







**Professionals of the Financial
Sector (PSF) in Luxembourg**

At the heart of regulatory
and tax environments

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Foreword



Given today's considerable size of the Professionals of the Financial Sector (PSF) market, we thought it is appropriate to share with you our understanding of the highly specific PSF environment.

Huge developments had taken place in the PSF industry in 2013. The most important one for PSF was the first step on the way to a consolidated regulatory collection in respect of central administration, internal governance and risk management for investment firms. While the majority of the provisions in CSSF circular 12/552 were not new per se, there was a strong emphasis on further formalisation needs to document internal governance arrangements and the way internal control activities are conducted. Much thinking also went into creating a Family Office as a wholly regulated entity and creating a new classification of 'professional depository of assets other than financial instruments' following the AIFM Directive as well as a new license for a 'central account keeper'.

Since 2014, PSF are in the consolidation phase of prior year developments and the last two years are rather stable with regards to these regulatory and tax environments.

The last step has been the creation of another new type of provider, the 'dematerialisation and/or conservation service providers' of the financial sector, in the scope of the law of 25 July 2015 on electronic archiving.

This 2015 edition reprinted in 2016 aims to provide you with a fairly detailed view of this environment, without being strictly exhaustive as per the latest changes.

In the first chapter, we address the essential aspects of the legal and regulatory framework. We primarily cover the authorisation and licensing procedure, but also the supervision resources of the *Commission de Surveillance du Secteur Financier*, the supervisory authority, and the role played by *réviseurs d'entreprises agréés* who contribute to that supervision.

Chapter two sets out the tax environment of PSF from a direct corporate tax and VAT perspective. This chapter further highlights some hot tax topics applicable to PSF such as FATCA or exchange of information developments and gives an overview of tax incentives relevant for the PSF industry.

Lastly, we present a profile analysis of PSF together with individual fast-reference sheets for each PSF setting out the most significant characteristics.

We hope you will enjoy reading this guide as you gain further insight into PSF.

Stéphane Césari
Partner – PSF Leader

Eric Centi
Partner – Tax

Raphaël Charlier
Partner – Audit

This booklet has been prepared by our leading audit, tax and regulatory compliance experts. We have strived to ensure the accuracy of the information contained within this brochure. Nevertheless Deloitte cannot be held responsible for any errors or omissions.

Introduction

As at 31 December 2015, 309 PSF (Professionals of the Financial Sector) were subject to the prudential supervision of the CSSF compared to 315 as at 31 December 2014. They employed 15,283 people in total compared to 14,864 as at 31 December 2014, with their total balance sheet having amounted to € 14,442 million as at 31 December 2015, compared to € 15,570 million a year before. Their net results year-on-year increased from € 560 million at 31 December 2014 to € 516 million at 31 December 2015.

Whilst employment in PSF shows growth, the number of PSF under CSSF supervision and especially total balance sheet and net results are decreasing, which is the sign of a consolidation of the sector. The evolutions are quite similar for the three different categories of PSF with a high increase in the net result for investment firms compared to the previous year. There are however disparities within the three categories of PSF.

PSF sector is maturing, consolidates in terms of number of PSF but has indicators showing progress, within a continuously evolving regulatory and tax environment. We therefore thought it appropriate to help decision-makers (whether already established and seeking to expand operations or keen to establish a PSF in the Grand Duchy) better understand the statuses that the name PSF encompasses, and the relevant regulatory requirements necessary to obtain such status.

This document aims to provide readers and decisions-makers with a practical tool summarising the advantages and conditions of obtaining PSF status licences. Through a dynamic presentation of the main categories of PSF, we will present the various PSF statuses that make up the financial sector landscape in Luxembourg, focusing additionally on the tax matters inherent to these structures. Lastly, fast-reference sheets are provided for each sub-group summing up the required conditions to retain PSF status depending on the licences.

To begin with, to enlighten readers about the world of PSF, we will give brief but precise insight into the legal, regulatory and tax environments, including the framework of prudential supervision, applicable to PSF in Luxembourg.

Changes in the number of PSF

Year	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Investment firms	90	88	85	92	100	110	109	116	109	110	112	107
Specialised PSF	76	97	111	68	90	102	113	119	124	126	123	124
Support PSF	0	0	0	55	67	74	79	87	83	82	81	78
Total	166	185	196	215	257	286	301	322	316	318	316	309

LEGAL ENVIRONMENT



1

Legislative framework and key obligations

a. Definition of PSF

PSF are defined as those persons “whose regular occupation or business is to exercise a financial sector activity or one of the connected or ancillary activities referred to in sub-section 3 of section 2 of [Chapter 2, part I of the Law] on a professional basis”, to the exclusion of credit institutions and those persons contemplated in paragraph (2) of Article 1-1 of the Law (hereinafter the ‘Law’).

PSF can thus be defined as regulated entities providing financial services which are not solely reserved for credit institutions, i.e. the receipt of deposits from the public.

The category of Professionals of the Financial Sector (PSF) encompasses 3 sub-groups, classified and defined as follows¹, depending on the type of business conducted and the nature of services provided:

Investment firms (article 24 to 24-10 of the Law)

They are defined as undertakings providing or performing respectively, on a professional and regular basis, investment services or investment operations for third parties, as defined in section A of appendix II of the Law:

1. Reception and transmission of orders in relation to one or more financial instruments
2. Execution of orders on behalf of clients
3. Dealing on own account
4. Portfolio management
5. Investment advice
6. Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis
7. Placing of financial instruments without a firm commitment basis
8. Operation of Multilateral Trading Facility (MTF)

The financial instruments referred to as part of the services and operations above are as follows (section B of appendix II of the Law):

1. Transferable securities
2. Money-market instruments
3. Units in undertakings for collective investment undertakings
4. Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, or other derivative instruments, financial indices or financial measures which may be settled physically or in cash
5. Options, futures, swaps, forward rate agreements and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event)
6. Options, futures, swaps, and any other derivative contracts relating to commodities that can be physically settled provided that they are traded on a regulated market or an MTF
7. Options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in point 6, and not being for commercial purposes, which have the characteristics of other derivative financial instruments, having regard to whether, *inter alia*, they are cleared and settled through recognised clearing houses or are subject to regular margin calls

¹ See licences in detail on first page of section III PSF profile analysis and specific data

8. Derivative instruments for the transfer of credit risk
9. Financial contracts for differences
10. Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates, emission allowances or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event), as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in this section, which have the characteristics of other derivative financial instruments, having regard to whether, *inter alia*, they are traded on a regulated market or an MTF, are cleared and settled through recognised clearing houses or are subject to regular margin calls

In the same way as EU credit institutions, investment firms licensed in another Member State are, by virtue of Article 30 of the Law, authorised to conduct their business in the Grand Duchy of Luxembourg, either by establishing a branch or using the freedom to provide services by means of a simple notification to the authorities of the other European Union Member States.

These investment firms may only provide the ancillary services referred to in section C of appendix II of the Law in Luxembourg in conjunction with one of the above-mentioned investment services or operations.

Specialised PSF do not benefit from the European passport, but may carry out financial operations in Luxembourg

These ancillary services are:

1. Safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management
2. Granting credits or loans to an investor to allow him to carry out a transaction in one or more financial instruments, where the firm granting the credit or loan is involved in the transaction
3. Advice to undertakings on capital structure, industrial strategy and related matters; advice and services relating to mergers and the purchase of undertakings
4. Foreign exchange services where these are connected with the provision of investment services
5. Investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments
6. Services related to underwriting
7. Investment services and activities as well as ancillary services of the type included under section A or C of appendix II of the Law relating to the underlying of derivatives included under points 5, 6, 7 and 10 of section B, where these are connected with the provision of investment or ancillary services

Specialised PSF²

Specialised PSF do not benefit from the European passport, but may carry out financial operations in Luxembourg.

Specialised PSF provide financial services in various sectors such as investment funds, company incorporation, management and domiciliation, securities lending, specific loan operations (leasing and factoring) or debt collection.

A list of the investment services provided by this type of PSF is given below in section III, paragraph 2-b (page 84).

Support PSF

This category is specific in that it may not receive deposits from the public and acts principally as subcontractor of operational functions for the account of other financial sector professionals. They correspond to the PSF defined in Articles 29-1 to 29-6 of the Law.

The services provided by this type of PSF are as follows:

1. Client relations service providers
2. Financial sector administration agents
3. Operators of financial services industry primary computer systems
4. Operators of financial services industry secondary computer systems
5. Digitisation service providers
6. E-archiving service providers

A comprehensive definition of the services provided by this category of PSF is given below in section III, paragraph 3-b (page 100).

b. Legal requirements

Although PSF are not commercial entities like others, they are nonetheless governed by the modified law of 10 August 1915. They are, however, also governed by the Law on the financial sector, which is completed by a multitude of national rules, CSSF circulars or other laws governing all aspects of the very diversified activities carried on by PSF.

Modified law of 5 April 1993³

The Law forms the basis of rules governing players in the financial sector and transposes into Luxembourg law many European directives applicable to the financial industry and particularly the banking sector.

This Law sets forth in particular the regulation on access to the financial services industry, professional obligations and other prudential rules and rules of conduct, prudential supervision, proceedings for the reorganisation and winding up of financial sector professionals, as well as deposit guarantee and investor compensation schemes.

³ *www.cssf.lu section Laws, regulations and other texts, then Professionals of the financial sector (PFS)*

⁴ *'Know Your Customer' refers to the due diligence obligations vis-à-vis clients who are satisfied by proven knowledge of clients and the transactions they perform*

⁵ *Threshold reached in one or several transactions*

⁶ *In this case, the threshold of €15,000 does not apply*

Support PSF may not receive deposits from the public and acts principally as subcontractor of operational functions for the account of other financial sector professionals

c. Professional obligations, prudential rules and rules of conduct

The Law specifies, particularly in part II, the professional obligations and rules that PSF and credit institutions must meet or observe. It should be noted that among these core requirements, some are only applicable to investment firms.

Applicable to all PSF

1. KYC⁴ and combating money laundering and terrorist financing (Art. 39 of the Law and Art. 3 to 5 of the modified law of 12 November 2004)

Pursuant to the modified law of 12 November 2004 and to CSSF regulation 12-02 PSF are subject to a set of rules necessary to combat money laundering and terrorist financing, giving rise to obligations in terms of due diligence in relation to their clients, appropriate internal organisation and cooperation with authorities.

When initiating business relationships and throughout the term thereof, for any transaction in excess of €15,000⁵ or if money laundering or terrorist financing⁶ is suspected, and if in doubt about the initial identification of clients, PSF must take due diligence measures, including among others:

- Identifying clients on a through documentation basis and checking that such documents are genuine
- Identifying the beneficial owner of any legal entity, structure or group



- Obtaining information about the nature of the business relationship contemplated and, throughout this business relationship, examining the transactions performed and the origin of funds to make sure that flows are consistent with the PSF's knowledge of their clients' activities

The monitoring measures taken are adapted to the risks inherent in the apparent nature of the business relationship. If these measures are introduced for any new client, they must nonetheless be appropriately reiterated for the PSF's existing clients.

If the PSF's client is an entity subject to the modified law of 12 November 2004 or another law or regulation requiring similar supervision, such as a credit institution, or a natural or legal person subject to heavy transparency requirements⁷, the PSF is not obliged to apply the same due diligence as above.

In the event that money laundering or terrorist financing enquiries are conducted by the Luxembourg authorities and in order to meet the relevant legal requirements, PSF must keep documents concerning the due diligence measures taken for five years after the end of the business relationship. The same period of five years applies to the evidence supporting transactions from the date of execution or the end of the business relationship.

PSF must introduce appropriate internal measures and procedures to meet all the requirements described in the previous paragraphs with a view to preventing money laundering and terrorist financing. To this end, PSF must in particular train their employees and raise their awareness. They must also apply a unique ID or specify an account number to the instructing party of an intercommunity transfer (the instructing party's address, name and account number are always required for a transfer outside the EU).

2. *Obligation to cooperate with authorities (Art. 40 of the Law and Art. 5 of the modified law of 12 November 2004)*

In anti-money laundering and the fight against terrorism matters, PSF must cooperate with the Luxembourg authorities through their representative⁸, managers and employees. The representatives, managers or employees report by means of a declaration, as soon as possible and spontaneously, any suspicion of money laundering or terrorist financing to the State Prosecutor at the Luxembourg District Court. Similarly, they provide the State Prosecutor with all information necessary for procedures to be applied.

⁷ Refer to Article 3-1 (2) of the modified law of 12 November 2004 for more information

⁸ Person appointed by the PSF, approved by the CSSF and interfacing with the CSSF in these matters

In such a case, the PSF must not perform any transaction it considers suspicious and it must not inform the client or the third party involved of the investigations in progress.

3. Professional secrecy (Art. 41 of the Law)

In the same way as credit institutions and other specific players in the financial sector in Luxembourg, natural and legal persons subject to the supervision of the CSSF, as well as all directors, members of management and supervisory bodies, managers, employees and other persons working for the PSF or natural and legal persons involved in the liquidation of PSF and all the persons designated, employed or appointed for any duty as part of a liquidation procedure, are required to keep secret any information confided to them in the context of their professional activities or appointment⁹. Disclosing such information covered by professional secrecy is punishable by the penalties laid down in Article 458 of the Penal Code which makes provision for a prison sentence of between eight days and six months as well as fines from €500 to €5,000.

This obligation is limited: either the disclosure of such information is authorised or required by law, or it is required as part of exchanges of information with other domestic or foreign authorities in charge of financial sector prudential supervision and themselves subject to professional secrecy rules. Furthermore, the obligation does not apply specifically to shareholders or partners whose status or capacity is a precondition for the PSF to be licensed insofar as knowledge of the information is required for the sound and prudent management of the entity. The duty of professional secrecy is not applicable either to credit institutions and support PSF provided that the services these professionals extend are governed by a clear services agreement. Lastly, the duty is not effective for entities of a financial conglomerate regarding the disclosure of information required to perform supplementary supervision: through internal control departments of the group to combat money laundering and terrorist financing and for the relevant persons at the head of the group concerning information disclosed to the State Prosecutor with the latter's consent.

Applicable only to investment firms

1. Organisational requirements (Art. 37-1 of the Law)

Even though all PSF are subject to organisational requirements, Article 37-1 strengthens these organisational obligations for investment firms since they provide investment services and operations for third-party clients who must be protected by sound and standardised management structures.

Therefore, investment firms must:

- Establish adequate policies and procedures, including their managers, employees and tied agents, to comply with their legal obligations
- Define appropriate rules governing transactions performed by their managers and employees
- Maintain and apply effective organisational and administrative arrangements with a view to preventing conflicts of interest as defined in Article 37-2 of the Law (see next page) from adversely affecting the interests of their clients
- Take reasonable steps to ensure continuity and regularity in the performance of their services and activities. To this end, they must establish appropriate and proportionate systems, resources and procedures
- Have a well-organised administrative and accounting system
- Where they rely on third parties for the performance of operational functions which are critical for the provision of services or the performance of activities, take reasonable steps to avoid undue additional operational risk
- Ensure records are kept of all services and transactions undertaken by them, in accordance with the provisions of the Commercial Code, which must be sufficient to allow the CSSF to monitor compliance with requirements and, in particular, obligations towards clients
- Where they hold financial instruments or funds belonging to clients, make appropriate arrangements to safeguard clients' ownership rights, especially in the event of insolvency, and to prevent the use of clients' financial instruments or funds for their own account except with clients' express consent

⁹ This obligation to maintain professional secrecy extends in the same way to the persons referred to in Article 16 of the modified law of 23 December 1998 on the creation of the CSSF (CSSF staff, registered company auditors, experts)

2. Conflicts of interest (Art. 37-2 of the Law)

Anticipating the existence of a residual risk in spite of the measures described above relating to the organisational or administrative arrangements to be made to prevent and manage conflicts of interest, the Law advises investment firms to clearly inform their clients of the general nature and sources of conflicts of interest before undertaking business on their behalf. In any case, investment firms must take all reasonable steps to identify conflicts of interest between themselves - i.e. their managers, employees and tied agents, or any person directly or indirectly linked to them by control - and their clients or between one client and another that arise in the course of providing any investment and ancillary services, or a combination thereof.

3. Rules of conduct when providing investment services to clients (Art. 37-3 of the Law)

The overall aim is to ensure that the investment firm has sufficient and adequate structures to serve clients appropriately, openly and in line with the client's risk profile.

As part of the investment activities and services provided to clients, investment firms must act fairly and honestly in the best interest of the client. To do so, they must particularly:

- Provide clients with clear and understandable information about themselves and the services they offer, for example about the financial instruments and investment strategies proposed, and the costs of such services
- Whether they provide investment advice services and asset management services or not, respectively obtain or seek the necessary information to assess their clients' knowledge and experience, financial situation or investment objectives. In certain circumstances, this may not be compulsory for investment firms providing only client order execution and/or receipt and transmission services
- Create a file with the documents approved by the parties specifying the rights and obligations of each of the parties for the provision of investment services
- Send their clients reports on the services provided

4. Best execution¹⁰ (Art. 37-5 of the Law)

Through an efficient system applying an order execution policy known and approved by clients, investment firms must achieve the best possible result for clients when executing orders, given the relevant parameters, i.e. price, cost, speed, likelihood of execution and settlement, size and nature of the order.

For each category of financial instrument, the order execution policy particularly includes information about the execution systems and factors impacting the choice of the execution system, to guarantee that systems offering the best possible result for the execution of clients' orders are used.

Investment firms must be able to prove to their clients at any time that they executed their orders in accordance with their execution policy.

5. Client order handling (Art. 37-6 of the Law)

Investment firms authorised to execute orders on behalf of clients must implement procedures which provide for the prompt and fair execution of client orders, relative to other client orders or their own trading interests. These procedures provide for execution depending on the date orders are received by the investment firm.

d. Reorganisation, winding-up and penalties

Here we examine the legal framework applicable to certain PSF suffering serious financial difficulties, as well as the penalties applied to PSF and more especially their managers, before focusing on the details of the authorisation procedure.

1. Reorganisation procedure (Art. 122 of the modified law of 18 December 2015 on the failure of credit institutions and certain investment firms)

Like the next section on winding-up, the reorganisation procedure or suspension of payments only applies to PSF responsible for managing third party funds: commission agents (Art. 24-2), asset managers (Art. 24-3), professionals trading for their own account (Art. 24-4), underwriters of financial instruments (Art. 24-6), distributors of units in UCIs which accept or make payments (Art. 24-7), transfer agents or registrars (Art. 25), professional depositaries of financial instruments (Art. 26) and

¹⁰ Or duty to execute orders on the best possible terms for the client

professional depositaries of assets other than financial instruments (Art. 26-1).

Suspension of payments, which may only be sought of the Court by the CSSF or the PSF in question, may occur in the following cases:

- The PSF finds itself in an insoluble liquidity crisis
- The entire ability of the PSF to meet its commitments is compromised
- The PSF's licence has been withdrawn but the withdrawal decision has not yet become final

Appointed by the judicial authorities, the administrator is responsible for managing the reorganisation measures, and as such must authorise in writing any act or decision made by the PSF under penalty of it being null and void. The scope of the transactions subject to this authorisation procedure may be adapted. In this management role, administrators partake in the governance of the PSF and make proposals that are submitted to the company's decision-making bodies.

2. Legal winding-up proceedings

A PSF may only go into voluntary winding-up if it informed the CSSF at least one month before calling the general meeting to decide on the winding-up. This voluntary winding-up decision shall not preclude the CSSF or the State Prosecutor from asking the Court for an order declaring the procedure for judicial winding-up applicable.

The dissolution and winding-up of the PSF in question occur when:

- The suspension of payments system is obviously not sufficient to remedy the situation
- The PSF's financial situation is such that it can no longer meet the commitments to all of its debtors, obligees and holders of participatory rights
- The authorisation has been withdrawn and the withdrawal decision has become final

When ordering the winding-up, the Court shall appoint an official receiver and one or more liquidators. Please refer to the details of the modified law of 18 December 2015 on the failure of credit institutions and certain investment firms in Article 129 for a description of the manner in which the winding-up is to be carried out.

3. Administrative and criminal penalties (Art. 63 and 64 of the Law)

The persons responsible for the administration and management of PSF supervised by the CSSF may be fined from €250 to €250,000 in the event that:

- They fail to comply with applicable laws, regulations, or statutory provisions
- They refuse to provide accounting documents or other requested information
- They have provided documentation or other information that proves to be incomplete, incorrect or false
- They hinder performance of the CSSF's powers of supervision, inspection and investigation
- They contravene the rules governing the publication of balance sheets and accounts
- They fail to act in response to injunctions of the CSSF
- They act such as to jeopardise the sound and prudent management of the PSF concerned

In the event of more serious acts, criminal sanctions are provided for that combine a prison sentence of between eight days and five years and a maximum fine of €125,000.

A PSF may only go into voluntary winding-up if it informed the CSSF at least one month before calling the general meeting to decide on the winding-up

2

Authorisation procedure

After defining the core legal bases forming the rules applicable to PSF, we will now describe in further detail the steps necessary to obtain a PSF's 'birth certificate': the authorisation procedure to obtain the required PSF licence

a. Licence

To ensure that the financial sector is recognised for its quality and reliability, the regulating body requires that players in the sector, i.e. persons engaged in business in the financial sector on a regular and professional basis, or in any business related or complementary to an activity in the financial sector, undergo a licence procedure to obtain the desired status. In addition, such activities may not be carried out (and the licence will not be issued) through another person or as an intermediary.

However, pursuant to Article 1-1 (2) of the Law, the licence is not required for those persons:

"[...] b) which provide investment services exclusively for their parent undertaking, for their subsidiaries or for another subsidiary of their parent undertaking;

c) which provide a service under this Law, exclusively to one or more undertakings forming part of the same group as the undertaking providing the service, unless otherwise provided; [...]"

Legal entities whose company's purpose requires that they obtain a licence under the Law may be incorporated with this company purpose even before

obtaining such a licence from the Minister, provided they applied for a licence to the CSSF and undertook in writing not to conduct the business before obtaining it.

A change to the company's purpose, corporate name or legal form of a company already incorporated is issued directly by the CSSF. Similarly, the CSSF's licence is sufficient to create and acquire subsidiaries in Luxembourg and abroad. The creation of agencies and branches in Luxembourg is no longer subject to a licence.

Furthermore, the licence that investment firms must have to extend their business to investment services or activities, or ancillary services not governed by their current licence, now falls within the exclusive scope of the CSSF.

A company or other legal person which has a licence for a specific financial sector business, must not have a company purpose covering a business in the financial sector which is not also covered by such licence.

b. Licence procedure

The licence is subject to obtaining a written authorisation from the Ministry of Finance which handles the licence documentation filed to obtain the desired status. This written request is made to the CSSF which prepares an application aiming to meet the requirements of the Law¹¹.

The application (see next point) may give rise to additional questions or requests after being examined.

The decision made by the CSSF on any licence application must be supported by a statement of the reasons on which it is based and be notified to the applicant within six months of receiving the application or, if the documentation is incomplete, within six months of receiving the information needed to make the decision.

The absence of an answer from the authority within twelve months of receiving the application shall be deemed notification of a decision refusing it. An appeal against the CSSF's decision may be lodged with the administrative tribunal within one month after which it will be time-barred.

It should be noted that an authorisation from the CSSF is required for any PSF established in Luxembourg wishing to change its purpose, name, legal form or to create or acquire agencies, branches or subsidiaries in Luxembourg or abroad. The same is true for any investment firm wishing to extend its business to other investment services or activities or to other ancillary services not covered by its licence.

Once obtained, the licence is valid for an unlimited length of time and the PSF may immediately commence business.

