSSF prior to starting such marketing activities, and will be registered on the CSSF's official list of Foreign UCIs published on the CSSF website.

- The CSSF's authorisation will be granted only if the following requirements are complied with:
- ***Marketing authorisation request*** – A specific application for authorisation to market the relevant Foreign UCI to retail investors must be filed with the CSSF, together with all the mandatory information and documentation as set out in the UCI Law and Regulation 20-10. Moreover, if the Foreign UCI qualifies as an AIF but is not managed by an EU-27 duly authorised AIFM under the AIFMD, the notification procedure required for the marketing of AIFs by non-EU AIFMs to professional investors in Luxembourg, as provided for in Article 45 of the AIFM Law, will have to be completed, which also includes the communication to the CSSF of all relevant information and documents required within the framework of such notification procedure.
- ***Marketing authorisation conditions*** – The relevant Foreign UCI must be subject in its home state to permanent supervision performed by a supervisory authority set up by law in order to ensure the protection of investors, and must also be subject to supervision considered by the CSSF to be equivalent to that laid down in the UCI Law. In addition, the manager of the relevant Foreign UCI must itself also be subject in its home state to prudential regulation and supervision and, if the Foreign UCI qualifies as an AIF managed by a non-EU AIFM, such AIFM will further have to comply on a permanent basis with the conditions set out in Article 45 of the AIFM Law (Article 42 AIFMD).
- ***Foreign UCI types which may be authorised*** – In order to be authorised by the CSSF for marketing to retail investors in Luxembourg, the relevant Foreign UCI must, amongst others:
  - determine at fixed and sufficiently close intervals, and in any case at least once a month, the issue and redemption price of its shares/unit;
  - ensure sufficient risk diversification of its investments, which will be deemed to be the case if it complies with the specific investment restrictions and limits laid down in Regulation 20-10;
  - appoint a credit institution to ensure that facilities are available in Luxembourg for making payments to unitholders/shareholders and ensuring subscription and redemption for shares/units in Luxembourg; and
  - take necessary measures to ensure that the information and documents to be made available to retail investors in Luxembourg (e.g. its constitutive and issue documents, PRIIPs KID, annual report, etc.) are provided in French, German, English or Luxembourgish, it being understood that such information and documents may be provided by means of a website.

For the avoidance of doubt, Regulation 20-10 does not apply to the marketing to retail investors in Luxembourg of Foreign UCIs qualifying as AIFs managed by a Luxembourg or other EU-27 AIFM duly authorised under the AIFMD, which foreign AIFs will have to comply, as appropriate, with the requirements of Article 46 of the AIFM Law and CSSF Regulation 15-03 in case they are

97 CSSF Regulation 20-10

marketed to retail investors in Luxembourg. Moreover, Regulation 20-10 does not apply to the marketing of Foreign UCIs in Luxembourg to professional investors within the meaning of MiFID nor to eligible investors under the EuVECA, EuSEF and ELTIF Regulations.

Regulation 20-10 was published in the Luxembourg official journal (*Mémorial A*) on 23 December 2020 and entered into force on 1 January 2021. Foreign UCIs which had already been authorised for marketing to retail investors in Luxembourg under Article 100(1) of the UCI Law are considered *ipso jure* as authorised under Regulation 20-10 at the time of its entry into force.

REDUCED SUBSCRIPTION TAX RATES FOR UCITS AND PART II UCIs INVESTING IN SUSTAINABLE ASSETS

Luxembourg 2021 Budget Law amending UI Law

The Luxembourg 2021 budget law, which introduces, among other things, certain tax amendments to the UCI Law with a view to promoting and encouraging certain Luxembourg UCIs investing in sustainable assets, was published in the Luxembourg official journal (*Mémorial A*) on 23 December 2020 (2021 Budget Law).[98]

The 2021 Budget law amends Article 174 of the UCI Law in order to allow certain UCITS and Part II UCIs, or the compartment(s) thereof, to benefit from reduced subscription tax rates (i.e. lower than the normally applied annual base rate that is, in principle, 0.05% of the total net assets of UCITS/Part II UCIs), provided that such UCITS/Part II UCIs, or the compartment(s) thereof, invest in environmentally sustainable economic activities within the meaning, and meeting the requirements, of the Taxonomy Regulation 2020/852 (Sustainable Assets).

The percentage of the reduced subscription tax rates will vary and decrease as indicated below depending on the degree/level of the relevant UCITS'/Part II UCI's (or compartment's) investments in Sustainable Assets, it being understood that the reduced rates will only be applied to the relevant part of the UCITS'/Part II UCI's (or compartment's) net assets so invested in Sustainable Assets:

- subscription tax rate of 0.04% if at least 5% of the total net assets are invested in Sustainable Assets
- subscription tax rate of 0.03% if at least 20% of the total net assets are invested in Sustainable Assets
- subscription tax rate of 0.02% if at least 35% of the total net assets are invested in Sustainable Assets
- subscription tax rate of 0.01% if at least 50% of the total net assets are invested in Sustainable Assets.

The benefit of the above reduced subscription tax rates will not be automatic, but subject to certain formalities.

In particular, the exact part of the UCITS'/Part II UCI's (or compartment's) net assets invested in Sustainable Assets on the last day of the UCITS'/Part II UCI's financial year will, among other things, have to be audited by an approved statutory auditor (*réviseur d'entreprise agréé*) or, as the case may be, certified by an approved statutory auditor in the framework of a reasonable assurance mission (*mission d'assurance raisonnable*) in accordance with the international auditing standards as adopted by the *Institut des Réviseurs d'Entreprises* by virtue of the Luxembourg law of 23 July 2016 concerning the audit profession, and such part of net assets invested in Sustainable Assets will further have to be included together with the corresponding percentage thereof in the UCITS'/Part II UCI's annual report or in an insurance report, as the case may be.

In addition, a separate dedicated statement containing the percentage of the UCITS'/Part II UCI's (or compartment's) net assets invested in Sustainable Assets as determined in the annual report or insurance report will be certified by the approved statutory auditor and transmitted to the Luxembourg indirect tax authorities (AED) at the time of the first subscription tax filing following the finalisation of the annual report or insurance report. The percentage so transmitted to the AED will be used as a basis to determine the subscription tax rate applicable to the part of the UCITS'/Part II UCI's (or compartment's) net assets invested in Sustainable Assets for the next four quarters following the filing of the above certified statement.

