Luxembourg Legal Update

July 2016

CLIFFORD CHANCE

Contents

BREXIT topic guide

Make sure to regularly visit our dedicated Brexit topic guide to keep up to date with the most recent developments relating to the outcome of the 23 June referendum in the UK.

Online resources

To view the **client briefings** mentioned in this publication, please visit our website www.cliffordchance.com

To view all editions of our **Luxembourg Legal Update**, please visit www.cliffordchance.com/luxembourglegalupdate

Follow **Clifford Chance Luxembourg** on **LinkedIn** to stay up to date with the legal industry in Luxembourg

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

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

Banking, Finance and Capital Markets

EU Developments

Benchmark Regulation

Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds was published in the Official Journal on 29 June 2016.

The Regulation aims to curb conflicts of interest in setting benchmarks, such as LIBOR and EURIBOR, which influence financial instruments and contracts and could affect the stability of financial markets across Europe. Under the new Regulation, which, as an EU regulation, is directly applicable across the EU, all benchmark administrators will have to be authorised by a competent authority or registered, even if they provide only non-significant benchmarks.

The Regulation will apply directly in Member States from 1 January 2018, excluding certain provisions including Article 56 (which amends MAR), which apply from 3 July 2016.

The Regulation entered into force on 30 June 2016.

For further information, please see the Clifford Chance client briefing The new EU benchmarks regulation: What you need to know and the Investment Funds section of this Luxembourg Legal Update.

MiFID2 and MiFIR

The MiFID2 Amending Directive (2016/1034) and MiFIR Amending Regulation (2016/1033), which postpone the transposition and application deadlines for MiFID2 and MiFIR by one year, were published in the Official Journal on 30 June 2016.

The Directive and Regulation both entered into force on 1 July 2016. The deadline for EU Member States to transpose MiFID2 into national legislation will be 3 July 2017 and the date of application of both MiFID2 and MiFIR will be 3 January 2018.

For more information and resources on MiFID2 and MiFIR, see the related section in the Clifford Chance Topic Guide on the Clifford Chance Financial Markets Toolkit.

Other New Delegated, Implementing and other EU Regulations and Texts

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

CRD IV/CRR:

- N°2016/428 of 23 March 2016 amending Implementing Regulation (EU) N°680/2014 under the CRR and laying down ITS with regard to supervisory reporting of institutions and reporting of the leverage ratio.
- N°2016/709 of 26 January 2016 supplementing the CRR with regard to RTS specifying the conditions for the application of the derogations concerning currencies with constraints on the availability of liquid assets.
- N°2016/818 of 17 May 2016 amending Implementing Regulation (EU) N°1030/2014 laying down ITS with regard to the uniform formats and date for the disclosure of the values used to identify global systemically important institutions (G-SIIs) according to the CRR.

Banking Union:

- ECB Regulation 2016/445 on the exercise of options and discretions available under Union law.
- ECB Guide on options and discretions available in Union law of March 2016.

- N°2016/451 of 16 December 2015 laying down general principles and criteria for the investment strategy and rules for the administration of the SRF.

BRRD:

- N°2016/778 of 20 May 2016 supplementing the BRRD relating to deferrals from paying extraordinary ex-post contributions and criteria for determining critical functions and core business lines.
- N°2016/860 of 4 February 2016 specifying further the circumstances where exclusion from the application of write-down or conversion powers is necessary under Article 44(3) of the BRRD. The Regulation is intended to provide clarification on the exceptional circumstances provided for in Article 44(3) of the BRRD when it is possible to exclude liabilities from bail-in for resolution authorities in Member States, the Single Resolution Board as resolution authority in the Banking Union or the EU Commission when prohibiting or requesting amendments to proposed exclusions by a national resolution authority, which must notify the EU Commission before exercising the discretion.
- N°2016/911 of 9 June 2016 laying down ITS with regard to the form and content of the description of group financial support agreements in accordance with the BRRD.
- N°2016/962 of 17 June 2016 laying down ITS with regard to the uniform formats, templates and definitions for the identification and transmission of information by competent authorities and resolution authorities to the European Banking Authority according to BRRD.

Deposit Guarantee Schemes Directive 2:

- EBA guidelines on stress tests for deposit guarantee schemes (DGSs) of 24 May 2016, providing a methodology for the planning, running and reporting on stress tests conducted by DGSs to assess their resilience to various types of scenarios in times of banking stress.

MiFID2 and MiFIR:

- N°2016/824 of 25 May 2016 setting out ITS with regard to the content and format of the description of the functioning of multilateral trading facilities (MTFs) and organised trading facilities (OTFs) under MiFID2.

EMIR:

- N°2016/822 of 21 April 2016 setting out amended RTS on margin period of risk (MPOR) for client accounts under EMIR.
- N°2016/892 of 7 June 2016 extending the transitional periods related to own funds requirements for exposures to CCPs under the CRR and the EMIR.

MAR:

- N°2016/378 laying down ITS with regard to the timing, format and template of the submission of notifications to competent authorities.
- N°2016/522 of 17 December 2015 supplementing MAR as regards an exemption for certain third countries public bodies and central banks, the indicators of market manipulation, the disclosure thresholds, the competent authority for notifications of delays, the permission for trading during closed periods and types of notifiable managers' transactions.
- N°2016/523 of 10 March 2016 laying down ITS on the format and template for notification and public disclosure of managers' transactions.
- N°2016/908 of 26 February 2016 laying down RTS on the criteria, the procedure and the requirements for establishing an accepted market practice and the requirements for maintaining it, terminating it or modifying the conditions for its acceptance.
- N°2016/909 of 1 March 2016 laying down RTS on the content of notifications to be submitted to competent authorities and the compilation, publication and maintenance of the list of notifications.
- N°2016/957 of 9 March 2016 with regard to RTS for the appropriate arrangements, systems and procedures as well as notification templates to be used for preventing, detecting and reporting abusive practices or suspicious orders or transactions.
- N°2016/958 of 9 March 2016 with regard to RTS for the technical arrangements for objective presentation of investment recommendations or other information recommending or suggesting an investment strategy and for disclosure of particular interests or indications of conflicts of interest.
- N°2016/959 of 17 May 2016 laying down ITS for market soundings with regard to the systems and notification templates to be used by disclosing market participants and the format of the records.
- N°2016/960 of 17 May 2016 with regard to RTS for the appropriate arrangements, systems and procedures for disclosing market participants conducting market soundings.
- N°2016/1052 of 8 March 2016 supplementing MAR with regard to RTS for the conditions applicable to buy-back programmes and stabilisation measures.

- N°2016/1055 of 29 June 2016 laying down ITS with regard to the technical means for appropriate public disclosure of inside information and for delaying the public disclosure of inside information in accordance with MAR.
- ESMA Questions and Answers on the MAR of 30 May 2016 (ESMA/2016/738).

Solvency 2:

- N°2016/467 of 30 September 2015 amending Regulation 2015/35 concerning the calculation of regulatory capital requirements for several categories of assets held by insurance and reinsurance undertakings.
- N°2016/869 of 27 May 2016 laying down technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 31 March until 29 June 2016 in accordance with Solvency 2.

Legislation

Law on OTC Derivatives, Central Counterparties and Trade Repositories published

Law dated 15 March 2016

The law dated 15 March 2016 on OTC derivatives, central counterparties and trade repositories and amending different laws relating to financial services was published in the Memorial on 17 March 2016.

The law formalises the appointment of the Luxembourg financial sector supervisory authority, the CSSF, as supervising authority for central counterparties and trade repositories in Luxembourg.

Furthermore, the CSSF (for financial counterparties subject to CSSF supervision and for Luxembourg non-financial counterparties) and the Luxembourg insurance sector supervisory authority, the Commissariat aux Assurances (CAA) (for financial counterparties subject to CAA supervision) are in charge of supervising compliance with Title II of the European Market Infrastructure Regulation (EMIR) in Luxembourg and are vested with supervision, intervention, inspection, investigation and sanction powers in this respect.

The law also provides for a number of other changes to Luxembourg financial sector legislation, including in relation to risk management and reliance of regulated entities or their managers on credit ratings, as well as in relation to the interoperability of settlement systems and facilities with respect to the good functioning of TARGET2 securities.

The new law entered into force on 21 March 2016.

Transparency Law and Prospectus Law: Amending Law

The Luxembourg law of 11 January 2008 on transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (the Transparency Law) has been amended by the Luxembourg law of 10 May 2016. Among other items, the following changes have been made to the former transparency rules:

The provisions regarding an issuer's choice of home Member State system have been extended.

Furthermore, the deadline for publishing half-yearly financial reports has been increased to three months after the end of the reporting period. The requirement to publish interim management statements has been abolished. Issuers, however, can continue to report quarterly on a voluntary basis if they wish to do so.

Issuers that are active in the extractive or logging of primary forest industries are required to report on an annual basis about specific payments made to governments on both a country and project basis.

Also, the notification rules regarding major holdings have been partly restructured. A very important factor in this respect is the new rule that direct and indirect holdings of voting rights and holdings of financial instruments must now be aggregated (Article 12bis of the Transparency Law).

Finally, the amending transparency of 10 May 2016 also introduced a more detailed rule regarding the determination of the prospectus home Member State for third country issuers in the Luxembourg law of 10 July 2005 on prospectuses for securities (the Prospectus Law).

CRD IV/CRR: CSSF Regulation on Automatic Recognition of Countercyclical Capital Buffer Rates during Transitional Period

CSSF Regulation N°16-01

On 29 March 2016, the CSSF published Regulation N°16-01 on the automatic recognition of the countercyclical buffer rate (*taux de coussin contracyclique*) during the transitional period.

Following the Luxembourg Systemic Risk Committee's recommendation of 15 February 2016 (CRS/2016/001), the new Regulation automatically recognises countercyclical buffer rates of up to 2.5%, as set by the designated authorities of other EU Member States, during the transitional period foreseen in Article 160 of Directive 2013/36/EU, in accordance with the option taken by the legislator of not adopting a transitional period in Luxembourg.

The new Regulation is effective between 1 April 2016 and 31 December 2016.

CRD IV/CRR: CSSF Regulations setting Countercyclical Buffer Rate for Second and Third Trimester of 2016

CSSF Regulation N°16-02 and CSSF Regulation N°16-03

On 29 March 2016, the CSSF published Regulation N°16-02 on the setting of the countercyclical buffer rate for the second trimester of 2016.

The new regulations follow the Luxembourg Systemic Risk Committee's recommendations of 15 February 2016 (CRS/2016/001) and 9 June 2016 (CRS/2016/003) and set the countercyclical buffer rate at 0% for relevant exposures located in Luxembourg for the second and third trimester of 2016. The new regulations entered into force on 1 April 2016 and 1 July 2016, respectively.

Regulatory Developments

National Resolution Fund: Information On and Announcement of raising 2016 *ex-ante* Contributions to the National Resolution Fund

CSSF and Luxembourg Resolution Board Circular 16/1

On 25 April 2016, the CSSF and the Luxembourg Resolution Board (*Conseil de Résolution*) issued Circular 16/1, providing information on and announcing the raising of the 2016 *ex ante* contributions required to be transferred under Articles 69 and 70 of the Single Resolution Mechanism (SRM) Regulation (EU) N°806/2014 to the Single Resolution Fund (SRF).

Pursuant to the Luxembourg law of 18 December 2015 implementing the agreement on the transfer and mutualisation of contributions to the SRF, all credit institutions subject to the SRM Regulation have to transfer, upon instruction by the CSSF, the amounts determined by the Single Resolution Board (SRB) for each credit institution concerned to an account of the Luxembourg Resolution Fund (*Fonds de résolution Luxembourg*) (LRF). The LRF will in turn transfer the collected amounts to the SRF. The amounts have been due by 6 June 2016. Individual invoices were sent out by the CSSF to the relevant credit institutions.

The circular further provides technical details on the computation of the amounts due and the use of irrevocable payment commitments upon request by an institution in lieu of cash contributions.

Internal Audit Function within Supervised Entities: Acceptability of External Expert

CSSF Q&A Paper on External Expert's Acceptability for Internal Audit Function

On 6 June 2016, the CSSF issued a set of Q&A in relation to the acceptability of an external expert to which an entity supervised by the CSSF outsources the internal audit function in accordance with CSSF Circular 12/552 on internal governance, central administration and risk control or IML Circular 98/143 on internal control.

Among other things, the Q&A clarify:

- the CSSF's assessment criteria regarding the external expert (i.e. independence, sufficient technical and human resources proportionate to the complexity of the supervised entity's activities, sufficient technical expertise and knowledge, satisfactory work quality and good repute)
- that the CSSF will apply the principle of proportionality to the assessment of the external expert against the above criteria, taking into account the nature, scale and complexity of the activities, including risks and organisation, of the supervised entity.

The acceptability criteria apply to all new applications in relation to outsourcing of internal audit function submitted to the CSSF by a supervised entity.

Customer Identification and Verification through Video Chat

CSSF Q&A Paper on Customer Identification and Verification through Video Chat

On 8 April 2016, the CSSF issued a new Q&A paper on the identification and verification of a customer's identity through video chat.

The new Q&A address specifically the situation in which a professional of the financial sector (subject to supervision by the CSSF) performs the identification of customers and the verification of their identity through an online video conference, in order to support and execute certain tasks for the purpose of fulfilling his or her customer identification and verification of identity obligations as required, *inter alia*, by the law of 12 November 2004 on the fight against money laundering and terrorist financing. The CSSF specifically allows the identification/verification of identity through video chat in certain circumstances and subject to certain conditions (e.g. preliminary measures to be taken, data quality, security measures) set out in the Q&A as well as identifies situations in which such identification/verification is not possible.

MAR: CSSF issues Press Release on the Entry into force of MAR replacing the Provisions of the Market Abuse Law

CSSF Press Release 16/31

On 1 July 2016, the CSSF published a press release regarding the application of MAR as of 3 July 2016. The CSSF clarified that the new MAR framework replaces the existing framework that was established by Directive 2003/6/EC and implemented into Luxembourg law by the law of 9 May 2006 on market abuse, as amended (the Market Abuse Law) and that the new rules are binding and directly applicable in Luxembourg. Consequently, the new provisions replace the corresponding rules of the Market Abuse Law with immediate effect. Furthermore, the CSSF emphasised the fact that the MAR applies not only to regulated markets but also to multilateral trading facilities (MTFs).

Prospectus Law: CSSF issues New Circular on filing of Documents under Law on Prospectuses for Securities

CSSF Circular 16/635

On 31 March 2016, the CSSF issued Circular 16/635 updating Circular CSSF 12/539 on the technical specifications regarding the submission to the CSSF of documents under the law on prospectuses for securities and general overview of the aforementioned law, as amended by Circular CSSF 15/632.

The amendments made by the new circular take into account the changes introduced by Commission Delegated Regulation (EU) 2016/301 of 30 November 2015 supplementing Directive 2003/71/EC with regard to RTS for approval and publication of prospectuses and dissemination of advertisements and amending Commission Regulation (EC) N°809/2004.

Transparency Law: CSSF updates Circulars and Q&A following Amendments to this Law

On 22 June 2016, the CSSF published two updated circulars which had to be amended due to the coming into force of the new Luxembourg Transparency Law (law of 10 May 2016 on transparency requirements). In this context, Circular CSSF 03/349 has been adjusted (by way of Circular 16/638) and now contains the required updated information relating to the details regarding the information to be notified with respect to major holdings (in particular detailed information regarding the new aggregation rule (Article 12bis)).

Likewise, on 22 June 2016, the main CSSF transparency circular (i.e. Circular CSSF 08/337) was adapted (by way of Circular 16/637) and now reflects the amended rules introduced by the new Luxembourg Transparency Law.

On 27 June 2016, the CSSF also published an updated version of its transparency FAQs, bringing these FAQs in line with the new transparency system amended by the new Luxembourg Transparency Law.

All three documents mentioned above are currently only available in the French language.

They can be downloaded from www.cssf.lu.

Annual reporting of Reinsurance Undertakings

CAA Circular 16/3

On 1 March 2016, the CAA issued circular 16/3 modifying the amended circular 99/6 on annual reporting of reinsurance undertakings. The circular also abolishes and replaces circular 14/5 and applies, for the first time, to 2015 annual accounts.

Following the amendments made by the new circular, the 2015 annual reporting will only contain minor adjustments at the level of the undertaking's information sheet (e.g. information on key function holders' names together with supporting evidence on competence and good standing (*honorabilité*) in the form of a CV and an extract from police records) and solvency margin status. However, this report will not contain any more Solvency 2 preparation related information, apart from a comparison of the balance sheet in the LUX-GAAP standard and in the Solvency 2 standard.