Moreover, the Law specifies that once a licence is obtained, the members of the administrative, management and supervisory bodies of the PSF must notify the CSSF on their own initiative and in writing, in a complete, consistent and comprehensible manner, of any change to the material information on which the CSSF based its decision. This information particularly concerns the professional standing of the members of the above mentioned bodies, the structure of the PSF's shareholding as well as its central administrative office and its infrastructure. By disclosing such information, the CSSF will have updated data.



¹¹ If the activities contemplated and the services provided involve insurance products, the Commissariat aux assurances, in addition to the CSSF, shall approve the licence documentation to ensure it complies with the modified law of 7 December 2015 on the insurance sector

c. Application file

The licence application file must be sent together with all information as may be needed for the assessment thereof and with a schedule of operations specifying the type and volume of business envisaged and the administrative and accounting structure planned. In practice, this application for status as PSF generally includes the following information¹² which reflects a part of the requirements to be met to obtain the licence:

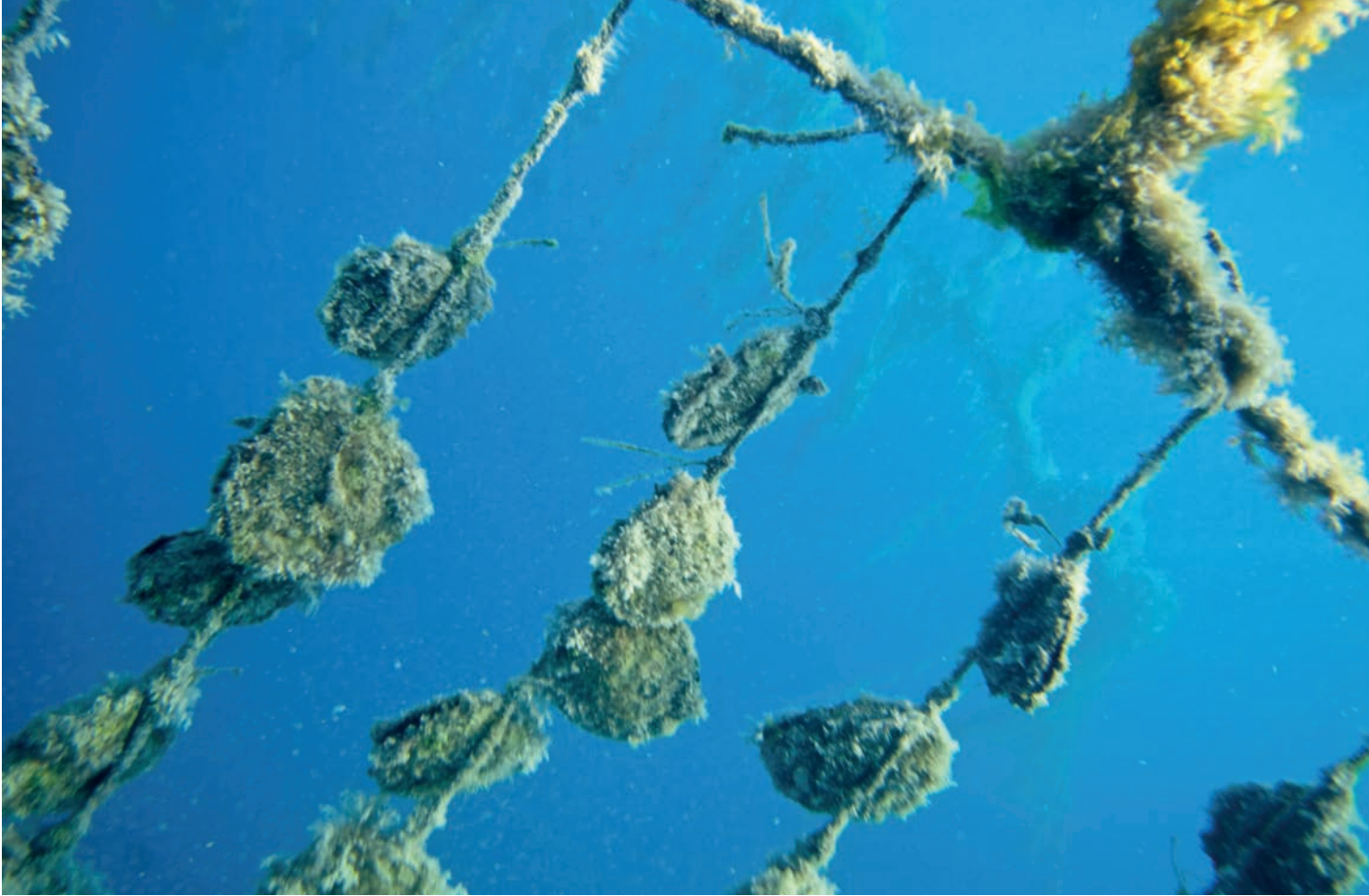
- Presentation of the natural or legal person, where applicable, of the group to which this person belongs, with a presentation of the financial statements available for the last three years
- The reasons for and objectives of establishing the PSF in Luxembourg
- The information concerning the identity of shareholders
- A three-year business plan including the balance sheet and income statement
- The company's draft articles of association
- The CVs together with certificates of respectability of the directors and managers of the company in Luxembourg as well as criminal records from the authorities in their respective country of residence

- Presentation and demonstration by the applicant of the existence in Luxembourg of the central administrative office in accordance with CSSF circular 95/120 or 12/552 and of its registered offices¹³ (see next page)
- The name of the independent auditor who must be a registered company auditor with appropriate professional experience. The PSF's annual accounts must effectively be entrusted to an auditor with such experience and any change to the approved auditor must be justified and authorised beforehand by the CSSF
- Authorisation shall be conditional on participation by investment firms in an investors' compensation scheme set up in Luxembourg and operated by the CSSF, meaning that it must provide cover in respect of claims arising out of the inability of an investment firm to:
 - Repay money owed to or belonging to investors and held, administered or managed on their behalf in connection with investment business
 - Return to investors any instruments belonging to them and held, administered or managed on their behalf in connection with the investment business

Subject to the application of Article 195, paragraph 2 of the modified law of 18 December 2015 on the failure of credit institutions and certain investment firms, the aggregate investment business of each investor is covered, regardless of the number of accounts, the currency in which they are denominated and their location within the European Union, up to a value equivalent to €20,000.

Authorisation shall be conditional on participation by investment firms in an investors' compensation scheme set up in Luxembourg and operated by the CSSF

¹² This list is not exhaustive and the applicant must ensure it complies with all regulations applicable and in force at the time of applying for the licence
¹³ A natural person must prove that he/she effectively conducts business in Luxembourg



d. Professional standing and experience

The personal data of authorised directors or managers is obtained to ascertain their professional standing and experience. The persons responsible for management must be empowered to determine the direction taken by the business and must prove their level of skill by having previously carried out similar activities with a sufficient level of responsibility and autonomy. They must be at least two in number and receive their authorisation from the CSSF.

Pursuant to company law, a legal entity appointed as director must designate a permanent representative to fulfil these duties for and on behalf of the legal entity (Art. 51bis of the modified law of 10 August 1915 on commercial companies). Under Article 59 of the same law, a legal entity appointed as director is liable to the company, in accordance with ordinary law, for fulfilling the duties entrusted and for any misdeeds committed in its management.

Any change to the persons responsible for the day-to-day running must be notified to the CSSF which shall be free to request additional information. The CSSF checks that such new persons comply with the legal requirements in terms of professional standing and experience.

In accordance with the rules of procedure of the Luxembourg Law Society, a lawyer may not be involved in the day-to-day management of a financial sector professional.

e. Central administration and organisation

As the decision-making centre, the PSF must have a sound internal governance system in Luxembourg with a clear and consistent organisation and distribution of tasks, efficient processes for detecting and monitoring risks, appropriate internal control including sound administrative and accounting procedures and mechanisms for ensuring information system control and security¹⁴.

The scope of the applicable CSSF circulars covering the aspects explained above varies according to the category of PSF, i.e. investment firms (most restrictive environment), specialised PSF or support PSF (least restrictive environment)¹⁵.

¹⁴ On this subject, refer to CSSF circular 95/120 for specialised and support PFS or 12/552 for investment firms

¹⁵ On this subject, refer to section 4 of this chapter and Appendix 1

f. Shareholding

Authorisation to hold the status is subject to disclosing to the CSSF the identities of the shareholders and partners, whether direct or indirect, natural or legal persons, any qualifying holding¹⁶ and the amounts of such holdings.

Thereby, the CSSF seeks to guarantee firstly the sound and prudent management of the PSF and secondly the transparency of the shareholding structure within the PSF to clearly identify the authorities responsible for the prudential supervision of the PSF and, where applicable, perform consolidated supervision of the group to which it belongs.

Refer to Article 18 of the Law for additional requirements regarding CSSF notification for cases of acquisition or sale of PSF in Luxembourg.

Furthermore, it is essential that the shareholders or partners of a PSF have sufficient financial resources that may be used if necessary.

g. Minimum capital or financial base

Conducting business as a financial sector professional is subject to a minimum capital or financial base requirement which varies depending on the risks involved in the various PSF statuses, the major decisive factor of which lies in whether third-party funds are managed or not. The capital or financial base requirement is between €50,000 and €730,000 depending on the PSF's operations.

For a detailed description of the minimum capital requirements, please refer to the individual data sheets of each status (chapter III) and to the fast-reference tables on first page of chapter III PSF profile analysis and specific data and in appendix 2 PSF in a nutshell.

Note that when a PSF holds several licences, it must comply with the highest minimum capital of the statuses obtained.

The CSSF requires that the direct shareholders finance all ownership interest with their own equity, after deduction of any other ownership interests or losses carried forward. The aim is clearly to prevent direct shareholders from refinancing their ownership interest using borrowed funds (Art. 20 of the Law). Therefore, in particular, the share capital may not be brought by means of a loan contracted by the PSF shareholder with the PSF.

The financial base includes the share capital subscribed and paid up, issue premiums, legally formed reserves and amounts carried forward, minus any potential loss in the current fiscal year. According to the same article, it must be permanently available to the PSF and be invested in its own interest.

Owing to prudential concerns, a PSF may not grant loans to its shareholders, whether directors or employees. It is vital that any acquisition of interests in the share capital of a financial sector professional be made using one's own funds and not borrowed money. Now, granting advances and loans to the shareholders amounts to giving the share capital back to shareholders.

In this context, note should be taken of Article 49-6 (1) of the modified law of 10 August 1915 on commercial companies which stipulates that *"A company may not directly or indirectly, advance funds or make loans or provide security with a view to the acquisition of its shares by a third party"* except under certain conditions.

¹⁶ Qualifying holdings means a direct or indirect holding of 10% of the capital or voting rights and/or the ability to significantly influence the business management of the PSF to be licensed

h. External audit

Authorisation shall be conditional on the PSF having its annual accounts audited by one or more *réviseurs d'entreprises agréés* (approved statutory auditors) who can show that they possess adequate professional experience. Those *réviseurs d'entreprises agréés* (approved statutory auditors) shall be appointed by the body responsible for managing the PSF, usually the board of directors, board of managers or the executive board.

Any change in the *réviseurs d'entreprises agréés* must be authorised in advance by the CSSF.

i. Licence withdrawal

Although issued for an unlimited length of time, the licence will be withdrawn if:

- The PSF does not make use of the licence within 12 months of it being granted
- The PSF expressly waives its licence
- The PSF has not conducted any of the activities for which the licence was obtained over a period of 6 months
- The conditions of granting PSF status are no longer met
- The licence was obtained through misrepresentation or by any other irregular means
- The investment firm PSF has seriously and systematically infringed Articles 37-2 to 37-8 of the Law or Articles 21, 22, 23, 26, 27 or 28 of the Law on markets in financial instruments
- The PSF (other than an investment firm) has seriously and systematically infringed Articles 36, 36-1 or 37 of the Law



The decision to withdraw the licence may be deferred to the administrative tribunal, within one month, after which the appeal will be time-barred.

The board of directors of a PSF notifies the CSSF of any planned dissolution or voluntary winding-up with at least one month's notice prior to calling the general meeting to vote on the dissolution or winding-up.

A closing balance sheet must be drawn up and sent to the CSSF. The conditions of a voluntary winding-up must also be disclosed to the CSSF.

Any change in the *réviseurs d'entreprises agréés* must be authorised in advance by the CSSF

3

Prudential supervision

a. Competent authority: *Commission de Surveillance du Secteur Financier (CSSF)*

Article 42 of the Law specifies that the CSSF, the entity established by the modified law of 23 December 1998, is the competent authority for financial sector professionals. It is responsible for the cooperation and exchange of information with other authorities and namely informs the competent authorities of other Member States responsible for the supervision of credit institutions and investment firms that it is in charge of receiving requests for exchanges of information or cooperation.

The CSSF conducts its activity in the public interest and satisfies itself that the laws and regulations relating to the financial sector as well as international agreements and Community law are complied with.

The prudential supervision role fulfilled by the CSSF on the financial sector is defined in part III of the Law and the CSSF has regulatory power by means of regulations, circulars and instructions which are addressed to financial sector players.

b. Scope

The following PSF fall within the scope of the CSSF's prudential supervision:

- PSF organised and existing under the laws of Luxembourg (Activities conducted by these entities in another EU/EEA Member State, both by establishing a branch and via the freedom to provide services, are also subject to the prudential control of the CSSF. Certain areas of prudential supervision, particularly compliance with rules of conduct for the provision of investment services to clients, fall within the scope of the supervisory authority in the host Member State.)
- Branches of investment firms that are based outside the EU/EEA
- Branches of PSF other than investment firms based inside or outside the EU/EEA

The supervision of branches established in Luxembourg by investment firms from another EU/EEA Member State is based on the principle of supervision by the regulatory authority in the country of origin. However, certain specific aspects of the supervision fall within the scope of the CSSF, as the regulatory authority in the host Member State, particularly aspects relating to combating money laundering and terrorist financing.

c. Means of supervision

The CSSF has several instruments to exercise its supervision. The key means are as follows:

- Regular receipt of financial information used to permanently monitor the PSF's business and related risks. In addition, there is a regular check of the capital adequacy ratio and the limitation of large exposure for investment firms (Art. 56 of the Law)
- The report drawn up on a yearly basis by the registered company auditor. This report includes a certificate relating to combating money laundering and terrorist financing and a management letter dealing in particular with compliance with the Law and applicable CSSF circulars
- For investment firms, a detailed analytical audit report (CSSF circular 03/113 as amended by CSSF circular 10/486) broadly covering the risk control and internal control system, including compliance with rules of conduct and a description and assessment of the Internal audit and Compliance functions (refer to part 5 Role of the *réviseur d'entreprises agréé* for PSF for a detailed view of the role of the registered company auditor and the scope of relevant certificates). The CSSF may also expressly ask a registered company auditor to audit one or more aspects of the PSF's business or operations
- The CSSF is also sent, for specialised and support PSF, the annual internal audit reports on the controls performed over the last period and the reports by the PSF's management on the status of internal control. For investment firms, once a year, the authorised management shall confirm compliance with CSSF circular 12/552 by way of a single written sentence followed by the signatures of all the members of the authorised management to the CSSF, as well as provide the ICAAP report and the summary reports of the internal control functions
- On-site audits. Furthermore, since 2009 the CSSF has stepped up its work in the field by conducting an increasing number of this type of audit including welcome visits for newly licensed PSF within the first months following the ministerial authorisation
- By virtue of CSSF regulation 13-02, the CSSF is also competent to receive complaints from clients sent to PSF and to take action with them to settle these disputes amicably
- Under the provisions of Article 57 of the Law, the CSSF must grant prior authorisation to PSF wishing to have a qualifying holding¹⁷
- Lastly, the CSSF also has powers to sanction, i.e. rights of injunction and suspension in the event that legal provisions are breached or in the absence of guarantees with respect to the management and durability of the PSF's operations and commitments. The penalties also referred to in Article 59 of the Law, where the PSF has failed to remedy the injunctions within the allotted time, extend from suspending the persons responsible for the PSF's governance and management, to suspending the voting rights attached to the stocks or shares held by shareholders or partners having a negative influence on the sound and prudent management of the PSF, or suspending operations or a given business line of the PSF

¹⁷ Defined as being more than 10% of the capital or of the voting rights of the company in which the PSF invested



d. Supervision of investment firms on a consolidated basis

Consolidated supervision of investment firms is addressed by CSSF circular 00/22.

This circular only targets investment firms (company falling within the scope of Art. 24 of the Law) holding direct or indirect interests in other investment firms, financial institutions or credit institutions.

Supervision on a consolidated basis concerns at least the following:

- Supervision of the solvency and capital adequacy in relation to market risks
- Supervision of large exposures
- Appropriate organisation of the group, particularly on administrative, accounting and internal control levels and in terms of group structure in general

e. Financial information to be regularly reported to the CSSF

CSSF circular 05/187 as amended and supplemented by CSSF circular 10/433 presents the outlines of financial information to be submitted to the CSSF.

The table below summarises all the reports to be submitted to the CSSF.



Table Ref	Title of the report	Frequency	Deadline
I.	Financial situation	Monthly	The 20 th of the next month
II. 1.	Financial advisers	Monthly	The 20 th of the next month
III. 2. A.	Brokers	Monthly	The 20 th of the next month
II. 2. B.	Commission agents	Monthly	The 20 th of the next month
II. 3.	Private portfolio managers	Monthly	The 20 th of the next month
II. 4.	Professionals acting for their own account	Monthly	The 20 th of the next month
II. 5.	Professional custodians of securities or other financial instruments	Monthly	The 20 th of the next month
II. 6.	Distributors of units of investment funds	Monthly	The 20 th of the next month
II. 7.	Underwriters	Monthly	The 20 th of the next month
II. 8.	Registrar and transfer agents	Monthly	The 20 th of the next month
II. 9.	Market makers	Monthly	The 20 th of the next month
II. 10.	Professionals performing cash-exchange transactions	Monthly	The 20 th of the next month
II. 11.	Debt recovery	Monthly	The 20 th of the next month
II. 12.	Professionals performing credit offering	Monthly	The 20 th of the next month
II. 13.	Professionals performing securities lending	Monthly	The 20 th of the next month
II. 14.	Professionals performing money transfer services	Monthly	The 20 th of the next month
II. 15.	Administrators of collective savings funds	Monthly	The 20 th of the next month
II. 16.	<i>Managers of non-coordinated UCIs (REPEALED)</i>		
II. 17.	Client communication agents	Monthly	The 20 th of the next month
II. 18.	Administrative agents of the financial sector	Monthly	The 20 th of the next month
II. 19.	IT systems and communication networks operators of the financial sector	Monthly	The 20 th of the next month
II. 20.	Professionals performing services of setting-up and management of companies	Monthly	The 20 th of the next month
II. 21.	Corporate domiciliation agents	Monthly	The 20 th of the next month
II. 22.	Professionals authorised to exercise all the activities permitted by Article 28 of the law of 15 December 2000 on postal services and financial postal services	Monthly	The 20 th of the next month
III. 1.	Off-balance sheet	Quarterly	The 20 th of the next quarter
III. 2.	P&L	Quarterly	The 20 th of the next quarter

4

Key CSSF regulations and circulars

The CSSF regulations and circulars form the core 'practical' dispositions with which PSF must comply. They apply to all or some PSF, meet legal obligations specific to the financial industry (combating money laundering and terrorist financing) or organisational requirements for one of the three categories of PSF, and further specify the systems introduced by the CSSF as part of its financial sector supervision (regular reporting) or impose financial ratios (capital adequacy). They provide guidance in establishing and maintaining the relevant financial or financial sector ancillary activities.

The main regulations and circulars issued by the CSSF are presented below. A fast-reference table of the regulations and circulars specifying their respective scopes of application is included in Appendix 1.

a. CSSF regulation 13-02 and CSSF circular 14/589 relating to the out-of-court resolution of complaints¹⁸

These regulation and circular are applicable to all PSF and supersede circular 95/118 on customer complaint handling.

This regulation aims at defining the rules applicable to the requests for the out-of-court resolution of complaints filed with the CSSF and is specifying certain obligations incumbent on professionals in relation to the handling of complaints.

The procedure for handling the requests aims at facilitating the resolution of complaints against PSF without judicial proceedings. It is not a mediation procedure. The CSSF's intervention shall be subject to the principles of impartiality, independence, transparency, expertise, effectiveness and fairness.

The regulation points out the following obligations:

- Each PSF shall have a complaint management policy that is defined, endorsed and implemented by the management. It shall be set out in a written document and shall be formalised in an internal complaint settlement procedure made available to all relevant staff. Any possible conflicts of interests shall be able to be identified and mitigated.
- The PSF shall ensure that each complaint as well as each measure taken to handle it are properly registered.
- Clear, precise and up-to-date information on the complaint handling process shall be provided.
- Data relating to complaint handling shall be analysed, on a permanent basis, in order to enable the identification and treatment of any recurring or systemic problem, as well as any potential legal and operational risks.
- The PSF shall provide contact details of the person responsible at the level of the management of the implementation and the efficient operation of the policy. The latter is required to communicate to the CSSF and to provide it with an as comprehensive as possible answer and cooperation. On an annual basis, a table including the number of complaints registered by the PSF, classified by type of complaints, as well as a summary report of the complaints and of the measures taken to handle them, must be communicated to the CSSF.

CSSF circular 14/589 provides details concerning the regulation, mentioning namely that the recording of complaints must be computerised and secured, that the respect of the policy must regularly be controlled by the compliance and internal audit functions, and that annual documents (table and report) shall be communicated to the CSSF no later than 1 March of each year and shall cover the previous calendar year.

¹⁸ www.cssf.lu section Laws, regulations and other texts, then Professionals of the financial sector (PFS)

b. CSSF regulation 12-02 on the fight against money laundering and terrorist financing¹⁹

While this regulation can be regarded as central to the practical system introduced by the lawmaker to combat money laundering and terrorist financing, it must be taken as part of a broader regulatory fabric based on the modified law of 12 November 2004 and the Law (Art. 39 and 40). Together, these form the cornerstone of the subject, supplemented by other circulars, particularly CSSF circular 06/274 on instructing party information accompanying transfers of funds.

The modified law of 12 November 2004 points out the following elements:

- *Scope:*
 - This law relating to combating money laundering and terrorist financing applies to PSF in Luxembourg, to branches and majority subsidiaries based in a third-party country (outside the EU) and to Luxembourg branches of foreign professionals
- *Professional obligations:*
 - Obligation to apply customer due diligence (cf. chapter 2 - Art. 3)
 - Obligation to have adequate internal organisation (cf. chapter 2 - Art. 4)
 - Obligation to cooperate with authorities (cf. chapter 2 - Art. 5)
 - Obligation to comply with the rules set forth in the EC Regulation 1781/2006 of 15 November 2006 on instructing party information accompanying transfers of funds

While this regulation can be regarded as central to the practical system introduced by the lawmaker to combat money laundering and terrorist financing, it must be taken as part of a broader regulatory fabric based on the modified law of 12 November 2004 and the Law (Art. 39 and 40)



¹⁹ www.cssf.lu section *Financial crime, then Anti-money laundering and counter-terrorist financing*

CSSF regulation 12-02 reinforces and completes the applicable regulatory framework with regards to the following topics:

- Risk-based approach: equivalent countries are not exempted from risk assessment
- Customer due diligence:
 - Adequate documentation of all business relationships by adequate client questionnaire
 - Minimum documentation for legal entities
 - Verification of the validity of the proxies' mandate
 - Thresholds of ownership and control that may be below 25%
 - Information on the source of funds required for all clients
 - Documentation and safekeeping all information, documents, analysis and decisions for Client Due Diligence
 - Politically exposed persons to be detected with 'progressing' methods, including information obtained from the client, public sources, private information databases or other adequate measures
- Internal organisation: training program goes beyond an annual training session
- Cooperation with authorities
- Review by the *réviseur d'entreprises agréé*

This regulation gives a formal and legally binding nature to existing professional guidance set out previously by CSSF circulars.