The new reduced subscription tax rates apply as from 1 January 2021, with a transitional period running until 1 January 2022 to allow, in particular, UCITS/Part II UCIs investing their net assets in Sustainable Assets to submit corrective subscription tax declarations, as the case may be.

AED Circular N°804 bis

On 17 February 2021, the AED issued Circular N° 804bis[99] (which replaces Circular 804) to clarify the implementation of Article 174 of the UCI Law (e.g. though examples) in relation to the reduced rates of subscription tax that may be applied to certain UCITS and Part II UCIs investing in Sustainable Assets.

98 2021 Budget Law

99 AED Circular 804bis

DIGITALISATION OF AML/CFT MARKET ENTRY FORMS FOR FUNDS AND MANAGERS

CSSF Communiqué of 8 February 2021

On 8 February 2021, the CSSF issued a communication concerning the digitalisation of its AML/CFT market entry forms (available previously under Excel form on the CSSF website), which have to be completed by certain Luxembourg investment funds and investment fund managers in order to allow the CSSF to collect standardised key information in relation to money laundering and terrorist financing risks to which these funds and managers are exposed to and in relation to the measures they put in place to mitigate those risks.[100]

The AML/CTF market entry forms remain to be completed and submitted to the CSSF for:

- Luxembourg UCITS, Part II UCIs, SIFs, SICARs, ELFTIFs, EUVECAs, EUSEFs and money market funds within the meaning of the Money Market Fund Regulation (Funds), each time an application is made for the authorisation by the CSSF of a new Fund or new additional compartment thereof; and
- Luxembourg UCITS management companies and certain other non-UCITS management companies as well as Luxembourg AIFMs authorised or registered with the CSSF (IFMs), each time an application is made for authorisation or registration, licence extension and/or modification of qualified shareholding of the relevant IFM.

The CSSF indicates that, as from 15 February 2021, the AML/CTF market entry forms have to be filled out and submitted through the CSSF eDesk Portal via a new eDesk "AML/CFT Market Entry Form" dedicated module, subject to a one-month transition period ending on 15 March 2021 to allow users to familiarise with the new digitalised format and permitting them to continue submitting the AML/CTF market entry forms other than those for Fund approval by email, using the Excel dedicated form available on the CSSF website. As from 15 March 2021, however, the only possible channel for submission of all AML/CTF market entry forms will be the eDesk Portal.

The CSSF requires that the AML/CFT market entry forms are initiated and submitted by (i) the compliance officer in charge of the control of compliance with the professional obligations (RC) of the Fund, or (ii) the person responsible for compliance with the professional obligations (RR) of the Fund. The CSSF however accepts that the completion of the AML/CFT market entry forms may be assigned within the CSSF eDesk portal to another employee of the relevant Fund or by a third party, but reminds that the ultimate responsibility for the adequate completion of the AML/CFT market entry forms shall remain with the RC or RR of the relevant Fund.

In practice, the Funds and IFMs concerned, or their potential delegates, must thus have an eDesk account with a LuxTrust authentication to access and submit the AML/CTF market entry forms to the CSSF. Reference is made by the CSSF to the eDesk Portal homepage for further details on the logistics aspects.[101]

100 CSSF Communiqué 08-02-2021

101 eDesk-CSSF Digital Portal

REVISED MANDATORY FORM FOR NOTIFICATION OF NAV CALCULATION ERRORS AND INVESTMENT BREACHES BY INVESTMENT FUNDS

CSSF Circular 02/77 of 18 February 2021

In the context of its Circular 02/77[102] concerning the protection of investors in case of NAV calculation errors and correction of the consequences resulting from non-compliance with the investment rules applicable to UCIs, the CSSF has introduced a revised version of the mandatory notification form (Form) to be used for the transmission of NAV calculation errors and investment breaches by UCIs.[103]

The main changes to the revised Form (available on the CSSF website) concern notably the introduction of additional drop-down menus (e.g. categorisation of investment breaches), the removal of some data fields (e.g. share class-specific information) and the addition of some data fields (notably on corrective measures implemented at the level of the UCI for avoiding the reoccurrence of similar incidents in the future).

The CSSF also published additional explanations in relation to the revised Form, in which it reminds that the notification procedure for NAV calculation errors and investment breaches continue to be applicable to UCITS and Part II UCIs as well as to SIFs (whether the relevant SIF chooses to apply Circular 02/77 or to set other specific internal rules).

The CSSF further indicates that the notification procedure must start immediately after the occurrence of a NAV calculation error or non-compliance with investment rules, and expects a complete Form to be submitted to it, in principle, within four to eight weeks of the detection of the incident. However, the CSSF specifies that:

- for non-compliance with investment rules that do not involve time-consuming calculations, the Form should be submitted within four to six weeks following their detection;
- for non-compliance with investment rules involving more time-consuming calculations and for regularisation processes of NAV calculation errors involving the compensation of individual investors (which may both take more time), the Form should be submitted within six to eight weeks.

In principle, the CSSF will not accept, and will reject, incomplete Forms and Forms with a modified structure, meaning that the notifying entities are expected to fill in all the requested information as foreseen by the applicable data fields of the Form and cannot add, delete, rename or otherwise modify any of these data fields. The sole exception concerns the pre-notification option, which allows the notifying entities to partially fill in and pre-notify the CSSF, but only on exceptional and duly justified cases where the calculations and compensation processes necessary to remediate and correct NAV calculation errors or non-compliance with investment rules are particularly complex and time-consuming (and thus do not allow the submission to the CSSF of a complete Form within the above required timelines). In such cases, a pre-notification will be submitted to the CSSF within four to eight weeks with all information available at that time, and will be completed by sending the complete Form with all the required information and data in a next and final step.

The revised Form should be used as from 18 February 2021, but notifications using the old form will continue to be accepted by the CSSF until 22 March 2021. Notifications should be sent electronically to opc.prud.sp@cssf.lu.