Quarterly Reporting of Life Insurance Undertakings for Assets representing Technical Reserves

CAA Circular 16/4

On 19 April 2016, the CAA issued circular 16/4 introducing a new version of quarterly reports of assets representing technical reserves.

The main difference between the new reporting templates annexed to the circular and the templates previously introduced in 2014 lies in the reporting of assets representing technical reserves for contracts in account units. The reporting templates have been adapted to reflect the new investment possibilities foreseen in CAA circular 15/3 on the investment rules for life insurance products linked to investment funds.

On the occasion of revising the template, the CAA also enhanced the information sections on the status of counterparties identified since 2013.

The circular also provides further practical details on filling in the templates and transmitting the reports.

The new circular applies as from the reporting for the second quarter of 2016 which has to be made to the CAA before 31 July 2016.

Conditions for Exemption from Providing Information on External Ratings in the detailed Investments and Derivatives Reports

CAA Circular 16/5

On 19 April 2016, the CAA issued circular 16/5 specifying the exemption conditions for providing information on external ratings in the detailed reports on investments (reporting table S.06.02) and derivatives (reporting table S.08.01) of Luxembourg insurance and reinsurance undertakings.

Commission Implementing Regulation (EU) 2015/2450 of 2 December 2015 laying down ITS with regard to the templates for the submission of information to the supervisory authorities according to Solvency 2, provides, *inter alia*, that insurance and reinsurance undertakings have to report to their regulator information on external ratings in their reports on investments and derivatives and foresees, with a view to avoid disproportionate costs for such undertakings, that national regulators may take the decision to exempt insurance and reinsurance undertakings in certain circumstances from such reporting obligation. In the new circular, the CAA makes use of this exemption option.

The new circular provides, therefore, that reinsurance undertakings that are exempted from quarterly reporting under Solvency 2 in application of CAA circular 16/1 are also exempted from the above external rating reporting obligation. The same applies for insurance and reinsurance undertakings that have outsourced the management of their assets in whole or in part, be it to an entity within or outside their group. Furthermore, the external rating reporting obligation shall only apply to the assets for which the insurance or reinsurance undertaking disposes directly of the required rating information and has the legal possibility to report it based on the conclusion of a subscription to that effect. For assets not covered by such subscription, no rating information reporting has to be made.

The above exemptions apply automatically, without the need to request an exemption decision from the CAA. These exemptions also apply to insurance groups for which the CAA assumes the group controller function.

The CAA has limited the application of the exemptions, for the moment, to the reporting due in the course of 2016, while waiting for the EIOPA to find an overall solution for the disproportionate costs issue which is due to rating agencies also requesting subscription fees for the purely internal use of ratings for the purpose of the determination of credit quality steps which are necessary for the calculation of the solvency capital ratio.

The CAA finally specifies that the prudent person principle requires that insurance and reinsurance undertakings have to monitor the external rating of their investments preferably anytime, but at least at the end of each quarter, independently of the fact whether the management of their assets is outsourced or not. Such monitoring duty is also independent from the obligation to report ratings to the CAA.

Financial Construction Completion Guarantee

CAA Circular 16/6

On 26 April 2016, the CAA issued circular 16/6 on the financial construction completion guarantee (*garantie financière d'achèvement*) issued by insurance undertakings in the context of sales of real estate in the course of construction, as provided for in Article 1601-3 of the Luxembourg Civil Code, where the risk is located in Luxembourg.

The new circular clarifies the obligations for insurance undertakings and insurance intermediaries proposing such insurance contracts.

The CAA confirms the legality and binding effect of financial construction completion guarantees issued by insurance undertakings. However, a special regime is applicable with respect to sales contracts for future completion as provided for in Article 1601-3 of the Luxembourg Civil Code. In particular, Article 1601-5 (2)(f) of the Luxembourg Civil Code foresees that these sales contracts for future completion have to provide for a complete completion guarantee which complies with the conditions and modalities foreseen in the amended Grand-Ducal regulation of 24 February 1977. According to such regulation, in relation to real estate located in Luxembourg a credit institution authorised to provide such service in

Luxembourg has to grant the completion construction guarantee.

As insurance sector actors are bound by their professional integrity obligation and their information duty to market to their prospects only insurance contracts complying with their needs, they have to ask their prospects whether they intend to conclude the financial construction completion guarantee with a view to comply, directly or indirectly, with the amended Grand-Ducal regulation of 24 February 1977. If this is their intention, the insurance sector actor has to inform the prospect that the subscription of such insurance contract is binding and enforceable vis-à-vis the beneficiary of the guarantee, but that such insurance does not comply with the requirements of the amended Grand-Ducal regulation of 24 February 1977.

Exemption Conditions for Direct Non-Life Insurance Undertakings from Quarterly reporting under Solvency 2

CAA Circular 16/7

On 17 May 2016, the CAA issued circular 16/7 modifying circular 16/1 setting the exemption conditions for quarterly reporting under Solvency 2.

The new circular extends the exemption from quarterly reporting under Solvency 2 foreseen up to now in circular 16/1 for reinsurance undertakings to direct non-life insurance undertakings. Circular 16/7 therefore makes the relevant changes to circular 16/1 and provides an amended version of circular 16/1 in its annex.

Guide of Good Conduct on Financial Sanctions

Ministry of Finance Guide of Good Conduct on Financial Sanctions

On 8 April 2016, the Luxembourg Ministry of Finance issued two Guides of Good Conduct for the implementation of financial sanctions, one in relation to sanctions in the context of the combat against terrorist financing (CATF) and one in relation to financial sanctions outside such context.

The Guides set out general recommendations with regard to financial sanctions in the CATF context, and provide a general overview of financial sanctions which exist on a United Nations, as well as on a European Union, level, along with a list of authorities competent on the Luxembourg level.

They further address the obligations of the persons, entities, groups and organisms subject to the financial sanctions regimes to cooperate with the authorities.

The Guides also provide guidance, *inter alia*, as to:

- the legal effect of the various legal financial sanctions acts
- the territorial application of EU regulations
- possible proceedings for administrative and judicial recourse against financial sanctions applied
- administrative requests, in particular for authorisation pursuant to the specific derogations foreseen in EU regulations
- "red flags" for potentially problematic transactions
- freezing of funds and other economic resources.

In relation to the penultimate point, the Ministry of Finance has also published forms for authorisation of fund transfers subject to sanctions foreseen in EU regulations.

Case Law

Bank's Duty to Inform and Advise Client

Supreme Court, 2 June 2016, N°63/16

Right of Retention – Insolvency

Court of Appeal, 14 October 2015, N°39083

Reservation of Title Clauses – General Conditions – Right to Demand Restitution of Assets

Court of Appeal, 25 February 2015, N°37549

Insolvency Proceedings – Cessation of Payments – Loss of Commercial Creditworthiness

Court of Appeal, 12 November 2014, N°40366

Please refer to the Litigation section of this Luxembourg Legal Update for more details on the above.

Corporate

National Legislation

Modernisation of Luxembourg Company Law

The legislation modernising the law concerning commercial companies of 10 August 1915 and modifying the Civil Code (the New Law) was finally adopted on 13 July 2016 by the Luxembourg Parliament. The New Law will be effective after its publication in the *Mémor*ial, which is expected to occur in August 2016.

For additional information, please refer to our client briefing on this subject.

Publication Regime applicable to Commercial Companies and Associations

The law of 27 May 2016 on the legal publication regime applicable to commercial companies and associations aims to simplify the publication process as well as significantly decrease the publication timeframe through the creation of the *Recueil électronique des sociétés et associations* (the RESA), an online platform available through the Luxembourg trade and companies register (the RCS) website (www.rcsl.lu).

Scope of the Law

The Law applies to all commercial companies as well as to other entities, and notably the following Luxembourg entities:

- public limited liability companies (*sociétés anonymes* – SA)
- corporate partnerships limited by shares (*sociétés en commandite par actions* – SCA)
- private limited liability companies (*sociétés à responsabilité limitée* – S.à r.l.)
- Luxembourg FCPs (*fonds communs de placement*).

Main features of the Law

Mémorial C replaced by RESA

Beginning 1 June 2016, the *Mémorial C* is replaced by RESA. The Luxembourg official gazette related to companies "*Mémorial C*" is replaced by an electronic publication in the RESA, published every day (including bank holidays) and accessible free of charge.

Reduction of publication timeframe

The normal delay between filing of documents with the RCS and their publication in the RESA is shortened to 15 days from the filing. Moreover due to the new electronic publication system with RESA, filing and publication should occur on the same day.

Exceptions to the new publication timeframe

The new law provides the possibility of choosing a date between D + 3 and D + 15 of the day of the filing for the publication to occur. In such a case, the respective dates of filing and publication would be different.

This procedure can be a useful tool for documents to be published on a specific date (for instance, a common merger project).

Convening notices for general meetings and ordinary general meetings of the shareholders pursuant to Article 70 of the 1915 law on commercial companies (the 1915 Law) must be published in RESA twice, with a minimal interval of eight days, and at least eight days before the meeting, in RESA and in a Luxembourg newspaper. For this purpose, the convening notice must be filed only once with the RCS, along with an indication of both dates on which the publications shall occur.

Convening notices for general meetings of listed companies must be published at least 30 days prior to the commencement of the meeting, according to the law of 24 May 2011 on the exercise of certain rights of the shareholders in listed companies.

Free consultation of publications

Consultation of all publications in RESA, including the filing of annual accounts and of coordinated articles of association, is free of charge. However, RCS excerpts remain fee-based.

Mémorial C to remain for archival purposes

The *Mémorial C* is still accessible from the RCS website for the consultation of archives compiled from 1996 to 2016.

Transitional arrangements

All documents filed with the RCS prior to 1 June 2016, but not yet published, will be published in the *Mémorial C* under the previously applicable rules and costs.

Mémorial C will therefore continue to be published until all documents filed prior to 1 June 2016 have been published.

Cross-cutting approach of registration information

The new law simplifies the registration of information for legal entities registered with the RCS.

Descriptive information of legal entities will be recorded in their own file and identified by the RCS number of the entity concerned.

Should an entity's information change (for instance, a change in the registered office of the company), all documents identifying the RCS number of such entity will automatically update to match.

The automatic update feature will not be available concerning natural persons or foreign legal entities. Any modification will have to be filed for each company in which said natural person or foreign legal entity is mentioned. The automatic information update feature commenced 1 June 2016 and is unable to modify documents filed prior to such date.

As a consequence, the registration process must now follow a chronological order. In case of registration of several companies, the legal entity acting as shareholder must be registered prior to the company in which it will act as shareholder.

Publications to be automatically issued by the RCS

Some publications with the Luxembourg RCS require, along with the filing of the document, a separate notice of publication.

In the following five instances, the notice of publication will be self-generated by the RCS:

- The extract for publication purposes of the decision to appoint or end the mandate of authorised representatives or of the persons responsible for the auditing of the accounts.
- The resignation of authorised representatives or persons responsible for auditing the accounts.
- The end of a domiciliation agreement.
- The appointment and resignation of a custodian for bearer shares.
- All the "mentions" of publication such as e.g. mention of the filing of the annual accounts of a company.

New cases of mandatory filing

The reform provides for new instances of mandatory action:

- Convening notices to all general meetings pursuant to Article 70 of the 1915 law must now be filed with the RCS in addition to their publication in the RESA.
- *Sociétés civiles*, whether governed by Luxembourg or foreign law, must register their branches.
- FCPs managed by management companies created as of 1 June 2016 must register with the RCS.
  - All FCPs created at any date prior to 1 June 2016 are allowed a six-month period in which to be registered (i.e. until 30 November 2016).

In addition, certain events in the life of any Luxembourg FCP must now be filed, including:

- the event causing the liquidation of a Luxembourg FCP
- the injunction made by the CSSF to liquidate a Luxembourg FCP.

Costs

Publication is now free of charge (the cost of filing remains). Increased fees for late filing of company financial information (i.e. filing of annual accounts or consolidated accounts) will be applied as of 1 January 2017.

Such fees will be automatically charged upon late filing and will be determined by the following timetable, according to Grand Ducal regulation:

- EUR 19 for on-time filing
- EUR 50 for one month of delay
- EUR 200 for between two and four months of delay
- EUR 500 from four months of delay.

These penalties do not apply to certain types of associations, including the following:

- non-profit associations
- foundations.

New Simplified private limited liability company

On 13 July 2016, the Luxembourg Parliament adopted a law introducing the simplified private limited liability company (*société à responsabilité limitée simplifiée* or simplified S.à r.l.).

The simplified S.à r.l. has been introduced in order to facilitate the kickoff of new business activities by making available a cost-efficient corporate vehicle to starting-up entrepreneurs or businesses with low capital requirements. Similar initiatives have also been implemented recently in Germany (Mini-GmbH), Belgium (SPRL Starter) and The Netherlands (Flex-BV).

While the simplified S.à r.l. constitutes a variant of the private limited liability company (*société à responsabilité limitée* or *S.à r.l.*) and its regime is thus based on the rules governing S.à r.l. type companies, some specific features and limitations have been introduced for the simplified S.à r.l.:

- **minimum share capital to be comprised between EUR 1 and EUR 12,000** (5% of the annual profits have to be allocated to a special reserve until the share capital and such reserve have reached in aggregate the amount of EUR 12,000)
- **incorporation either by notarial deed or under private seal** (thus possibly reducing the incorporation costs considerably)
- **only physical persons may be shareholders and managers of simplified S.à r.l.'s**
- physical persons may only be shareholder of one simplified S.à r.l. (failing which they would become jointly liable for the obligations of the simplified S.à r.l. in which they would subsequently become a shareholder)
- the **corporate object is limited to activities requiring a business license** (a copy of the business license has to be filed with the Luxembourg Register of Commerce and Companies upon registration of the simplified S.à r.l.).

Even though the simplified S.à r.l. has been set-up in view of serving as a transitional vehicle for start-ups, there is no limitation in time for this company form.

The new law introducing the simplified S.à r.l. will enter into force on 16 January 2017.

For further information on the above, please refer to the March 2015 edition of our Luxembourg Legal Update.

Reform of Audit Profession

On 14 July 2016, the Luxembourg Parliament adopted the Bill of Law N°6969 regarding the reform of the audit profession (the Bill). The Bill implements:

- Directive 2014/56/EU (amending Directive 2006/43/EC) on statutory audits of annual accounts and consolidated accounts (the Directive)
- certain provisions of Regulation (EU) N°37/2004 on specific requirements regarding statutory audit of public-interest entities (the Regulation)
- improves the national supervision of the audit profession.

The Bill will be effective after its publication in the Luxembourg official journal and will abrogate the law of 18 December 2009 (the 2009 Law) on the audit profession, nevertheless a large part of old provisions is maintained by the Bill.

The main aim of the Bill and EU audit reform is to improve the organisation and harmonisation of the audit profession in the EU and to enhance the supervision and the coordination between the national supervisory authorities in the EU.

Improvement of the Organisation and Harmonisation of the Audit Profession

Provisions regarding the organisation of the audit profession

Redefinition of auditor's role

The Bill extends the role of auditors (*réviseurs d'entreprises*) that will be authorised to undertake services which are until now reserved, by the 2009 Law, to approved auditors (*réviseurs d'entreprises agréés*), except for company's statutory audit of accounts, which will only be provided by an approved auditor.

Strengthening of independence and objectivity of auditors

- Mandatory firm rotation and tendering: Regarding the audit mandates, the Bill requires an annual renewal with a limited duration of ten years, except in case of public tendering process. Furthermore, in the case of public-interest entities (the PIEs), the mission of the key audit partners who undertakes a statutory audit is limited to seven years.
- Prohibition of non-audit services (the NAS): The Bill introduces prohibitions on the provision of certain non-audit services (the NAS) by the audit firm and its network. Nevertheless, the Bill authorises certain tax and valuation services. Moreover, the EU audit reform provides a cap on permissible NAS of 70% of the average of the fees paid in the last three consecutive financial years for the statutory audit of the audited entity.

Use of international auditing standards

The Bill submits the audit profession to the strict international rules as defined by international auditing standards (IAS), the code of the International Federation of Accountants (IFAC) and the International Auditing and Assurance Standards Board (IAASB) requirements.

These rules contain provisions affecting statutory audits, the way they are conducted, the content and nature of the audit report, audit working papers, the role of audit committees, audit tender processes and many others.

Implementation of European passport

The Bill implements a European passport that allows the audit firms from another Member State to carry out a statutory audit in Luxembourg, if they are approved auditors in another Member State.