CSSF circular 11/529 specifies the requirements for the risk analysis inherent to each PSF's business activities that must be set down in writing. The management shall first identify the risks of money laundering or terrorist financing. The management shall further set up a methodology in order to categorise these risks and afterwards define and implement measures to mitigate the identified risks.

c. CSSF circular 12/552 as amended by CSSF circulars 13/563, 14/597 and 16/642 – central administration, internal governance and risk management²⁰

This circular is applicable to investment firms. Consequently, CSSF circulars 95/120, 96/126, 98/143, 04/155, 05/178 and 10/466 shall be repealed for them.

This circular gathers the regulatory obligations that investment firms PSF will need to satisfy. As regards professionals performing lending operations as defined in Article 28-4 of the modified law of 5 April 1993 relating to the financial sector, only the chapter on credit risk in the risk management section shall apply.

The *Commission de Surveillance du Secteur Financier* brought together all the key implementing provisions on internal governance in this single circular, reflecting the guidelines of the European Banking Authority on internal governance of 27 September 2011 and those of the Basel Committee on Banking Supervision on internal audit of 28 June 2012, while supplementing them by the additional provisions included in CSSF circulars 96/126, 98/143, 04/155, 05/178 and 10/466.

The implementing procedures on central administration as specified in CSSF circular 95/120 are also integrated, as well as all the provisions on risk management. Thus, while the majority of the provisions in CSSF circular 12/552 as amended by CSSF circular 13/563 are not new per se, there is a strong emphasis on further formalisation needs to document internal governance arrangements and the way internal control activities are conducted.

What is the three-lines-of-defence model?

The institutions shall establish internal governance arrangements which are consistent with the three-lines-of-defence model:

- The first line of defence consists of business units that take or acquire risks under a predefined policy and limits, and carry out controls

²⁰ www.cssf.lu section Laws, regulations and other texts, then Professionals of the financial sector (PFS)

- The second line is formed by the support functions, including the financial and accounting function, the IT function, as well as the compliance and risk control functions which contribute to the independent risk control
- The third line consists of the internal audit function which provides an independent, objective and critical review of the first two lines of defence

The three-lines-of-defence are complementary, each line of defence assuming its control responsibilities regardless of the other lines.

What is new for the board of directors?

The concept of 'fit and proper' is introduced, meaning that the collective skills of board of directors members should be in line with the complexity and the challenges of the business and that sufficient time must be dedicated to the role of director, with disclosure of other mandates and on-going training required. CSSF circular 12/552 as amended by CSSF circulars 13/563, 14/597 and 16/642 reflects the final guidelines from the European Banking Authority on the assessment of the suitability of members of the management body and key function holders in terms of reputation, experience and governance.

Independent board members are recommended (especially for larger institutions): independent means the absence of *"any conflict of interest which might impair his/her judgment because he/she is bound by a business, family or other relationship with the institution, its controlling shareholder or the management of either"*. The chairman cannot be a member of the authorised management.

At least annually, the board of directors should assess and approve the alignment of the risk and capital profile with business strategy, the adequacy of the organisational and operational structure and the efficiency and effectiveness of the internal control, including appointments and revocations of the persons in charge of the internal control functions (internal audit, compliance and risk control) in written.

What is new for the authorised management?

The same 'fit and proper' concept as for the board of directors applies and the authorised management should have an absolute understanding of the organisational and operational structure of the institution, in particular in terms of the underlying legal entities.

Regularly and at least annually the authorised management reports to the board of directors on the implementation, adequacy, effectiveness and compliance with the internal governance arrangements, including the state of compliance and internal control. An annual written and signed confirmation of full compliance with CSSF circular 12/552 as amended by CSSF circular 13/563, 14/597 and 16/642 shall be transmitted to the CSSF and explanations in case of non-full compliance.

The authorised management implements all the strategies and guiding principles through written policies and procedures, in particular the risk policy (with risk tolerance and limits) and the capital and liquidity policy.

What is new for the internal control functions?

At least once a year, each internal control function shall prepare a summary report on its activities and operation, which should include a statement to the authorised management of the main recommendations on existing or emerging problems, significant shortcomings and irregularities since the last report, the measures taken in this respect, etc. This summary report is submitted to the board of directors and, where appropriate, the specialised committees for approval and to the authorised management for information.

A new product approval process shall be defined in written. In particular, it describes the changes in the activities subject to the approval process as well as the implementation of the approval process, including the responsibilities. It includes a risk analysis including compliance aspects and can be triggered by the internal control functions.

The outsourcing policy should include reporting requirements to which the service providers and control mechanism which the institution implements in this respect are subject from inception to the end of the outsourcing agreement. For each outsourced activity, a person must be designated to manage the outsourcing relationship and access to confidential data. Specific rules are required for IT outsourcing.

The CSSF reiterates its concerns on adequate identification and assessment of all forms of concentration risks, not only credit. In particular, it can take the form of intra-risk concentration (groups of customers or counterparties, countries, sectors, specific products or markets) or inter-risk concentration as a result of various risks combined. Intra-risk or inter-risk concentration may result in economic and financial losses as well as in a significant and negative impact on the risk profile of the institution, so that the various consequences should be assessed as well.

A pricing mechanism that takes into account all risks incurred should be implemented, documented, approved by the authorised management and supervised by the risk control function. The objective is to act as an incentive to effectively allocate the financial resources in accordance with the risk tolerance and the principle of sound and prudent business management. While the circular pays specific attention to the liquidity transfer pricing system, other forms of risks should be considered in the exercise.

What is new for the other functions?

The Information Security Officer is in charge of the protection of the information. An escalation mechanism should be in place to report any exceptional issue to the highest level of the hierarchy, including the board of directors.

A policy on management of conflicts of interest, notably for transactions with related parties (not only should they be at arms' length, but they should not impair solvency, liquidity situation or risk management

capacities from a regulatory or internal point of view) as well as internal whistleblower arrangements should be in place.

d. CSSF circular 95/120 – central administration²¹

This circular is applicable to specialised and support PSF. It has been replaced by CSSF circular 12/552 for investment firms. However the concepts, the principles are the same.

This circular reflects Article 17 of the Law and stipulates that to obtain a licence for PSF status, the entity must not merely have a legal registered office in Luxembourg, but its central administrative office, thus inferring the existence of its decision-making centre and its administrative centre in Luxembourg.

The circular specifies the meaning of 'central administration' which corresponds to managerial and business functions, as well as operational and control functions. It further defines the notion of 'centre' to and from which extend all the PSF's components, implying the existence of sufficient technical and human resources necessary for its operations.

The first notion does not simply stop at the managers (of which there must be at least two) authorised by the CSSF, who are responsible for managing the PSF and empowered to direct the PSF's business. It further includes the persons responsible for the various administrative and business units or departments forming the entity's infrastructure, who must also, in principle, be permanently based in Luxembourg.

If the PSF conducts business abroad through branches, the day-to-day running of such branches is carried out by managers assigned to them who are granted powers by the registered office bodies. The latter must be able to monitor and be involved in such branches' operations and major decisions.

²¹ www.cssf.lu section Laws, regulations and other texts, then Professionals of the financial sector (PFS)



The **second notion** of ‘centre’ implies that the PSF has, in Luxembourg:

- Its own skilled operating staff in sufficient numbers to carry out the decisions made
- Its own operating systems, i.e. procedures and technical infrastructure
- Documentation relating to operations
- Support functions in accounting and data processing
- Internal control

e. CSSF circulars 96/126²², 05/178²² and 06/240²² – administrative and accounting organisation and IT subcontracting

These circulars are applicable to specialised and support PSF. They have been replaced by CSSF circular 12/552 for investment firms. However the concepts, the principles are the same.

Reflecting Article 17 (2) of the Law which requires PSF to furnish evidence of good administrative and accounting organisation, these circulars follow on from the previous circular 95/120 and provide guidelines on how such an organisation functions (they should, in

fact, be read in conjunction). They further specify the IT security measures that PSF must put in place to meet banking secrecy requirements. The recommendations made in these circulars are to be adapted to each PSF according to operations and size.

The department in charge of the day-to-day management is responsible for implementing this organisation the rules of which are defined in writing and which reflect its powers and the way they are delegated while pursuing the following goals:

- Correctly manage assets and property
- Adequately conduct operations
- Fully and correctly record operations and produce reliable and swiftly available information
- Implement the decisions made by management and by persons acting on its authority and under its responsibility and ensure compliance with rules governing the PSF’s business

A procedures manual is drafted and contains at least the procedures applying to administrative organisation and accounting, plus definitions of positions and related responsibilities.

²² www.cssf.lu section Laws, regulations and other texts

The accounting management must:

- Identify and record all the transactions undertaken by the entity
- Explain changes to the accounting balances from one cut-off to the next by tracking flows that have impacted the accounting items
- Draw up the accounts in accordance with the accounting and valuation rules defined by accounting legislation and applicable CSSF regulations
- Produce and disclose information on a regular basis to the supervisory authority
- Keep all accounting documents according to the legal provisions in force
- Prepare, as applicable, financial statements according to the chart of accounts in force in the shareholder's country of origin with a view to preparing consolidated accounts
- Produce reliable management information that is swiftly available to management so that it can closely monitor the entity's financial situation and its compliance with budgetary data. This information will be used as a management control instrument and will be all the more effective if it is based on cost accounting



More specifically, the organisation must satisfy the following requirements:

- The PSF must have sufficient, skilled operating staff whose tasks, duties, powers and reporting relationships are described and set out in an organisational chart. The principle of separation of tasks must be observed in order to prevent mistakes and improper acts
- Correct conduct of operations requires that PSF draft complete, clear and monitored procedures describing execution systems, i.e., the logical steps involved in operations from initiation to archiving, as well as the documents used and the regular checks to be performed
- All the commitments made by the PSF and the related decisions must be documented. This documentation must be kept up-to-date, retained according to legal requirements and be easy to consult
- The administrative infrastructure of the business functions must guarantee correct application of decisions made
- Accounting must be based on an accounting department responsible for the accounting management of the PSF. This department must centralise the accounting entries recorded by other departments, as applicable, and is responsible for preparing the PSF's annual accounts and regular reports to be sent to the CSSF

As regards IT, CSSF circular 05/178 covers four cases in detail:

- Use of an IT subcontractor for services that are not IT system and communication network management and operations services
- Use of IT subcontracting within the group
- Use of IT subcontracting within the group, but abroad
- Use of IT subcontracting provided by a related PSF in Luxembourg

In all cases, use of a third party for IT services must comply with the fundamental rules which aim to ensure that IT subcontracting is properly managed and that financial professionals retain responsibility for organising and overseeing these delegated operations.

Subcontracting must be managed within the framework of a documented policy approved by the board of directors. The latter must base its decision to outsource on an in-depth analysis of the financial, operating, legal and reputation risks in particular.

Subcontracting will give rise to a services agreement with specifications containing the following information: continuity and revocability of the relationship subcontracting, maintained integrity of internal and external control, a clear description of the parties' responsibilities, and explicit conditions concerning the possibilities of cascade subcontracting.

PSF planning to contract out operations must check, by means of contract or legal analysis, whether or not they need to inform their partners and particularly their clients.

For each subcontracted activity, a manager will be appointed to handle the subcontracting relationship.

The PSF must find the means to operate despite the occurrence of unforeseen events such as failures in communication with the IT services provider.

The PSF must be able to transfer subcontracted services to another provider or to handle them internally again when the continuity or quality of the service is jeopardised.

A PSF using the services of a support PSF (Art. 29-1 to 29-6 of the Law) must notify the CSSF thereof and furnish evidence that it has observed the conditions presented in CSSF circular 05/178.

Pursuant to Article 41 (5) of the Law, the obligation to maintain secrecy does not exist in relation to credit institutions and support PSF (targeted by Art. 29-1 to 29-4) insofar as the information communicated to those professionals is provided under an agreement for the provision of services.

In all the other cases, a PSF using such IT subcontracting shall not be relieved of its responsibility as regards professional secrecy.

Circular 06/240 provides certain clarifications particularly on the responsibilities of the PSF in matters of confidentiality when it uses a support PSF for services other than those requiring a licence, on the qualification of a subcontracted technical service to determine whether or not it requires an *OSIRC* licence (IT system and communication network operator), on the migration of systems and data, and on use of IT subcontracting by a subsidiary or branch of a financial professional located abroad.

f. CSSF circular 98/143 – internal control²³

This circular is applicable to specialised and support PSF. It has been replaced by CSSF circular 12/552 for investment firms. However the concepts, the principles are the same.

This circular presents and develops the principles of adequate internal control applicable to PSF in accordance with Article 17 (2) of the Law.

To satisfy the following aims:

- The objectives set by the undertaking are achieved
- Resources are used efficiently and economically
- Risks are adequately managed and assets are protected
- Financial and management information is complete and reliable
- Laws and regulations as well as in-house policies, plans, rules and procedures are observed

The circular specifies the respective responsibilities of the entity's board of directors and management and the internal control system to be introduced.

It must comprise three components:

- It must comply with CSSF circulars 95/120 and 96/126 examined above for specialised and support PSF and CSSF circular 12/552 for investment firms
- There must be a system of identifying, measuring, limiting and reporting on the PSF's operational and financial risks
- There must be an internal audit function to regularly assess internal control

This internal control system must also include various levels of control set out as follows in the Circular:

- Daily controls performed by operating staff
- Ongoing critical controls performed by people responsible for the administrative processing of operations
- Controls performed by managerial staff on the activities and duties for which they are directly responsible
- Controls performed by the internal audit department, which must have a number of characteristics: internal audit must be independent, be conducted on a permanent basis and be described, together with the relevant objectives and, powers within an audit charter. The members of this department must also be objective and have proven professional skills. Lastly, the extent of the audit work may not be restricted and it must be carried out according to an audit plan containing the audit engagements which give rise to written reports highlighting recommendations

g. CSSF circular 07/307 as amended by CSSF circulars 13/560, 13/568 and 14/585 – rules of conduct in the financial sector²⁴

This circular, which **applies solely to investment firms**, defines the organisational requirements and rules of conduct in the financial sector (transposing the Directive on Markets in Financial Instruments (MiFID) 2004/39/EC and Directive 2006/73/EC).

Regarding organisational requirements, chapter 3 of this circular includes the board of directors' responsibility, the authorised management's responsibility and provides further detail about risk management, compliance and internal audit functions.

In October 2013, the European Securities and Markets Authority (ESMA) published the French version of its guidelines on remuneration policies and practices (MiFID). Circular 14/585 transposes these guidelines into Luxembourg regulation in the form of an annexe V of CSSF circular 07/307.

²³ www.cssf.lu section Laws, regulations and other texts, then Professionals of the financial sector (PFS)

²⁴ www.cssf.lu section Laws, regulations and other texts, then Professionals of the financial sector (PSF)

The rules of conduct are set forth under the following principles:

1. Client categorisation (chapter 5)

The MiFID provides for a differentiated application of the rules of conduct depending on the type of client. It draws a distinction between retail clients, professional clients and eligible counterparties

2. The assessment of whether the service to be provided is suitable for and appropriate to the client (suitability and appropriateness tests) (chapter 6)

Article 37-3 (4) of the Law and Article 41 (2) of the MiFID Grand-ducal regulation require that when undertakings provide investment advice or portfolio management services, they must take into account the client's knowledge of and experience in investing, its financial situation and investment objectives so as to recommend suitable investment services and instruments (suitability test).

When the investment service provided is other than investment advice or portfolio management, undertakings must check, in accordance with Article 37-3 (5) of the Law, whether the client has the necessary experience and knowledge to understand the risks involved in the investment product or service proposed or requested (appropriateness test)

3. Conflicts of interest (chapter 7)

All undertakings must take reasonable measures to detect potential conflicts of interest between their own interests (including those of their managers, employees and any tied agents), on the one hand and, on the other, their duties to each of their clients, and between the diverging interests of two or more of their clients, the undertaking having obligations vis-à-vis each of their clients



4. Benefits (inducements) (chapter 8)

Article 30 of the MiFID Grand-ducal regulation provides that, to be acceptable, remuneration, commission or non-monetary benefits paid to or collected by a firm in connection with an investment service must firstly aim to improve the quality of the service provided to the client, and secondly, be disclosed to the same. Furthermore, benefits paid to or collected by an undertaking must not prevent it from fulfilling its obligation to act in the client's best interests

5. *Obligation of best execution (chapter 9)*

Article 37-5 of the Law and Articles 51 to 54 of the MiFID Grand-ducal regulation set forth in detail the reasonable steps to be taken by firms to obtain the best possible result for their clients taking into account price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order

6. *Client order handling rules (chapter 10)*

Undertakings are required to introduce procedures and provisions guaranteeing prompt and fair execution of client orders relative to other client orders or their own trading interests

7. *Information to existing and potential clients (chapter 11)*

Superseded CSSF circular 2000/15 already included an obligation to make adequate disclosure of relevant information in dealings with clients, with the aim of enabling the client to make a well-considered investment decision on an informed basis. The obligations of which the undertakings have to inform their clients are considerably reinforced by the MiFID law. Thus, all information, including marketing communications, addressed by the undertaking to existing or potential clients, must be fair, clear and not misleading

8. *The need for a written document establishing the rights and duties of the parties (chapter 12)*

Under paragraph (7) of Article 37-3 of the Law, undertakings providing clients with investment services must establish in writing the terms and conditions governing the provision of services and the rights and duties of the parties. They may be incorporated by reference to other documents or legal texts. A framework agreement or the general terms and conditions between the undertaking and the client may, if necessary, fulfill this requirement

9. *Reports to be provided to clients (chapter 13)*

The MiFID law provides that reports on the execution of orders which do not come within the scope of portfolio management (Art. 47 of the MiFID Grand-ducal regulation), reports concerning portfolio management (Art. 48 of the MiFID Grand-ducal regulation) and statements of clients' financial instruments and funds (Art. 50 of the MiFID Grand-ducal regulation) must be sent to clients on a regular basis. The detailed rules concerning information to be sent to clients and the frequency of reports vary depending on the nature of the investment service provided and the client category, i.e. retail or professional

10. *Records to be retained (chapter 14)*

Under Article 61 (3) of the MiFID Grand-ducal regulation, the CSSF is responsible for drafting and updating a list of minimum obligations regarding records with which undertakings are required to comply. Account is taken, inter alia, of the terms of Article 37-1 (6) of the Law requiring that undertakings keep a record of any service they have provided and of any transaction they have executed to enable the CSSF to monitor their compliance with all obligations arising under MiFID, namely their obligations towards their clients

11. *Rules applicable in specific competitive situations (chapter 15)*

The undertaking must refrain from taking or from attempting to take clients from a competitor using methods contrary to fair competition practices. It must not, in particular, seek to receive and use for this purpose any confidential information about a competitor's clients that is available to a member of its staff previously employed by the competitor. It shall also ensure that employees do not make any active use of such information for the same purpose

h. CSSF circular 07/290 as amended by CSSF circulars 10/451, 10/483, 10/497 and 13/568 - definition of capital adequacy ratio²⁵

Circular 07/290 as amended by CSSF circulars 10/451, 10/483, 10/497 and 13/568 applies solely to investment firms, excluding all enterprises only authorised to provide investment advisory services and/or receive and communicate orders from investors without holding any funds and/or securities of their clients. It defines a capital adequacy ratio, seeking to ensure that investment firms have sufficient capital with regard to credit, dilution, operational and foreign exchange risks, risks of basic product price fluctuations and portfolio risks.

The capital adequacy ratio is the ratio between eligible capital and the global capital required to cover the different types of risks. Investment firms must have sufficient capital at all times to cover their global capital requirement on an individual basis and, as applicable, on a consolidated basis. Eligible capital forming the numerator of the ratio includes tier-1 capital, tier-2 capital and tier-3 capital.

i. CSSF circulars 01/28²⁵, 01/29²⁵, 01/47²⁵ and 02/65²⁵ - concerning domiciliation

In the context of the modified law of 31 May 1999 governing domiciliation of companies, these four CSSF circulars address various aspects of the domiciliation activity in Luxembourg.

CSSF circular 01/28 stipulates the persons and companies authorised to operate as corporate domiciliation agents.

CSSF circular 01/29 lists the minimum content of a corporate domiciliation agreement.

CSSF circular 01/47 defines the professional duties applying prior to and after entering into a domiciliation agreement for corporate domiciliation agents subject to CSSF supervision. It also provides general guidelines for domiciliation agents encountering conflict of interest situations.

Lastly, CSSF circular 02/65 provides further detail to the modified law of 1999 as regards the notion of registered office.

j. CSSF circular 10/437 - guidelines concerning compensation policies in the financial sector²⁵

This circular aims to improve the way financial institutions take, manage and control risks, by defining guidelines namely on the structure of compensation and the process of preparing and implementing compensation policies.

From this perspective, CSSF circular 10/437 stipulates the scope of application, the exclusions, the structure of the compensation policy, and the disclosure, monitoring and entry into effect of the guidelines.

k. CSSF circular 12/544 - optimisation of the supervision exercised on the support PSF by a risk-based approach²⁵

This circular implements a risk assessment and management process for the provision of services to the financial sector for support PSF, relying on:

1. The application of the principle of proportionality according to the importance of the activity exercised in the financial sector by the support PSF
2. Self-assessment and management taken into account regarding risks the support PSF exposes the financial sector to and which are subject to an annual risk assessment report (RAR) by the support PSF; a description of the activities exercised in the financial sector, the organisation and infrastructure – to be provided annually in a descriptive report (DR) – will facilitate the understanding and analysis of the risks reported in the RAR

²⁵ www.cssf.lu section Laws, regulations and other texts, then Professionals of the financial sector (PFS)



It is expected that the above would be completed with the issuance of an agreed-upon procedures report of findings by the approved statutory auditors, allowing a precise assessment of the organisation, the internal control system, the financial situation and the risks incurred.

I. CSSF circular 13/554 – evolution of the usage and control of the tools for managing information technology resources and the management access to these resources²⁶

This circular applies to all PSF and concerns the tools allowing the management of access rights to IT resources connected to a network and/or the centralised registration and administration of most of these resources.

The PSF must always have full control over the resources under their responsibility and the corresponding access to these resources, primarily for compliance and governance reasons and secondly in order to protect confidential data subject to professional secrecy.

The technical note annexed to the circular provides the mandatory technical rules and focus on preventive controls implementation since corrective controls are not considered as sufficient and should be performed as a contingency solution in case of preventive control failover.

²⁶ www.cssf.lu section Laws, regulations and other texts, then Professionals of the financial sector (PFS)

5

Role of the *réviseur d'entreprises agréé* for PSF

a. The *réviseur d'entreprises agréé's* mission in relation to investment firms

The role of the *réviseur d'entreprises agréé* in relation to investment firms is fully set out in CSSF circular 03/113 as amended by CSSF circular 10/486 and supplemented by CSSF circular 13/571.

These circulars define, in general, the role and mission of the *réviseur d'entreprises agréé* as regards of the statutory audit of the annual accounts, and more specifically, they stipulate the subjects that must be analysed in the analytical audit report.

Report on the annual accounts

The annual accounts must be audited in accordance with International Standards on Auditing (ISAs) published by the International Federation of Accountants (IFAC), adapted or completed as required by national legislation or practices.

Audit work and compliance with legal and prudential provisions

The audit must encompass all areas of the investment firm, i.e. balance sheet and off-balance sheet operations.

It must cover all branches abroad and all of the investment firm's foreign subsidiaries for the purpose of monitoring compliance with Luxembourg's anti-money laundering standards and rules of conduct, in particular.