102 CSSF Circular 02/77 additional explications

103 CSSF Notification Form
CSSF FAQ Circular 02/77

SIMPLIFICATION OF THE SUBMISSION PROCESS FOR APPROVAL OF A NEW SUB-FUND UNDER AN EXISTING INVESTMENT FUND

CSSF Press Release of 23 February 2021[104]

On 23 February 2021, the CSSF issued a press release concerning the simplification of the submission process for the approval of a new sub-fund under an existing regulated investment fund structure subject to the CSSF's prudential supervision.[105]

The process' simplification consists of the completion and submission to the CSSF of a new single application questionnaire replacing the four application questionnaires currently in use for the approval by the CSSF of a new sub-fund created within an existing:

- UCITS or Part II UCI subject to the UCI Law;
- SIF subject to the SIF Law; and
- SICAR subject to the SICAR Law.

The new questionnaire is an Excel file (downloadable on the CSSF website), which has been designed to further standardise the data, information and documents necessary to the CSSF for the examination of the application made. It compiles information and data already requested under the former questionnaires, but also requires certain additional information in relation to, amongst others:

- the fee structure applicable to the new sub-fund,
- the classification of the new sub-fund as Article 8, Article 9 or other product under SFDR, with the completion of an additional ESG section for an Article 8/9 sub-fund;
- the use of benchmarks by the new sub-fund under the Benchmarks Regulation; and
- the use of derivatives by, and correlative obligations applicable to, the new sub-fund under EMIR.

The new questionnaire is introduced with immediate effect as from 23 February 2021, and one questionnaire must be completed for each new sub-fund of an existing UCITS, Part II UCI, SIF or SICAR for which an approval by the CSSF is requested. Filings using the former questionnaires will however still be accepted by the CSSF until 12 March 2021.

104 CSSF Press Release 21/05

105 CSSF Questionnaire for the approval of a new sub fund

EXTENSION OF TEMPORARY REGIME FOR MARKETING OF UK UCITS TO RETAIL INVESTORS

Law of 25 February 2021[106]

The law of 25 February 2021 was published in the Luxembourg official journal (*Memorial A*) on 26 February 2021 and amends (i) the AML/CTF Law, (ii) the law of 20 April 1977 on gambling and betting relating to sporting events (Gambling Law), (iii) the law of 25 March 2020 establishing a central electronic data retrieval system related to IBAN accounts and safe-deposit boxes (Central Register Law), (iv) the law of 10 July 2020 creating a register of fiduciaries and trusts (RFT Law) and (iv) the UCI Law.

The main objective of the new law is to clarify and add further detail to certain provisions of the AML/CTF Law and Gambling Law as well as to further correct three material errors which have crept into the Central Register Law and RFT Law. These adaptations aim to refine the transposition of certain provisions of AMLD 4, Solvency 2 and CRD 4 and are in line with the recommendations of the Financial Action Task Force in this respect.

The second objective of the new law is to extend, until 31 July 2021, the temporary regime introduced in Article 186-6 of the UCI Law by the Luxembourg law of 8 April 2019 concerning the measures to be taken in relation to the financial sector, and more particularly regarding certain Luxembourg and UK funds, in case of a withdrawal of the UK from the EU (Brexit Law).[107]

As a reminder, the Brexit Law, which entered into force on the date of the UK's withdrawal from the EU (i.e. on 31 January 2020), provided, among other things, for a specific temporary regime in favour of UK UCITS marketed to retail investors in Luxembourg under the UCITS marketing passport in order to allow them to continue, under certain conditions, their marketing activities to retail investors in Luxembourg for a period of 12 months from the date of the UK's withdrawal from the EU (i.e. until 31 January 2021).

This temporary regime under the Brexit Law has, however, rarely applied in practice to the extent that UK entities, including UK UCITS, have been allowed by the EU-UK Withdrawal Agreement to continue to provide their services and activities in Luxembourg on the basis of their respective EU passporting rights until the end of the EU transition period for Brexit on 31 December 2020. In this context, the law of 25 February 2021 extends the temporary regime of the Brexit Law, which ended on 31 January 2021, for an additional six-month period until 31 July 2021, in order to ensure a smooth transition and avoid any legal uncertainty for Luxembourg investors holding units/shares in UK UCITS.

In particular, the law of 25 February 2021 amends Article 186-6 of the UCI Law by providing that:

- UK UCITS with UK UCITS ManCo – UK UCITS authorised by the UK Financial Conduct Authority (FCA) under the UCITS Directive, which:
  - are managed by a UK UCITS management company at the date of the end of the transition period provided for in the EU-UK Withdrawal Agreement (i.e. 31 December 2020), and
  - are marketed to retail investors in Luxembourg on 31 January 2021 on the basis of and in accordance with the temporary regime of the Brexit Law,

  will be *ipso jure* authorised until 31 July 2021 for marketing to retail investors in Luxembourg under Article 100(1) of the UCI Law, which provides for the conditions to be complied with for the marketing of foreign open-ended undertakings for collective investment (other than EU UCITS to retail investors in Luxembourg) and

106 Law of 25-02-2021

107 Law of 08-04-2019

- UK UCITS with EU-27 UCITS ManCo – UK UCITS authorised by the FCA under UCITS Directive, which:
    - are managed by a UCITS management company established and authorised in an EU Member State other than the UK, and
    - are marketed to retail investors in Luxembourg on 31 January 2021 on the basis of and in accordance with the temporary regime introduced by the Brexit Law,

will be allowed to market their units/shares to retail investors in Luxembourg only if their EU-27 UCITS management company is also duly authorised and licensed as AIFM at the date of the end of the transition period provided for in the EU-UK Withdrawal Agreement (i.e. 31 December 2020). If this condition is met, these UK UCITS will be *ipso jure* authorised until 31 July 2021 for marketing to retail investors in Luxembourg under Article 46 of the AIFM Law, which applies to the marketing of foreign open-ended AIFs by EU-27 AIFMs to retail investors in Luxembourg.

The Law of 25 February 2021 enters into force on 2 March 2021, save for the modifications made to Article 186-6 of the UCI law that entered into force on 1 February 2021 to ensure the continuity between the end of the temporary regime of the Brexit Law on 31 January 2021 and its proposed extension until 31 July 2021.