Statutory audit of PIEs

The Bill provides new requirements that will impact the PIEs, their parent undertakings and controlled undertakings within the EU. The main requirement's change concerns the improved responsibility of audit committees and the audit report requirements.

Thus, a PIE shall establish an audit committee composed of non-executive members of administrative body and/or members of the supervisory body and/or members appointed by the general meeting of shareholders (exemptions may be granted according the size of undertakings or for the PIEs having a body performing equivalent functions or which are UCITS or AIF). Furthermore, the audit report needs to be more comprehensive than for non PIEs.

Improvement of the Supervision and the Coordination between National Supervisory Authorities in the EU

Extension of the role and powers of the CSSF and IRE

The supervisory for auditors and approved auditors in Luxembourg are still the CSSF and the IRE, but the powers of the CSSF will now increased.

The CSSF will be entitled to deal with claims from third parties regarding the statutory audit and provide for sanctions for auditors and management body of PIEs in case of non-compliance with the Bill (up-to EUR 1 million or 5% of annual turnover).

Implementation of Committee of European Auditing Oversight Bodies

National oversight bodies still remain responsible for oversight at a Member State level. However, the Committee of European Audit Oversight Bodies (CEAOB) is established which will take over the existing role of the European Group of Auditor Oversight Bodies (EGAOB).

Case Law

Liability of Directors – Misconduct in the Management of the Company's Affairs – No involvement in the Company's Management – No Accounting Supervision

District Court, 25 April 2014

SA – Daily Management – Conditions of Apparent Mandate – Company's Articles of Association – Double Signature to Bind the Company towards Third Party

District Court, 2 April 2014

Transfer of Registered Seat – Publication to RCSL and Memorial – Notification of Judgment to the Previous Registered Seat – Validity of the Notification

Supreme Court, 23 January 2014

SICAV – Evidence of Shareholder's Quality – Registration in the Shareholders' Register – Rebuttable Presumption – Notion of *Nominee*

Court of Appeal, 7 May 2015

Please refer to the Litigation section of this Luxembourg Legal Update for more details on the above.

Investment Funds

EU Developments

UCITS

ESMA Guidelines on UCITS V Remuneration Rules

On 31 March 2016, ESMA published its final guidelines on sound remuneration policies under the UCITS Directive and the AIFMD[1], which set out the final text on remuneration policies required by the UCITS V Directive (UCITS Remuneration Guidelines) and also provide for a revision of the July 2013 guidelines on sound remuneration policies under the AIFMD (AIFMD Remuneration Guidelines). On the same day, ESMA also published a letter to the EU Commission, Council and Parliament concerning the proportionality principle and the remuneration rules in the financial sector (ESMA Letter).

Timing

As regards timing, both the UCITS Remuneration Guidelines and the amendment to the AIFMD Remuneration Guidelines will apply as from 1 January 2017. However, the guidance on variable remuneration as provided for under Section 12 (guidelines on the general requirements on risk alignment) and Section 13 (guidelines on the specific requirements on risk alignment including but not limited to the pay-out process rules) of the UCITS Remuneration Guidelines should first apply for the calculation of payments relating to new awards of variable remuneration to identified staff for the first full performance period after 1 January 2017. Thus, for example, a UCITS management company whose accounting period ends on 31 December should apply the guidance on the rules on variable remuneration provided in the UCITS Remuneration Guidelines to the calculation of payments relating to the 2017 accounting period.

Proportionality

As regards proportionality, Section 7 (guidelines on proportionality) of the UCITS Remuneration Guidelines has been amended in comparison with the draft guidelines that were published by ESMA on 23 July 2015. Thus, the UCITS Remuneration Guidelines no longer include explicit guidance on the possibility to neutralise or dis-apply the pay-out process rules on an exceptional basis and under certain circumstances.

However, in both the press release accompanying the UCITS Remuneration Guidelines and ESMA Letter, ESMA reiterates that the principle of proportionality is a key element under both the AIFMD and the UCITS V Directive and that proportionality provisions as set out under the UCITS V Directive and the AIFMD may lead to a result where:

- under specific circumstances, the requirements on the pay-out process are not applied
- it is possible to apply lower thresholds whenever minimum quantitative thresholds are set for the pay-out requirements (e.g. the requirement to defer at least 40% of variable remuneration).

As a justification, ESMA points out a text argument, which is that the possibility to use the proportionality principle in order to tailor the application of the AIFMD and UCITS V remuneration requirements is made clear by the language of both the AIFMD and the UCITS V Directive, which states that management companies and AIFMs "*shall comply with the [remuneration] principles in a way and to the extent that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities (…)*". Moreover, ESMA recalls the specificities of the investment fund industry sector and points out that the relatively different nature of UCITS compared to credit institutions subject to CRD IV could justify a different approach to proportionality that is in line with the AIFMD Remuneration Guidelines. Finally, ESMA gives some examples of situations in which it considers that the application of the pay-out process rules to UCITS management companies and their delegates would need to be proportionate. In particular, ESMA indicates that it believes that it would be inappropriate for certain UCITS management companies to be subject in all circumstances to the requirements of the pay-out process rules, such as smaller fund managers (in terms of balance sheet or size of AUM), fund managers with a simpler internal organisation or nature of activities, or fund managers whose scope and complexity of activities are more limited.

In light of all the above, ESMA has called for further clarity and suggests that legislative changes in the relevant asset management legislation could be one way to further clarify the applicable regulatory framework and ensure consistent application of the remuneration requirements in the asset management sector.

---

[1] ESMA/2016/411.
[2] ESMA/2016/569 and ESMA/2016/1135..
[3] ESMA/2016/570.
[4] ESMA/2016/1137
[5] ESMA/2016/1140

Delegates

The provisions applicable to delegates as described in the draft guidelines that were published by ESMA on 23 July 2015 remain unchanged. Moreover, the UCITS Remuneration Guidelines do not provide any further guidance on the way to assess the equivalence of the remuneration rules of delegates that perform risk management or portfolio management on behalf of the management company when they are not subject to CRD IV or AIFMD requirements.

Payment in Instruments

ESMA has amended its guidance in Section 13 concerning the payment of a minimum amount (at least 50%) of the variable remuneration in instruments, unless the management of UCITS accounts for less than 50% of the total portfolio under management, to clarify that the calculation of the 50% threshold will compare the total net asset value of all the UCITS managed by the UCITS management company to the total assets under management, including UCITS and AIFs.

ESMA Updated Q&A on UCITS

On 5 April and 19 July 2016, ESMA published an update of its consolidated Q&A on the application of the UCITS Directive[2], including new questions and answers on UCITS investment in UCITS feeder funds and on the impact of EMIR on the UCITS Directive, regarding the valuation of centrally cleared OTC derivatives by UCITS.

More particularly, ESMA confirms that:

- As UCITS feeder funds have to invest at least 85% of their net assets in their UCITS master fund, another UCITS cannot invest in a UCITS feeder fund. Indded, according to Article 50(1)(e)(iv) of the UCITS Directive, a UCITS can only invest in other UCITS if no more than 10% of the assets of the UCITS or of the other UCI, whose acquisition is contemplated, can, according to their fund rules or instruments of incorporation, be invested in aggregate in units of other UCITS or other UCIs.
- For OTC financial derivative transactions that are centrally cleared and subject to the reporting obligation of EMIR, UCITS management companies cannot rely on the valuation provided by the central counterparty (CCP). Indeed, the UCITS Directive requires UCITS management companies to have in place their own process for accurate and independent verification of the value of the OTC financial derivative transactions, but the valuation provided by the CCP can serve as a point of reference for the verification performed by the UCITS management company. Moreover, the UCITS management company should be able to justify any deviation from the valuation provided by the CCP.

ESMA Consultation on UCITS Share Classes

On 6 April 2016, ESMA issued a new discussion paper on UCITS share classes[3], which follows an earlier paper issued by ESMA in December 2014 and seeks views on ESMA's current thinking with respect to the development of a framework for UCITS share classes throughout the EU.

In brief, the discussion paper describes the nature of share classes, the reasons for their existence (including the reasons why the industry often favours the creation of a new share class over the creation of an additional sub-fund) and their key elements. The ESMA discussion paper also identifies four common principles that could form the basis of a regulatory framework for all share classes, as summarised below.

Common Investment Objective Principle

ESMA is of the opinion that share classes of the same fund or compartment should have a common investment objective reflected in a common pool of assets and that UCITS management companies which seek to offer different investment objectives to investors should set up separate funds or compartments. ESMA also seeks the view of stakeholders on that currency risk hedging at the level of a share class which ESMA considers incompatible with the principle of a common investment objective.

Non-Contagion Principle

According to ESMA, UCITS management companies should implement appropriate procedures to minimise the risk that features which are specific to one share class could have a potentially adverse impact on the other share classes within the same fund. In particular, ESMA points out that, due to the lack of asset segregation between share classes, the potential counterparty risk inherent in a

[2] ESMA/2016/569 and ESMA/2016/1135..

[3] ESMA/2016/570.

derivative contract could "contaminate" other share classes. To avoid contagion to other share classes, ESMA recommends that the following operational principles are observed by UCITS management companies:

- to limit the amount of collateral engaged in the derivative agreement to the maximum pool of collateral on which the investors of the share class have a claim
- to put in place proper operational segregation of assets, liabilities and profit/loss to the respective share classes on an ongoing basis (at the very least at the same valuation frequency of the fund)
- to implement stress tests to quantify the impact on losses (relating to share class-specific assets that exceed the value of the respective share class) of all investor classes
- to evidence, *ex-ante*, that the implementation of a derivative hedge will lead to a share class which better aligns with the specific risk profile of the investor
- to implement the derivative hedge according to a detailed, pre-defined and transparent hedging strategy.

Pre-Determination Principle

ESMA considers that all features of the share class should be pre-determined before it is set up in order to allow the potential investor in the fund or compartment to gain a full overview of the rights and/or features attributed to his or her investment. In share classes with hedging arrangements, this pre-determination should also apply to the kinds of risk which are to be hedged out systematically. If new share classes are created after the fund or compartment, they should not affect the features and characteristics of the fund or compartment for the investors already invested in other classes of the fund or compartment. ESMA further considers that a share class offering any form of discretion to the UCITS management company with regard to hedging mechanisms would contravene this principle.

Transparency Principle

ESMA is of the opinion that the differences between share classes of the same fund or compartment should be disclosed to investors when they have a choice between two or more classes in order to allow them to be informed about the existence and nature of all existing share classes, whether they invest in this share class or not. According to ESMA, the following operational principles should be observed by a fund or compartment with multiple share classes in order to ensure a common level of transparency vis-à-vis all their investors:

- the information about existing share classes should be made available in the prospectus
- the management company should provide and maintain up-to-date the list of share classes with a contagion risk in the form of readily available information which should be kept up-to-date
- the stress tests results should regularly be made available to national competent authorities.

The consultation closed on 6 June 2016 and ESMA expects to take further steps on UCITS share classes by the end of 2016. ESMA also indicates that transitional provisions should be introduced as regards the potential closure of, or the possibility to allow new investments in, existing non-complying share classes as well as regarding the costs arising from the closure of an existing non-complying share class.

ESMA consults on asset segregation and custody services under UCITS and AIFMD

On 15 July 2016, ESMA published a call for evidence on asset segregation and custody services under the AIFMD and the UCITS Directive[4].

ESMA previously consulted on a set of guidelines on asset segregation under the AIFMD in December 2014. However, given that the majority of respondents objected to the two options on which ESMA consulted and expressed a preference for alternative options, coupled with the fact that the UCITS V Directive has recently introduced asset segregation requirements which are broadly aligned to the AIFMD, ESMA has decided to carry out a further consultation.

With this new consultation, ESMA has decided to gather additional evidence on the arguments set out by stakeholders in their responses to the December 2014 consultation, but also to broaden the scope of the workstream to also include asset segregation rules under the UCITS Directive.

In brief, the areas on which further stakeholder input is needed are as follow:

- mapping of asset segregation models which are currently used in the different markets for the safe-keeping of assets which are, in accordance with both

[4] ESMA/2016/1137

UCITS and AIFM Directives, required to be held in custody
- understanding how investor protection in the event of insolvency would be ensured under the various asset segregation models
- understanding the issues linked to complexity and operational costs that arise from the current legislative framework
- understanding the issues linked to collateral management/prime brokerage
- understanding the issues linked to the T2S system
- understanding the impact of segregation requirements on 3rd countries
- gathering views on the optimal asset segregation regime for achieving a strong level of investor protection without imposing unnecessary requirements
- gathering views on any uncertainties that could remain on how the depositary delegation rules should apply to CSDs.

Comments to the consultation close on 23 September 2016. ESMA will consider the feedback it receives and plans to finalise its work on asset segregation by the end of 2016.

AIFMD

ESMA Advice on AIFMD Passport Extension

On 18 July 2016, ESMA published a new advice on the possibility of extending the AIFMD marketing passport to non-EU AIFMs and non-EU AIFs which could be able to benefit from that passport[5].

As a reminder ESMA had already published a first advice in July 2015 on six non-EU countries, setting out that the AIFMD passport could be extended to Jersey, Guernsey and potentially Switzerland, but noting that further consideration was needed to be given to the US, Singapore and Hong Kong. Subsequently, the EU Commission had asked in January 2016 that ESMA completes (i) the assessment of the US, Hong Kong and Singapore, for which no advice had been provided, and (ii) the assessment of a further six jurisdictions being Japan, Canada, Isle of Man, Cayman Islands, Bermuda and Australia.

The new advice published by ESMA on 18 July 2016 covers those additional jurisdictions. In brief, according to ESMA:

- The AIFMD passport could be extended to Canada, Guernsey, Japan, Jersey and Switzerland.
- No definitive advice can be given on the extension of the AIFMD passport to Bermuda and the Cayman Islands since both countries are in the process of reforming their local fund marketing rules to position themselves for the extension of the AIFMD passport, and ESMA will thus need to make a further assessment once final rules are in place.
- The AIFMD passport could be extended to the US. Interestingly, however, ESMA has noted that extending the passport to the US could create an unlevel playing field in respect of any funds marketed to the public (because of differences between the US and EU regimes around public offering of funds). As a results, ESMA suggests that the EU Commission might want to consider only extending the passport to certain types of US funds, which will mean more work for the EU Commission before a decision to extend the AIFMD passport.
- It is possible that the AIFMD passport could be extended to Australia, provided that the Australian Securities and Investment Committee (ASIC) extends to all EU Member States the ‘class order relief’, currently available only to some EU Member States.
- It does not seem at this stage that the AIFMD passport would be extended to the Isle of Man due to the the absence of an AIFMD-like regime which makes it difficult to assess whether the investor protection criterion is met.

Interestingly, ESMA does set out in its advice a list of the main non-EU jurisdictions currently using AIFMD national private placement regimes to market into the EU. This includes jurisdictions not yet assessed by ESMA for the extension of the AIFMD passport (such as South Africa and Mauritius), and it is not clear whether the EU Commission will see a need for ESMA to do further work on those other jurisdictions before deciding whether to extend the AIFMD passport.

The advice will now be considered by the EU Commission, Parliament and Council to decide on whether to activate the relevant provisions in the AIFMD extending the passport through a Delegated Act. However, it still remains unclear whether the EU institutions can decide to extend the AIFMD passport on a country by country basis.

---

5 ESMA/2016/1140

For more information on ESMA advice on the extension of the AIFMD passport, see our separate client briefing.

ESMA Opinion on EU Framework for Loan Origination by Investment Funds

On 11 April 2016, ESMA published its opinion to the EU Commission on a common EU framework for loan origination by investment funds[6] as the EU Commission plans to issue a public consultation on the matter in the course of 2016.

Loan origination refers to investment funds providing credit, acting as a sole or primary lender, to borrowers such as SMEs and represents an alternative form of market-based financing. ESMA opinion sets out the key elements that should ideally form part of a harmonised EU framework on this topic, either through a legislative proposal or by way of an ESMA instrument supplementing the AIFMD. In particular, ESMA is of the view that:

- The EU Commission's consultation should consider whether an EU framework should require mandatory authorisation of managers for loan-originating funds. So, for example, should loan-originating funds be required to be managed by full-scope/authorised AIFMs (ruling out "small"/sub-threshold AIFMD managers unless they opt-in to full authorisation).
- Loan-originating AIFs should be set up as closed-ended vehicles.
- Loan-originating AIFs should not be allowed to have liabilities with a shorter maturity than the loans granted by the fund.
- The EU Commission's consultation should consider the impact on loan origination if the relevant fund carries on other activity, i.e. if the fund is not just exclusively originating loans.
- The EU Commission's consultation should consider any additional systems and controls, which fund managers should be subject to, such as on risk management and collateral management. The most interesting are those which might be seen as loan business specific, including assessment and scoring of borrowers, credit monitoring, management of forbearance, identification of problem debt management and the capability and experience of staff connected with loan origination.
- The merits of setting a limit to the leverage of a fund should be considered.
- Mandatory diversification for loan-originating funds should be considered.
- Loan-originating funds should not be able to originate loans to individuals, financial institutions and collective investment schemes.