In accordance with the circulars, the auditor must verify compliance with all of the following legal and prudential provisions:

- Compliance with part II of the Law and the provisions laid down by CSSF regulation 12-02 on the fight against money laundering and terrorist financing
- Compliance with Article 37 of the Law concerning prudential rules in the financial sector and particularly the principles laid down by CSSF circular 91/78 on the segregation of assets and the proper application of internal procedures in force in this respect
- Compliance with Article 37-1 to 37-9 of the Law and the principles laid down by CSSF circular 07/307 MiFID concerning rules of conduct in the financial sector, and proper application of internal procedures for the implementation of such rules of conduct
- Compliance with the principles enacted by the CSSF circular 12/552 as amended, on central administration, internal governance and risk management; the following items are highlighted as mentioned in CSSF circular 13/571:
 - Chapter 5 of Part II dealing with the administrative, accounting and IT organisation
 - Chapter 6 of Part II on internal control
 - Sub-chapter 7.4 of Part II relating to outsourcing
 - Chapter 3 of Part III on credit risk
 - Chapter 5 of Part III relating to private wealth management
- Compliance with all other circulars applicable to the PSF referred to in CSSF circular 03/113 as amended, and other circulars subsequently issued by the CSSF and specifically requesting the involvement of the *réviseur d'entreprises agréé*

Annual analytical audit report

The report must include the following sections:

1. Mandate
2. Significant events
3. Organisation and administration
4. Activities and analysis of related risks
5. Scheduled reporting to the CSSF
6. Prudential ratios
7. Analysis of the annual accounts
8. Professional anti-money laundering and anti-terrorism financing obligations
9. Professional obligations in respect of rules of conduct
10. Branches
11. Relations with affiliated undertakings
12. Monitoring of problems raised in previous reports
13. General conclusion

Consolidated analytical audit report

The consolidated analytical audit report must be drawn up in accordance with the same principles and framework as the annual audit report. It does, however, focus on information specific to the consolidated reporting entity.

The consolidated analytical audit report must explain the scope of consolidation in detail and any changes that have occurred in the scope during the year under review, together with the list of interests that are not included within the consolidated report, with the reasons for such exclusion. For each consolidated entity, the method of consolidation must be specified.

If an investment firm subject to CSSF consolidated supervision is exempt from publishing consolidated accounts or when the scope of consolidation of the consolidated accounts published differs from the scope of consolidated supervision, the consolidated analytical audit report must be based on the consolidated accounting situation corresponding to the scope of consolidated supervision performed by the CSSF.

The consolidated analytical audit report briefly sets out the various points in the framework for each consolidated subsidiary.



The consolidated analytical audit report aims to provide an overview of the group's situation and information about the group's organisation and operations as well as its management and risk structure.

b. *The réviseur d'entreprises agréé's mission in relation to specialised and support PSF*

There is not (yet) any circular dedicated to the mission of the *réviseur d'entreprises agréé* in relation to specialised and support PSF.

For both specialised and support PSF, the *réviseur d'entreprises agréé* must, however, certify in a compliance report that the entity complies with professional anti-money laundering obligations and rules of conduct.

For support PSF and following the issuance of CSSF circular 12/544, a new circular is expected to be issued soon, defining the practical rules of the *réviseurs d'entreprises agréés'* mission as regards support PSF and the content of the agreed-upon procedures report on findings.

The *réviseur d'entreprises agréé* also issues a letter of recommendation once a year to the board of directors, which the latter forwards to the CSSF. This letter contains the observations relating particularly to compliance with laws and circulars applicable to the PSF. The *réviseur d'entreprises agréé* considers:

- Compliance with part II of the Law and the provisions laid down by CSSF regulation 12-02 on the fight against money laundering and terrorist financing
- Article 36-1 of the Law
- CSSF circular 95/120 on central administration
- CSSF circular 96/126 on administrative organisation and accounting procedures
- CSSF circular 98/143 on internal control, as amended

- CSSF circulars 01/47 and 01/29 applicable to company administrators, if relevant
- CSSF circulars 05/178 and 06/240 relating to administrative organisation and accounting procedures and IT outsourcing

and reports significant deficiencies in the letter of recommendation attached to the compliance report.

Lastly, the *réviseur d'entreprises agréé* is required by law to promptly report to the CSSF any serious facts discovered during the audit.

c. The *réviseur d'entreprises agréé*'s mission in relation to branches of PSF

For the purpose of the task of auditing accounts, the *réviseur d'entreprises agréé* must, in certain cases, express an opinion on the PSF's branches. The *réviseur d'entreprises agréé*'s mission depends primarily on the nationality of the PSF's branch.

Non-European branches

Whatever the type of PSF chosen, the *réviseur d'entreprises agréé* must assess compliance with regulatory provisions concerning:

1. The central administrative office of the branch
2. The branch organisation
3. Internal branch supervision and internal audit
4. The branch's IT organisation and subcontracting
5. The financial information to be reported on a regular basis to the CSSF by PSF
6. Anti-money laundering and combating terrorist financing within the branch

In the analytical audit report drafted for investment firms only, the registered company auditor must include

an assessment of branches concerning:

1. Compliance with regulations relating to asset managers, as applicable
2. Compliance with regulations on consolidated supervision
3. The Compliance function
4. Compliance with regulations relating to rules of conduct in the financial sector (MiFID)
5. The calculation of significant exposures

European branches

The *réviseur d'entreprises agréé*'s task is less extensive for European branches owing to the fact that they are subject to equivalent rules as those in force in Luxembourg.

The *réviseur d'entreprises agréé* must nonetheless ensure that European branches of investment firm PSF comply with regulations on rules of conduct in the financial sector (MiFID) and comply with regulations on combating money-laundering and terrorist financing within the branch, irrespective of the category of PSF.

The analytical audit report is designed to describe and analyse the financial and organisational findings made by the *réviseur d'entreprises agréé* during the audit

6

Accounting requirements

PSF are subject to the accounting principles set forth by the modified law of 19 December 2002 (title II, chapters II and IV) for the annual accounts and by the modified law of 10 August 1915 (section XVI) on commercial companies, for consolidated accounts.

The annual accounts must give a true and fair view of the assets, the liabilities and the income statement of the PSF.

Furthermore, the presentation of the balance sheet and the income statement may not change from one year to the next.

Under the modified law of 19 December 2002, a Grand-Ducal regulation made with the benefit of an opinion of the *Commission des normes comptables* determines the form and content of the layouts of the balance sheet and the profit and loss account.

According to Grand-Ducal regulation of 18 December 2015, the balance sheet is presented as follows:

Assets	Capital, Reserves and Liabilities
<ul style="list-style-type: none">A. Subscribed capital unpaid<ul style="list-style-type: none">I. Subscribed capital not calledII. Subscribed capital called but unpaid	<ul style="list-style-type: none">A. Capital and reserves<ul style="list-style-type: none">I. Subscribed capitalII. Share premiumIII. Revaluation reserveIV. Reserves<ul style="list-style-type: none">1. Legal reserve2. Reserve for own shares or corporate units3. Reserves provided for by the articles of association4. Other reserves, including the fair value reserve<ul style="list-style-type: none">a. Other available reservesb. Other non available reservesV. Results brought forwardVI. Result for the financial yearVII. Interim dividendsVIII. Capital investment subsidies
<ul style="list-style-type: none">B. Formation expenses	<ul style="list-style-type: none">B. Provisions<ul style="list-style-type: none">1. Provisions for pensions and similar obligations2. Provisions for taxation3. Other provisions

C. Fixed assets**I. Intangible fixed assets**

1. Development costs
2. Concessions, patents, licences, trademarks and similar rights and assets if they were
 - a. Acquired for valuable consideration and need not be shown under C.I.3
 - b. Created by the undertaking itself
3. Goodwill, to the extent that it was acquired for valuable consideration
4. Payments on account and intangible fixed assets under development

II. Tangible fixed assets

1. Land and buildings
2. Plant and machinery
3. Other fixtures and fittings, tools and equipment
4. Payments on account and tangible assets under development

III. Financial fixed assets

1. Shares in affiliated undertakings
2. Loans to affiliated undertakings
3. Participating interests
4. Loans to undertakings with which the undertaking is linked by virtue of participating interests
5. Investments held as fixed assets
6. Other loans

C. Creditors

1. Bonds
 - a. Convertible bonds
 - i) becoming due and payable within one year
 - ii) becoming due and payable after more than one year
 - b. Non-convertible bonds
 - i) becoming due and payable within one year
 - ii) becoming due and payable after more than one year
2. Amounts owed to credit institutions
 - a. becoming due and payable within one year
 - b. becoming due and payable after more than one year
3. Payments received on account of orders insofar as they are not shown separately as deductions from stocks
 - a. becoming due and payable within one year
 - b. becoming due and payable after more than one year
4. Amounts due to trade creditors
 - a. becoming due and payable within one year
 - b. becoming due and payable after more than one year
5. Bills of exchange payable
 - a. becoming due and payable within one year
 - b. becoming due and payable after more than one year
6. Amounts owed to affiliated undertakings
 - a. becoming due and payable within one year
 - b. becoming due and payable after more than one year
7. Amounts owed to undertakings with which the undertaking is linked by virtue of participating interests
 - a. becoming due and payable within one year
 - b. becoming due and payable after more than one year
8. Other creditors
 - a. Tax debts
 - b. Social security debts
 - c. Other debts
 - i) becoming due and payable within one year
 - ii) becoming due and payable after more than one year

D. Current assets**I. Stocks**

1. Raw materials and consumables
2. Work in progress
3. Finished goods and merchandise
4. Payments on account

II. Debtors

1. Receivables resulting from sales and from the provision of services
 - a. Becoming due and payable within one year
 - b. Becoming due and payable after more than one year
2. Amounts owed by affiliated undertakings
 - a. Becoming due and payable within one year
 - b. Becoming due and payable after more than one year
3. Amounts owed by undertakings with which the undertaking is linked by virtue of participating interests
 - a. Becoming due and payable within one year
 - b. Becoming due and payable after more than one year
4. Other receivables
 - a. Becoming due and payable within one year
 - b. Becoming due and payable after more than one year

III. Investments

1. Shares in affiliated undertakings
2. Own shares or own corporate units
3. Other investments

IV. Cash at bank, cash in postal cheque accounts, cheques and cash in hand

D. Deferred charges

E. Deferred charges

According to Grand-Ducal regulation of 18 December 2015, the profit and loss account is presented as follows:

1. Net turnover
2. Variation in stocks of finished goods and in work in progress
3. Work performed by the undertaking for its own purposes and capitalised
4. Other operating income
5. a) Raw materials and consumables
b) Other external expenses
6. Staff costs
 - a) Wages and salaries
 - b) Social security costs
 - i) relating to pensions
 - ii) other social security costs
 - c) Other staff costs
7. Value adjustments
 - a) in respect of formation expenses and of tangible and intangible fixed assets
 - b) in respect of current assets
8. Other operating expenses
9. Income from participating interests
 - a) from affiliated undertakings
 - b) from other participating interests
10. Income from other investments, other securities and loans forming part of the fixed assets
 - a) from affiliated undertakings
 - b) other income not shown under a)
11. Other interest receivables and other financial income
 - a) from affiliated undertakings
 - b) other interest and financial income
12. Share in the results of the undertakings to which the equity method has been applied
13. Value adjustments in respect of financial assets and investments held as current assets
14. Interest payable and other financial expenses
 - a) relating to affiliated undertakings
 - b) other interests and financial expenses
15. Tax on results
16. Results after taxation
17. Other taxes not shown under items 1 to 16
18. Results for the financial year

According to the modified law of 19 December 2002, the notes to the accounts must contain information concerning in particular:

- The accounting policies and measurement bases applied to the various items of the annual accounts
- The name and registered office of undertakings in which the undertaking, either itself or through a person acting in its own name but on the undertaking's behalf, holds at least 20% of the capital with the percentage of capital held as well as the amount of capital and reserves and the profit/loss of the last year of the undertaking in question for which the accounts have been approved
- The average number of staff employed during the financial year
- The amount owed by the undertaking becoming due and payable after more than five years as well as the undertaking's entire debts secured by collateral on assets furnished by the undertaking with an indication of the nature and form of the collateral
- The name and registered office of the company which prepares the consolidated accounts of the largest group of companies of which the undertaking is a subsidiary, etc.

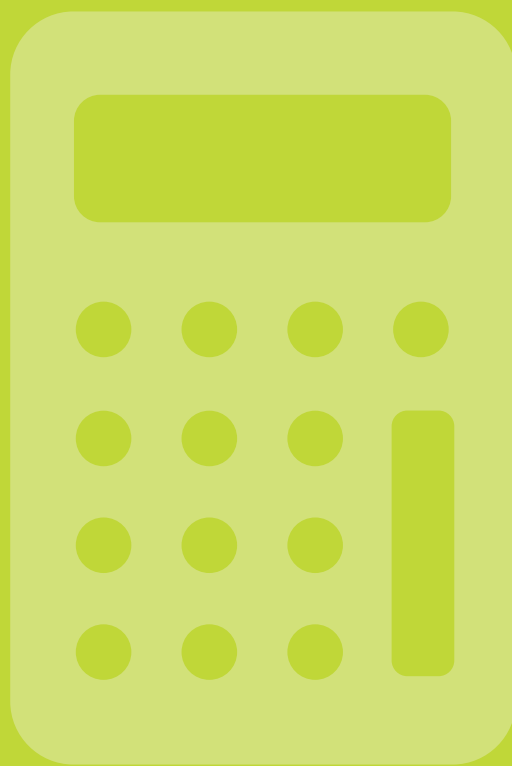
The minimum content of the notes to the annual accounts is stipulated in section 8 of the modified law of 19 December 2002.

The law of 30 July 2013 reforming the *Commission des Normes Comptables* and amending various provisions relating to the accounting and annual accounts of undertakings as well as consolidated accounts of certain forms of companies has introduced requirements for support PSF which are thereby required to comply with the standard chart of accounts (*plan comptable normalisé*). They are no longer exempt and have to file their annual accounts applying the eCDF platform.

The annual accounts must give a true and fair view of the assets, the liabilities and the income statement of the PSF



TAX ENVIRONMENT



1

Corporate income tax (IRC)

Taxable income

IRC (corporate income tax) is calculated on the operating profit as posted in the balance sheet. Certain restatements must be made on that basis to obtain the taxable base to which the tax rate will apply, as certain categories of income are exempt and certain expenses are not tax deductible (the main restatements are given below).

Exempt income

'Parent company and subsidiaries' regime:

Dividends and gains received from subsidiaries of a Luxembourg entity may be exempt from corporate income tax and from municipal business income tax (*Impôt Commercial Communal*) subject to the following conditions:

- The beneficiary holds or undertakes to hold, directly or indirectly, an interest qualifying for the regime for an uninterrupted period of 12 months
- The interest does not fall below the 10% threshold or its acquisition price below €1.2 million (€ 6 million for capital gains) during that time
- Entities benefitting under this regime are listed in Article 166 of the *Loi de l'Impôt sur le Revenu* (LIR – Law on Income Tax)

Exemption from withholding tax on dividends:

Dividends paid to subsidiaries of Luxembourg entities may be exempt from withholding tax subject to the following conditions:

- The beneficiary holds or undertakes to hold, directly or indirectly, an interest qualifying for the regime for an uninterrupted period of 12 months
- The interest does not fall below the 10% threshold or its acquisition price below €1.2 million during that time

- Entities benefitting under this regime are listed in Article 147 LIR. This regime includes parent companies based in a country with which Luxembourg has signed a double taxation treaty and fully liable for a tax corresponding to the IRC

Exempt income under a double taxation treaty:

Several categories of income are covered by such treaties which should be referred to on a case-by-case basis depending on the type of income and the country in question. Nevertheless, a permanent entity or real estate assets are means to capture taxation in the related country.

The 'Parent company and subsidiaries' directive has been recently amended to include an anti-hybrid loan mismatches provision and a common anti-abuse rule to prevent misuse of the directive and to ensure a greater consistency in its application in different Member States. The law of 18 December 2015 transposed these amendments applicable on revenues allocated after 31 December 2015.

For further details:

Art. 147 of the Law on Income Tax (Loi de l'Impôt sur le Revenu) of 4 December 1967 (LIR)

Circular no. 153-1 LIR of 22 November 2004

Art. 166 LIR

Grand-ducal regulation of 21 December 2001 Directive of 30 November 2011 (2011/96/UE) amended by the Directive of 8 July 2014 (2014/86/UE) and the Directive of 21 January 2015 (2015/121/UE) on the common system of taxation applicable to parent companies and subsidiaries

Double taxation treaties: <http://www.impotsdirects.public.lu/conventions/index.html>

Non-deductible expenses

The tax law stipulates that a number of expenses are not tax-deductible including:

- Distributed earnings
- Director's fees or pay
- Penal and administrative fines
- Donations made to non-recognised organisations
- Expenses relating to exempt income
- Non-deductible taxes (including IRC, ICC, IF)

For further details:

Art. 12 LIR

Art. 45 LIR

Art. 168 LIR

Other deductions from the taxable base

- Donations and gifts paid to organisations recognised by law and subject to certain conditions
- Losses which can be indefinitely carried forward to future results without any limit on amount

For further details:

Donations and gifts: Art. 109 and 112 LIR

Losses available for carry-forward: Art. 114 LIR and LIR circular No. 114/2 of 2 September 2010

Tax rate

If the taxable base is less than €15,000, the IRC rate is 20% (or 21.40% including the employment fund contribution tax applicable since 1 January 2013).

Above €15,000, the rate is set at 21% (22.47% since 1 January 2013).

For further details:

Art. 173 and 174 LIR

Tax relief

The tax law makes provision for various types of tax credit applicable to the IRC base:

- Relief for hiring previously unemployed people (law of 24 December 1996). The tax credit available for hiring unemployed persons has been extended from the 31 December 2014 to the tax year ending 31 December 2016
- Relief for continuous professional training (law of 22 June 1999)
- Tax relief for investments (see hereafter)

Investments made in commercial companies are granted income tax relief, on request:

- The relief is equal to 12% of the additional investment in depreciable tangible assets, other than constructions, made during the business year in question.
- The relief for global investment is granted in respect of investments made during the business year.



It amounts to:

- 7% for the first range up to €150,000 and 2% for the investment range in excess of €150,000 as regards:
 - Investments in depreciable tangible assets other than constructions
 - Investments in sanitary facilities and central heating integrated into hotel buildings
 - Investments in welfare buildings
- 8% for the first range up to €150,000 and 4% for the investment range in excess of €150,000 as regards investments in fixed assets eligible for special depreciation

The following are, however, excluded:

- Assets ordinarily depreciated over a period of less than 3 years
- Assets acquired by a bulk transfer of a company
- Second-hand goods
- Certain motor vehicles

Second-hand goods are, however, eligible for investment tax relief up to €250,000 when they are invested by the taxpayer to establish a first entity.

For further details:

Art. 152 bis LIR

Circular no. 152 bis LIR of 14 November 1994

Grand-ducal regulation of 29 October 1987

Minimum flat tax

All collective entities with their statutory seat or central administration in Luxembourg are liable to the minimum income tax, regardless of whether they are regulated (before 2013, only unregulated collective entities were subject to the minimum tax). Luxembourg permanent establishments of foreign companies are beyond the scope of the minimum tax on the basis that, in principle, foreign companies have their statutory seat or central administration outside of Luxembourg.

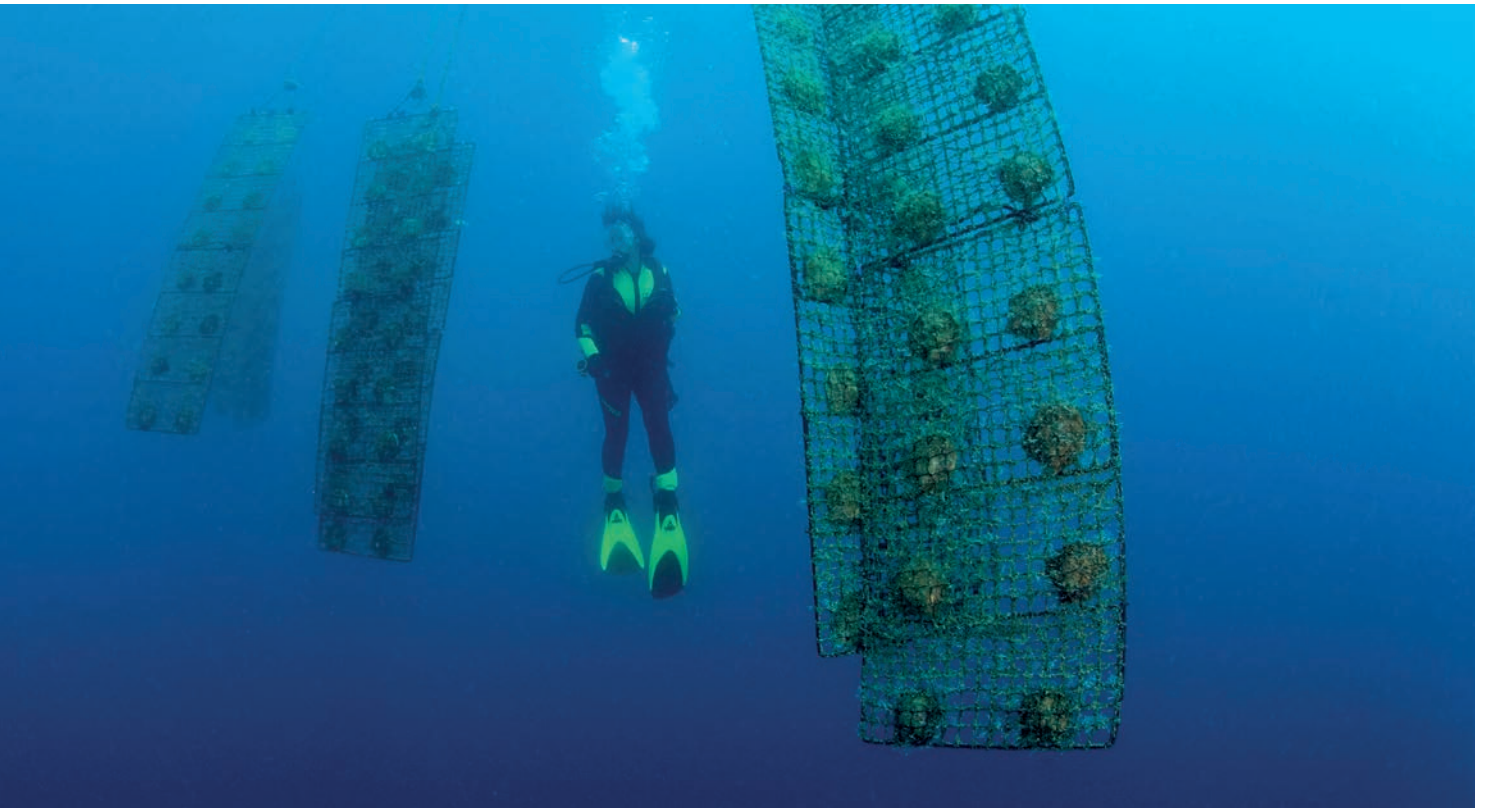
The amount of minimum tax due by a Luxembourg collective entity depends on the composition of its balance sheet. For this purpose, Luxembourg collective entities are divided into two categories:

- Tax resident collective entities that have qualifying holding and financing assets exceeding 90% of their balance sheet. These are liable to a minimum flat income tax of €3,210 (including the unemployment fund surcharge)
- Tax resident entities other than those that hold mainly financial items (broadly speaking: operating companies). Those are subject to a progressive minimum income tax depending on the total assets of their balance sheet. The tax ranges from €535 (for a total balance sheet up to €350,000) to €21,400 (for a total balance sheet exceeding €20 million). These amounts include the unemployment fund surcharge

Since 1 January 2015, the criteria for the application of the minimum income tax of €3,210 is revised. A collective entity will have to own qualifying holding and financial assets that exceed 90% of its balance sheet and have a total balance sheet exceeding €350,000 to be liable to the €3,210 minimum income tax. Entities that meet the 90% test and have a total balance sheet below €350,000 would be liable to a minimum income tax of €535 (previously €3,210).