CORPORATE

REGISTER OF BENEFICIAL OWNERS – FILING WITH LUXEMBOURG TRADE AND COMPANIES REGISTER AND REGISTER OF BENEFICIAL OWNERS

District Court, 16 July 2020 No 328/2020

In the case at hand, a Luxembourg public limited liability company (Company) was prosecuted for committing two offences, (i) not publishing its annual accounts for the financial years running from 2011 to 2018, thus constituting a serious violation of the Companies Law that can justify, *inter alia*, its judicial liquidation, and (ii) the absence of registration of its beneficial owner(s) as provided for by the law of 13 January 2019 establishing a register of beneficial owners which is punishable by a fine amounting between EUR 1,250 and EUR 1,250,000 (RBO Law).

On the first count, the court considered that "given the regularisation efforts that have taken place, while noting that a criminal sanction should result from the acknowledged offences, it was decided not to prosecute the directors of the company […] to refrain from pursuing the action for the judicial liquidation of the company".

With this decision, the District Court of Diekirch demonstrates a certain clemency in the sanctions that can be imposed on a company which is in breach of the Companies Law, even though the offence was committed over a relatively long period of time. It would appear that the goodwill of the Company's representatives seeking to "regularise the situation" was sufficient for the court to abandon the action for judicial liquidation.

On the second count, the court considered that, in view of "the seriousness of the offence and given the high penalties provided for by the law and considering the duration of the offence, which lasted more than six months, but also taking into account the regularisation which finally took place", the Company should be sentenced, in the context of an agreement entered into with the latter, to a fine of EUR 2,500. Once again, the court shows a certain clemency and tended to personalise the penalties, which is due to the regularisation of the situation before the judgment.

It should be noted that, in any case, the decision of the judges will be made at their sovereign discretion on the basis of the specific circumstances of the case.

DIGITALISATION DIRECTIVE (EU) 2019/1151 – ONLINE INCORPORATION OF COMPANIES

To be transposed into national law by 1 August 2021

Directive (EU) 2019/1151 of the European Parliament and of the Council of June 20, 2019 amending Directive (EU) 2017/1132, with respect to the use of digital tools and processes in company law, entered into force on 31 July 2019 (Directive).

This Directive aims to ensure the competitiveness and trustworthiness of the European market, by requesting the Member States to, *inter alia*:

- implement efficient processes for the incorporation of companies by providing digital solutions such as the online incorporation of companies; and
- harmonise their companies register by introducing a minimum access to information free of charge and limiting the fees for access to documents and information.

The most important contribution of the Directive concerns the online incorporation of companies, for which Member States shall implement solutions (i) that do not require the physical presence of the founding shareholders[108] and (ii) can be completed either within five business days for founding shareholders who are natural persons using exclusively standard documents, or up to 10 business days in other cases.

As to the impact of the Directive on the role of the notaries in the incorporation process, the Directive expressly specifies that Member States may still involve notaries at all stages of the online incorporation process. Thus, based on the information available so far, there is no particular reason to expect major changes as to the involvement of notary in the incorporation process.

From a Luxembourg perspective, the precise scope of the Directive, as to which legal forms will be concerned by the online incorporation process or as to the involvement of the notary, remain to be determined at this stage, given that no draft bill has yet been introduced as part of its transposition.

Keep an eye open for any update on this topic in our future legal update.

[108] Although the Directive provides for the option to require physical presence of the founding shareholder for identification purposes in case of any doubt.

PROHIBITION OF FINANCIAL ASSISTANCE NOT APPLICABLE TO SARL

Bill 7791 amending the Companies Law introduced on 16 March 2021

The purpose of the bill 7791 is to amend article 1500-7, 2° of the Companies Law (formerly article 168, 2nd indent) to rectify a clerical error which occurred during the parliamentary works in relation to the bill of law 5730, which led to the law of 10 August 2016 modernising the Companies Law.

In the initial versions of the bill of law 5730, the intention was to expressly prohibit financial assistance for a SARL through the introduction of new articles and of the reference to *parts sociales* under article 1500-7, 2° of the Companies Law (formerly article 168, 2nd indent), pertaining to criminal sanctions. However, the position subsequently changed and the relevant new articles were removed accordingly from the bill 5730. The reference to *parts sociales* nevertheless remained under article 1500-7, 2° of the Companies Law (formerly article 168, 2nd indent), which has resulted in difficulties of interpretations amongst practitioners.

The bill 7791 aims precisely at removing the reference to *parts sociales* in article 1500-7, 2° of the Companies Law and to thus clarify that the prohibition of financial assistance is not applicable to a SARL.

DATA PROTECTION

THE EU-UK TRADE AGREEMENT ALLOWS FOR PERSONAL DATA FLOWS TO THE UK

EU-UK Trade and Cooperation Agreement of 24 December 2020[109]

On 24 December 2020, the UK and the EU announced they had agreed on a post-Brexit "EU-UK Trade and Cooperation" Agreement (the "**EU-UK Agreement**"), which the EU plans to bring to provisional application on 1 January 2021 before being fully ratified. The EU-UK Agreement reinforces the parties' commitment to privacy and data protection and contains provisions regulating the flow of personal data between the EU and the UK.

From the end of the transition period on 1 January 2021, the UK and the EU will form two distinct regulatory, legal and customs territories. The UK will therefore become a "third country" no longer bound by EU law, including the GDPR.

In the absence of an adequacy decision from the European Commission to allow the free-flow of personal data from the EU to the UK, data flows to the UK shall constitute international transfers and shall be subject to appropriate safeguards pursuant to Chapter V of the GDPR.

In this context, the EU-UK Agreement sets out an interim period during which the UK will not be deemed a third country for data protection purposes, and will last until (i) the adoption of an adequacy decision by the European Commission, or in any case for a duration of 4 months from 1 January 2021 extendable to 6 months in the absence of an objection by the EU or the UK.

Therefore, during this interim period, no safeguards are required to justify the transfers of personal data from the EU to the UK.

For more information, please refer to our client briefing.

109 The EU-UK Trade and Cooperation Agreement

NEW GUIDELINES ON THE NOTIFICATION OF PERSONAL DATA BREACHES OPEN FOR CONSULTATION

EDPB Guidelines 01/2021 on Examples regarding Data Breach of 18 January 2021[110]

On 18th January 2021, the EDPB released case-based guidelines regarding personal data breach notifications under the GDPR (the "**Guidelines**").