Interestingly, it is not clear whether the EU Commission consultation will lead to a concrete legislative proposal for a European wide regime for lending by funds, or whether it will be closer to a review by the EU Commission of the current market landscape, while continuing to monitor how Member States approach lending by funds under their own national regimes. It should also be noted that there is no mention in the opinion of non-EU fund structures, and so it is not clear how any EU legislative proposal would approach lending into the EU by such funds.

Clifford Chance has prepared a briefing paper on loan origination by investment funds.

ESMA Updated Q&A on AIFMD

On 5 April and 3 June 2016, ESMA published updated versions of its Q&A on the application of the AIFMD[7].

The Q&A has first been updated to include a new question and answer on notification requirements relating to additional investment in existing AIFs. In particular, the

[6] ESMA/2016/596.

[7] ESMA/2016/568, ESMA/2016/909, ESMA/2016/1136.

Q&A provides that an AIFM does not have to submit a new notification to the national competent authority in accordance with Article 31(2) of AIFMD if an EU AIF decides to offer additional fund units to investors and the offer is limited to the investors already invested in the AIF.

New Q&As also have to be included on:

- the requirements regarding the domicile of EU AIFs which are marketed in the home Member State of the AIFM
- the marketing of EU feeder AIFs which have a non-EU master AIF
- the influence that committed capital can have on the calculation of the total value of assets under management and additional own funds
- the impact of EMIR on the AIFMD, clarifying that AIFMs cannot rely on the valuation of centrally cleared OTC derivatives provided by CCPs but must have in place a process for accurate and independent verification of the value of the OTC financial derivative transactions in accordance with the AIFMD, even if these OTC financial derivative transactions are centrally cleared.

Money Market Funds

EU Council Presidency Compromise Text for MMF Regulation

On 10 May 2016, the EU Council Presidency published a new compromise text for the proposed regulation on money market funds (MMF Regulation), which had been deposited initially by the EU Commission on 4 September 2013. The EU Council Presidency also published on 10 June 2016 a proposal for a general approach with regard to the proposed MMF Regulation together with a report setting out the state of play of the negotiations on the proposal.

As a reminder, the aim of the proposed MMF Regulation concerns the provision of a common framework for UCITS and AIFs qualifying as MMF and that are domiciled or sold in the EU in order to improve their liquidity profile and the stability of their structure.

Under the new regulation, an "MMF" is a UCITS or an AIF that has as distinct or cumulative objectives to offer returns in line with money market rates or to preserve the value of the investment and that seek to achieve these objectives by investing in short-term assets (such as money market instruments or deposits, or entering into reverse repurchase agreements, or certain derivative contracts with the sole purpose of hedging risks inherent in other investments of the fund).

In brief, the proposed MMF Regulation lays down rules concerning the financial instruments eligible for investment by MMFs, the risk diversification of their portfolio, the valuation of their assets and the reporting requirements in relation to MMFs established, managed or marketed in the EU. It also introduces common standards to increase the liquidity of MMFs to ensure that MMFs can face sudden redemption requests when market conditions are stressed. In addition, the text also provides for common rules to ensure that the fund manager has a good understanding of his/her investors, and provides investors and competent authorities with adequate and transparent information.

An important new element of the proposed MMF Regulation is the introduction of a permanent category of "low volatility net asset value MMFs" (LVNAV MMF) in addition to the other categories of "variable net asset value MMFs" (VNAV MMF) and "constant net asset value MMFs" (CNAV MMF). These LVNAV MMFs will gradually replace most of the existing CNAV MMFs, which would be required to convert into LVNAV MMFs within 24 months of entry into force of the MMF Regulation. However, two types of CNAV MMFs would be allowed to continue to operate under the proposed MMF Regulation, i.e. those that invest 99.5% of their assets in public debt instruments and those with a specific investor base solely outside the EU.

Following the implementation of the proposed MMF Regulation, UCITS and AIFs will not be allowed to use the designation "money market fund" or "MMF" or to use a misleading or inaccurate designation which would suggest they are MMFs or have their characteristics, unless these UCITS or AIFs have been authorised in accordance with the MMF Regulation.

For the avoidance of doubt, UCITS qualifying as MMFs will remain subject to the UCITS Directive and AIFs qualifying as MMFs will remain subject to the AIFMD. Therefore, the new product rules imposed by the proposed MMF Regulation shall apply to these UCITS and AIFs in addition to the product rules laid down in the UCITS Directive and AIFMD, unless they are explicitly dis-applied under the proposed MMF Regulation.

In terms of timing, the expectation is now to start negotiations with the European Parliament on the basis of the EU Council Presidency's new compromise text with a view to reaching an agreement at first reading. Under the current text of the proposed MMF Regulation, it is provided that the new regulation will enter into force from the 20th day following publication in the Official Journal and shall apply from six months after the date of entry into force. However, existing UCITS and AIFs qualifying as MMFs would have 18 months following the date of application of the MMF Regulation to comply with its provisions and submit an application for authorisation to their competent authorities.

SFTR

Industry Associations Statement for Market Participants on SFTR

At the beginning of April 2016, the Association for Financial Markets in Europe (AFME), the Futures Industry Association (FIA), the International Capital Market Association (ICMA), the International Swaps and Derivatives Association (ISDA) and the International Securities Lending Association (ISLA) jointly published an information statement designed to help market participants comply with the new requirements under the SFTR.

The statement, drawn up to comply with Article 15 of the SFTR, aims to inform market participants of the general risks and consequences that may be involved in consenting to a right of use of collateral provided under a security collateral arrangement or of concluding a title transfer collateral arrangement. The statement can be tailored for a market participant's own specific circumstances.

Benchmark Regulation

Benchmark Regulation published in the Official Journal

Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts (Benchmark Regulation) was published in the Official Journal on 29 June 2016 and entered into force on 30 June 2016.

As a reminder, the Benchmark Regulation will introduce new rules intended to ensure greater accuracy and integrity in relation to indices used as benchmarks in financial instruments and financial contracts. In particular, the objectives of the Benchmark Regulation are to:

- improve governance and controls
- improve quality of data input
- curb conflicts of interest in setting benchmarks
- ensure greater transparency and rights of redress for consumers and investors.

Requirements for benchmarks will relate to their size and nature as critical benchmarks, significant benchmarks or non-significant benchmarks and specific regimes will apply to commodity, interest rate and regulated data benchmarks. The most onerous requirements under the Benchmark Regulation will affect all benchmark administrators that will have to be authorised by a competent authority or registered, even if they provide only non-significant benchmarks. However, entities which contribute data to, or which simply use, benchmarks may also be impacted by the new regulation's perimeter. In particular, the Benchmark Regulation prohibits supervised entities (including a UCITS management company/a self-managed investment company and AIFMs) from using benchmarks provided by an unauthorised EU or non-EU administrator.

The Benchmark Regulation will apply directly in Member States as from 1 January 2018, with the exception of the following provisions:

- Articles 3(2), 5(5), 11(5), 13(3), 15(6), 16(5), Article 20 (excluding point (b) of paragraph (6)), Articles 21 and 23, Articles 25(8), 25(9), 26(5), 27(3), 30(5), 32(9), 33(7), 34(8), Article 46, and Articles 47(3) and 51(6), which relate essentially to the critical benchmarks regime and to the obligation for ESMA and the EU Commission to adopt further regulatory technical standards, respectively delegated acts, under the Benchmark Regulation, apply from 30 June 2016. The transitional period for existing benchmarks also starts on 30 June 2016 and will end on 31 December 2019, i.e. existing benchmarks will have to be in compliance by 1 January 2020.
- Article 56 on amendments to the Market Abuse Regulation (MAR) apply from 3 July 2016.

For more information on the Benchmark Regulation and its impact on investment funds, see our previous briefing The new EU benchmarks regulation: What you need to know.

ESMA consultation on Draft Technical Advice under Benchmark Regulation

On 27 May 2016, ESMA published a consultation paper on its draft technical advice under the Benchmark Regulation[8], seeking feedback on the proposed regulatory framework for benchmarks, including the following areas:

- the definition of benchmarks

[8] ESMA/2016/723.

- the measurement of the use of critical and significant benchmarks
- the criteria for the identification of critical benchmarks
- the endorsement of a benchmark/family of benchmarks provided in a third country
- the transitional provisions.

Comments were due by 30 June 2016 and ESMA intends to submit the final technical advice to the EU Commission in October 2016.

PRIIPs

Delegated Regulation on Product Intervention

On 14 July 2016, the EU Commission has adopted a Delegated Regulation on supervisory measures on product intervention by regulatory authorities in relation to Regulation EU 1286/2014 of 26 November 2014 on the key information documents (KIDs) for packaged retail and insurance-based investment products (PRIIPs) (PRIIPs KID Regulation).

As a reminder, the PRIPPs KID Regulation introduces the KID that will provide retail investors with information about a broad range of investment products which can be bought by retail investors, including insurance-based investment products, structured investment products as well as collective investment schemes (investment funds). The PRIIPs KID Regulation also reinforces the role and power of supervisory authorities by conferring upon competent authorities and the European Insurance and Occupational Pensions Authority (EIOPA) the power to monitor financial products under their supervision and, subject to certain conditions, to prohibit or restrict temporarily the marketing, distribution or sale of insurance-based investment products, financial activities or practices. These Intervention powers are of an extraordinary nature, constitute a measure of last resort and need to be applied in a proportionate way

The Delegated Regulation now sets out criteria and factors to be taken into account by the national competent authorities and EIOPA when intending to use their product intervention powers in case of significant investor protection concern or threat to the orderly functioning and integrity of financial markets or to the stability of the whole or part of the financial system of the EU or respectively of at least one Member State.

The Delegated Regulation will enter into force on the twentieth day following that of its publication in the Official Journal and will apply from 31 December 2016, which is also the date by when the PRIIPs KID Regulation should apply in Member States.

RTS on PRIIPs KID

On 30 June 2016, the EU Commission adopted regulatory technical standards (RTS) specifying the content of key information documents (KIDs) for Packaged retail and insurance-based investment products (PRIIPs) which was introduced by Regulation EU 1286/2014 of 26 November 2014 (PRIIPs KID Regulation).

The RTS specify the exact content and presentation of the PRIIPs KID and include:

- a common mandatory three-page template for the KID, covering the texts and layouts to be used
- a summary risk indicator of seven classes for the risk and reward section of the KID
- a methodology to assign each PRIIP to one of the seven classes contained in the summary risk indicator, and for the inclusion of additional warnings and narrative explanations for certain PRIIPs
- details on performance scenarios and a format for their presentation, including possible performance for different time periods and at least three scenarios
- costs presentation, including the figures that must be calculated and the format to be used for these, i.e. in both cash and percentage terms
- specific layouts and contents for the KID for products offering multiple options that cannot effectively be covered in three pages
- rules on revision and republication of the KID, to be done at least each year
- rules on providing the KID sufficiently early for a retail investor to be able to take its contents into account when making an investment decision.

The EU Parliament and Council have a two-month period to review the draft RTS, which they may extend for a further month. The RTS will enter into force on the 20th day following that of its publication in the Official Journal and will apply from 31 December 2016, which is also the date by when the PRIIPs KID Regulation should apply in Member States.

Financial Associations ask EU Commission to Reconsider Timeline

On 27 April 2016, the European Banking Federation (EBF), Insurance Europe, European Fund and Asset Management Association (EFAMA) and the European Structured

Investment Products Association (Eusipia) jointly wrote to the EU Commission and ESAs to call for a one year delay to the application date of the PRIIPs KID Regulation, i.e. until 31 December 2017.

Indeed, these financial associations are all extremely concerned that, in the best case scenario, the final RTS will only be officially published in the third quarter of 2016, leaving only three to four months for product manufacturers and distributors to meet the 31 December 2016 deadline, which seems to be unrealistic to them.

ELTIFs

ESMA draft RTS under ELTIF Regulation

On 8 June 2016, ESMA published its final report on draft regulatory technical standards (RTS) under Regulation (EU) 2015/760 of 29 April 2015 on European long-term investment funds (ELTIF Regulation)[9].

As a reminder, the ELTIF Regulation, which came into force on 8 June 2015 and is now applicable from 9 December 2015, establishes a new type of collective investment vehicle called an ELTIF that must, among other things, be managed by an authorised AIFM and meet minimum eligible assets and risk diversification requirements.

ESMA's draft RTS under the ELTIF Regulation include the following key proposals:

- the criteria to determine the circumstances in which the use of financial derivative instruments solely serves hedging purposes
- that the life of an ELTIF should be determined with reference to the individual asset within the ELTIF portfolio which has the longest investment horizon
- the criteria for the valuation of the ELTIF assets ahead of their divestment, which specify the timing of the valuation and allow for valuations made under the AIFMD to be taken into account
- a grandfathering provision which allows ELTIFs one year after the RTS come into force to comply with the rules.

ESMA's delivery of its RTS on the cost disclosure information, which must be included in the ELTIF's prospectus, has been postponed following discussion with the EU Commission in order to take into account the work being done on cost disclosures under the PRIIPs KID Regulation.

The RTS set out in the final report have been submitted to the EU Commission for endorsement. A decision by the EU Commission on whether to endorse the RTS should be taken within three months from the date of submission.

For further details on the ELTIF Regulation, please refer to the July 2015 edition of our Luxembourg Legal Update.

EuVECA and EuSEF

ESMA Updated Q&A on EuSEF and EuVECA Regulations

On 31 May 2016, ESMA published an updated Q&A on the application of Regulations (EU) 345/2013 and 346/2013 of 17 April 2013 on EU venture capital funds (EuVECA) and on EU social entrepreneurship funds (EuSEF) (EuSEF and EuVECA Regulations)[10].

The Q&A has been updated to include a new section on the use of EuSEF and EuVECA designations. In particular, ESMA clarifies that EuSEF and EuVECA funds that are only marketed in their home Member State, and thus are not using the EU marketing passport provided for by the EuSEF and EuVECA Regulations, can use the "EuSEF" and "EuVECA" designations or labels. Indeed, ESMA recalls that the use of these designations is linked to the compliance of the funds' managers with the qualitative requirements contained in Chapter II of the respective regulations and not to any obligation to market the funds in more than one EU Member State.

For further details on the EuSEF and EuVECA Regulations, Please refer to the June 2013 edition of our Luxembourg Legal Update.

EU Commission Consultation on Cross-Border Distribution of Investment Funds

On 2 June 2016, the EU Commission launched a public consultation on cross-border distribution of investment funds across the EU, the aim of which is to collect information on the main barriers to the cross-border distribution of investment funds (including UCITS, AIFs, ELTIFs, EuVECAs and EuSEFs) in order to make the marketing passport work better.

[9] ESMA/2016/935.

[10] ESMA/2016/774.

This consultation is part of the EU Commission's work on the Capital Markets Union (CMU) project, which aims to strengthen Europe's economy and encourage investment in all 28 Member States. The EU Commission is seeking tangible examples and, where possible, quantitative and financial evidence on the financial impact of the barriers in the areas of marketing restrictions, distribution costs and regulatory fees, administrative arrangements, distribution networks, notification processes and taxation.

Comments to the consultation close on 2 October 2016.

Solvency II

Solvency II Delegated Regulation amended to mobilise Private Sector Investment

The Commission Delegated Regulation (EU) 2016/467 of 30 September 2015, amending the Solvency II Delegated Regulation (EU) 2015/35 regarding the calculation of regulatory capital requirements, entered into force on 2 April 2016.

The amendments to Solvency II intend to mobilise private sector investment, which is a key objective of the so-called "Investment Plan for Europe". They pertain, among others, to:

- Infrastructure investments: the amendments set up a specific treatment in the solvency capital requirements for infrastructure investments (being investments in special purpose entities that own, finance, develop or operate infrastructure assets that provide or support essential public services).
- Investments in ELTIFs: the amending Regulation extends to ELTIFs the provisions in the Solvency II Delegated Regulation concerning the treatment of EuVECA and EuSEF.