Since 2016, this minimum tax is a minimum net wealth tax and the maximum amount is €32,100.

2 Municipal business tax (ICC)



Taxable income

The ICC taxable base is calculated using a method similar to IRC. The base is 3% of the adjusted taxable operating profit. A rebate of €17,500 is provided for entities liable for IRC and of €40,000 for other taxpayers.

Tax rate

The ICC rate varies from one locality to another. The rate for the city of Luxembourg is 225%, i.e. a global rate of 6.75% (3% x 225%).

For the city of Luxembourg, including IRC (corporate income tax), ICC (municipal business income tax) and the employment fund tax, the effective rate is therefore 29.22%.

For further details:

*Art.11 of the law on municipal business income tax
(Loi sur l'Impôt Commercial Communal (LICC))
ICC circular No. 37 of 15 September 2003*

3 Net wealth tax (IF)

Taxable wealth

The tax applies to the value of all goods, rights and assets making up the wealth as at 1 January of each year, minus any liabilities burdening such wealth.

Just like the IRC and the ICC, restatements must be made to determine the unit value including the exemption of significant interests (special 'parent company and subsidiaries' regime).

Assets must be valued at market value except for real estate located in Luxembourg which is valued at a set-rate value based on 1941 prices.

Once the unit value of the entity is determined, the applicable rate is 0.5%. The applicable rate is 0.05% for the value beyond € 500 million. A minimum net wealth tax has now replaced the minimum tax since 2016.

Tax reduction

The lawmaker has made provision for a deduction system which partially or totally cancels out the wealth tax burden subject to meeting certain conditions. To this end, the taxpayer must undertake to book, latest by the end of the accounting year following the one when net wealth tax reduction is claimed, a non-distributable reserve of five times the amount of the tax of which deduction (the reduction) is sought (the undertaking must naturally have the necessary available profits, carryovers or reserves in the balance sheet serving as a reference for net wealth tax reserve implementation application to book such a reserve). The non-available reserve must be kept in the balance sheet for five years, and any distribution during that time entails additional wealth tax assessment amounting to one fifth of the reserve amount distributed before maturity.

This reduction is nonetheless limited to the amount of IRC calculated (thus before deduction of withholding tax, tax credits, etc.) for the year of taxation.

Until 2014, the reduction of the net wealth tax was limited to the amount of corporate income tax (including the contribution to the employment fund and before any tax credits) due for the same tax year. As from 2015, the net wealth tax reduction is limited to the amount of the corporate income tax due (including the employment fund contributions and before any tax credits) of the preceding year. Furthermore, it will be necessary to ask for the net wealth tax reduction 2014 and 2015 in the tax return for the year 2014.

For further details:

Law on net wealth tax (Loi sur l'impôt sur la fortune) of October 1934

Contributions Director circular net wealth tax of 28 March 2014

Just like the IRC and the ICC, restatements must be made to determine the unit value including the exemption of significant interests

4 Obligations to declare— IRC, ICC and IF



Late payment interest is charged at 0.6% per month of delayed payment

Tax returns

Must be filed by 31 May following the fiscal year for corporate income tax (IRC), municipal business tax (ICC) and net wealth tax (IF).

Payment of tax

Advance payments are to be paid on a quarterly basis:

- IRC: 10 March, 10 June, 10 September and 10 December
- ICC and net wealth tax: 10 February, 10 May, 10 August and 10 November

Tax notices

The tax stipulated on the notice is payable within one month of receiving notification from the tax authorities.

5 Value added tax

Liability

A taxable person for VAT purposes is *“anyone who performs in an independent and regular manner, operations connected with any economic activity, regardless of the aims or results of such activity and the place in which it is conducted”*. Thus, PSF are generally considered as taxable persons which implies various VAT obligations.

VAT rate

Since 1st January 2015, the standard Luxembourg VAT rate is 17%, thereby currently being the lowest within the EU.

In addition to that, there is a super-reduced rate, a reduced rate and an intermediary VAT rate of 3%, 8% and 14% respectively, applicable to specific supplies of goods or services defined by the Luxembourg VAT law.

The 14% rate, for example, applies to the custody and management of securities and to the management of loans by a person other than the entity granting them.

Exemption

The supply of services (and goods) is in principle taxable. As an exception and within the limits set by the Luxembourg VAT law, certain transactions are VAT exempt, including the following services:

- Granting and negotiation of loans as well as the management of loans by the granting person
- Transactions, including negotiation, concerning debts, except for debt collection
- Transactions, including negotiation but excluding management and safekeeping, of shares, debentures and other securities

- Management of the following vehicles:
 - special investment funds within the meaning of the law on special investment funds, undertakings for collective investment within the meaning of the law on undertakings for collective investments, SICARS and pension funds in the form of an ASSEP or SEPCAV subject to the supervision of the CSSF, as well as pension funds covered by the law on the insurance sector subject to the supervision of the Commissariat aux assurances
 - undertakings similar to the ones mentioned under the previous indent, established in other EU Member States and subject to the supervision of a supervisory body similar to the CSSF or the *Commissariat aux assurances*
 - securitisation vehicles covered by the law on securitisation and similar vehicles performing securitisation transactions within the meaning of the Regulation No 24/2009 of the European Central Bank
 - alternative investment funds as defined by the law on alternative investment fund managers.

Entitlement to VAT deduction

A taxable person is entitled to deduct input VAT incurred on received supplies that directly relate to taxable supplies provided.

However, VAT cannot be deducted on received supplies that directly relate to VAT exempt supplies (such as financial services listed in the previous point).

If a received supply relates to both taxable supplies in respect of which VAT can be deducted, and VAT exempt supplies, in respect of which VAT cannot be deducted, the input VAT can be deducted partially based on a predefined pro-rata coefficient.

Based on a circular issued by the Luxembourg VAT authorities, as of 2013, VAT payers should, for partial input VAT deduction, use primarily VAT recovery alternative methods based on appropriate objective allocations such as the ‘direct allocation’ method or special ‘pro-rata’ method.

The general pro-rata rate calculated on the basis of the turnover should, as of 2013, be used as a residual method for deducting input VAT incurred on overhead expenses.

Place of taxation of supply of services

As a general rule, services provided to other taxable persons established abroad are taxable where the recipient is established ('B2B'). The recipient is then generally obliged to self-assess VAT based on its national VAT legislation ('reverse charge' mechanism).

Services provided to persons that do not qualify as taxable persons are in principle taxable where the provider is established ('B2C').

VAT registration

In principle, any taxable person is required to register for the purposes of VAT under a normal regime.

By derogation, a taxable person is not required to register if its entire turnover is VAT exempt without entitlement to deduct the corresponding input VAT.

Such a taxable person falling under this derogation is nonetheless required to register (under a simplified regime) for VAT if:

- The person receives a service from abroad that is taxable in Luxembourg under the reverse charge mechanism
- The person makes intra-community acquisitions of goods (threshold of €10,000/year)

VAT returns

A PSF registered under the normal regime is required to file VAT returns at a frequency depending on the total sum of annual sales, annual intra-Community acquisition of goods and annual purchase of services from other EU Member States subject to reverse charge in Luxembourg. Thus, when the annual sales or annual intra-Community acquisition of goods and services is:

- Less than €112,000 it must file a single annual return
- Between €112,000 and €620,000 it must file quarterly returns and an annual return;
- Above €620,000 it must file monthly returns and an annual return

A PSF registered under the simplified regime is only required to file an annual VAT return.

EC Sales List

Furthermore, since 1st January 2010, any taxable person established in Luxembourg is required to file an EC Sales List when providing services to other taxable persons established in other EU Member States who are liable to self-assess VAT in their Member States.

A PSF may also be required to file an EC Sales List when it performs intra-Community delivery of goods.

eCDF

Since 1st January 2013, VAT returns and EC Sales List must be filed via the Internet using the eCDF system of the Luxembourg VAT authorities (*Administration de l'Enregistrement et des Domaines*).

Since 1st January 2015, the standard, intermediary and reduced rates have increased by 2% (i.e. the 15% rate has been increased to 17%, the 12% rate to 14% and the 6% rate to 8%), whereas the super-reduced rate remains unchanged

6 Double taxation treaties

Luxembourg has a fabric of more than 70 double taxation treaties. Some additional agreements are currently under negotiation or pending ratification by Luxembourg or the other nation.

The aim of the double taxation treaties is to tax a taxpayer at a reduced rate and thus encourage investments in these countries.

Furthermore, a double taxation of one specific income may occur when the same income (e.g. dividends, interest, royalties) is subject to taxation in two or more countries. The source of the double taxation issue is that one taxing jurisdiction might tax income at its source, while others will tax income based on the residence of the recipient.

In order to avoid the double taxation of income, the tax treaties concluded between Luxembourg and other countries provide the possibility of tax reliefs.

Tax treaties can only have the effect of restricting, but never enlarging, the power to tax that already exists in Luxembourg. The fact that the right to impose a tax may be given to Luxembourg by a treaty is without consequences if the tax in question is not already anchored in domestic law. There are two methods being used to avoid double taxation that are explicitly mentioned in each concluded treaty. The first method is tax exemption and the second one is tax credit.

Tax exemption

The exemption method for avoiding double taxation is for the residence country to exclude foreign income from its tax base altogether. The country of source is then given the exclusive right to tax this income.

The comprehensive tax treaties Luxembourg signed are generally based, as far as Luxembourg is concerned, on the principle of the exemption of income that is taxable

in the other contracting state. This is without prejudice, however, to the granting of a tax credit for taxes deducted at source on income from capital investments abroad. The exemption method has the advantage that proof of payment of the foreign tax is not required in order to reduce the amount of tax payable in the country of residence, as this latter reduction is independent of the amount of tax paid abroad.

Luxembourg, when exempting foreign income, generally employs the exemption with the progression method. The taxation procedure, for the purpose of ensuring that the rate is progressive, defines that the exempt income is added to the Luxembourg income in order to determine the global tax rate. The latter rate is then applied to the income taxable in Luxembourg. As a result, the income taxable in Luxembourg is taxed at the rate corresponding to the total income of the taxpayer, taking into account his ability to pay tax.

Tax credit

This method reflects the concept that the resident remains liable to tax in the country of residence on his/her global income, however, credit for tax paid in the source country is given by the residence country against its domestic tax, generally up to the amount of domestic tax that is due in respect of the income concerned.

In the treaties concluded by Luxembourg, the credit method is generally used to avoid the double taxation of investment income.

For further details:
<http://www.impotsdirects.public.lu/conventions/index.html>

7 Registration fees



Capital duty was abolished with effect from 1 January 2009 and was replaced by registration fees, which are explained in this section.

Pursuant to the law of 19 December 2008, a fixed registration fee of €75 must be paid to incorporate a company.

In the event of a contribution of real estate or a contribution of moveable assets for payment, a proportional duty is payable in the manner set forth by Articles 4 and 5 of the law:

- The pure and simple contribution of a real-estate asset is subject to the registration fee of 0.5% + 2/10 and to the transcription fee of 0.50%
- The contribution for payment of a real-estate asset is subject to the registration fee of 5% + 2/10 and to the transcription fee of 1%

The contribution for payment of moveable assets is subject to the proportional duty as set by the taxation schedule of the law of 7 August 1920 as amended and completed by subsequent laws

8 Withholding tax

Dividends

15% of the gross dividend (exemption possible under the 'parent company and subsidiaries' regime and/or application of a reduced rate with countries having a treaty).

Interest

0% as a general rule (except payment to a natural person who is a resident in Luxembourg).

Royalties

0% as a general rule.

Distribution of liquidation proceeds

0%

Directors' fees

The tax regime applicable to directors' fees is provided by article 152 title 2 of the Luxembourg law on income tax. This regime provides that a withholding tax of 20% applies to the directors' fees gross amount and is creditable against the personal income tax due by the director.

The resident taxpayers must submit a tax return

whenever their income includes directors' fees exceeding €1,500.

However, regarding non-resident taxpayers' taxation, the 20% withholding tax is final if the director has no other Luxembourg-source professional income and if directors' fees do not exceed €100,000 per annum.

Finally, whenever directors' fees exceed €100,000, it is compulsory for the taxpayer to file a tax declaration. This leads to the application of the income tax schedule. As a result, the average tax rate is increased by at least 10% as compared to a withholding tax of 20% (for a single taxpayer).

*For further details:
Art. 146 et seq. LIR*

9.1. Transfer pricing

Since a few years now, the ultra-globalised environment is heading to a direction where transfer pricing (and the related arm's length principle) is on the top of the agenda for companies involved in intra-group transactions, supply of goods or services and payment thereof. The increasing volume of intra-group transactions (representing about two thirds of the total number) and the evolution of local regulations make transfer pricing planning and documentation a key risk management stone on the path of every company operating on a cross-border and intra-group basis.

Under the 'arm's length principle', intra-group transactions are treated by reference to the profit that would have arisen if the transactions had been carried out under comparable circumstances by independent parties. Based on this principle, the tax authorities are, in many jurisdictions, allowed to adjust the taxable basis of a company which would have unjustifiably deviated from market conditions. These adjustments can either result in an increase of the taxable income or in a reduction of the tax loss.

Luxembourg inserted two new legal provisions in its tax law stating that as from 1 January 2015, any taxpayers (among which PSF) carrying out intra-group transactions must be able to deliver, upon request, the appropriate transfer pricing documentation demonstrating that the remuneration applied with the related party is arm's length²⁷. Aside of this documentation obligation, a second provision is granting the possibility to the tax administration to adjust upwards or downwards the taxable basis of a taxpayer if the conditions prevailing within the transaction would deviate from market conditions.

As for other countries, the Luxembourg tax practice essentially relies on the OECD Transfer Pricing Guidelines which provide tax authorities and tax payers with a wide range of transfer pricing recommendations. In addition to the OECD Guidelines and the aforementioned circulars, there are general provisions in the Luxembourg income tax law²⁸ allowing tax authorities to raise tax or adjust the taxable basis where transfer pricing principles would not have been respected by the taxpayers. Foreign tax authorities are logically endowed with similar powers of enforcement.

Accordingly, since tax authorities are more and more sophisticated and increasing the number of their enquiries, it has become of extreme importance to Luxembourg companies (as well as for foreign ones) carrying out intra-group transactions and/or supply of services on a cross-border basis, as Luxembourg PSF for example, to ensure upfront compliance with transfer pricing aspects as well as monitor these on an on-going basis in order to avoid possible readjustments of the taxable base by tax authorities at a later stage.

Handling the transfer pricing matter by anticipation results in ensuring that functions carried out by a Luxembourg company are duly remunerated and provides valuable comfort to the taxpayers when transfer pricing justification enquiry knocks on the door.

²⁷ Art. 56 LITL and § 171 (3)

²⁸ Art. 56 LITL
Art. 164 (3) LITL

9.2. FATCA

In March 2010, the United States adopted new tax regulations within the framework of the Hiring Incentives to Restore Employment (HIRE Act), thus creating a new chapter in the American internal revenue code, the Foreign Account Tax Compliance Act (FATCA). FATCA aims for global transparency of U.S. account holders.

The United States wants all Foreign Financial Institutions (FFI) to report annually to the IRS on U.S. persons and their assets, as well as on certain types of entities (so-called Passive NFFE) and their controlling US persons.

The scope of FATCA is much broader than the Qualified Intermediary regime already familiar to certain financial intermediaries (and recently modified in function of FATCA), as it actually concerns a considerable number of financial players and payments. Based on the final regulations, the concept of a Foreign Financial Institution includes entities that:

- Accept deposits in the ordinary course of a banking or similar business
- Hold 'financial assets' for others as a 'substantial portion' of their business
- Are investment entities, which are defined as entities that primarily conduct as a business one or more of the following activities:

- (i) Primarily trading in money market instruments, foreign currency, foreign exchange interest rate and index instruments, transferable securities or commodity futures
- (ii) Individual or collective portfolio management
- (iii) Investing, administering or managing funds, money or financial assets on behalf of other persons ; or where
- (iv) The entities' gross income is primarily attributable to investing, reinvesting or trading and is managed by one of the above mentioned entities (depository, custodial institution or investment entity etc.)

In March 2010, the United States adopted new tax regulations within the framework of the Hiring Incentives to Restore Employment (HIRE Act), thus creating a new chapter in the American internal revenue code, the Foreign Account Tax Compliance Act (FATCA)



- Are certain insurance companies that issue or are obligated to make payments with respect to cash value insurance contracts or annuity contracts
- Are holding companies or treasury centres that (i) are part of an expanded affiliated group that includes a depository institution, custodian institution, insurance company or investment entity or (ii) are formed in connection with or availed by a collective investment vehicle, private equity fund, etc. or similar investment vehicle established with an investment strategy of investing, reinvesting or trading in financial assets

Through FATCA, the U.S. impose a punitive withholding tax of 30% for all financial intermediaries who do not comply with the FATCA obligations (which comes in addition to the current US internal withholding tax / Qualified Intermediary regime). This tax applies not only to direct U.S.-source (Fixed, Determinable, Annual or Periodic income or FDAP) income but also to proceeds from sales of assets that generate direct (and, possibly in the future, indirect) U.S. source income.

A participating FFI not only needs to exchange information with the IRS on U.S. persons but may also need to apply a 30% withholding on certain payments to non-participating FFIs and recalcitrant account holders (accounts inadequately identified to determine the status as a U.S. or non-U.S. person).

However, FFI located in Model 1 IGA jurisdictions (see below) will only apply the withholding tax on certain payments made to non-participating FFIs.

Certain non-financial foreign entities (i.e. Passive NFFE) must identify their substantial U.S. owners and provide withholding agents with a certification regarding their substantial U.S. owners to avoid the 30% withholding tax.

On 17 January 2013, the IRS and U.S. Treasury Department issued the final regulations setting out the IRS's interpretations of identification, reporting and withholding obligations under FATCA. These regulations were updated on 20 February 2014.

FATCA Key Dates: Legislation, IRS Guidance and obligation to withhold

FATCA Compliance action items		Dates
General compliance	Registration Portal Opening Date	19 August 2013
	Registration Deadline for first list FFI	5 May 2014
	First FFI list	2 June 2014
	Model 1 IGA initial registration date	22 December 2014
	Second FFI list	1 January 2015
	Transition Period for affiliated group rule	1 January 2016
New/preexisting accounts	FFI begin new account onboarding for individuals	1 July 2014
	Cutoff date to determine individuals preexisting account population	30 June 2014
	Initial account balance determination date for de-minimis rules and high value account rule	30 June 2014
	FFI complete preexisting Prima Facie FFI accounts (N/A in IGA Model 1 countries)	31 December 2014
	FFI begin new account onboarding for entities	1 January 2015
	Cutoff date to determine entities preexisting account population	31 December 2014
	FFI complete due diligence for preexisting high value accounts for individuals	30 June 2015
	FFI complete due diligence for all other preexisting accounts (individuals and entities)	30 June 2016
Chapter 3, QI/WP/WT agreements, and Foreign-targeted registered obligation rules	New expiration date for Qualified Intermediary, Withholding Partnership, and Withholding Trust agreements set to expire in 2014	30 June 2014
	Registration deadline to renew the QI agreement	5 May 2014
Withholding	Begin income withholding (excludes certain offshore payments of U.S. source income)	1 July 2014
	Begin gross proceeds withholding	TBD according to Luxembourg IGA
	Begin foreign - passthru payments withholding	TBD according to Luxembourg IGA
Reporting	Reporting due dates and calendar year(s) to report towards Luxembourg tax authorities	31 August 2015 (on calendar year 2014, regarding U.S. accounts identified by 31 December 2014) 30 June 2016 (regarding calendar year 2015, for U.S. accounts identified by 31 December 2015 and accounts held by non-participating FFIs)

Intergovernmental Agreements

A broader framework for international cooperation aimed at easing privacy concerns was initially announced in February 2012 in a Joint Statement between the U.S. and five major European countries (Germany, Spain, France, Italy and the UK). Meanwhile, 113 countries have signed or negotiated bilateral Intergovernmental Agreements (IGAs) with the US in order to implement FATCA in their jurisdictions.

The FATCA obligations of FFIs will vary depending on whether they are incorporated in a country not having signed an IGA, a country having signed Model 1 IGA (automatic exchange of information) or a country having signed a Model 2 IGA (automatic exchange of information with the IRS, completed with exchange upon demand).

On 28 March 2014, Luxembourg has signed its Model 1 IGA with the U.S.

On 27 March 2015, the Luxembourg draft law transposing this IGA was issued. The law has been voted on 1 July 2015 and was published on 29 July 2015.

The Luxembourg Tax Authorities also issued two FATCA circulars, dated 31 July 2015: one circular (ECHA 2) contains certain details of application of the IGA principles, and the second circular (ECHA 3) focuses on the technical details of the FATCA reporting format.

Meanwhile, Luxembourg Banking and Fund Industry associations (ABBBL and ALFI) have also published their guidelines and Q&A documents ("local guidelines") to implement FATCA.

Registration portal

The FFI registration portal has been opened on 19 August 2013.

Further to the announcement 2014-1 released by the IRS, entities located in an IGA Model 1 country (such as Luxembourg) had until 22 December 2014 to be registered.

Only once registrations are submitted as final, the IRS will assign Global Intermediary Identification Numbers (GIINs).

The portal is also used for the renewal of the QI Agreement.

New U.S. forms

The IRS has released final forms to certify the status U.S./non-U.S. and the classification for U.S. tax purposes (i.e. classification chapter 3 for QI purposes and chapter 4 for FATCA purposes); the most important of which are :

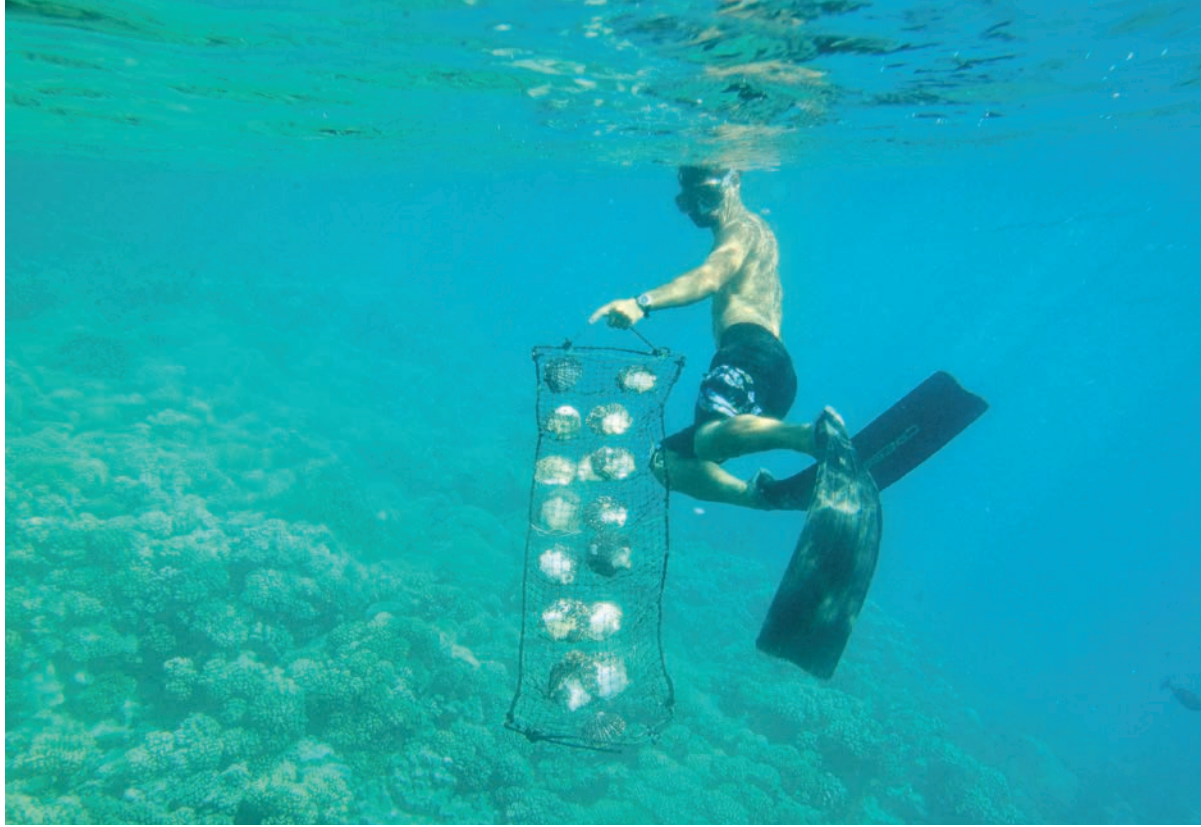
- W-8BEN and instructions – Certificate of Foreign Status for an effective Beneficial Owner for the purposes of declarations and withholding taxes for the United States (individuals)
- W-8BEN-E and instructions – Certificate of Foreign Status for an effective Beneficial Owner for the purposes of declarations and withholding taxes for the United States (entities)

These forms allow non-U.S. beneficiaries to confirm their status for the purposes of Internal Revenue Code (IRC) section 1441 and FATCA.