The EDPB in the Guidelines cites examples of personal data breaches stemming from the supervisory authorities' collective experience, ranging from ransomwares, cyber-attacks, stolen equipment and exfiltration of data by former employees, to accidentally sending data to the wrong recipients.

The Guidelines further clarify the obligations under the GDPR relating to personal data breaches and lists several measures that supervisory authorities would legitimately expect from data controllers, such as:

- An internal handbook or policy on handling personal data breaches;
- Adequate training and awareness of employees on the identification and risks of data breaches;
- Backups of the personal data;
- State of the art IT security measures; and
- Concluding data breach related arrangements with service providers.

The Guidelines specify that the risk assessment to be conducted must take at least into account the nature, sensitivity, and volume of personal data impacted by the breach. In the presence of a ransomware or other cyber-attack, the data controller should be able to assess the type of attack and determine the possible consequences on the impacted data.

Whilst the notification to data subjects should in principle be made only where the breach is likely to result in a high risk to their rights and freedoms, the EDPB nevertheless recommends notifying data subjects in any case where their intervention or assistance is required in order to minimise the material damage of the breach (e.g., inviting data subjects to change their passwords).

The EDPB also stated that the 72 hour time limit is a maximum, data controllers confronted to high-risk data breaches are expected being able to report in a shorter timeframe.

The open consultation for these guidelines was closed on 2 March 2021.

110 Guidelines 01/2021 on Examples regarding Data Breach Notification

UPDATE OF THE CNPD GUIDANCE ON THE PROCESSING OF PERSONAL DATA IN THE CONTEXT OF THE COVID-19 HEALTH CRISIS

CNPD Recommendations of 11 February 2021 of the CNPD on the processing of personal data in the context of a health crisis[111]

On 11 February 2021, the CNPD updated its recommendations on the processing of personal data in the context of a health crisis.

When an employee is ill, he or she is required under the Labour Code (and where applicable) to inform the employer only of his/her incapacity to work, without providing any further information regarding his or her state of health or the nature of the illness. The CNPD considers that the employee in such case is not required to inform the employer that he/she has tested positive for COVID-19 or has COVID-19 symptoms.

As regards the processing of personal data, the employer may only process elements linked to the medical certificate. The employer cannot put in place files or processing activities relating to health data linked to COVID-19 (even if an employee voluntarily informs his or her employer that he or she has tested positive for COVID-19 or may present symptoms of the disease), including files or data relating to the body temperature or to other diseases (such as the comorbidities).

The CNPD further considers that it is not the role of the employer to carry out investigations or "contact tracing". This task falls to the Health Inspection from the moment where an employee tests positive for COVID-19.

111 CNPD Recommendations 11-2-2021

REAL ESTATE

CLARIFICATION REGARDING THE ALLOCATION OF THE COMPETENCIES BETWEEN THE DIFFERENT MUNICIPAL BODIES CONCERNING THE EXERCISE OF THE PRE-EMPTIVE RIGHT AND THE MOTIVATION OF THE PRE-EMPTIVE DECISIONS

Case law Administrative Court, 5 January 2021, No 44939C and circular No 3951 dated 19 January 2021[112]

The Administrative Court has clarified in a judgment rendered on 5 January 2021 (i) the allocation of the competences between the different municipal bodies regarding the exercise of the pre-emptive right and (ii) the conditions of regularity of the pre-emptive decisions as to their motivation.

The Administrative Court upheld the judgment rendered by the Administrative Tribunal on 22 July 2020, which ruled that the administrative courts have jurisdiction to determine the nullity of a pre-emptive decision but partially changed the grounds of the judgment regarding the annulment of the pre-emptive decision taken by the college of Mayor and Aldermen (*college Bourgmestre et échevins*) of a municipality.

The Administrative Court ruled on the basis of the communal law dated 13 December 1988 and of the law dated 22 October 2008 (*Pacte Logement* Law), as amended, regarding the allocation of competences that the college of Mayor and Aldermen, which is the executive body of a municipality, may take the decision to exercise the right of pre-emption, and this decision has to be ratified by the communal council (*conseil communal*) before the notarial deed is executed, i.e. within three months from the date on which the pre-emptive decision was notified to the notary.

The Administrative Court specified that this competence of the college of Mayor and Aldermen does not prevent the communal council from directly exercising the pre-emptive decision in the month following the acknowledgement of receipt of the notice sent by the notary relating to the project of sale of the real estate asset.

Regarding the motivation of the pre-emptive decisions, the Administrative Court ruled that the purpose of the pre-emptive decision has to be indicated clearly and precisely in the notification sent to the notary by reference to one of the three aims set out in article 3 of the *Pacte Logement* Law, i.e. realisation of affordable housing projects within the meaning of the amended law of 25 February 1979 concerning housing assistance, carrying out road works and public facilities, as well as works to erect collective facilities.

In the instant case, the municipality simply stated that the objectives set by the *Pacte Logement* Law are followed, without any further details. New elements regarding the purpose of the exercise of the pre-emptive right were only given during the proceedings, which is too late according to the Administrative Court.

A circular, referenced under number 3951, was addressed to the municipal administrations on 19 January 2021 summarising the principles set out by the Administrative Court in the commented judgment. This circular further recommends that the municipalities involve the concerned parties in the contemplated sale in the decision-making process through non-contentious administrative proceedings in order to ensure the formal legality of the decision. This circular is also referred to in an answer dated 1 February 2021 to a parliamentary question No. 3401.

112 Case law Administrative Court, 5 January 2021, n° 44939C

THE COMPULSORY CLOSURES ORDERED BY THE GOVERNMENT IN RESPONSE TO THE COVID-19 PANDEMIC ARE CONSTRUED AS A FORTUITOUS EVENT OF TEMPORARY NATURE, JUSTIFYING THE TEMPORARY SUSPENSION OF THE OBLIGATION OF PAYMENT OF THE RENT AND CHARGES

Case law Magistrates' Court 21 January 2021, No 204/2021, 13 January 2021, No 94/21, 14 January 2021, No 124/2021, 21 January 2021, No 197/21

In a series of judgments rendered in January 2021, the Magistrates' Court (*Tribunal de Paix*) of Luxembourg ruled with reference to article 1722 of the Civil Code that some tenants under commercial lease agreements, who respectively operate a bar, a restaurant with bar and a retail clothing shop, are discharged from the obligation of paying the rent due for the periods of compulsory closure of their businesses ordered by the Luxembourg Government with the view of limiting the spread of COVID-19.