In summary, these investments will benefit from the same capital charges under Solvency II as "equities traded on regulated markets". Risk charges on unlisted equity investments in qualifying infrastructure projects have been reduced to 30%, compared to 49% for unlisted equities. Moreover, risk charges on debt investments in qualifying infrastructure projects have been reduced by up to 40%. Investments in ELTIFs are to be included in the standard formula's lower equity bucket, meaning to the same level as the risk charge that applies to equities traded on a regulated market. Consequently, the risk calibration is brought down to 39%, i.e. 10% lower than for other equity investments.

For further information on Solvency II, including, in particular, the key changes for investments by insurers in investment funds, please refer to the separate briefing paper prepared by Clifford Chance outlining some of the new Solvency II requirements from an investment and a reporting perspective.

MAR

ESMA Updated Q&A on MAR

On 30 May 2016, ESMA published an updated version of its Q&A on the application of Regulation 596/2014 on market abuse (MAR)[11], which clarifies that the obligation to detect and report market abuse under Article 16(2) of the MAR also applies to UCITS management companies and AIFMs.

As a reminder, the MAR, which has been applicable in Member States since 3 July 2016 and is repealing the existing Market Abuse Directive, updates and strengthens the existing EU market abuse regime by extending its scope to new markets and trading strategies and by introducing new requirements and standards. The definition of financial instruments in the MAR also refers to the meaning of this concept under MIFID II, which is very broad. On top of that, the MAR does not limit its scope of application to financial instruments admitted to trading on a regulated market or for which a request for admission to trading on a regulated market has been made, but also covers financial instruments admitted to trading or traded on multilateral trading facilities (MTF), financial instruments traded on organised trading facilities (OTF) and emission allowances.

As regards the obligation imposed on any person professionally arranging or executing transactions to detect and report market abuse (Article 16(2) of the MAR), ESMA considers that the definition of "person professionally arranging or executing transactions" (as laid down in point (28) of Article 3(1) of the MAR) is not only limited to firms or entities providing investment services under MiFID, and that such definition does not exclude other particular categories of persons such as those regulated by other financial EU legislation. Therefore, ESMA considers that this obligation applies broadly and that the concept of "persons professionally arranging or executing

[11] ESMA/2016/738.

transactions" includes buy side firms, such as investment management firms (AIFs and UCITS managers) as well as firms professionally engaged in trading on own account (proprietary traders). ESMA also highlights that detecting and reporting suspicious orders and transactions under Article 16(2) of the MAR should be applied by "persons professionally arranging or executing transactions" through the implementation of arrangements, systems and procedures that are appropriate and proportionate to the scale, size and nature of their business activity.

For the avoidance of doubt, other provisions than Article 16(2) of the MAR also apply to UCIs in their role as issuers of financial instruments or, as the case may be, on their management, such as the obligation to publicly disclose inside information and to draw up lists of insiders. The general provisions of the MAR apply to UCIs as well, in particular the prohibition from engaging in insider dealing and market manipulations.

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

EMIR

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

MIFID II

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

IORP2

On 30 June 2016, the permanent representatives committee (Coreper) approved, on behalf of the EU Council, an agreement with the EU Parliament on a proposal for a revised directive on occupational pension funds, known as IORP2, initially adopted by the Commission in 2014.

The proposed directive aims to facilitate the development of IORPs and better protect pension scheme members and beneficiaries by improving the governance and transparency of IORPs and facilitating their cross-border activity.

The directive has four objectives:

- clarifying cross-border activities of IORPs
- ensuring good governance and risk management
- providing clear and relevant information to members and beneficiaries
- ensuring that supervisors have the necessary tools to effectively supervise IORPs.

The proposed directive is expected to be approved by the Parliament at first reading. It will then be submitted to the Council for adoption. Member States will have two years to transpose the directive into their national laws and regulations.

Luxembourg Legal and Regulatory Developments

Law of 10 May 2016 Implementing UCITS V

The Law of 10 May 2016 implementing the UCITS V Directive into Luxembourg laws was published in the Luxembourg official journal (*Mémorial A*) on 12 May 2016 and entered into force on 1 June 2016.

For further information on the Law of 10 May 2016, please see the separate briefing paper prepared by Clifford Chance.

Law of 23 July 2016
Luxembourg Reserved Alternative Investment Funds

The new law of 23 July 2016 on reserved alternative investment funds (RAIF Law) has been published in the Luxembourg official gazette (*Mémorial*) on 28 July 2016 and will enter into force on 1 August 2016.

The purpose of the RAIF Law is to introduce a new type of Luxembourg investment vehicle that is reserved to Luxembourg AIFs managed by an authorised external AIFM within the meaning of the AIFMD. To a large extent, the RAIF vehicle offers similar structuring flexibilities as Luxembourg SIFs. However, in contrast to SIFs, RAIFs are not subject to supervision of the CSSF; but a RAIF will nevertheless be indirectly supervised by the competent supervisory authorities of its authorised AIFM under the AIFMD.

For further information on the RAIF Law, please see the separate brochure prepared by Clifford Chance.

Law of 27 May 2016 Reforming Legal Publication Rules for Companies and Associations

The Law of 27 May 2016 reforming the rules of legal publication in respect of companies and associations was published in the Luxembourg official journal (*Mémorial A*) on 30 May 2016 and entered into force on 1 June 2016.

In brief, the new law provides for the replacement of the *Mémorial C* by a new official electronic platform of central publication, the *Recueil Electronique des Sociétés et Associations* (RESA), to be managed by the Luxembourg RCS and that is available on its website as from 1 June 2016. In the context of the reform, the procedure of publication in respect of companies and associations is expected to be simplified and rationalised in comparison with the previous formalities applicable to publication in the *Mémorial C*. Moreover, publications and consultations of documents via RESA are free of charge.

The new publication rules and procedures are applicable as from 1 June 2016 to all Luxembourg companies, including investment fund vehicles of the corporate type (SICAVs, SICAFs and SICARs) and management companies. The new rules also require the registration of Luxembourg FCPs with the RCS. However, FCPs created before 1 June 2016 will have a six-month period to comply with this new requirement, meaning that registration must take place at the latest by 30 November 2016. Such registration will require the provision of the latest version of the management regulations of the FCP and of a specific registration form.

The RCS issued a brochure to allow the implementation of the new registration obligations applicable to FCPs.

Please also see the presentation made in this respect in the Corporate section of this Luxembourg Legal Update.

Adoption of Bill of Law N°5730 Modernisation of Company Law

The legislation modernising the Company Law and modifying the Civil Code (New Law) was finally adopted on 13 July 2016 by the Luxembourg Parliament. The New Law will be effective after its publication in the Luxembourg official gazette (Mémorial), which is expected to occur in August 2016.

It is worth mentioning that some of the modifications introduced by the New Law in relation to the capital structure, management and/or meeting of shareholders of Luxembourg SA, Sàrl and SCA may impact investment funds and their management companies or AIFMs as long as they are incorporated under one of these legal forms. Another important modification for investment funds of the corporate type is the possibility that is explicitly recognised by the New Law for all types of companies (civil and commercial) to create tracking shares.

Please also refer to the Corporate and M&A section of this Luxembourg Legal Update for further details on the above.

Adoption of Bill of Law N°6969 Reform of Audit Profession

On 14 July 2016, the Luxembourg Parliament adopted the Bill of Law N°6969 regarding the reform of the audit profession.

The main aim of Bill 6969 is to implement Directive 2014/56/EU on statutory audits of annual accounts and consolidated accounts (Directive) and certain provisions of Regulation (EU) N°537/2004 on specific requirements regarding statutory audit of public-interest entities (Regulation). Investment funds in general are not public-interest entities, but EU listed investment funds (including UCITS or AIFs) are included, as the definition of public-interest entities include entities that are both governed by the law of a Member State and whose transferable securities are admitted to trading on a regulated market of a Member State.

Please refer to the Corporate and M&A section of this Luxembourg Legal Update for further details on the above

Law of 10 May 2016 Amending Luxembourg Transparency Law

The Luxembourg law of 11 January 2008 on transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (Transparency Law) has been amended by the Luxembourg law of 10 May 2016 implementing EU Directive 2013/50/EU and which entered into force on 15 May 2016.

The amendments that have been made to the former transparency rules are mainly relevant for the issuers of listed securities for which Luxembourg is the home Member State in accordance with the Transparency Law, which may include some categories of investment funds. Indeed, Article 2(2) of the Transparency Law specifies that the law does not apply to units issued by UCIs other than the closed-end type nor to units acquired or disposed of in such UCIs. Consequently, closed-ended UCIs issuing listed securities for which Luxembourg is the home Member State fall under the scope of application of the Transparency Law, regardless of whether these UCIs qualify as AIFs or not.

It is also worth mentioning that the revised Transparency Law not only impacts the issuers of listed securities; but certain of its provisions are also relevant for their investors, i.e. any natural person or legal entity holding, directly or indirectly, shares of the issuers or depository receipts, which investors can also be investment funds. In particular, a wider scope has been introduced regarding major holding notifications imposed on investors with respect to specific financial instruments, including new aggregation rules, the introduction of the stabilisation exemption and the indication of the basis for the calculation of voting rights attached to cash-settled financial instruments (which have to be calculated on a delta-adjusted basis by multiplying the notional amount of underlying shares by the delta of the instrument).

Please refer to the Banking, Finance and Capital Markets section of this Luxembourg Legal Update for further details on the changes that have been made to the Transparency Law.

CSSF Circular 16/637 and 16/638 and Updated FAQ on the Transparency Law

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

CSSF Press Release 16/31
Application of MAR in Luxembourg

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

CSSF Updated FAQ on AIFM Law

On 9 June 2016, the CSSF published an update of its FAQ on the AIFM Law, including new questions and answers on loan origination and loan participation/acquisition by AIFs (section 22 of CSSF FAQ).

In particular, the CSSF indicates that, in principle, loan origination and loan participation/acquisition by AIFs is a permitted activity in Luxembourg as the AIFM Law and the AIFMD, as well as the respective Product Laws applicable to AIFs (if any), do not prohibit this activity. Certain specific EU AIFs are even expressly allowed by EU regulations to originate loans, such as ELTIFs, EuVECAs and EuSEFs.

However, the CSSF specifies certain aspects that should be considered by an AIFM or an AIF, where applicable, before and when performing loan origination and loan participation/acquisition by AIFs, including:

- to address all aspects and risks of the loan origination activity
- to rely on an adequate organisational and governance structure
- to hire sufficient staff with the required expertise and experience in the activity and to have adequate technical resources in place
- to establish a strong risk management process to address credit and liquidity risk management, concentration and risk limitation which are key issues especially for loan origination and loan participation/acquisition
- to have policies in place, i.e. relating to assets and investors which specify loan and investor categories, how conflicts of interest are addressed, and ensure proper disclosure and transparency.

The above aspects will be analysed on a case-by-case basis by the CSSF in the context of the approval and on-going supervisory process of the AIFM or, where applicable, the AIF itself active in the areas of loan origination and loan participation/acquisition.

For information, loan origination and loan participation/acquisition are defined as follows in the CSSF FAQ:

- Loan origination by an AIF is the process, initiated by its AIFM or, where applicable, by the AIF itself, of actively creating/granting/extending a loan as part of its investment policy. For the purpose of section 22 of the CSSF FAQ, this concept refers to, and may comprise all relevant steps in the origination process, that is, among others, receiving and processing loan applications, performing the credit assessment and borrower selection, setting the characteristics of a specific loan (e.g. pricing (interest rates and fees), type of documentation, collateral requirements), monitoring, servicing and provisioning. Thus, the AIF becomes the original lender and the lending process is part of its investment policy.
- Loan participation/acquisition by an AIF is the process, initiated by its AIFM or, where applicable, by the AIF itself, of purchasing/acquiring all or parts of an existing loan or package of loans (whether fully drawn or not) on the secondary market from a third party after its origination. It also refers to any other way for the AIF to acquire loans as an investment apart from loan origination (such as e.g. participation (or sub-participation) in syndicated loans, consortiums, club deals). Loan participation/acquisition thus only relates to parts of the overall loan process, while loan origination encompasses, in particular, the process of the initial granting and pricing of the loan. There are instances though, where these

delimitations/distinctions become difficult and a close and careful case-by-case analysis is warranted.

CSSF Annual Report 2015

The CSSF published its annual report for 2015 in July 2016. In addition to statistical information concerning the Luxembourg financial sector, the report contains some information on the exercise by the CSSF of its regulatory powers over regulated investment funds.

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

Updated FAQ on Immobilisation of Bearer Shares

On 25 April 2016, the Luxembourg *Caisse de Consignation* published an updated version of its FAQ document concerning the Law of 28 July 2014 on the immobilisation of bearer shares and bearer units.

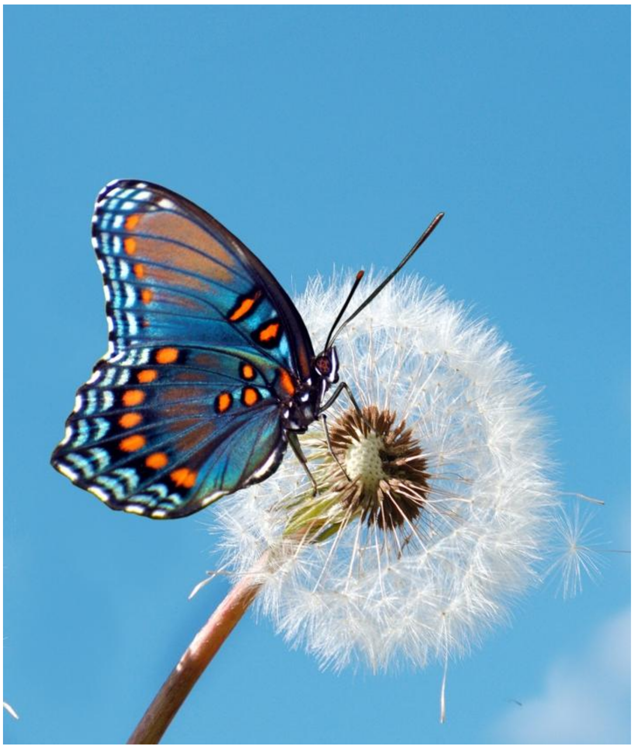
As a reminder, Luxembourg commercial companies and Luxembourg investment funds, which have been incorporated in the form of an SA, SCA or FCP, must cancel their bearer shares/units that would not have been deposited with a depositary before the 18 February 2016 deadline provided by the Law of 28 July 2014. The net proceeds of such cancellation will be deposited with the Luxembourg *Caisse de Consignation* until restitution is requested by a person having validly established his/her entitlement.

The initial FAQ already gave some information on the procedure to be followed when claiming a refund of assets that have been deposited with the *Caisse de Consignation*, and the revised version now updates question 8, which details the applicable procedure to request the issuance of a certificate confirming that the shares presented are neither stopped shares nor expired shares. This certificate may be issued by:

- the issuer of the bearer securities
- the financial agent of the bearer securities in Luxembourg
- Registering Institution of Stops on Bearer Securities (i.e. the *Société de la Bourse de Luxembourg S.A.*).

In addition, the Luxembourg *Caisse de Consignation* issued a standard form to be used to obtain this certificate.

For additional information, please refer to our client briefing on Law of 28 July 2014 on the immobilisation of bearer shares and bearer units as well as to the April 2016 edition of our Luxembourg Legal Update which contains further



information on the previous FAQ published by the Luxembourg *Caisse de Consignation*.

Luxembourg Tax Authorities released CRS FAQ

On 29 April 2016, the Luxembourg Tax Authorities published a FAQ document in relation to the Luxembourg law of 18 December 2015 on the automatic exchange of information on financial accounts in tax matters and transposing Directive 2014/107/UE (CRS Law) and have accordingly updated their website on automatic exchange of information.

Among others, the FAQs indicate that the US has been included in the list of so-called "Participating Jurisdictions" (published last March 2016 through a Grand Ducal Decree) on the basis of the IGA signed with Luxembourg related to exchange of information under FATCA. FAQs also indicate that for both due diligence and reporting purposes under CRS, the only "appropriate reference period" is the calendar year. Finally, under its point 2.3, FAQs clarify that investors in an investment fund are assimilated and should be treated as clients in the context of an "investment entity" as defined in Annex I, section VIII, point A. 6) of CRS Law.

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

ALFI Newsflash on Data Protection in the Context of Automatic Exchange of Information

On 14 June 2016, ALFI issued a special newsflash on data protection issues for investment funds in the context of automatic exchange of information in tax matters under the CRS Law.