The IRS also published the following final forms:

- W-9 and instructions – Request for Taxpayer Identification Number for the purposes of tax and certification
- W-8 IMY and instructions – Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for the purposes of declarations and withholding taxes for the United States

The Luxembourg Banking Association has also issued a template of entity self-certification form, that can be used by financial institutions wishing to elaborate their own self-certification form for the purposes of FATCA.



9.3. Qualified Intermediary regime

In January 2001, following lengthy negotiations with the global financial services industry, the U.S. tax authorities introduced the QI regime. These regulations enable financial intermediaries to streamline administrative withholding tax procedures relating to the collection of U.S. source revenues.

More particularly, the QI reduces tax refund applications by applying reduced withholding rates, thus lightening the administrative workload while preserving the banking secrecy for non-U.S. investors. Although the QI is required to reveal the identity of U.S. beneficial owners, the identity of non-US clients receiving U.S. income is not revealed. In return, the intermediary is subject to a complex set of rules and procedures regarding documentation of the beneficial owners, withholding tax and reporting to the U.S. tax authorities. Until recently, compliance with the provisions of the contract was regularly checked by an independent Internal Revenue Service (IRS)-approved auditor, and this audit was conducted on the basis of agreed-upon procedures (Revenue Procedure 2002-55).

In Luxembourg, many banks and equally certain PSF have adopted this status.

On 1st July 2016, the IRS released Notice 2016-42, updating prior guidance applicable to foreign intermediaries seeking to enter into a QI agreement with the IRS or such intermediaries planning to continue QI operations.

The modified QI agreement reflects the recent updates to Treasury regulations under chapters 3, 4 and 61 of the Internal Revenue Code. The updated requirements contained in this Notice are applicable to QIs on or after 1st June 2017.

The most substantial change introduced by this new QI agreement is the replacement of the external audit requirement with an internal compliance program, consistent with FATCA. As a result, the QI is required to designate a responsible officer to oversee compliance with the agreement and to make periodic certifications to the IRS. The agreement sets out the specific areas that are required to be covered by the certifications. The periodic certifications are required to be made every three years. Though an external QI audit is not required any longer, it may be recommended for responsible officers to seek assurance through an external health check though.

The new QI agreement expires on 31 December 2016.

For further details:

Notice 2001-4 (I.R.B. 2001-2)

Notice 2001-43 (I.R.B. 2001-30)

Notice 2002-66 (I.R.B. 2002-42)

Revenue Procedure 2003-64, Appendix 3 (I.R.B. 2003-32)

Notice 2016-42

9.4. Automatic exchange of information— Savings Directive and CRS based reporting

According to European Council Directive 2003/48/EC on the taxation of income from savings (the 'EU Savings Directive'), Member States must provide to the tax authorities of another Member State details of any cross-border interest paid by a 'paying agent' to a beneficial owner whose permanent address is in a different Member State, or to certain types of entities ('residual entities').

European 'paying agents' must send a statement of all cross-border interest payments and identification information on the beneficial owners of these payments to their respective tax authorities. These tax authorities will then automatically exchange this information with their peers in other jurisdictions.

A number of non-European countries (Switzerland, Liechtenstein, Monaco, San Marino and Andorra) and associated territories such as Jersey, Guernsey, Isle of Man and Cayman Islands, have also adopted similar or equivalent measures to the EU Savings Directive.

More than 50 'early adopter' countries are aiming to apply exchange of information (based on the 'Common Reporting Standard' or 'CRS') as from 2016 under this Convention

Initially three European Union Member Countries were allowed to apply withholding on savings income instead of exchange of information during a transitional period: Belgium, Luxembourg and Austria.

Meanwhile, Belgium decided unilaterally to abandon the savings withholding tax as from 1 January 2010. Luxembourg unilaterally abandoned savings withholding tax as from 1 January 2015, and consequently automatically exchanges information under the EU Savings Directive as from this date.

In jurisdictions that operate a savings withholding tax system, paying agents must offer the beneficial owner an alternative withholding procedure. The Directive stipulates that at least one of two options must be available (i) information exchange procedure, and/or (ii) tax certificate procedure. The savings withholding tax rate is 35% (since 1 July 2011) and is creditable or deductible to or from the beneficial owner's account via its tax return in his/her country of residence.

Note that after a review process of several years, the EU Savings Directive in its amended version has been approved by European Council in 2014.

The amended Savings Directive contains four main changes:

- The definition of 'residual entity' is extended to include all entities that are not subject to effective tax
- The Directive must be applied to beneficiaries of non-EU 'look through' entities (such as certain trusts, foundations or corporate entities in low tax jurisdictions)
- Its scope is extended to apply to products that are similar to savings products (certain structured products and life insurance products)
- Its scope is extended to all Funds under supervision (including Funds excluded under the current Directive such as SIF-SICAV, SICAV part II and SICAR)

The amended Savings Directive will come into effect on 1 January 2017.

However in view of the developments related to the Common Reporting Standard (see below), the EU Savings Directive took effect on 1 January 2016. The Directive 2015/2060 repealing the EU Savings Directive as from this date (with certain transitional measures for Austria) was published in the Official Journal of the European Union on 18 November 2015. The Directive was transposed into Luxembourgish law by the law of 23 July 2016.

Common Reporting Standard (CRS)

The OECD Convention on Mutual Administrative Assistance in Tax Matters, as amended in 2010 (and which has been signed by Luxembourg amongst more than 90 other countries) will give rise to additional automatic exchange of information obligations in relation with "CRS Partner" jurisdictions, in respect of tax residents of the other Partner jurisdiction.

More than 50 'early adopter' countries are aiming to apply exchange of information (based on the 'Common Reporting Standard' or 'CRS') as from 2016 under this Convention. Other participating jurisdictions announced to apply the CRS as from 2017, or did not formally announce yet as from when they will apply CRS reporting.

The CRS has been inspired by FATCA Model 1 IGAs, and the financial institutions (FIs) impacted as well as the methodologies and reporting principles are consequently similar (though not identical; as certain important differences need to be taken into account as well when implementing CRS reporting).

Currently, two legal instruments relevant for Luxembourg FIs exist:

- Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory exchange of information in the field of taxation (the "DAC2"), that is applicable as from 1 January 2016, imposing CRS based reporting amongst all Member States as from 2017 on calendar year 2016 (with certain transitional measures for Austria). EU Member States had to transpose this Directive before the end of 2015. The directive was transposed into Luxembourgish law by the law of 18 December 2015.
- The Agreement reached between the EU and Switzerland in May 2015, amending the existing EU-Swiss agreement on savings taxation. This agreement, provided it is transposed into local law, will be applicable as from 1 January 2017 on a reciprocal basis, and will impose automatic exchange of information based on the CRS as from 2018 regarding calendar year 2017 (by Swiss FIs on tax residents of an EU Member State, but also by EU based FIs on tax residents of Switzerland).

To be noted that similar agreements will be concluded rapidly, on a bilateral or multilateral basis, between partner jurisdictions to the above-mentioned OECD Multilateral Convention and its Protocol.

Luxembourg FIs (including, amongst others, banks, funds, life insurers, but also certain holding companies and certain PSF) should thus not only prepare for the application of automatic exchange of information under the DAC2 and the EU-Swiss Agreement referred to above, but also closely monitor additional CRS based agreements that will be concluded between the EU (or certain EU Member States) and non-EU CRS partner jurisdictions.

Certain of these agreements may possibly contain specificities that should be taken into account in implementation projects.

For further details:

*Savings Directive 2003/48/EC
law of 21 June 2005 transposing Directive 2003/48/EC Circular
no. 1 RIUE of 26 June 2005
law of 21 June 2005 transposing to Luxembourg law Directive
2003/48/EC of 3 June 2003
Directive 2015/2060 of 10 November 2015
Law of 23 July 2016 transposing Directive 2015/2060
Council of the European Union OECD Convention on Mutual
Administrative Assistance in Tax Matters
Implementation handbook on Automatic Exchange of Financial
Account Information
Council Directive 2014/107/EU of 9 December 2014 amending
Directive 2011/16/EU as regards mandatory exchange of
information in the field of taxation
Law of 18 December 2015 transposing Directive 2014/107/EU*

9.5. Taxation of savings income

The law of 23 December 2005 which took effect on 1 January 2006 was based on the law of 21 June 2005 which transposed European Union Council Directive 2003/48/ EC of 3 June 2003 into Luxembourg law regarding the taxation of savings income received in the form of interest payments (hereinafter the 'law of 21 June 2005'). This law introduced a final withholding tax regime for certain types of interest income from fixed-income investments.

The main types of income concerned are:

- Interest from savings account
- Interest from current accounts and term accounts
- Interest on bonds

The law provides a rate of 10% on interest paid by a paying agent within the meaning of the law, based in Luxembourg to beneficiaries resident in Luxembourg.

Interest that is subject to this final withholding tax should in principle not be declared in the beneficiary's personal tax return. However, there are certain exceptions where this withholding is not final, and the income should still be declared (notably if the income relates to a commercial, agricultural or forestry business, or a professional occupation).

The 10% flat-rate tax can also apply if the paying agent is based in the European Economic Area (European

Union, Iceland, Liechtenstein and Norway) or in a State that has signed an agreement with Luxembourg which includes measures equivalent to those in the Savings Directive. Taxpayers resident in Luxembourg who want to opt for the 10% flat-rate tax must file a separate return no later than 31 March after the end of the calendar year in which the interest was received.

In addition, starting 1 January 2009, interest paid by home-purchase savings plans are exempt from tax. This applies to housing savings plans recognised in Luxembourg or in any other Member State of the European Union.

Income that is not subject to the 10% flat-rate withholding is taxable at progressive rates as referenced in the taxpayer's normal tax return (with a small exemption threshold).

The law of 25 November 2014 clarified the terms of the exchange of information on demand.

An update of procedures and a training course for staff should be planned by PSF liable to receive requests for tax information under these agreements. The list of treaties containing provisions relative to exchanges of information for tax purposes is available for consultation at <http://www.impotsdirects.public.lu/conventions/index.html>

For further details:

*Contributions Director circular
Flat-rate discharge payment (relib No.1) of 24 January 2006
law of 23 December 2005
Draft law No 6680*



9.6. Exchange of information upon request

The exchange of information on demand is one of the three main methods of exchanging information along with the automatic and spontaneous exchange.

An exchange of information on demand occurs when a jurisdiction requests another jurisdiction to provide information on a case-by-case basis. To answer such demand, the responding jurisdiction may ask the holder of the information (bank, taxpayer, etc.) to provide information for it to send back to the requesting jurisdiction.

The procedures and the conditions of exchanging information were clarified in the new agreements/ protocols signed by Luxembourg, by the law of 31 March 2010, as amended by the law of 25 November 2014 (entered into force on 1 December 2014) that significantly modified the procedure that has to be followed upon the reception of a request.

The main changes introduced by this law are as follows:

- The Luxembourg tax administration will limit its role to verify the formal validity of a request for information
- Confidentiality will be enhanced since the Luxembourg tax authorities will not authorize the holder of the information to inform the taxpayer of the request
- No legal proceedings will be possible (as was previously the case) in Luxembourg against the instruction of the Luxembourg tax authorities to provide the requested information

9.7. EU Directive relating to administrative cooperation in tax matters

The Member States of the European Union agreed a new wording for Directive 2011/16/EU at the Council meeting of 15 February 2011 relating to administrative cooperation in taxation matters, which supersedes Directive 77/799/EEC. The new Directive generalises information exchange on request and automatic exchange of information amongst EU Member States but also contains provisions regarding spontaneous exchange of information, and regarding automatic exchange of information amongst tax authorities on, amongst others, salaries, director's fees, real estate and insurance.

9.8. System of exemption for intellectual property rights

To develop its appeal, Luxembourg has introduced an attractive tax regime for income derived from intellectual property rights.

In this respect, 80% of income resulting from the exploitation of intellectual property rights acquired or registered after 31 December 2007 and 80% of the capital gains arising from such assets are exempt. This regime was abrogated since 1st July 2016 and cannot apply for new rights. However this regime still applies for a transitional period until 30 June 2021 under certain conditions. A mechanism exchanging the information on the beneficiaries was introduced as well.

*For further details:
Art.50 bis LIR
Grand-ducal regulation of 21 December 2007
Circular no. 50bis/1 LIR of 5 March 2009*

9.9. BEPS (Base Erosion and Profit Shifting)

At the demand of the G8 and the G20, the OECD launched in July 2013 extensive action programs to fight against international tax evasion and harmful tax competition.

These actions, which are 15 in number, are neither more nor less recommendations whose normative force varies, were approved by the OECD and the G20 in October and November 2015. These are articulated around three central concerns: more coherence, more substance and more transparency in international tax.

The procedures and the conditions of exchanging information were clarified in the new agreements/ protocols signed by Luxembourg and by the law of 31 March 2010

More coherence: at the coordination level of the national tax systems on income communities and their interactivity. What is aimed more particularly, is the lack of taxation of certain income from the cumulative application of two contradictory tax regimes on the same stream i.e. prevent interest expense deductible in one country, to be reclassified as dividends in another country and as such exempted in the other countries (so-called 'hybrid' structures).

One of the actions also aims to limit the deduction of artificial burdens on companies resident in countries where corporate tax is high.

A better framework for certain support schemes is also provided, especially for income from intellectual property ('IP Box regime'). The recommended approach would be to establish a link between research and development expenditure in a country and the income associated with it.

More substance: the desire here is to ensure that profits are taxed where the activities that generated them are located. It specifically targets the treaty shopping and the 'letter box companies' set to benefit from conventional exemptions. To this end, it is expected to establish a multilateral instrument, which will aim once signed to simultaneously edit all conventions preventing double taxation.

The transfer pricing rules will be reviewed in depth and made more stringent.

More transparency: new reporting obligations and statements for companies. This relates to documentation requirements for transfer pricing, the introduction of an obligation to report certain data relating to activities performed and the taxes paid in each country ('country by country reporting') and obligation to declare 'spontaneously' any tax planning in place. Information exchange between administrations will be strengthened, beginning with the systematic communication between countries concerned of any advance ruling. An automatic exchange of rulings was as well organized at European level by the Directive 2015/2376 along with an automatic exchange of information country by country by the Directive 2016/881.

In addition, some of the BEPS recommendation have been reproduced at European level by the Directive 2016/1164, establishing rules to fight against tax evasion and having a direct impact on the functioning of the internal market. This Directive transposes namely certain rules in relation with interest deductibility limitation, supervised foreign entities, and certain hybrid arrangements along with a general anti-abuse clause. These rules should apply as from 1st January 2019 (with some exceptions/terms depending on the provisions).

10 Personal tax

Cash compensation represents all forms of cash payments made to an employee for his services, typically base salary plus bonuses and other cash incentives

If an individual works for a company in a non-executive capacity serving as a director on its board of directors (or equivalent), he/she is considered to be self-employed for Luxembourg tax purposes and will receive director's fees. This income is subject to a particular tax regime which has been highlighted in section 8.

Alternatively, if an individual works for a company and is involved in the day-to-day management or operations of the company, he/she would be considered as an employee and his/her income would be treated as employment income.

Employment income

As defined by Article 95 of the Luxembourg income tax law, there are two forms of employment income: cash compensation and benefits in kind.

Cash compensation represents all forms of cash payments made to an employee for his services, typically base salary plus bonuses and other cash incentives.

The basis of taxation of benefits in kind is founded on the general rule that all benefits and perquisites made available to employees and assessable under a given revenue category are considered to be income and therefore subject to tax.

Employment income is subject to tax at progressive rates ranging from 0% to 40% and subject to monthly withholding taxes and social security.

Impatriate tax regime

In order to increase the attractiveness of Luxembourg, in 2011 the Luxembourg tax authorities have introduced a favourable tax regime for highly skilled employees coming to Luxembourg. The conditions of this special treatment were relaxed in May 2013 and the scope of the regime was extended in January 2014. The new scope applies to expatriates who arrived in Luxembourg as of 1st January 2014. By expatriates, the Luxembourg tax authorities mean employees who are part of an international group and who are temporarily seconded to Luxembourg, and the employees directly recruited abroad by a company which is located in Luxembourg or by a company established in another EU/EEA Member State.

Provided that the conditions of the regime are met, a number of expenses that are typically incurred by the employer in the context of expatriation (eg moving expenses of the employee and his family, expenses related to their move to Luxembourg, school fees of children, rent, travel to the country of origin, the differential cost of living, tax equalization) and are therefore in principle taxable as benefits in kind at the level of the employee benefit from a total or partial tax

exemption. The exemption applies to the employee or the employer (assuming the tax is borne by the employer as part of a tax equalization policy). Moreover, these expenses are considered as operating expenses at the level of the employer. The employee and employer can benefit from the regime until the end of the fifth calendar year following the year of the beginning of the employee's activity in Luxembourg.

Withholding tax and formalities

An employer has the obligation to withhold taxes and social security from an employee's remuneration each time they pay a salary to the employee. In order to avoid penalties, timely payments are required.

Each year, employees receive or must request a tax card from the Luxembourg tax authorities. This tax card needs to be provided to their employer to ensure the correct collection and reporting of the Luxembourg withholding tax.

As of 1st January 2015, the tax card has not to be returned to the tax administration any longer. It has to be archived by the employer in order to be provided to the tax administration in case of wage tax audit.

Tax administration and rates

In Luxembourg, the tax year closes on December 31. Legally, a taxpayer must file a tax return by March 31 of the year following the tax year if the taxable income exceeds certain thresholds. In practice, late filing not exceeding a couple of months is usually acceptable by tax authorities without penalties. Returns may not be required from employees who are taxed at source.

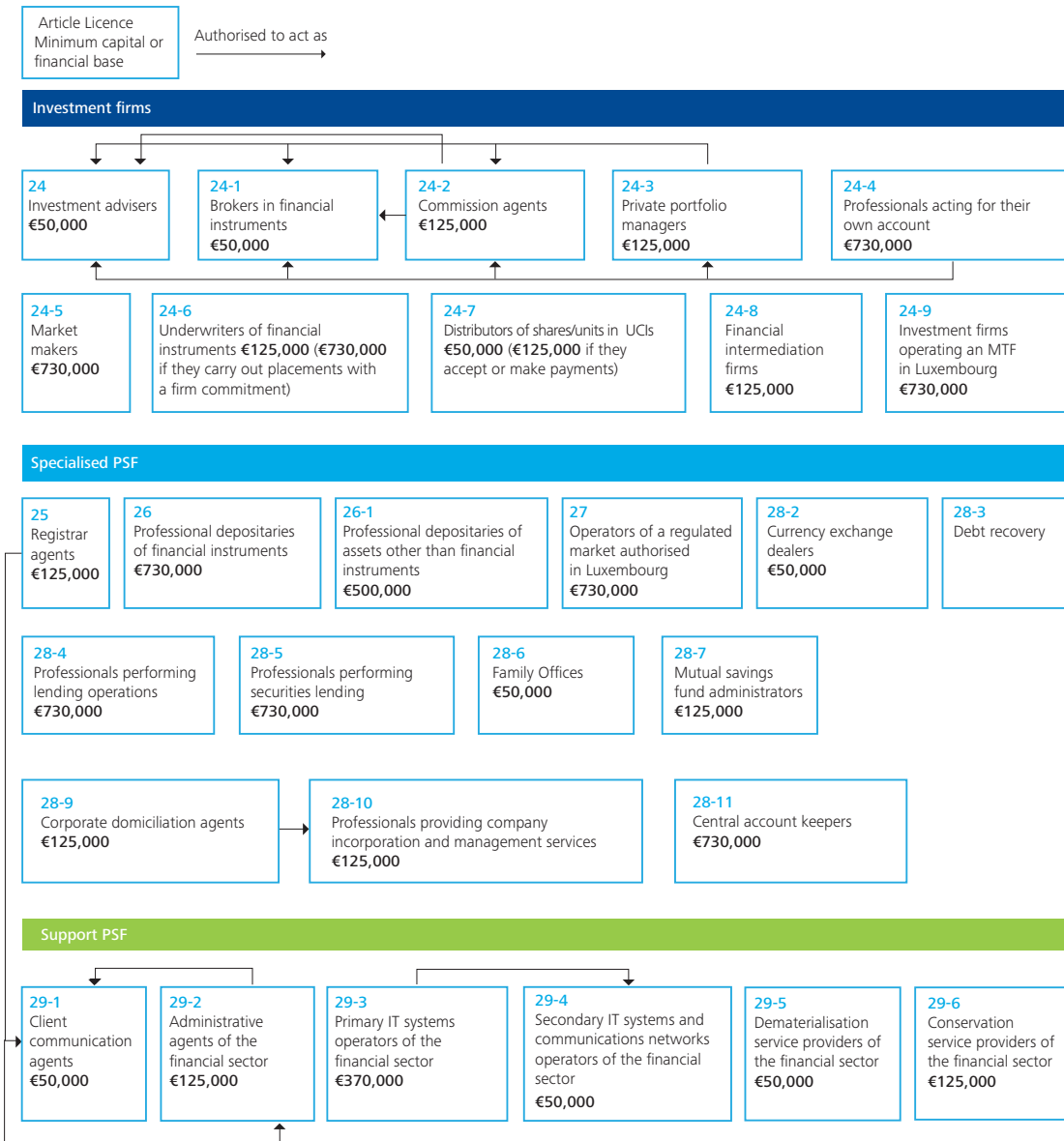


PSF PROFILE ANALYSIS AND SPECIFIC DATA



Licences in detail

The following table schematically sets out the various categories, as well as the different licence types of PSF:



1 Investment firms

Article 24	Investment advisers
Article 24-1	Brokers in financial instruments
Article 24-2	Commission agents
Article 24-3	Private portfolio managers
Article 24-4	Professionals acting for their own account
Article 24-5	Market makers
Article 24-6	Underwriters of financial instruments
Article 24-7	Distributors of shares/units in UCIs
Article 24-8	Financial intermediation firms
Article 24-9	Investment firms operating an MTF in Luxembourg

a. Specific information

Although this information is specified in the first chapter of this report, it is interesting here to consolidate the points specific to the investment firm status compared to the other categories of PSF.