Article 1722 of the Civil Code provides in substance that, if the let premises are destroyed during the term of the lease by a fortuitous event, the lease agreement is terminated as of right.

Luxembourg case law and doctrine have since long adopted a broad interpretation of article 1722 of the Civil Code considering that the "destruction" of the let premises, may not only be physical, but can also encompass "legal" destruction of the building, the latter being defined as a fortuitous event rendering legally impossible the use of the let premises.

This impossibility of use has not to be absolute, in the theoretical meaning of this word, but it must be reasonably impossible for the tenant to enjoy the let premises in compliance with the contractually intended use.

In addition, the fortuitous event must affect the let premises themselves. The Magistrates' Court decided that, since the aim of the governmental measures was to prevent the gathering of people in the premises of these businesses (restaurants, bars, clothing shops), the compulsory closures did indeed affect the let premises themselves.

Consequently, the Magistrates' Court concluded in the commented judgments that the compulsory closures ordered by the government in response to the COVID-19 pandemic were a fortuitous event of temporary nature.

Considering that article 1722 of the Civil Code is an adaptation of the theory of risks, according to which the occurrence of a temporary fortuitous event only suspends the debtor's obligation for its duration, the Magistrates' Court ruled that (i) the commercial lease agreements are not terminated and (ii) the tenants are discharged from paying the rent and charges corresponding to the compulsory closure period.

CLARIFICATIONS OF THE OBLIGATION OF TRANSPARENCY INCUMBENT ON THE STATE REGARDING THE CONTRACTS IT CONCLUDES

Case law Administrative Court, 26 January 2021, No 43866 and Administrative Tribunal 9 November 2020 (No 44514)

Over the recent years, the obligation of transparency incumbent on the public entities and its corollary, the obligation to communicate certain administrative acts, have been strengthened. However, the limits of these obligations have been recently clarified regarding the contracts concluded by the Grand Duchy of Luxembourg (State).

The Administrative Court rendered a judgment on 26 January 2021 which is in line with the context of strengthening the transparency obligation on the State towards the members of the Parliament regarding the contracts it concludes.

A member of the Parliament (MP) filed a lawsuit before the Administrative Tribunal to obtain the annulment of a decision of the Minister of Communications and the Media (Minister), refusing him the communication of the contracts signed between the Grand Duchy of Luxembourg and the RTL Group in 2017 further to the restructuring of RTL Group (Contracts).

The Administrative Tribunal construed the refusal decision of the Minister as an act of government and not as an administrative act subject to appeal before administrative courts, taking into account the political nature of such decision and thus declared itself incompetent.

On appeal, the Administrative Court reversed the judgment and construed the refusal decision as an administrative decision over which it is competent. The Court dismissed the arguments of the State pursuant to which (i) the decision of the Minister would have a purely political content and (ii) the confidentiality clause contained in the Contracts would prevent the communication of these Contracts to the MP.

The Court held that a member of the Parliament is not a third party with regard to the State, and that it has the right to obtain the communication of all the documents likely to enable him to carry out his effective control over the action of the government.

The commented judgment is reminiscent of the discussions which took place before the Parliament in June 2020 regarding the Memorandum of Understanding signed by Google, the city of Bissen and the State pertaining to the implementation of a data centre project in Bissen (MoU).

The government decided to communicate the MoU in the frame of a closed session of a parliamentary commission further to the opinion rendered on 4 May 2020 by the Commission for Access to Documents (CAD), which considered that the MoU could be construed as a document relating to the exercise of an administrative activity of the State and of the city of Bissen and falls, as such, in the scope of the law dated 14 September 2018 on transparent and open administration (Law).

Despite the opinion rendered by the CAD, the government maintained its refusal to disclose the MoU to the environmental association which had made the request before the CAD (Association).

The Association introduced a request for annulment of this refusal decision before the Administrative Tribunal, which rendered its judgment on 9 November 2020.

The Administrative Tribunal ruled that the MoU cannot be construed as a document in connection to an administrative activity within the meaning of the Law on the following grounds:

- in the light of the description of the content of the MoU given by the parties, the MoU does not have at this stage a sufficiently direct link with the exercise of a public service mission (*mission de service public*); it only contains preliminary phases to be carried out before any development of a more concrete project. The Tribunal specifies that such a direct link will exist at a subsequent stage when the administrative authorisations for the construction of the site and its operation will have been issued;
- the commitments of the parties contained in the MoU regarding real estate acquisitions to be realised with the view of implementing the project are excluded from the scope of the Law, unless it can be proven that these acquisitions are directly

linked to the exercise of a public service mission, which is not the case here; and

- the MoU is a part of the economic, industrial and commercial policy of the State.

The Tribunal therefore dismissed the action for annulment of the Association.

It can be concluded in the light of the commented decisions that the obligation of transparency incumbent on the State regarding the contracts it concludes has been strengthened towards the members of Parliament, but that this tendency is somewhat weaker towards private entities.

THE SECTOR MASTER PLANS HAVE BEEN (FINALLY) APPROVED AND THEIR REGIME HAS BEEN CLARIFIED

Law dated 1 February 2021 amending the Law dated 17 April 2018 on spatial planning and the grand-ducal regulations dated 10 February 2021 making the sector master plans compulsory as from 1 March 2021

The sector master plans (*Plans Directeurs Sectoriels* or PDS) are regulations implementing the law dated 17 April 2018 on spatial planning as amended (Law of 2018).

The law dated 1 February 2021, which amended the Law of 2018 (Law of 2021), clarified the regime of the PDS, which has been (finally) approved by four grand-ducal regulations dated 10 February 2021.

The purpose of the PDS is to organise Luxembourg's territory in terms of housing, economic activities, transport and landscaping by means of graphic and written prescriptions.