The aim of this newsflash is to provide some information on a few selected topics and questions as regards mandatory automatic exchange of information in the field of taxation and related considerations and obligations on data protection for investment funds, which qualify as reporting financial institutions under the CRS Law, and/or their administrative agents under the Data Protection Law.

ALFI also published recommendations and templates of self-certification forms which reporting financial institutions may wish to consider when dealing with their clients and investors. These documents can be downloaded from the ALFI website.

Litigation

Banking, Finance and Capital Markets

Insolvency Proceedings − Cessation of Payments − Loss of Commercial Creditworthiness

Court of Appeal, 12 November 2014, N°40366

Insolvency proceedings may be opened against a commercial debtor if it:

- is in cessation of payments (*cessation des paiements*)
- has lost its commercial creditworthiness (*ébranlement du crédit commercial*).

With regard to the cessation of payments, the Court of Appeal holds that the situation is analysed on the day of the opening judgment. This condition is fulfilled if unpaid debts are certain, liquidated and payable. It is not necessary that the cessation of payments is general and the number of unpaid creditors does not matter. The fact that the debtor has more assets than debts does not matter either if, in fact, the debtor does not pay its debts. Cessation of payments is independent of the sufficiency of existing assets of the debtors. The fact that the debtor is the owner of real estate has no influence on whether it is in cessation of payments or not. Solvency may not be demonstrated by way of the existence of immobilised assets.

With regard to the loss of commercial creditworthiness, the court holds that it is a consequence of the impossibility to obtain new credit in order to pay existing debt or of the refusal of creditors to extend payment periods.

Reservation of Title Clauses – General Conditions – Right to Demand Restitution of Assets

Court of Appeal, 25 February 2015, N°37549

With regard to Articles 1135-1 of the Civil Code and 567-1 of the Commercial Code, for reservation of title clauses, being part of the general conditions, to be valid and to take effect against the buyer, it is necessary that they could have been known to the buyer at the latest at the signature of the contract and that the buyer may be considered to have accepted such clauses. In the case at hand, the Court of Appeal has considered that such is the case for several reasons:

- the general conditions were printed on the back of the agreement in the same ink and were not hidden in small print
- the general conditions were drafted clearly and printed legibly, one of its clauses provides that the sold goods

remain the seller's property until complete payment of the price and, according to it, the buyer could demand restitution in case of insolvency of the buyer in accordance with Article 567-1 of the Commercial Code and

- every sales contract has the general conditions on its reverse and there is a mention "see general conditions on the reverse" next to the field where the buyer is supposed to sign, so the that buyer is sufficiently informed that his/her acceptance of and consent to the general conditions is given by signing.

The Court also considers that a reservation of title clause is not exorbitant, unusual or abusive given that the possibility of inserting such a clause into an agreement is expressly provided for in Article 567-1 of the Commercial Code. Additionally, the Court underlines that the buyer is not an inexperienced consumer, but a merchant who is used to such clauses.

With regard to the right to demand restitution based upon a reservation of title clause, the Court stresses that, given that the faculty provided for by Article 567-1 of the Commercial Code is exceptional, it has to be construed narrowly. In particular, the seller has to demand restitution based upon Article 567-1 of the Commercial Code within three months after the latest publication of the judgment opening insolvency proceedings in order to allow the insolvency receiver to determine the assets being part of the insolvent estate as soon as possible. The receiver may, subject to approval of the court, return the assets to the seller if he/she considers that the demand is justified.

Right of Retention – Insolvency

Court of Appeal, 14 October 2015, N°39083

With a view to securing his debt, a creditor had received a precious stone from his debtor. When the debtor became insolvent, the insolvency administrator demanded the restitution of the stone.

The creditor considered that he had a right of retention over the precious stone which had effect against the other creditors and that he could thus keep it until the debtor had paid his debt.

According to the Court of Appeal, the beneficiary of a right of retention takes a passive attitude and waits until his claim is paid. The opening of insolvency proceedings does not give him the right to enforce the asset that he has been given, because of the stay of any proceedings against the insolvent debtor. However, the insolvency administrator may sell an asset that is part of the estate of the insolvent debtor, if he/she pays the creditor benefiting from the right of retention with priority from the proceeds of the sale.

Bank's Duty to Inform and Advise Client

Supreme Court, 2 June 2016, N°63/16

According to the Supreme Court, a bank's duty to inform and advise its client when acting as an agent is an obligation of means (*obligation de moyens*), unless there is a special agreement between the client and its bank regarding information and advice.

As a consequence, if the client files for damages because of negligent breach of its contractual obligations by the bank, the client has the burden of proof.

Corporate

Liability of Directors – Misconduct in the Management of the Company's Affairs – No involvement in the Company's Management – No Accounting Supervision

District Court, 25 April 2014, N°158196/159713

On 25 April 2014, the District Court clarified the framework for an action for misconduct in management based on Article 59 of the Companies Law.

In the case at hand, a company was declared insolvent and its financial statements mentioned various unjustified payments from its bank account. The insolvency administrator ("*curateur*") accused the company directors of misconduct in the management of the company's affairs, which was reflected by their lack of involvement in the company's management *(i.e.* no regular bookkeeping of the company).

Indeed, directors may be held liable for all acts relating to the management and supervision of the company, which includes both the faults committed within the limits of their power as well as those committed in excess of their power. In addition, a director may be held civilly liable for any act that a reasonably prudent and diligent entrepreneur would not commit.

Further, a director may not escape liability by designating authority to others; moreover, in doing so a director commits a fault. For instance, in the present case, only the appointed director was permitted to lead the company or to accept responsibility for such managerial roles as establishing and controlling the regular bookkeeping. The lack of interest in the company's bookkeeping and the lack of oversight on the part of a director are considered to be a dereliction of his/her duties.

SA – Daily Management – Conditions of Apparent Mandate – Company's Articles of Association – Double Signature to Bind the Company towards Third Party

District Court, 2 April 2014

On 2 April 2014, the District Court had to determine whether an agreement (i.e a car sale and purchase agreement), clearly beyond the scope of an SA managing director's (*administrateur-délégué*) daily management responsibilities, was enforceable against the company after the resignation of said managing director.

In the present case, the District Court reasserted that daily management (which is not a legal definition but a jurisprudential one) includes (I) actions that are driven by the needs of the daily life of the company as well as (II) acts that, because of their lack of importance and their need for a quick solution, do not justify the intervention of the board of directors. The notion of daily management, therefore, depends on the corporate purpose of the company and is to be assessed on a case-by-case basis (*in concreto*).

In this case, a provision of the company's articles of association stated that, for an agreement above a certain amount, joint signatures of two directors are required, including the signature of the managing director. Despite this provision, the District Court decided that the company would be held liable for the acts of the managing director if the claimant could prove the existence of an apparent mandate.

An apparent mandate exists when a third party believes that the person with whom he or she had contracted had the power to act on behalf of the company. Thus the burden of proof lies with whoever invokes the appearance (i.e. the claimant).

In this case, the District Court concluded that, due to the identity of the co-contractor as a majority shareholder and managing director of the company, the claimant could have reasonably believed that the co-contractor had the power to bind the company by its sole signature. As a consequence, the defendant company was not entitled to refuse unilaterally to execute the agreement.

Transfer of Registered Seat – Publication to RCSL and Memorial[12] – Notification of Judgment to the Previous Registered Seat – Validity of the Notification

23 January 2014, Supreme Court, N°3280

On 22 June 2011, a company appealed a judgment rendered on 26 April 2011, of which notification was sent to the previous registered address of the company on 2 May 2011, despite the publication of the transfer of seat in 2009 in the RCSL and the Memorial.

In the case at hand, the Court of Appeal decided that the time to file the appeal had expired according to, among others, Article 150 of the New Civil Procedure Code (*Nouveau code de procédure civile*), which states that the appeal must be filed within a period of 40 days from the notification date of the judgment.

Further, the Court of Appeal considered the notification of the judgment to be valid, despite having been sent to the previous company address. It refused to reopen the case, given the fact that the company should have appealed at the latest on 13 June 2011 rather than on 22 June 2011.

This decision by the Court of Appeal was quashed by the Supreme Court, which considered that the transfer of the registered office was enforceable against third parties once it was duly published in the RCSL and the Memorial, and that such publications were equivalent to the termination (*publication valant dénonciation*) of the previous domiciliation agreement.

SICAV – Evidence of Shareholder's Quality – Registration in the Shareholders' Register – Rebuttable Presumption – Notion of *Nominee*

Court of Appeal, 7 May 2015

A Spanish SICAV, having made an investment in a Luxembourg SICAV, requested the repurchase of its units. The repurchase orders were transmitted through a management company and a platform dedicated to the investment, but no repayment was made.

The Luxembourg SICAV argued that the request from the Spanish SICAV was not admissible, as the latter was not a shareholder of the Luxembourg SICAV. Since all the shares issued by the Luxembourg SICAV are registered, if the Spanish SICAV was a shareholder, it would have been

[12] N.B. pursuant to the law of 27 May 2016 as of 1 June 2016 the Memorial is replaced by the RESA.

registered in the shareholders' register.

However, the Court of Appeal highlighted that this argument cannot be admitted due to the following considerations:

- The registration in the shareholders' register must be considered as a rebuttable presumption.
- Only the shareholder or the pretended shareholder – and not the company – is entitled to use the shareholders' register as evidence for its case, since the company is the author of shareholder registrations.

As the shareholder status of the Spanish SICAV had not been established pursuant to the shareholders' register, the Spanish SICAV argued that a "nominee" agreement, by and between the management company and the platform dedicated to the investment, should grant them shareholder status in place of status gained by registration. Indeed, according to the Spanish SICAV, pursuant to this agreement, the management company should have acquired the shares on behalf of the Spanish SICAV as its "client".

Further, according to the Spanish SICAV, the "nominee" agreement should be considered as a commission agreement (*contrat de commission*) whereby the "nominee" would be a commission agent acting on behalf of its "client", the Spanish SICAV.

However, the Court of Appeal explained that the notion of "nominee", initially developed and well known in the Common Law system, does not possess an equivalent in the Civil Law system. Nevertheless, the Court of Appeal admitted the issue by analysing the nominee agreement as a commission agreement (*contrat de commission*).

The Court of Appeal highlighted the role of a commission agreement (*contrat de commission*) as a mechanism whereby a person or an entity acts as an intermediary agent on behalf of the company but in its own name, in exchange for a commission. In the case at hand, it appears that the initial purchase order and the repurchase order were made by the platform dedicated to the investment on behalf of the management company. No mention of the Spanish SICAV was made in the relevant documents and, as a consequence, the shareholding link between the Spanish SICAV and the Luxembourg SICAV was not established.

Tax

Compensation of Profits realised by Newly Integrated Entities with Losses incurred by a Tax Unity

Administrative Court of Luxembourg, 24 March 2016, N°36656C

For the financial year 2004, a Luxembourg company submitted an application for a tax unity for itself and two of its subsidiaries. During the financial years 2004 to 2007, the tax unity incurred significant losses. In 2008, the Luxembourg company applied for the inclusion of two additional subsidiaries to the tax unity.

Further to this inclusion, the consolidated revenue of the tax unity became positive and the Luxembourg company tried to use the available losses carried forward to offset taxation.

The tax authorities took the view that the inclusion of new subsidiaries creates a new tax unity and that losses incurred before 2008 could therefore not be used to offset taxation in the hands of the new tax unity under the principle that losses can only be used by the tax payer who incurred them.

On 24 June 2015, the District Court of Luxembourg ruled in favour of the Luxembourg company. The tax authorities appealed the decision and, on 24 March 2016, the Administrative Court of Luxembourg confirmed the District Court decision.

The Administrative Court of Luxembourg stated that, although the exit of a subsidiary from the tax unity, less than five years from the set-up of the tax unity, would result in the cancellation of the tax unity, the inclusion of new companies would not and that therefore losses incurred between 2004 and 2007 could be used by the enlarged tax unity in 2008.

Minimum CIT for Companies undergoing a Liquidation Process is not incompatible with the Constitution

Administrative Court of Luxembourg, 12 May 2016, N°36471C

On 12 May 2016, the Administrative Court of Luxembourg upheld the Luxembourg minimum corporate tax regime and confirmed that it did not raise any particular constitutional issues.

In 2009, a Luxembourg resident company was voluntarily liquidated by its shareholder by an extraordinary general meeting of the shareholder on 30 November 2009.

Further to the liquidation, the tax authorities continued to issue tax advance notices to the company for the payment of minimum CIT during the liquidation period; however, the management of the company refused to pay these advances and on 3 December 2013 filed a motion against the tax authorities to the District Court of Luxembourg.

On 13 May 2015, the District Court of Luxembourg ruled in favour of the tax authorities. The company appealed to the Administrative Court of Luxembourg claiming that the company had no working capital at the time to pay tax advances and that it was not receiving any revenue that could have been subject to tax. Therefore the mandatory payment of minimum CIT created a tax burden that was disproportionate to the revenue effectively realised by a company undergoing liquidation. This tax charge was therefore in contradiction of the constitutional principle of the equal discharge of public burdens and of taxation in accordance with the ability to pay taxes.

The Administrative Court of Luxembourg ruled in favour of the tax authorities in this case, claiming that the provisions for minimum CIT were not incompatible with the constitutional principles considered, because a company undergoing liquidation can theoretically receive revenue and pay tax thereon, as it is able to upstream profits to its shareholders through liquidation proceeds. A company being liquidated is therefore in the same position as a company that has incurred losses during the financial year.

Substance Requirements for a Luxembourg Company in France

Lyon Administrative Court of Appeal, 3 March 2016, N°13LY01036

On 6 February 2013, the District Court of Dijon ruled against a Luxembourg resident company and considered that it was effectively managed in France.

On 22 April 2013, the Luxembourg company appealed this decision and asked the Lyon Administrative Court of Appeal to rule that it had a sufficient level of substance in Luxembourg. The Luxembourg company argued that its presence in Luxembourg was justified for financing purposes, as it acted as the holding company for several operative companies in different jurisdictions.

The Court decided that in reality the Luxembourg company was entirely managed out of its French subsidiary and therefore that it should be considered a tax resident in France, where its place of effective management is situated.

Clarification on the Notion of an Invoice for VAT Purposes

European Court of Justice, case number C-516/14, 18 February 2016 (Opinion)

Advocate General Kokott considered, in her opinion dated 18 February 2016, that an invoice containing the following description: "legal services rendered" fulfils the conditions of Article 226(6) of Directive 2006/112/EC, unless national law, in accordance with EU law, provides for a different VAT treatment of certain specific legal services.

However, an invoice "stating legal services rendered from such a date until the present date" or "legal services rendered until the present date" does not fulfil the requirements to be considered an invoice for VAT purposes.

No VAT Exemption for Certain Lawyers' Services

European Court of Justice, case number C-543/14, 10 March 2016 (Opinion)

Advocate General Sharpston in her opinion dated 10 March 2016, considered that Member States where not authorised to exempt from VAT the supply of services by lawyers under a national legal aid scheme as services which are closely linked to welfare and social security work under Article 132(1)(g) of Directive 2006/112.

VAT Exemptions for Debt Collection

European Court of Justice, case number C-130/15, 26 May 2016

On 26 May 2016, the Court of Justice of the European Union ruled that under Article 13B(d)(3) of Directive 77/388/EEC the term "uniform basis of assessment" should be interpreted as meaning that an exemption from value added tax for transactions relating to payments and transfers does not apply to the "processing of payment by debit or credit card".

In the case at hand, if an individual who buys, via a service provider, a ticket for a show or an exhibition, which the provider sells in the name and on behalf of another entity and which that individual pays for by debit or credit card, no VAT exemption should be granted by the tax authorities.

VAT Exemptions for Financial Services and Transfer of Money

European Court of Justice, case number C-607/14 - Bookit

On 26 May 2016, the Court of Justice of the European Union ruled that Article 135(1)(d) of Directive 2006/112/EC must be interpreted as meaning that an exemption from value added tax for payments and transfers should not be applicable to a so-called "card handling" service.