Investment firms are indeed subject to more extensive licensing conditions and to additional obligations:

1. Participation in the Investor Compensation Scheme Luxembourg (Art. 22-1 of the Law)
2. The organisational requirements set forth by Article 37-1 of the Law
3. The Compliance function
4. The risk management function
5. Prudential ratios
6. Minimum equity amounts higher than other PSF statuses
7. Issuance of an analytical or 'long form' report

Article 24-10 has been introduced in 2016 which is not a licence as such, but it specifies that CRR investment firms cannot be physical persons. CRR are professionals within the meaning of Article 4, paragraph 1, point 2) of Regulation (EU) No 575/2013, being primarily professionals holding directly their clients' assets.

b. Fast-reference sheets and additional data per status

Individual sheet 1

Investment advisers

Definition	Investment advisers shall be professionals engaged in the business of providing personal recommendations to a client, either upon request of that client or at the initiative of the investment firm, in respect of one or more transactions relating to financial instruments.
Legal reference	Article 24 of the Law
Minimum capital	€50,000
Authorised form	Physical* or legal person
Authorisation procedure	The licence is subject to obtaining a written authorisation from the Ministry of Finance which handles the licence documentation filed to obtain the desired status, including the necessary basic information (cf. I.2)
Professional indemnity insurance	€1,000,000 per claim and €1,500,000 per year
Main applicable CSSF regulations (Reg.) and circulars	00/17 (compensation scheme), 03/113 (long form), 07/290 (prudential ratios), 07/301 (ICAAP), 07/307 (MiFID), 09/403 (liquidity), 10/437 (remuneration), 11/506 (stress tests), 12/552 (governance), Reg. 12-02 (AML), 13/554 (IT), Reg. 13-02 and 14/589 (complaints), Regs 14-01, 15-01 and 15-02 (CRR/CRD IV / FINREP)

Additional information

The law of 21 December 2012 has introduced a change in scope, including the activity of adviser of undertakings for collective investment referred to in the modified law of 17 December 2010 or of specialised investment funds referred to in the modified law of 13 February 2007. Nevertheless, if they do not provide personalised recommendations to clients who are investors and if they are not subject to the provisions governing the provision of investment services arising from the legislation relating to markets in financial instruments, these entities, which only give advice inside the group of undertakings for collective investment and specialised investment funds to which they belong, do not need an authorisation pursuant to Article 24 of the Law.

The notion of personal recommendations covers two key points:

1. The recommendation concerns dedicated transactions on financial instruments (purchase, sale, subscriptions, swap, etc.) or rights relating to such financial instruments
2. The personal nature of the recommendation. The recommendation is thus intended for a given person, whether investor or investor agent, according to the specific situation of the investor in question

The activity of Investment advisers is limited to providing personal recommendations and does not include the implementation of such advice.

As specified in Article 24 of the Law, the following are not covered:

- A business of merely providing information
- General recommendations about financial instruments that are disclosed via distribution channels or intended for the public

- The disclosure of information published in the press
- The simple explanation of the risks and advantages of one or more given financial instruments
- The production of performance rating tables of financial instruments compared to published reference indicators

* subject to not being CRR

Individual sheet 2

Brokers in financial instruments

Definition	Financial instrument brokers shall be professionals engaged in the business of accepting and transmitting, on behalf of clients, orders relating to one or more financial instruments without holding any clients funds or financial instruments. Such activity shall also include bringing together two or more parties thereby bringing about a transaction between those parties.
Legal reference	Article 24-1 of the Law
Minimum capital	€50,000
Authorised form	Physical* or legal person
Authorisation procedure	The licence is subject to obtaining a written authorisation from the Ministry of Finance which handles the licence documentation filed to obtain the desired status, including the necessary basic information (cf. I.2)
Professional indemnity insurance	€1,000,000 per claim and €1,500,000 per year
Main applicable CSSF regulations (Reg.) and circulars	00/17 (compensation scheme), 03/113 (long form), 07/290 (prudential ratios), 07/301 (ICAAP), 07/307 (MiFID), 09/403 (liquidity), 10/437 (remuneration), 11/506 (stress tests), 12/552 (governance), Reg. 12-02 (AML), 13/554 (IT) , Reg. 13-02 and 14/589 (complaints), Reg. 14-01 (CRR/CRD IV / FINREP)
Status-specific CSSF circular	93/102 (brokers)
Additional information	Brokers in financial instruments registered under the Directive on insurance intermediation must also be licensed by the <i>Commissariat aux Assurances</i> to carry on this type of business.

* subject to not being CRR

Commission agents

Definition	Commission agents shall be professionals engaged in the business of executing on behalf of investors, orders relating to one or more financial instruments. Execution of orders on behalf of clients shall mean acting to conclude agreements to buy or sell one or more financial instruments on behalf of clients.
Legal reference	Article 24-2 of the Law
Licence granted automatically	Investment adviser (Article 24) and Brokers in financial instruments (Article 24-1)
Minimum capital	€125,000
Authorised form	Legal person
Authorisation procedure	The licence is subject to obtaining a written authorisation from the Ministry of Finance which handles the licence documentation filed to obtain the desired status, including the necessary basic information (cf. I.2)
Professional indemnity insurance	€0
Main applicable CSSF regulations (Reg.) and circulars	00/17 (compensation scheme), 03/113 (long form), 07/290 (prudential ratios), 07/301 (ICAAP), 07/307 (MiFID), 09/403 (liquidity), 10/437 (remuneration), 11/506 (stress tests), 12/552 (governance), Reg. 12-02 (AML), 13/554 (IT), Reg. 13-02 and 14/589 (complaints), Regs 14-01, 15-01 and 15-02 (CRR/CRD IV / FINREP)
Status-specific CSSF circular	93/102 (commission agents)

Private portfolio managers

Definition	Private portfolio managers shall be professionals engaged in the business of managing, on a discretionary and individual basis, investment portfolios including one or more financial instruments, under the terms of a mandate given by the client.
Legal reference	Article 24-3 of the Law
Licence granted automatically	Investment adviser (Article 24), Brokers in financial instruments (Article 24-1) and Commission agents (Article 24-2)
Minimum capital	€125,000
Authorised form	Legal person
Authorisation procedure	The licence is subject to obtaining a written authorisation from the Ministry of Finance which handles the licence documentation filed to obtain the desired status, including the necessary basic information (cf. I.2)
Professional indemnity insurance	€0
Main applicable CSSF regulations (Reg.) and circulars	00/17 (compensation scheme), 03/113 (long form), 07/290 (prudential ratios), 07/301 (ICAAP), 07/307 (MiFID), (liquidity), 10/437 (remuneration), 11/506 (stress tests), 12/552 (governance), Reg. 12-02 (AML), 13/554 (IT), Reg. 13-02 and 14/589 (complaints), Regs 14-01, 15-01 and 15-02 (CRR/CRD IV / FINREP)
Status-specific CSSF circular	91/78 (segregation of assets)

Additional information

Asset management involves specific notions and requirements which should be explained in detail:

- Private portfolio managers manage their clients' assets, under a mandate, i.e. they act on behalf and for the account of the client
- Private portfolio managers may not receive or keep assets belonging to their clients in deposit. These client assets must be deposited with an authorised custodian supervised by official authorities and do not form part of the collective assets of the PSF in the event of liquidation. Private portfolio managers must enter their clients' assets in accounts separate from those relating to their own assets
- Discretionary asset management implies that private portfolio managers make decisions as to the investment of their clients' assets
- As part of its business, the manager must enter into a management agreement with the client. This written management agreement must specify all the accounts and other assets belonging to the client to which it relates. Under no circumstances may the private portfolio manager dispose in its own favour of clients' assets. In addition, the management agreement must highlight the objective of the portfolio management, the nature of authorised transactions, the information to be disclosed to the account holder, and the manager's method of payment, the term of the agreement and the termination procedure
- Private portfolio managers may incidentally grant their clients Lombard loans, provided that this activity is covered by their licence

Professionals acting for their own account

Definition	Professionals acting for their own account shall be professionals engaged in the business of the proprietary trading of own funds in one or more financial instruments in order to engage in dealings, where they provide in addition investment services or conduct in addition investment activities or deal on own account outside a regulated market or an MTF, on an organised, frequent and systematic basis in order to engage in dealings with third parties.
Legal reference	Article 24-4 of the Law
Licence granted automatically	Investment adviser (Article 24), Brokers in financial instruments (Art. 24-1), Commission agents (Art. 24-2) and Private portfolio managers (Art. 24-3)
Minimum capital	€730,000
Authorised form	Legal person
Authorisation procedure	The licence is subject to obtaining a written authorisation from the Ministry of Finance which handles the licence documentation filed to obtain the desired status, including the necessary basic information (cf. I.2)
Professional indemnity insurance	€0
Main applicable CSSF regulations (Reg.) and circulars	00/17 (compensation scheme), 03/113 (long form), 07/290 (prudential ratios), 07/301 (ICAAP), 07/307 (MiFID), 09/403 (liquidity), 10/437 (remuneration), 11/506 (stress tests), 12/552 (governance), Reg. 12-02 (AML), 13/554 (IT), Reg. 13-02 and 14/589 (complaints), Regs 14-01, 15-01 and 15-02 (CRR/CRD IV / FINREP)

Additional information

Trading for one's own account is an investment activity within the meaning of the MiFID. However, this activity is subject to the MiFID provisions only when it is carried on together with another investment service or activity. On the contrary, persons managing their own assets without providing any investment service or activity other than trading for one's own account do not fall within the scope of the Law, unless they are market makers.

Individual sheet 6

Market makers

Definition	Market makers shall be professionals engaged in the business of presenting themselves on the financial markets and on a continuous basis as being willing to deal for their own account by buying and selling financial instruments against their proprietary capital at prices defined by them.
Legal reference	Article 24-5 of the Law
Licence granted automatically	None
Minimum capital	€730,000
Authorised form	Legal person
Authorisation procedure	The licence is subject to obtaining a written authorisation from the Ministry of Finance which handles the licence documentation filed to obtain the desired status, including the necessary basic information (cf. I.2)
Professional indemnity insurance	€0
Main applicable CSSF regulations (Reg.) and circulars	00/17 (compensation scheme), 03/113 (long form), 07/290 (prudential ratios), 07/301 (ICAAP), 07/307 (MiFID), 09/403 (liquidity), 10/437 (remuneration), 11/506 (stress tests), 12/552 (governance), Reg. 12-02 (AML), 13/554 (IT), Reg. 13-02 and 14/589 (complaints), Regs 14-01, 15-01 and 15-02 (CRR/CRD IV / FINREP)

Underwriters of financial instruments

Definition	Financial instrument underwriters shall be professionals engaged in the business of underwriting financial instruments and/or placing such instruments with or without underwriting.
Legal reference	Article 24-6 of the Law
Licence granted automatically	None
Minimum capital	€125,000 or €730,000 in the event of placements with underwriting
Authorised form	Legal person
Authorisation procedure	The licence is subject to obtaining a written authorisation from the Ministry of Finance which handles the licence documentation filed to obtain the desired status, including the necessary basic information (cf. I.2)
Professional indemnity insurance	€0
Main applicable CSSF regulations (Reg.) and circulars	00/17 (compensation scheme), 03/113 (long form), 07/290 (prudential ratios), 07/301 (ICAAP), 07/307 (MiFID), 09/403 (liquidity), 10/437 (remuneration), 11/506 (stress tests), 12/552 (governance), Reg. 12-02 (AML), 13/554 (IT) Reg. 13-02 and 14/589 (complaints), Regs 14-01, 15-01 and 15-02(CRR/CRD IV / FINREP)

Distributors of UCI units

Definition	Distributors of shares/units in UCIs shall be professionals engaged in the business of the distribution of the shares/units of Undertakings for Collective Investment licensed for distribution in Luxembourg.
Legal reference	Article 24-7 of the Law
Licence granted automatically	None
Minimum capital	€50,000 or €125,000 if the distributor accepts or makes payments
Authorised form	Legal person
Authorisation procedure	The licence is subject to obtaining a written authorisation from the Ministry of Finance which handles the licence documentation filed to obtain the desired status, including the necessary basic information (cf. I.2)
Professional indemnity insurance	€0
Main applicable CSSF regulations (Reg.) and circulars	00/17 (compensation scheme), 03/113 (long form), 07/290 (prudential ratios), 07/301 (ICAAP), 07/307 (MiFID), 09/403 (liquidity), 10/437 (remuneration), 11/506 (stress tests), 11/506 (stress tests), 12/552 (governance), Reg. 12-02 (AML), 13/554 (IT), Reg. 13-02 and 14/589 (complaints), Regs 14-01, 15-01 and 15-02(CRR/CRD IV / FINREP)

Additional information

This activity is covered by the European passport. The corresponding investment service consists in receiving and transmitting orders on financial instruments and in particular UCI units. Simply recording orders on UCI units does not require any licence as a distributor of UCI units.

Distributors of UCI units authorised to accept or make payments are ipso jure authorised to also engage in the activity as Registrar. In this case however, the European passport covers only the receipt and transmission of orders covered by the status as distributor of UCI units.

Financial intermediation firms

Definition

Financial intermediation firms shall be professionals engaged in the business of:

- a. Providing personal recommendations to a client, either upon its request or at their own initiative, in respect of one or more transactions relating to financial instruments or insurance products
- b. Accepting and transmitting, on behalf of clients, orders relating to one or more financial instruments or insurance products without holding any client funds or financial products. Such activity shall also include bringing together two or more parties thereby bringing about a transaction between those parties
- c. Performing, on behalf of associated investment advisers or brokers in financial instruments and/or insurance products, under a sub-contract, the administrative and client reporting services inherent in the professional activities of those associates

Legal reference

Article 24-8 of the Law

Licence granted automatically

None

Minimum capital

€125,000

Authorised form

Legal person

Authorisation procedure

The licence is subject to obtaining a written authorisation from the Ministry of Finance which handles the licence documentation filed to obtain the desired status, including the necessary basic information (cf. I.2)

Professional indemnity insurance

€ 2,000,000 per claim and €3,000,000 per year

Main applicable CSSF regulations (Reg.) and circulars

00/17 (compensation scheme), 03/113 (long form), 07/290 (prudential ratios), 07/301 (ICAAP), 07/307 (MiFID), 09/403 (liquidity), 10/437 (remuneration), 11/506 (stress tests), 12/552 (governance), Reg. 12-02 (AML), 13/554 (IT), Reg. 13-02 and 14/589 (complaints), Regs 14-01, 15-01 and 15-02 (CRR/CRD IV / FINREP)

Additional information

In addition, financial intermediation firms may provide ancillary services such as investment research or making general recommendations about transactions on financial products, provided that such ancillary services are explicitly covered by their licence.

Investment firms operating an MTF in Luxembourg

Definition	Investment firms operating an MTF in Luxembourg shall be professionals engaged in the business of operating an MTF in Luxembourg apart from professionals who are market operators within the meaning of the Law on Markets in Financial instruments.
Legal reference	Article 24-9 of the Law
Licence granted automatically	None
Minimum capital	€730,000
Authorised form	Legal person
Authorisation procedure	The licence is subject to obtaining a written authorisation from the Ministry of Finance which handles the licence documentation filed to obtain the desired status, including the necessary basic information (cf. I.2)
Professional indemnity insurance	€0
Main applicable CSSF regulations (Reg.) and circulars	00/17 (compensation scheme), 03/113 (long form), 07/290 (prudential ratios), 07/301 (ICAAP), 07/307 (MiFID), 09/403 (liquidity), 10/437 (remuneration), 11/506 (stress tests), 12/552 (governance), Reg. 12-02 (AML), 13/554 (IT), Reg. 13-02 and 14/589 (complaints), Regs 14-01, 15-01 and 15-02 (CRR/CRD IV / FINREP)

Additional information

Difference between a regulated market and a MTF

Regulated markets differ from multilateral trading systems (MTF) due above all to the fact that the admission of an instrument for trading on a regulated market triggers the application of a number of related provisions as follows:

- Provisions relating to the publication of a prospectus in the event of offering securities to the public or in order to admit securities for trading
- Provisions relating to the harmonisation of transparency requirements concerning the information about issuers whose securities are admitted for trading on a regulated market
- Provisions (prohibitions and obligations) relating to market abuse

These requirements are designed to provide investors with a high standard of protection harmonised at European level

Operating an MTF is an investment activity within the meaning of MiFID and MTFs are operated by a market operator within the meaning of MiFID, a credit institution or an investment firm. **Credit institutions are authorised to operate an MTF in Luxembourg under their banking licence and require no separate licence for this investment activity.**

2 Specialised PSF

- Article 25 Registrar agents
- Article 26 Professional depositaries of financial instruments
- Article 26-1 Professional depositaries of assets other than financial instruments
- Article 27 Operators of a regulated market authorised in Luxembourg
- Article 28-2 Currency exchange dealers
- Article 28-3 Debt recovery
- Article 28-4 Professionals performing lending operations
- Article 28-5 Professionals performing securities lending
- Article 28-6 Family Offices
- Article 28-7 Mutual savings fund administrators
- Article 28-9 Corporate domiciliation agents
- Article 28-10 Professionals providing company incorporation and management services
- Article 28-11 Central account keepers

a. Specific information

The law of 28 April 2011 clarified and amended the definition of specialised PSF and takes into account the actual changes to the various categories of PSF.



b. Fast-reference sheets and additional data per status

Individual sheet 11

Registrar agents

Definition	Registrars shall be professionals engaged in the business of keeping a register of one or more financial instruments. The keeping of a register comprises the receipt and execution of orders concerning such financial instruments, for which they are the necessary accessory.
Legal reference	Article 25 of the Law
Licence granted automatically	Client communication agents (Art. 29-1) and Financial sector administrative agents (Art. 29-2)
Minimum capital	€125,000
Authorised form	Legal person
Authorisation procedure	The licence is subject to obtaining a written authorisation from the Ministry of Finance which handles the licence documentation filed to obtain the desired status, including the necessary basic information (cf. I.2)
Professional indemnity insurance	€0
Main applicable CSSF regulations (Reg.) and circulars	95/120 (central administration), 96/126 (organisation), 98/143 (internal control), 05/178, 06/240 and 13/554 (IT), 10/437 (remuneration), Reg. 12-02 (AML), Reg. 13-02 and 14/589 (complaints)

Additional information

Activity as registrar particularly relates to the field of UCIs, SIFs and venture capital companies (SICAR) for which these agents perform central administrative office tasks. Registrars may ipso jure work as Financial sector administrative agents – including in particular the calculation of the net asset value (NAV) – and Client communication agents.

This activity consists in recording on a register of shareholders or security/unit holders all subscription, redemption and conversion orders sent to the registrar in connection with the shares, securities or units of an issuer. The registrar also proceeds with the issue and cancellation of personal registration certificates concerning shares, securities and units for which the agent performs this activity.

Registrars may not be engaged in investment advice or in the distribution of shares, securities or units for which they perform this business, their activity being strictly limited to carrying out administrative tasks involved in receiving and processing orders related to shares, securities or units on behalf of the issuer.

Registrars do not benefit from the European passport.
A specific licence is required for this activity.

Professional depositaries of financial instruments

Definition	Professional depositaries of financial instruments are professionals who engage in the receipt into custody of financial instruments exclusively from the professionals of the financial sector, and who are entrusted with the safekeeping and administration thereof, including custodianship and related services, and with the task of facilitating their circulation.
Legal reference	Article 26 of the Law
Licence granted automatically	None
Minimum capital	€730,000
Authorised form	Legal person
Authorisation procedure	The licence is subject to obtaining a written authorisation from the Ministry of Finance which handles the licence documentation filed to obtain the desired status, including the necessary basic information (cf. I.2)
Professional indemnity insurance	€0
Main applicable CSSF regulations (Reg.) and circulars	95/120 (central administration), 96/126 (organisation), 98/143 (internal control), 05/178, 06/240 and 13/554 (IT), 10/437 (remuneration), Reg. 12-02 (AML), Reg. 13-02 and 14/589 (complaints)

Professional depositaries of assets other than financial instruments

Definition	<p>Professional depositaries of assets other than financial instruments are professionals whose activity consists in acting as depositary for:</p> <ul style="list-style-type: none">• Specialised investment funds within the meaning of the modified law of 13 February 2007,• Investment companies in risk capital within the meaning of the modified law of 15 June 2004,• Alternative investment funds within the meaning of Directive 2011/61/EU, which have no redemption rights that can be exercised during five years as from the date of the initial investments and which, pursuant to their main investment policy, generally do not invest in assets which shall be held in custody pursuant to Article 19(8) of the law of 12 July 2013 on alternative investment fund managers or which generally invest in issuers or non-listed companies in order to potentially acquire control thereof in accordance with Article 24 of the law of 12 July 2013 on alternative investment fund managers.
Legal reference	Article 26-1 of the Law
Licence granted automatically	None
Minimum capital	€500,000
Authorised form	Legal person
Authorisation procedure	The licence is subject to obtaining a written authorisation from the Ministry of Finance which handles the licence documentation filed to obtain the desired status, including the necessary basic information (cf. I.2)
Professional indemnity insurance	€0
Main applicable CSSF regulations (Reg.) and circulars	95/120 (central administration), 96/126 (organisation), 98/143 (internal control), 05/178, 06/240 and 13/554 (IT), 10/437 (remuneration), Reg. 12-02 (AML), Reg. 13-02 and 14/589 (complaints)

Additional information

This classification of 'professional depositaries of assets other than financial instruments' has been created in the context of the AIFM Directive.

PSF actors such as fiduciary companies, family offices or domiciliary agents have their stake to act as a depositary for the 'not-in-bank' assets, especially for private equity and real estate. This new demand represents a real opportunity to diversify and expand their service offering along the asset servicing value chain and could also represent an additional advantage for a PSF to increase its client retention by proposing a 'one-stop-shop' offering.

More specifically, this possibility to deposit 'not-in-bank' assets with a PSF will be mainly applicable to the Luxembourg SIF and SICAR schemes, as structures falling under part II of the modified law of 17 December 2010 relating to undertakings for collective investment can also be distributed to retail investors, triggering more stringent requirements for the depositary.

An important difference is made between safekeeping duties on financial or 'in-bank' assets and monitoring duties on other or 'not-in-bank' assets. In case of loss of financial assets in custody (i.e. safekeeping), the depositary has the obligation to return an identical type or the corresponding amount of the assets whereas for other assets not held under custody, the monitoring duties mainly consist in verifying the ownership of these assets. This difference is a key factor for PSF entities that consider entering this new market segment of the depositary activity.

Operators of a regulated market authorised in Luxembourg

Definition	Operators of a regulated market in Luxembourg shall be those persons managing or operating an MTF in Luxembourg authorised in Luxembourg apart from investment firms operating an MTF in Luxembourg
Legal reference	Article 27 of the Law
Licence granted automatically	None
Minimum capital	€730,000
Authorised form	Legal person
Authorisation procedure	The licence is subject to obtaining a written authorisation from the Ministry of Finance which handles the licence documentation filed to obtain the desired status, including the necessary basic information (cf. I.2)
Professional indemnity insurance	€0
Main applicable CSSF regulations (Reg.) and circulars	95/120 (central administration), 96/126 (organisation), 98/143 (internal control), 05/178, 06/240 and 13/554 (IT), 10/437 (remuneration), Reg. 12-02 (AML), Reg. 13-02 and 14/589 (complaints)

Currency exchange dealers

Definition	Currency exchange dealers are professionals who carry out operations involving the purchase or sale of foreign currencies in cash.
Legal reference	Article 28-2 of the Law
Licence granted automatically	None
Minimum capital	€50,000
Authorised form	Legal person which is established as a public-law institution, a commercial company, a non-trading company or an economic interest grouping (see below)
Authorisation procedure	The licence is subject to obtaining a written authorisation from the Ministry of Finance which handles the licence documentation filed to obtain the desired status, including the necessary basic information (cf. I.2)
Professional indemnity insurance	€0
Main applicable CSSF regulations (Reg.) and circulars	95/120 (central administration), 96/126 (organisation), 98/143 (internal control), 05/178, 06/240 and 13/554 (IT), 10/437 (remuneration), Reg. 12-02 (AML), Reg. 13-02 and 14/589 (complaints)

Additional information

The CSSF ensures that the person planning to engage in such an activity will apply rates prevailing in the market and will enter into an agreement with a marketplace bank, ensuring the availability of the necessary currencies.