The PDS limit or frame the right of ownership, insofar as they have an impact on the general land use plan (*plan d'aménagement general* or PAG), the specific land-use plans (*plans d'aménagement particulie*r or PAP), the building permits and the authorisations issued by reference to the law dated 18 July 2018 on the protection of the nature and the natural resources (Environmental Administrative Authorisations).

Indeed, PAG, PAP, building permits and the Environmental Administrative Authorisations shall comply with the PDS.

The PDS may in particular:

- restrict or prohibit the land use (activities admissible in a given area); and
- burden plots with a prohibition or with restrictions as to the building rights.

Concerning this last aspect, as from the date of the entry into force of the grand-ducal regulations making the PDS compulsory, i.e. from 1 March 2021:

- no building permit shall be delivered if the project does not comply with the PDS;
- no Environmental Administrative Authorisations shall be delivered if the project does not comply with the PDS; and
- the State and the municipalities are entitled to acquire the lands necessary for the realisation of the purpose of the PDS by way of expropriation.

The grand-ducal regulation approving the PDS has taken into account the comments made by the Council of State (*Conseil d'Etat)* in its opinion dated 12 May 2020.

For example, concerning the PDS Transport, the grand-ducal regulation expressly specifies that the designation in the graphic part of the PDS Transport of areas where infrastructure projects may be developed, have only an indicative value, meaning that the final localisation of a transport infrastructure project may differ from the indication in the graphic part of the PDS.

The provisions of the grand-ducal regulations draft, which previously stated that Annex 1 to the PDS Transport lists the transport infrastructure projects that can be declared to be in the public interest within the meaning of the amended law dated 15 March 1979 on expropriation, have been deleted by reference to the opinion rendered by the Council of State. Such a deletion has been made, insofar as the matter of expropriation falls within the competence of the area reserved for the law under article 16 of the Constitution. Such a deletion does not however prevent the State and the municipalities from using the expropriation proceedings in compliance with article 24 of the Law of 2018.

Article 6 of the grand-ducal regulation approving the PDS on Housing states that, in areas designated as priority in the graphic part of the PDS, the obligation to dedicate within the PAPs new area a part of the gross buildable surface (*surface construite brute*) to housing reserved for the construction of moderate-cost housing (*logements à coût modéré*) applies.

Amended article 11 (2) 9° of the Law of 2018 has clarified this obligation by specifying that 30% of the gross buildable surface which is dedicated to housing shall be dedicated to the moderate-cost housing (and not 30% of the total buildable surface within the PAP new area).

TAX

LUXEMBOURG COURT OF APPEAL CONFIRMED THE DEDUCTIBILITY OF INPUT VAT IN PRESENCE OF LEASE CONTRACTS INCLUDING RENT-FREE PERIOD

9 December 2020; Arrêt No 174/20-II-CIV

On 9 December 2020, the Luxembourg Court of Appeal confirmed the right of input VAT deduction of the lessor in case of rent-free periods as often agreed to in property lease agreements.

Background

In principle, the Luxembourg law provides for an exemption of VAT applicable to letting of buildings. However, a lessor may opt for taxation if both it and the lessee are VAT taxable persons and to the extent the building is used for an activity giving right to input VAT deduction.

Key elements

In business practice, rent-free periods are frequently granted to the lessee. The Luxembourg VAT Administration (VAT Administration) has previously taken the view of a split between the period subject to rent payment and the rent free period, whereas the input VAT deduction right was denied for the rent-free period. Consequently, a lessor was obliged to regularise and pay back part of the input VAT previously deducted.

In July 2019, the Luxembourg Tribunal had already reversed the VAT Administration's position and ruled in favour of the deductibility of input VAT linked to lease including rent-free periods.

Aligning with case law of the European Court of Justice (ECJ), the Court of Appeal confirmed the position of the taxpayer and that the lease of a building has to be considered as a single global activity even in case of rent-free periods (i.e. a breakdown in economic and non-economic periods should thus not be acceptable). Therefore, the right input VAT deduction should not be restricted.

The Court of Appeal decision appears as a welcomed clarification for the real estate industry and stakeholders should review their position in light of the judgment.

LUXEMBOURG EXTENDS TAX COMPLIANCE DEADLINES

21 December 2020

On 21 December 2020, Luxembourg's Prime Minister announced, in the context of the COVID-19 strategy, that the deadline for the filing of corporate and individual tax returns relating to the fiscal years 2019 and 2020 will be extended.

Key elements

For individuals and enterprises, the deadline for the 2020 declaration has been extended from 31 March 2021 to 30 June 2021. Individuals may also be granted an extension until 31 March 2021 for the declarations relating to the tax year 2019. These measures have been laid out in the law of 25 February 2021.

In respect of corporations, the Ministry of Finance announced that the Luxembourg Tax Authorities (*Administration des Contributions Directes*) should exceptionally display flexibility in respect of the filing of 2019 corporate income, municipal business and net wealth tax returns. It is expected that the tax offices in charge should not impose fines for late filing on tax returns for 2019 that will be submitted by 31 March 2021 at the latest.

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

08 January 2021, circular L.I.R. No 168bis/1

On 8 January 2021, the Luxembourg tax authorities issued circular L.I.R. No 168bis/1 providing clarifications on the Interest Limitation Rule.

Background

Initiated by the OECD, the fight against excessive interest deduction has been followed by the European Union through the Anti-Tax Avoidance Directive of July 2016 (ATAD I). Transposed by the law of 21 December 2018, the Interest Limitation Rule has remained unclear in Luxembourg.

Key elements

First, the Administration has clarified the interaction of existing Luxembourg tax provisions with the new Interest Limitation Rule

The Circular has also detailed the concept of borrowing costs. Borrowing costs are all costs linked to borrowed money or other financing arrangements. In that regard, elements of the non-exhaustive list have been approached.

The application of the grandfathering clause has also been addressed. Loans concluded before 17 June 2016 shall not be taken account when determining [excessive] borrowing costs. However, the Administration has remained blurred about the definition of those loans.

Even if some welcomed clarifications have been issued, serious uncertainties remain. While waiting for notably the jurisprudence, debt (and especially distressed) financing structures should remain carefully monitored.