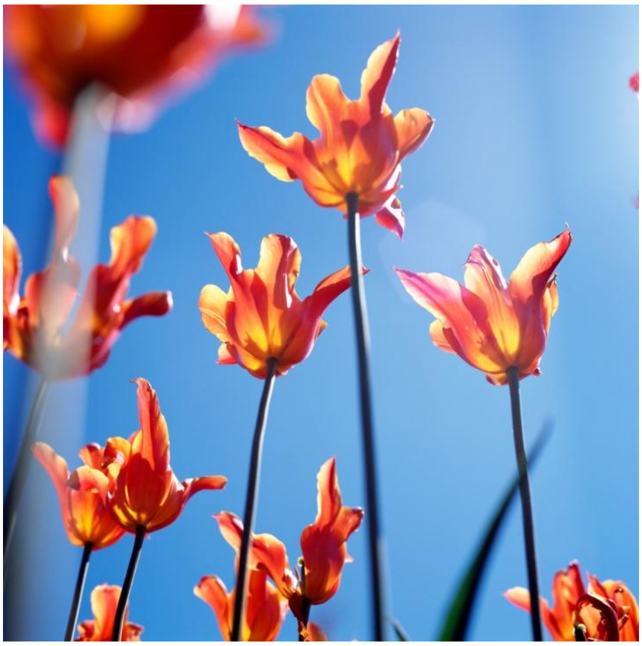
In the case at hand, a taxable provider supplied to an individual purchaser a cinema ticket which was sold for and on behalf of another entity, and which the individual had paid for by debit or credit card.

Tax Credit for Pensioners extended to Pensioners receiving Pensions from other Member States

European Court of Justice, case number C-300/15, 26 May 2016

On 26 May 2016, the Court of Justice of the European Union ruled that the principle of freedom of movement for workers, as defined by Article 45 TFEU, precludes the provisions of Article 139ter(1) of the Luxembourg income tax law, as they restrict eligibility for a tax credit established there to persons in possession of a tax deduction form.

Consequently, all pensioners should now be eligible for the EUR 300 tax credit. Prior to this decision, residents receiving pensions from another Member State could not benefit from the tax credit because they were not in possession of a Luxembourg withholding tax form, a sine qua non condition



Tax

International Legislation

US Senate Report on the Protocol to the US-Luxembourg Double Tax Treaty

On 9 February 2016, the US Senate Foreign Relations Committee released a report urging Congress to ratify the protocol signed on 20 May 2009 to the US-Luxembourg Income Tax treaty dated 3 April 1996.

Protocol to the Luxembourg-Tunisia Income Tax Treaty has been approved by Tunisian Authorities

The protocol to the Luxembourg-Tunisia Income Tax Treaty signed on 8 July 2014 was approved by the Tunisia Finance, Planning and Development Committee on 18 February 2016 and by the Tunisian National Assembly on 3 May 2016.

European Court of Auditors Report on Intra-Community VAT Fraud

On 3 March 2016, The European Court of Auditors published a report addressing the challenges of tackling intra-Community VAT fraud at both the EU and national levels. The report addresses particular weaknesses such as, *inter alia*:

- the absence of cross-checks between customs and tax data in certain Member States
- VAT information shared between tax authorities is often inaccurate and/or incomplete
- cooperation between administrative, judicial and enforcement authorities can be difficult due to an overlap of powers and inefficient internal procedures.

The report also sets out a series of recommendations to address these particular concerns, such as, *inter alia*:

- the EU Commission should propose legislation with regard to cross-checks between customs and tax data in Member States
- the EU Commission should ensure that this legislation provides for effective monitoring tools, as most of the new legal measures should be taken by national legislation in each Member State
- the Council should approve the Commission's proposal on the joint and several liability for VAT losses in the Member State of destination
- the Council should authorise the Commission to negotiate and sign mutual assistance agreements with

non-Member States where most of the digital service providers are established

- the EU Parliament, together with the Council, should include VAT in the Directive on the fight against fraud and grant the European anti-fraud office with the necessary powers to investigate intra-Community VAT fraud.

EU Council on Economic and Financial Affairs takes positions on the Tax Avoidance Package and the VAT Package

On 8 March 2016, the European Council on economic and financial affairs held a meeting to discuss, *inter alia*, the code of conduct on business taxation. The Council called for a strengthening of the code and a focus on eliminating situations where unfair tax competition arises.

On 25 May 2016, the European Council on economic and financial affairs held a meeting to discuss, *inter alia*, several proposals from the Commission:

- the Council adopted the proposal directive 2016/0107/(COD) on Country by Country reporting
- the Council failed to reach an agreement on the Commission's proposal for an ATA directive and postponed the decision until 17 June
- the Council adopted the proposal of the Commission to maintain the minimum standard VAT rate at 15% until 31 December 2017, pending agreement on definitive rules for a single European VAT area.

Further to the EU Council on economic and financial affairs meeting on 25 May 2016, the Council published its comments on the draft Anti-Avoidance proposal directive on 26 May 2016.

The new Anti-Avoidance proposal directive should contain the following amendments:

- increase of the related party threshold from 25% to 50%, for the purposes of the definition of the term "associated enterprise" in cases where a double deduction results from the use of a hybrid entity
- Member States shall adopt the necessary laws and regulations for the transposition of the directive by 31 December 2019
- the directive shall be applicable from 1 January 2020.

On 17 June 2016, the European Council on economic affairs held a meeting to discuss, *inter alia*, the proposal ATA directive, these discussions having been postponed on 25 May 2016. During the meeting the Council reached a broad agreement on the ATA directive, which was adopted by consensus, after expiration of the deadline under the silence procedure on 20 June 2016.

Please refer to the April 2016 edition of the Luxembourg Legal Update for more information on the Anti-Avoidance package.

Adoption of the UCITS V Directive

The adoption of this Directive on 18 March 2016 should have no particular tax aspects.

Please refer to the Investment Funds section of this Luxembourg Legal Update for further details on the above.

OECD Report on Tax Treaty Entitlements for Non Collective Investment ("non-CIV") Funds

On 24 March 2016, the OECD fiscal affairs committee published a discussion paper on Action 6 of the BEPS Action Plan with regard to the treaty entitlement of non-CIV Funds.

The OECD invited the public to provide comments on the following key considerations before 22 April 2016:

- scope of application of the limitation of benefits provision and potential exception for non CIV Funds that are regulated or widely held
- granting of treaty benefits to non-CIV Funds where a large proportion of the investors would similarly be entitled to the same benefits
- creation of a "Global Streamed Fund" regime where a qualifying non-CIV Fund would be tax exempt and be eligible for treaty benefits, because it is obliged to distribute on a regular basis its income to a taxable investor
- specific exemption for non-CIV Funds from the PPT rule
- specific exemption for non-CIV Funds from the anti-conduit rule
- amendment to the commentary on "special tax regimes" to limit the effect of these types of provisions on non-CIV Funds.

Adoption of the VAT Action Plan

On 7 April 2016, the EU Commission adopted the VAT Action Plan. An opinion of the expert group was subsequently published on 20 May 2016. The Plan has four major focuses.

Recent and Ongoing Policy Initiatives

Removal of VAT Obstacles to E-Commerce in the Single Market

By the end of 2016, the Commission intends to bring forward proposal legislation, in the context of the Commission's Digital Single Market Strategy announced on 6 May 2015, to simplify VAT compliance for cross-border e-commerce. This expected piece of legislation will focus on:

- the extension of the single electronic registration (One Stop Shop) and payment mechanism to intra-EU and third country sales of tangible goods to private consumers
- the introduction of a common EU-wide simplification measure (VAT threshold) to help small start-up e-commerce businesses
- allowing home country controls, including a single audit for cross-border businesses for VAT purposes
- removing VAT exemption for the import of small consignments from suppliers in third countries.

SME VAT Package

Further to the announcement on a deeper and fairer Single Market strategy on 28 October 2015, the Commission will strive to adopt before the end of 2017 a proposal for legislation aiming towards a more favourable cross-border trade and growth environment.

As SMEs bear proportionally higher VAT compliance costs compared with larger businesses, the legislation will contain tailored provisions for SMEs and small start-ups.

Urgent Measure to tackle the VAT Gap

According to a study quantifying and analysing the VAT Gap in EU Member States, commissioned by the EU and presented in May 2015, the estimated revenue loss corresponding to the VAT Gap amounts to EUR 170 billion for the year 2013.

AS a consequence, the EU Commission has adopted a series of measures in order to reach three major goals, which are the following:

- improving cooperation within the EU and with non-EU countries
- improving the efficiency of EU tax administrations
- improving voluntary compliance.

Towards a Robust Single European VAT area

By 2017, the EU Commission intends to present a definitive VAT regime for cross-border trade. This legislation will be based on the principle of taxation in the country of destination of the goods.

Towards a Modernised VAT Rates Policy

The VAT directive applicable today is based on the origin principle. However, it is now the EU Commission's view that legislation based on the destination principle would grant more autonomy to Member States on VAT rates.

Negotiations are now underway in order for the EU Commission to be mandated by the Council and the EU Parliament to propose legislation to amend the VAT directive in 2017.

Country by Country Public reporting for Multinationals

Further to a press release on 12 April 2016, the EU Commission presented proposal directive 2016/0107/(COD) amending directive 2013/34/EU regarding the disclosure of tax information by certain undertakings and branches.

Under this proposal directive, companies that are residents in the EU or that undertake business in the EU, through a permanent presence there, will be required to disclose tax-related information publicly, *via* the corporate websites or *via* the RCSL.

Companies should fall out of the scope of the proposal directive if their global annual turnover does not exceed EUR 750 million. There is no specific exemption for funds.

The proposed information to be disclosed per jurisdiction relates to:

- the nature of the activities undertaken by the company in the EU
- the number of people employed by the company
- the amount of profit before tax
- the amount of tax due on the basis of the profits made by the company
- the amount of net turnover of the company
- the amount of tax actually paid by the company
- the accumulated earnings of the company.

The information should remain available to the public for a period of five years on a rolling basis.

Proposal Directives on Standard VAT returns and VAT Treatment of Financial Insurance Services

On 30 April 2016, the Commission withdrew its proposal COM (2007) 747 for a directive amending the rules governing the VAT exemption on financial and insurance services and its proposal COM (2013) 721 for a directive establishing a common standard VAT return.

EU Commission publishes Notice on State Aid

On 19 May 2016, the Commission published guidance clarifying the scope of the EU State aid rules to facilitate public investment. The report concludes that public support can be granted without prior approval in the following five cases:

- public investment for the construction and upgrade of infrastructure can benefit from support without it being State aid, if it does not directly compete with other infrastructure of the same kind
- even if infrastructure is built with the help of State aid, there is no aid to its operator and users if they pay a market price
- EU State aid control focuses on public investments that have cross-border effects and that attract customers from other Member States
- public financing of certain cultural activities which are not commercial but provided for free or against a minimal fee, will not be subject to State aid rules
- if public authorities acquire goods or services through tenders, which respect EU rules on public procurement, these transactions should be considered free of State aid.

National Legislation

Electronic Filing of Tax Returns for SIFs

Bill of Law N°6963

On 3 March 2016, the Luxembourg Government introduced legislation for the electronic filing of tax returns for specialised investment funds. The *Chambre de Commerce* on 21 April 2016 proposed an amendment to the bill to include the option to file electronic tax returns for other types of fund-like structures such as SPFs, a comment which is in line with a general trend in Luxembourg towards the electronic filing of all tax and VAT returns.

New Notification Rules for Married or Partnered Couples

Bill of Law N°6964

On 3 March 2016, the Luxembourg Government introduced legislation to improve notification of households in tax matters.

Further to a study released by the tax authorities, some EUR 1,200,000 of notifications are needlessly sent to tax payers who have opted for collective taxation under Articles 3 and 3bis of the Luxembourg income tax law every year.

The bill will amend paragraph 91(1) of the *Abgabenordnung* so that a notification (e.g. a tax assessment) sent to one spouse or legal partner will also be a valid notification for the other.

Exchange of Information in Tax Matters

Bill of Law N°6972

On 22 March 2016, the Luxembourg Government introduced legislation for the automatic exchange of advance tax and pricing agreements with the EU Commission. The key features of this automatic exchange are as follows:

Advance Tax and Pricing Agreements that should be communicated

- Advance tax agreements should be communicated to the EU Commission if the annual net turnover of the tax payer is in excess of EUR 40 million or if the main activities of the tax payer are financial or investment activities.
- Advance tax agreements should only be communicated if they deal with an international tax issue or if there is reasonable belief that they affect the tax treatment of the tax payer in another Member State.
- Advance pricing agreements should always be communicated, unless such pricing agreements are bilateral pricing agreements with a Third Party State, and if the double tax treaty between Luxembourg and that Third Party State prohibits the communication of the advance pricing agreement.

Information that should be communicated

- Information exchanged with the EU Commission will contain a summary of the agreement.
- The identity of the tax payer and whether the tax payer is part of a group of companies.
- The date on which the advance tax agreement was issued.
- The date on which the advance tax agreement ceases to be valid.
- The nature of the agreement (i.e. an advance tax or an advance pricing agreement).
- The nominal amount of the transaction subject to the advance tax or pricing agreement.
- The description of the transfer pricing methods used to establish a margin and allocate profit.
- The identification of the Member States that are affected by the advance tax or pricing agreement.
- The identification of other related tax payers, for the purposes of the advance tax or pricing agreement, in these Member States.

Retroactive Effects of the bill

- Advance tax and pricing agreements issued or renewed between 1 January 2012 and that are still in force on 1 January 2014 should be communicated to the EU Commission immediately.

- Advance tax and pricing agreements issued or renewed after 1 January 2014 should be communicated to the EU Commission immediately, regardless of whether they are still in force.

In order to organise compliance with EU legislation on this topic, the Luxembourg tax authorities have published form 777 on their website. This form should be used by tax payers for all future applications for advance tax or pricing agreements to the Luxembourg rulings' commission.

Please refer to the April 2016 edition of the Luxembourg Legal Update for more details on automatic exchange of information in tax matters.

Repeal of the Law implementing the EU Savings Directive

Bill of Law N°6978

On 29 March 2016, the Luxembourg Government introduced legislation to repeal the law of 21 June 2005 implementing the EU Savings Directive in Luxembourg and amending the law of 23 December 2005 on the application of a flat rate tax on certain interest payments on savings.

The amendments to the law of 23 December 2005 relate to the deletion of references to definitions under the EU Savings Directive. There are no substantial changes to the 10% flat rate tax applicable to interest income received by a Luxembourg individual tax payer acting within the management of his/her own wealth.

Please refer to the April 2016 edition of the Luxembourg Legal Update for more information on the repeal of the EU Savings Directive.

Luxembourg Tax Reform for 2017

Further to the announcement of the Luxembourg *Steier Reform* on 29 February 2016, the minister of finance, Mr Pierre Gramegna, held a press conference on 21 April 2016 to clarify and add certain points to the proposed reform. The main proposals for individual taxation are as follows:

- The amount of alimony received by a spouse ordinarily reduces the amount of tax credit for single parents (*Crédit d'impôt monoparental*). In the proposed reform, the first bracket of alimony up to EUR 184 per month (previously EUR 160) or EUR 2,208 per year (previously EUR 1,920) will not be considered for the reduction of the tax credit.
- The tax discount for extraordinary charges for children who are not residing with the tax payer should be increased to EUR 4,020 (previously EUR 3,480).
- The tax discount for domestic help should be increased to EUR 5,400 (previously EUR 3,600).
- Tax payers that are married and who do not reside in Luxembourg must provide by the end of the year 2017 relevant documents concerning their financial and marital situation to the tax authorities. As from 2018, the tax authorities will assess the effective tax rate that should be applied to these non-residents. If the relevant information is not provided before the end of the year 2017, these non-residents will be taxed as if they were single, under taxation class 1.
- The face value of luncheon vouchers should be increased to EUR 10.80 (previously EUR 8.40).
- The reform will introduce a new criminal offence for tax fraud (*fraude fiscale aggravée*). The existing criminal offence corresponding to *fraude fiscale simple* will be decriminalised and sanctions will be sought against these latter offenders through administrative and tax fines only.

The main additional proposals for corporate taxation are as follows:

- The general tax credit for investment should be increased to 8% (previously 7%), except for the bracket of investments in excess of EUR 150,000 which will remain at 2%.
- The additional tax credit for investment should be increased to 13% (previously 12%).
- The amortisation/depreciation of certain fixed assets eligible for the special amortisation method will be increased to 8% (previously 7%), except for the bracket of assets in excess of EUR 150,000 which will remain at 2%.

Please refer to the April 2016 edition of our Luxembourg Legal Update for our comments on Minister Gramegna's first press conference on the *Steier Reform* on 29 February 2016.

Taxation of Capital Gains derived from the Sale of Luxembourg Real Estate

Bill of Law N°6983

On 3 May 2016, the Luxembourg Government introduced legislation amending the rules applicable to the taxation of capital gains arising from the sale of real estate in Luxembourg. In the context of the 2017 *Steier Reform*, the sale of Luxembourg real estate by a Luxembourg tax payer, acting within the management of his/her own wealth, will be taxed at a quarter of the rate normally applicable to the capital gains (previously half of the rate).