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

LUXEMBOURG PARLIAMENT PASSED LAW TO LIMIT DEDUCTIBILITY OF PAYMENTS TO NON-COOPERATIVE JURISDICTIONS

28 January 2021, Bill of Law number 7547

On 28 January 2021, the Luxembourg Parliament passed Bill of Law number 7547, limiting the deductibility of certain interest and royalties paid to associated enterprises in non-cooperative jurisdictions.

Background

Encouraged by the Council of the European Union, Luxembourg has joined the fight against jurisdictions which do not comply with international tax standards (so-called EU Blacklist) by focusing on the non-deductibility of certain costs measures.

Key elements

As of 1 March 2021, the deductibility of interest and royalties "due" will be limited (in opposition to the initial drafting referring to "paid or due"). The non-retroactivity has been confirmed, and interest and royalties already paid are therefore out of scope. Taxpayers concerned by the provision could avoid the restriction by proving the genuine commercial reasons to reflect the economic reality of such payments.

As amended on 6 October 2020, the EU Blacklist comprises American Samoa, Anguilla, Barbados, Fiji, Guam, Palau, Panama, Samoa, Trinidad and Tobago, US Virgin Islands, Vanuatu and Seychelles. Cayman Islands and Oman have been removed by the last modification.

For Luxembourg taxpayers, this new provision may lead to a broadened tax base. Therefore, specific attention should be given when dealing with interest or royalty payments made to blacklisted jurisdictions.

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

GLOSSARY

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

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

"**AIF**": Alternative Investment Fund

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Glossary

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

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

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

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

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

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

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

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

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

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

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

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

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

"**CRA**": Credit Rating Agencies

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

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

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

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

"**CRR/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

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

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

Glossary

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

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

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

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

"**EBA**": European Banking Authority

"**ECB**": European Central Bank

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

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

"**EEA**": European Economic Area

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

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

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

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

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

"**ETDs**": Exchange Traded Derivatives

"**ETFs**": Exchange Traded Funds

"**EU**": European Union

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

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

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

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

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

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

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

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

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

"**FSB**": Financial Stability Board

Glossary

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"**NCA**": National Competent Authority

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

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

Glossary

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

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

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

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

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

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

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

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

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

"**PSP**": Payment Service Provider

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

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

"**Public Interest Entities**":

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

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

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

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

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

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

Glossary

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Glossary

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

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

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

"**UCITS Directive**": Directive 2009/65/EC of 13 July 2009 of the EU Parliament and of the Council on the 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

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

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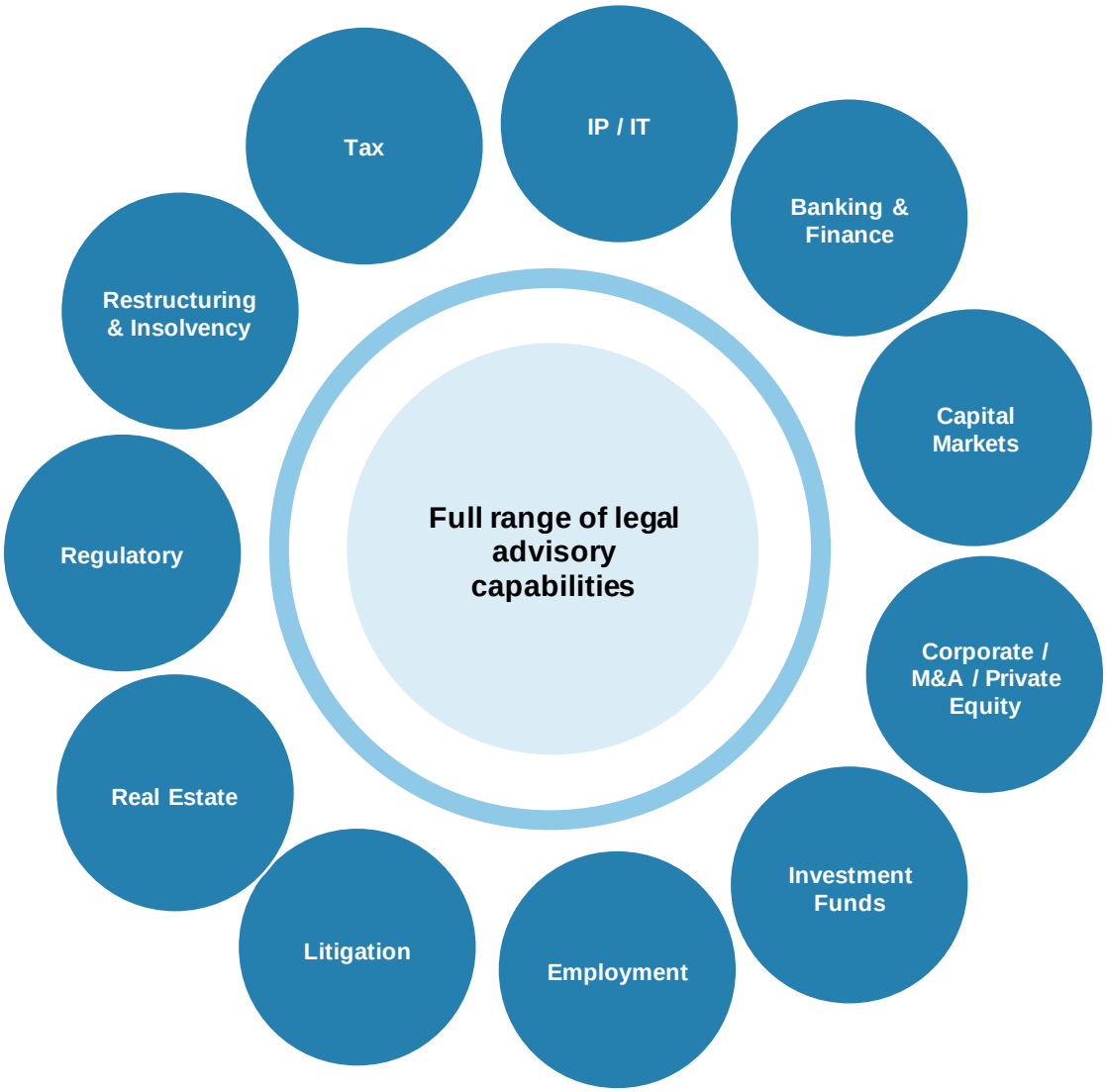

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