This is a temporary measure that concerns real estate sold between 1 July 2016 and 31 December 2017. The date of the sale, for tax purposes, will be the date of the notarised sale agreement.

Proposal for an Amendment of the US-Luxembourg Double Tax Treaty

Bill of Law N°7006

On 22 June 2016, the Luxembourg Government introduced legislation relating to the attribution of specific tax powers between Luxembourg and the United States.

This bill will allow the government to negotiate a protocol to the US-Luxembourg double tax treaty signed on 3 April 1996, as amended.

The protocol will limit the benefits of the treaty in cases where certain Luxembourg tax payers attribute income to US permanent establishments in order to benefit from an exemption in both Luxembourg and in the US.

Regulatory Developments

New Template for the 2015 Corporate Tax Return

For the fiscal year 2015, the tax authorities have released a new template for corporate tax returns (form 500). Tax payers will have to disclose additional information about the company, the shareholders and the managers of the tax payer to the Luxembourg tax authorities. This information includes, *inter alia*:

- the number of shareholders and their stake in the company
- the exact address of the shareholders
- the name, date of birth and address of the managers of the company
- whether the company is part of a tax unity and information about the other companies in the unity
- whether the company is currently being liquidated voluntarily or by judicial order
- whether the company has activities outside its city of residence
- whether the company has been granted an advance tax or pricing agreement for the year 2015.

Luxembourg VAT Authorities take a position on Directors' Fees

On 10 February 2016, the Luxembourg VAT authorities confirmed that independent director services rendered to a Luxembourg company are subject to VAT at the standard rate of 17%. Many directors considered their activities to be out of scope in accordance with market practice.

As some companies in Luxembourg have only a partial or no right to deduct VAT, this additional tax charge may have significant consequences for them. Companies paying directors' fees to a non-resident may also be affected as they would be liable to VAT in Luxembourg under the reverse charge mechanism.

Circular of the Tax Authorities on the Taxation of Capital Gains derived from the Sale of Usufruct in relation to Luxembourg Real Estate

On 7 March 2016, the Luxembourg tax authorities issued a circular on the tax treatment of the sale of usufruct in relation to Luxembourg real estate. The Luxembourg tax authorities take the view that the sale of usufruct in relation to Luxembourg real estate should be taxed according to Articles 99bis and 99ter of the Luxembourg income tax law (i.e. in line with the taxation of capital gains derived from the sale of Luxembourg real estate itself).

ABBL Guidance on FATCA Compliance

On 29 March 2016, the ABBL published a guidance paper on FATCA compliance. The paper contains a template subscription form for funds and other financial institutions falling within the scope of FATCA.

Luxembourg Tax Administration updates its notices on the CRS and Electronic Exchange of Information

On 29 April 2016, the Luxembourg tax authorities updated their website section on the CRS. The section now contains comprehensive information for tax payers that may be concerned by the application of the CRS in Luxembourg.

The section now contains a short description of the CRS and administrative deadlines, as well as extensive references to the applicable legislation.

Luxembourg Tax Administration publishes New Circular on Filings in a Foreign Currency

On 21 June 2016, the Luxembourg tax authorities published circular L.I.R. – 23/3/I.C.C. 39/Eval. 59/I.Fort 49, on the filing of corporate tax returns with accounts in another currency than EUR.

The changes to the previous version of the circular relate to the implementation of the new minimum net wealth tax regime and its impact on paragraph 8a of the fortune tax law.

Any reduction, awarded by the tax authorities, against the set-up of a net wealth tax reserve cannot lead to a net wealth tax liability below the minimum net wealth tax due by the company.

Please refer to the April 2016 edition of the Luxembourg

Legal Update for more information on the repeal of the minimum annual corporate income tax and introduction of a minimum annual net wealth tax.

Update of the List of Non-Profit Organisations Eligible for Tax Deductible Donations

Further to a Grand-Ducal Decree dated 30 May 2016, the Luxembourg tax authorities announced on 24 June 2016 that donations made by Luxembourg tax payers to the non-profit organisation IMS, Inspiring More Sustainability, a.s.b.l. are tax deductible as from the fiscal year 2016.

Case Law

Compensation of Profits Realised by Newly Integrated Entities with Losses incurred by a Tax Unity

Administrative Court of Luxembourg, 24 March 2016, N°36656C

Minimum CIT for Companies undergoing a Liquidation Process is not incompatible with the Constitution

Administrative Court of Luxembourg on 12 May 2016 – N°36471C

Substance Requirements for a Luxembourg Company in France

Lyon Administrative Court of Appeal on 3 March 2016 – N°13LY01036

Clarification on the Notion of an Invoice for VAT Purposes

European Court of Justice, case number C-516/14, 18 February 2016 (Opinion)

No VAT Exemption for Certain Lawyers' Services

European Court of Justice, case number C-543/14, 10 March 2016 (Opinion)

VAT Exemptions for Debt Collection

European Court of Justice, case number C-130/15, 26 May 2016

VAT Exemptions for Financial Services and Transfer of Money

European Court of Justice, case number C-607/14 - Bookit

Tax Credit for Pensioners extended to Pensioners receiving Pensions from other Member States

European Court of Justice, case number C-300/15, 26 May 2016

Please refer to the Litigation section of this Luxembourg Legal Update for more details on the above.

Glossary

ABBL: Luxembourg Banks and Bankers Association

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

AIFM: Alternative Investment Fund Managers

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

AIFs: Alternative Investment Funds

ALFI: Association of the Luxembourg Fund Industry

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

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

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

BCBS: Basel Committee on Banking Supervision

BCL: Banque Centrale du Luxembourg

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

CCCTB: Common Consolidated Corporate Tax Base

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

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

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

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

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 re-securitisations, and the supervisory review of remuneration policies

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) N° 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) N°648/2012 Text with EEA relevance

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

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

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

EBA: European Banking Authority

ECB: European Central Bank

ECJ: European Court of Justice

ESMA: European Securities and Markets Authority

ETDs: Exchange Traded Derivatives

ETFs: Exchange Traded Funds

EUIR: European Union Insolvency Regulation: Council regulation (EC) No 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*)

FCP: *Fonds Commun de Placement or mutual fund*

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

ICMA: International Capital Market Association

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 the investors to 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 and the accounting

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 réels immobiliers*)

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

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

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

Prospectus Regulation: Regulation (EC) N°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

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

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

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

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

Takeover Law: Law of 19 May 2006 on public takeover bids

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

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

UCITS Directive: Directive 2009/65/EC of 13 July 2009 of the EU Parliament and of the Council on the coordination of laws, regulations and administrative provisions relating to UCITS

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

CLIFFORD CHANCE

Luxembourg Contacts

Banking, Finance & Capital Markets

Christian Kremer
Managing Partner
T : +352 48 50 50 201
E : christian.kremer@cliffordchance.com

Steve Jacoby
Partner
T : +352 48 50 50 219
E : steve.jacoby@cliffordchance.com

Marc Mehlen
Partner
T : +352 48 50 50 305
E : marc.mehlen@cliffordchance.com

Stefanie Ferring
Counsel
T : +352 48 50 50 253
E : stefanie.ferring@cliffordchance.com

Audrey Mucciante
Counsel
T : +352 48 50 50 409
E : audrey.mucciante@cliffordchance.com

Michael Mbayi
Counsel
T : +352 48 50 50 437
E : michael.mbayi@cliffordchance.com

Udo Prinz
Counsel
T : +352 48 50 50 232
E : udo.prinz@cliffordchance.com

Martin Wurth
Counsel
T : +352 48 50 50 237
E : martin.wurth@cliffordchance.com

Corporate/M&A/Private Equity

Christian Kremer
Managing Partner
T : +352 48 50 50 201
E : christian.kremer@cliffordchance.com

Katia Gauzès
Partner
T : +352 48 50 50 205
E : katia.gauzes@cliffordchance.com

Dunja Pralong-Damjanovic
Counsel
T : +352 48 50 50 222
E : dunja.pralong-damjanovic@cliffordchance.com

Judit Stern
Counsel
T : +352 48 50 50 426
E : judit.stern@cliffordchance.com

Investment Funds

Joëlle Hauser
Partner
T : +352 48 50 50 203
E : joelle.hauser@cliffordchance.com

Paul Van den Abeele
Partner
T : +352 48 50 50 478
E : paul.vandenabeele@cliffordchance.com

Arne Bolch
Counsel
T : +352 48 50 50 295
E : arne.bolch@cliffordchance.com

Augustin de Longeaux
Counsel
T : +352 48 50 50 438
E : augustin.delongeaux@cliffordchance.com

Christian Lennig
Counsel
T : +352 48 50 50 459
E : christian.lennig@cliffordchance.com

Kristof Meynaerts
Counsel
T : +352 48 50 50 226
E : kristof.meynaerts@cliffordchance.com

Caroline Migeot
Counsel
T : +352 48 50 50 258
E : caroline.migeot@cliffordchance.com

Jacques Schroeder
Of Counsel
T : +352 48 50 50 217
E : jacques.schroeder@cliffordchance.com

Litigation, Employment

Albert Moro
Partner
T : +352 48 50 50 204
E : albert.moro@cliffordchance.com

Isabelle Comhaire
Counsel
T : +352 48 50 50 402
E : isabelle.comhaire@cliffordchance.com

Claude Eischen
Counsel
T : +352 48 50 50 268
E : claude.eischen@cliffordchance.com

Olivier Poelmans
Counsel
T : +352 48 50 50 421
E : olivier.poelmans@cliffordchance.com

Sébastien Schmitz
Counsel
T : +352 48 50 50 455
E : sebastien.schmitz@cliffordchance.com

Tax

François-Xavier Dujardin
Partner
T : +352 48 50 50 254
E : francois-xavier.dujardin@cliffordchance.com

Maxime Budzin
Counsel
T : +352 48 50 50 465
E : maxime.budzin@cliffordchance.com

Worldwide contact information
35* offices in 25 countries

Abu Dhabi
Clifford Chance
9th Floor, Al Sila Tower
Abu Dhabi Global Market Square
PO Box 26492
Abu Dhabi
United Arab Emirates
T +971 2 613 2300
F +971 2 613 2400

Amsterdam
Clifford Chance
Droogbak 1A
1013 GE Amsterdam
PO Box 251
1000 AG Amsterdam
The Netherlands
T +31 20 7119 000
F +31 20 7119 999

Bangkok
Clifford Chance
Sindhorn Building Tower 3
21st Floor
130-132 Wireless Road
Pathumwan
Bangkok 10330
Thailand
T +66 2 401 8800
F +66 2 401 8801

Barcelona
Clifford Chance
Av. Diagonal 682
08034 Barcelona
Spain
T +34 93 344 22 00
F +34 93 344 22 22

Beijing
Clifford Chance
33/F, China World Office Building 1
No. 1 Jianguomenwai Dajie
Beijing 100004
China
T +86 10 6505 9018
F +86 10 6505 9028

Brussels
Clifford Chance
Avenue Louise 65
Box 2, 1050 Brussels
Belgium
T +32 2 533 5911
F +32 2 533 5959

Bucharest
Clifford Chance Badea
Excelsior Center
28-30 Academiei Street
12th Floor, Sector 1,
Bucharest, 010016
Romania
T +40 21 66 66 100
F +40 21 66 66 111

Casablanca
Clifford Chance
169 boulevard Hassan 1er
20000 Casablanca
Morroco
T +212 520 132 080
F +212 520 132 079

Doha
Clifford Chance
Suite B
30th floor
Tornado Tower
Al Funduq Street
West Bay
P.O. Box 32110
Doha, Qatar
T +974 4 491 7040
F +974 4 491 7050

Dubai
Clifford Chance
Level 15
Burj Daman
Dubai International Financial Centre
P.O. Box 9380
Dubai, United Arab Emirates
T +971 4 362 0444
F +971 4 362 0445

Düsseldorf
Clifford Chance
Königsallee 59
40215 Düsseldorf
Germany
T +49 211 43 55-0
F +49 211 43 55-5600

Frankfurt
Clifford Chance
Mainzer Landstraße 46
60325 Frankfurt am Main
Germany
T +49 69 71 99-01
F +49 69 71 99-4000

Hong Kong
Clifford Chance
27th Floor
Jardine House
One Connaught Place
Hong Kong
T +852 2825 8888
F +852 2825 8800

Istanbul
Clifford Chance
Kanyon Ofis Binasi Kat. 10
Büyükdere Cad. No. 185
34394 Levent, Istanbul
Turkey
T +90 212 339 0000
F +90 212 339 0099

Jakarta**
Linda Widyati & Partners
DBS Bank Tower
Ciputra World One 28th Floor
Jl. Prof. Dr. Satrio Kav 3-5
Jakarta 12940
T +62 21 2988 8300
F +62 21 2988 8310

London
Clifford Chance
10 Upper Bank Street
London
E14 5JJ
United Kingdom
T +44 20 7006 1000
F +44 20 7006 5555

Luxembourg
Clifford Chance
10 boulevard G.D. Charlotte
B.P. 1147
L-1011 Luxembourg
T +352 48 50 50 1
F +352 48 13 85

Madrid
Clifford Chance
Paseo de la Castellana 110
28046 Madrid
Spain
T +34 91 590 75 00
F +34 91 590 75 75

Milan
Clifford Chance
Piazzetta M. Bossi, 3
20121 Milan
Italy
T +39 02 806 341
F +39 02 806 34200

Moscow
Clifford Chance
Ul. Gasheka 6
125047 Moscow
Russia
T +7 495 258 5050
F +7 495 258 5051

Munich
Clifford Chance
Theresienstraße 4-6
80333 Munich
Germany
T +49 89 216 32-0
F +49 89 216 32-8600

New York
Clifford Chance
31 West 52nd Street
New York
NY 10019-6131
USA
T +1 212 878 8000
F +1 212 878 8375

Paris
Clifford Chance
1 Rue d'Astorg
CS 60058
75377 Paris Cedex 08
T +33 1 44 05 52 52
F +33 1 44 05 52 00

Perth
Clifford Chance
Level 7
190 St Georges Terrace
Perth WA 6000
Australia
T +618 9262 5555
F +618 9262 5522

Prague
Clifford Chance
Jungamannova Plaza
Jungamannova 24
110 00 Prague 1
Czech Republic
T +420 222 555 222
F +420 222 555 000

Riyadh
Clifford Chance
Building 15, The Business Gate
King Khaled International Airport Road
Cordoba District, Riyadh
P.O. BOX: 90239
Riyadh 11613
Kingdom of Saudi Arabia
T +966 11 481 9700
F +966 11 481 9701

Rome
Clifford Chance
Via Di Villa Sacchetti, 11
00197 Rome
Italy
T +39 06 422 911
F +39 06 422 91200

São Paulo
Clifford Chance
Rua Funchal 418 15ºandar
04551-060 São Paulo-SP
Brazil
T +55 11 3019 6000
F +55 11 3019 6001

Seoul
Clifford Chance
21st Floor, Ferrum Tower
19, Eulji-ro 5-gil, Jung-gu
Seoul 100-210
Korea
T +82 2 6353 8100
F +82 2 6353 8101

Shanghai
Clifford Chance
40th Floor, Bund Centre
222 Yan An East Road
Shanghai 200002
China
T +86 21 2320 7288
F +86 21 2320 7256

Singapore
Clifford Chance
Marina Bay Financial Centre
25th Floor, Tower 3
12 Marina Boulevard
Singapore 018982
T +65 6410 2200
F +65 6410 2288

Sydney
Clifford Chance
Level 16, No. 1 O'Connell Street
Sydney NSW 2000
Australia
T +612 8922 8000
F +612 8922 8088

Tokyo
Clifford Chance
Akasaka Tameike Tower
7th Floor
2-17-7, Akasaka
Minato-ku
Tokyo 107-0052
Japan
T +81 3 5561 6600
F +81 3 5561 6699

Warsaw
Clifford Chance
Norway House
ul.Lwowska 19
00-660 Warsaw
Poland
T +48 22 627 11 77
F +48 22 627 14 66

Washington, D.C.
Clifford Chance
2001 K Street NW
Washington, DC 20006 - 1001
USA
T +1 202 912 5000
F +1 202 912 6000

*Clifford Chance's offices include a second office in London at 4 Coleman Street, London EC2R 5JJ. **Linda Widyati and Partners in association with Clifford Chance. Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.

C L I F F O R D

C H A N C E