Although Article 28-2 does not expressly stipulate it, the CSSF has specified that this activity may be carried on by a physical person.

Debt recovery

Definition	The business of collecting third parties' debts, to the extent that it is not the legal preserve of bailiffs (<i>huissiers de justice</i>), may be authorised only with the express approval of the Minister of Justice. The application is examined by the CSSF which makes sure that the documentation and its opinion are forwarded to the Ministry of Justice.
Legal reference	Article 28-3 of the Law
Licence granted automatically	None
Minimum capital	No minimum capital other than the one defined by the Law on commercial companies of 1915, as applicable.
Authorised form	Not specified (by default, physical or legal person)
Authorisation procedure	The licence is subject to obtaining a written authorisation from the Ministry of Finance which handles the licence documentation filed to obtain the desired status, including the necessary basic information (cf. I.2)
Professional indemnity insurance	€0
Main applicable CSSF regulations (Reg.) and circulars	95/120 (central administration), 96/126 (organisation), 98/143 (internal control), 05/178, 06/240 and 13/554 (IT), 10/437 (remuneration), Reg. 12-02 (AML), Reg. 13-02 and 14/589 (complaints)
Additional information	<p>All services consisting in contacting defaulting debtors (whether by telephone, text message, email, post or in person) in order to recover claims on behalf of third parties fall within the scope of Article 28-3.</p> <p>A licence under Article 28-3 of the Law is required even if the agent providing the debt collection service is not authorised to collect the funds or have them credited to its account. However, debt collection by the assignor or by a third party for the account of a securitisation organisation does not fall within the scope of Article 28-3 of the Law.</p>

Professionals performing lending operations

Definition

Professionals performing lending operations are professionals engaging in the business of granting loans to the public for their own account.

The CSSF states that, within the meaning of Article 28-4, 'public' means clients other than professional clients within the meaning of annex III section A (1) and (2) of the Law.

The following, in particular, shall be regarded as lending operations for the purposes of this article:

- (a) financial leasing operations involving the leasing of moveable or immoveable property specifically purchased with a view to such leasing by the professional, who remains the owner thereof, where the contract reserves unto the lessee the right to acquire, either during the course of or at the end of the term of the lease, ownership of all or any part of the property leased in return for payment of a sum specified in the contract;
- (b) factoring operations, either with or without recourse, whereby the professional purchases commercial debts and proceeds to collect them for his own account "*when he makes the funds available to the transferor before maturity or before payment of the transferred debts*".

This article shall not apply to persons engaging in the granting of consumer credit, including financial leasing operations as defined in paragraph (a) above, where that activity is incidental to the pursuit of any activity covered by the law of 28 December 1988 on the right of establishment.

This article shall not apply to persons engaging in securitisation operations.

Legal reference

Article 28-4 of the Law

Licence granted automatically

None

Minimum capital

€730,000

Authorised form

Legal person

Authorisation procedure

The licence is subject to obtaining a written authorisation from the Ministry of Finance which handles the licence documentation filed to obtain the desired status, including the necessary basic information (cf. I.2)

Professional indemnity insurance	€0
Main applicable CSSF regulations (Reg.) and circulars	95/120 (central administration), 96/126 (organisation), 98/143 (internal control), 05/178, 06/240 and 13/554 (IT), 10/437 (remuneration), Reg. 12-02 (AML), Reg. 13-02 and 14/589 (complaints)
Status-specific CSSF circulars	12/538 (lending), chapter 3 of part III of 12/552 (credit risk)

Additional information

This status covers professionals extending **loans to clients for their own account** but which are not authorised to use public savings for refinancing purposes. These professionals are refinanced exclusively inside their group or in the interbank market.

Article 28-4 of the Law exclusively governs the granting of loans to the public. This excludes professionals exclusively granting loans to companies belonging to the same group. A lending activity carried on for a limited circle of natural or legal persons is not a public lending activity, provided the target persons are clearly identifiable by meeting pre-defined criteria.

Article 28-4 of the Law deals with granting loans of any kind to the public, including mortgage loans and, subject to point (3) of Article 28-4, consumer credits, no matter whether the credits granted are secured by collateral or pledges or otherwise.

This status does not cover activities reserved solely for mortgage banks. In particular, the professionals in question must not issue debt instruments, referred to as mortgage bonds, based on the rights in rem in immovable property or charges on real property securing the mortgage loans.

This status does not govern professionals engaged in securitisation operations either.

The Law specifies that financial leasing operations and factoring operations are lending operations within the meaning of Article 28-4 of the Law. However, this list is not limitative and other activities may be considered as lending operations. For instance, the CSSF considers that issuing guarantees also constitutes a lending operation within the scope of Article 28-4, when this activity is carried on in a professional capacity and when the professional in question does not use public savings for refinancing purposes.

Professionals performing securities lending

Definition	Professionals performing securities lending are professionals engaging in the business of lending or borrowing securities for their own account.
Legal reference	Article 28-5 of the Law
Licence granted automatically	None
Minimum capital	€730,000
Authorised form	Legal person
Authorisation procedure	The licence is subject to obtaining a written authorisation from the Ministry of Finance which handles the licence documentation filed to obtain the desired status, including the necessary basic information (cf. I.2)
Professional indemnity insurance	€0
Main applicable CSSF regulations (Reg.) and circulars	95/120 (central administration), 96/126 (organisation), 98/143 (internal control), 05/178, 06/240 and 13/554 (IT), 10/437 (remuneration), Reg. 12-02 (AML), Reg. 13-02 and 14/589 (complaints)

Additional information

The professionals in question are authorised to **act for their own account** as lender or borrower of shares, units, warrants, debt instruments, bonds, bills of exchange, deposit certificates, savings bonds, promissory notes and other securities of any nature and any options and rights on or to them, issued or secured by companies located in Luxembourg or abroad.

A company established in Luxembourg which occasionally engages in securities lending operations for its own account to improve the quality of the borrower's ratios or balance sheet, when such operations are not its main company object, does not thereby fall within the scope of Article 28-5.

Professional intermediaries engaged in securities lending for the account of third parties either come under the status of agency broker (if they act in their own name) or of broker when their role consists in finding the securities requested and putting the parties in contact.

Family Offices

Definition

Those persons carrying out the activity of Family Office within the meaning of the law of 21 December 2012 relating to the Family Office activity and not registered in one of the other regulated professions listed under Article 2 of the above-mentioned law are Family Offices and regarded as carrying on a business activity in the financial sector.

Family Office activity within the meaning of the law of 21 December 2012 consists in providing, as a professional, patrimony advice or services to physical persons, families or patrimony entities belonging to physical persons or families or founded by them or from which they are beneficiaries.

Legal reference

Article 28-6 of the Law

Licence granted automatically

None

Minimum capital

€50,000

Authorised form

Legal person

Authorisation procedure

The licence is subject to obtaining a written authorisation from the Ministry of Finance which handles the licence documentation filed to obtain the desired status, including the necessary basic information (cf. I.2)

Professional indemnity insurance

€0

Main applicable CSSF regulations (Reg.) and circulars

95/120 (central administration), 96/126 (organisation), 98/143 (internal control), 05/178, 06/240 and 13/554 (IT), 10/437 (remuneration), Reg. 12-02 (AML), Reg. 13-02 and 14/589 (complaints)

Additional information

The main purpose for regulating Family Office activity is for Luxembourg to strengthen the attractiveness and integrity of its financial market at European and world level. The purpose of regulating such activity is also to professionalise the role of the Family Office and its image, which is in no way incompatible with the independence and discretion it is required to exercise.

Such regulation meets a market need. It also allows Luxembourg to position itself on the world Family Office stage, while being a complementary activity to its private banking.

Mutual savings fund administrators

Definition

Mutual savings fund administrators are professionals, whether natural or legal persons, engaged in the business of administering one or more collective savings schemes (*fonds communs d'épargne*).

For the purposes of this Article, a collective savings scheme shall be understood to mean any undivided pool of cash deposits managed on behalf of a group of savers acting in common, of which there are at least 20 in number, with a view to obtaining more favourable financial conditions.

Legal reference

Article 28-7 of the Law

Licence granted automatically

None

Minimum capital

€125,000

Authorised form

Physical or legal person

Authorisation procedure

The licence is subject to obtaining a written authorisation from the Ministry of Finance which handles the licence documentation filed to obtain the desired status, including the necessary basic information (cf. I.2)

Professional indemnity insurance

€0

Main applicable CSSF regulations (Reg.) and circulars

95/120 (central administration), 96/126 (organisation), 98/143 (internal control), 05/178, 06/240 and 13/554 (IT), 10/437 (remuneration), Reg. 12-02 (AML), Reg. 13-02 and 14/589 (complaints)

Additional information

Administrators of collective savings schemes being PSF and collective savings schemes (*fonds communs d'épargne*) being undivided pools without legal personality may not as such become members of the Luxembourg deposit guarantee system. They do not therefore pay any contribution to this system and do not benefit from the deposit guarantee.

Corporate domiciliation agents

Definition	Corporate domiciliation agents acting as professionals of the financial sector are natural or legal persons who agree to the establishment at their address by one or more companies of a seat and who provide services of any kind connected with that activity.
Legal reference	Article 28-9 of the Law
Licence granted automatically	Professionals providing company incorporation and management services (Art. 28-10)
Minimum capital	€125,000
Authorised form	Physical or legal person
Authorisation procedure	The licence is subject to obtaining a written authorisation from the Ministry of Finance which handles the licence documentation filed to obtain the desired status, including the necessary basic information (cf. I.2)
Professional indemnity insurance	€0
Main applicable CSSF regulations (Reg.) and circulars	95/120 (central administration), 96/126 (organisation), 98/143 (internal control), 05/178, 06/240 and 13/554 (IT), 10/437 (remuneration), Reg. 12-02 (AML), Reg. 13-02 and 14/589 (complaints)
Status-specific CSSF circulars	01/28, 01/29, 01/47 and 02/65 (domiciliation)

Additional information

CSSF circular 02/65 gives details about the definition of 'registered office' while emphasising that this notion must be interpreted in a broad sense. It should be noted that a 'registered office' exists, within the meaning of the modified law of 31 May 1999 on corporate domiciliation, when the company is provided with an address in Luxembourg by a third party for use by it in dealings with other third parties.

If not all the criteria of a true lease (i.e. long-term lease with a lessor and a tenant ensuring exclusive enjoyment of private premises with a separate entrance, such that the tenant can be engaged in a real business on the premises in question) are met, the activity does constitute a domiciliation business within the meaning of Article 1 of the modified law of 31 May 1999 on corporate domiciliation.

Professionals providing company incorporation and management services

Definition	Professionals providing company incorporation and management services are natural and legal persons engaging in the provision of services relating to the formation or management of one or more companies.
Legal reference	Article 28-10 of the Law
Licence granted automatically	None
Minimum capital	€125,000
Authorised form	Physical or legal person
Authorisation procedure	The licence is subject to obtaining a written authorisation from the Ministry of Finance which handles the licence documentation filed to obtain the desired status, including the necessary basic information (cf. I.2)
Professional indemnity insurance	€0
Main applicable CSSF regulations (Reg.) and circulars	95/120 (central administration), 96/126 (organisation), 98/143 (internal control), 05/178, 06/240 and 13/554 (IT), 10/437 (remuneration), Reg. 12-02 (AML), Reg. 13-02 and 14/589 (complaints)

Additional information

Corporate domiciliation agents as referred to in Article 28-9 of the Law and the notaries and registered members of other regulated professions listed in Article 1, paragraph (1) of the modified law of 31 May 1999 governing the domiciliation of companies shall be automatically authorised to act, in addition, as professionals providing company incorporation and management services. Except for the former, such persons shall not be subject to prior approval by the minister responsible for the CSSF or to prudential supervision by the CSSF.

As regards the qualification of a professional engaged in company incorporation and management services, the CSSF has specified that the relationship between the professional and the client is material. The assumption is that the business in question is performed repeatedly or that the service provider is paid for the services provided. Services related to company incorporation consist in performing for the account of the client any steps required to incorporate the type of company desired. The services as intermediary provided to a client to prepare a company incorporation deed (whether organised and existing under the laws of Luxembourg or not) and of representing a client when incorporating the company are included. As regards company management services, Article 28-10 covers entities providing third-party companies with administrators, directors or managers.

Individual sheet 23

Central account keepers

Definition	Central account keepers are persons whose activity is to keep issuing accounts for dematerialised securities.
Legal reference	Article 28-11 of the Law
Licence granted automatically	None
Minimum capital	€730,000
Authorised form	Legal person
Authorisation procedure	The licence is subject to obtaining a written authorisation from the Ministry of Finance which handles the licence documentation filed to obtain the desired status, including the necessary basic information (cf. I.2)
Professional indemnity insurance	€0
Main applicable CSSF regulations (Reg.) and circulars	95/120 (central administration), 96/126 (organisation), 98/143 (internal control), 05/178, 06/240 and 13/554 (IT), 10/437 (remuneration), Reg. 12-02 (AML), Reg. 13-02 and 14/589 (complaints)

3 Support PSF

Article 29-1 Client communication agents

Article 29-2 Administrative agents of the financial sector

Article 29-3 Primary IT systems operators of the financial sector

Article 29-4 Secondary IT systems and communication networks operators of the financial sector

Article 29-5 Dematerialisation service providers of the financial sector

Article 29-6 Conservation service providers of the financial sector

a. Specific information

Support PSF encompass the financial sector professionals holding only a licence under Articles 29-1 to 29-6 of the Law. The term 'support' was defined by the market in agreement with the CSSF.

Support PSF do not receive deposits from the public and mainly act as subcontractors of operational functions for the account of other financial sector professionals. These support PSF are engaged in an activity which, in principle, is not part of the financial sector, but they provide a service for an entity governed by the modified law of 5 April 1993 relating to the financial sector. They are therefore subject to a licence.

CSSF circular 08/350 of 22 April 2008 as amended by CSSF circular 13/568 is the first circular specific to support PSF. It covers the following four points:

1. Qualification of the activities carried on by OSIPs (operators of primary computer systems) and OSISs (operators of communications networks and secondary computer systems)
2. Terms of supervision of support PSF
3. Prudential rules and rules of conduct
4. Transitional provision

CSSF circular 06/240 as amended by CSSF circular 13/568 deals with the administrative and accounting organisation; IT subcontracting and details about the services subject to a support PSF licence, Articles 29-1, 29-2 and 29-3 of the Law; changes to the terms of IT subcontracting of branches abroad.

The law of 28 April 2011 extends the client relations service provider or administrative agent licence. These licences are now required when the related activities are provided for specialised investment funds (SIF), venture capital investment companies (SICAR) or authorised securitisation organisations.

The law of 23 July 2016 extends it as well for the administrative agents when activities are provided for reserved alternative investment funds.

The law of 25 July 2015 on electronic archiving broadens on its side the licence for all support PSF. These licences are as well required when the activities arising from these categories are carried out for payment institutions and electronic money institutions.

b. Fast-reference sheets and additional data per status

Individual sheet 24

Client communication agents

Definition

Client communication agents are professionals engaged in the business of providing one or more of the following services on behalf of Luxembourg and non-Luxembourg credit institutions, PSF, payment institutions, electronic money institutions, UCIs, SIFs, venture capital investment companies, authorised securitisation organisations, pension funds, insurance undertakings and reinsurance undertakings:

- The production of confidential documents in hard-copy or electronic format for the personal use of clients of credit institutions, PSF, payment institutions, electronic money institutions, insurance or reinsurance undertakings, investors in UCIs, SIFs, venture capital investment companies, authorised securitisation organisations and contributors, members or beneficiaries of pension funds
- The archiving or the destruction of the documents referred to in the previous indent
- The provision of documents or information to the persons referred to in the first indent concerning their assets and the services offered by the professional in question
- Mail management giving access to confidential data of the persons referred to in the first indent
- The compilation, under the terms of a specific mandate, of the various positions held by the persons referred to in the first indent with various financial professionals

Legal reference

Article 29-1 of the Law

Licence granted automatically

None

Minimum capital

€50,000

Authorised form

Legal person

Authorisation procedure

The licence is subject to obtaining a written authorisation from the Ministry of Finance which handles the licence documentation filed to obtain the desired status, including the necessary basic information (cf. 1.2)

Professional indemnity insurance

€0

Main applicable CSSF regulations (Reg.) and circulars

95/120 (central administration), 96/126 (organisation), 98/143 (internal control), 05/178, 06/240 and 13/554 (IT), 08/350 (supervision), 08/364 (reporting), 12/544 (supervision), Reg. 12-02 (AML), Reg. 13-02 and 14/589 (complaints)

Status-specific CSSF circular

04/146 (late trading/market timing)

Administrative agents of the financial sector

Definition	Administrative agents of the financial sector are professionals who engage in the provision, on behalf of credit institutions, PSF, payment institutions, electronic money institutions, UCIs, pension funds, SIFs, investment companies in risk capital, authorised securitisation undertakings, reserved alternative investment funds , insurance undertakings or reinsurance undertakings established under Luxembourg law or foreign law, pursuant to a sub-contract, of administration services forming an integral part of the business activities of the originator.
Legal reference	Article 29-2 of the Law
Licence granted automatically	Client communication agents (Article 29-1)
Minimum capital	€125,000
Authorised form	Legal person
Authorisation procedure	The licence is subject to obtaining a written authorisation from the Ministry of Finance which handles the licence documentation filed to obtain the desired status, including the necessary basic information (cf. I.2)
Professional indemnity insurance	€0
Main applicable CSSF regulations (Reg.) and circulars	95/120 (central administration), 96/126 (organisation), 98/143 (internal control), 05/178, 06/240 and 13/554 (IT), 08/350 (supervision), 08/364 (reporting), 12/544 (supervision), Reg. 12-02 (AML), Reg. 13-02 and 14/589 (complaints)

Additional information

Article 29-2 of the Law governs the professionals providing purely administrative services (back-office services), on a subcontracting basis, for the account of financial professionals, whether from Luxembourg or abroad.

The field of action of administrative agents of the financial sector encompasses the following functions, inter alia:

- Administrating investor portfolio
- Posting transactions in client accounts
- Valuing client assets
- Opening new accounts in the books
- Accounting audit of inflows and outflows
- Reconciliations
- Calculating the net asset value of UCI units
- Defining computer application settings

Therefore, administrative agents may actively partake in the professional process of their client. This status does not cover technical services that are not likely to impact the principal's professional activity.

Primary IT systems operators of the financial sector

Definition	Primary IT systems operators of the financial sector shall be professionals responsible for the running of computer systems enabling the production of accounting and financial statements which are part of the computer facilities of Luxembourg and non-Luxembourg credit institutions, PSF, 'payment institutions', electronic money institutions, UCIs, pension funds, insurance and reinsurance undertakings.
Legal reference	Article 29-3 of the Law
Licence granted automatically	Article 29-4
Minimum capital	€370,000
Authorised form	Legal person
Authorisation procedure	The licence is subject to obtaining a written authorisation from the Ministry of Finance which handles the licence documentation filed to obtain the desired status, including the necessary basic information (cf. I.2)
Professional indemnity insurance	€0
Main applicable CSSF regulations (Reg.) and circulars	95/120 (central administration), 96/126 (organisation), 98/143 (internal control), 05/178, 06/240 and 13/554 (IT), 08/350 (supervision), 08/364 (reporting), 12/544 (supervision), Reg. 12-02 (AML), Reg. 13-02 and 14/589 (complaints)

Additional information

Primary computer systems are systems which support applications directly related to the financial activity of the financial professional, i.e. applications involved in the production of accounting and financial statements. Examples include applications for banking, front offices, portfolio management, net asset value calculation, reconciliations of financial transactions, payments and transfers, loans, and establishment or consolidation of securities prices or foreign exchange rates.

Secondary IT systems and communication networks operators of the financial sector

Definition	Secondary IT systems and communication networks operators of the financial sector shall be professionals responsible for the running of computer systems other than those enabling the production of accounting and financial statements which are part of the computer and communication facilities of Luxembourg and non-Luxembourg credit institutions, PSF, payment institutions, electronic money institutions, UCIs, pension funds, insurance and reinsurance undertakings.
Legal reference	Article 29-4 of the Law
Licence granted automatically	None
Minimum capital	€50,000
Authorised form	Legal person
Authorisation procedure	The licence is subject to obtaining a written authorisation from the Ministry of Finance which handles the licence documentation filed to obtain the desired status, including the necessary basic information (cf. I.2)
Professional indemnity insurance	€0
Main applicable CSSF regulations (Reg.) and circulars	95/120 (central administration), 96/126 (organisation), 98/143 (internal control), 05/178, 06/240 and 13/554 (IT), 08/350 (supervision), 08/364 (reporting), 12/544 (supervision), Reg. 12-02 (AML), Reg. 13-02 and 14/589 (complaints)

Additional information

Operators of financial services industry secondary computer systems and communications networks are engaged in processing or transferring the data stored in the computer system. These computer systems and communications networks may either belong to the Luxembourg or non-Luxembourg credit institution, PSF, payment institution, electronic money institution, pension fund, insurance company or reinsurance company, or be provided at its request by the operator. Operators of financial services industry secondary computer systems and communications networks are also authorised to set up and maintain the computer systems and networks in question.

Dematerialisation service providers of the financial sector

Definition	Dematerialisation service providers of the financial sector are dematerialisation service providers within the meaning of the law of 25 July 2015 on e-archiving in charge of the dematerialisation of documents on behalf of credit institutions, PSF, payment institutions, electronic money institutions, UCIs, SIFs, investment companies in risk capital, pension funds, authorised securitisation undertakings, insurance undertakings or reinsurance undertakings, governed by Luxembourg law or by foreign law
Legal reference	Article 29-5 of the Law
Licence granted automatically	None
Minimum capital	€50,000
Authorised form	Legal person
Authorisation procedure	The licence is subject to obtaining a written authorisation from the Ministry of Finance which handles the licence documentation filed to obtain the desired status, including the necessary basic information (cf. I.2)
Professional indemnity insurance	€0
Main applicable CSSF regulations (Reg.) and circulars	95/120 (central administration), 96/126 (organisation), 98/143 (internal control), 05/178, 06/240 and 13/554 (IT), 08/350 (supervision), 08/364 (reporting), 12/544 (supervision), Reg. 12-02 (AML), Reg. 13-02 and 14/589 (complaints), Regs GD of 25 July 2015 on the dematerialization and conservation of documents and on electronic archiving
Additional information	CSSF and ILNAS collaborate for the purposes of the performance of their respective duties of supervision of dematerialisation service providers of the financial sector.

Conservation service providers of the financial sector

Definition	Conservation service providers of the financial sector are conservation service providers within the meaning of the law of 25 July 2015 on e-archiving in charge of the conservation of electronic documents on behalf of credit institutions, PSF, payment institutions, electronic money institutions, UCIs, SIFs, investment companies in risk capital, pension funds, authorised securitisation undertakings, insurance undertakings or reinsurance undertakings, governed by Luxembourg law or by foreign law
Legal reference	Article 29-6 of the Law
Licence granted automatically	None
Minimum capital	€125,000
Authorised form	Legal person
Authorisation procedure	The licence is subject to obtaining a written authorisation from the Ministry of Finance which handles the licence documentation filed to obtain the desired status, including the necessary basic information (cf. I.2)
Professional indemnity insurance	€0
Main applicable CSSF regulations (Reg.) and circulars	95/120 (central administration), 96/126 (organisation), 98/143 (internal control), 05/178, 06/240 and 13/554 (IT), 08/350 (supervision), 08/364 (reporting), 12/544 (supervision), Reg. 12-02 (AML), Reg. 13-02 and 14/589 (complaints), Regs GD of 25 July 2015 on the dematerialization and conservation of documents and on electronic archiving

Additional information

The activities consisting solely in basic data storage and that do not consist in the conservation of a recognised legal copy or a digital original ensuring its integrity according to the law of 25 July 2015 on e-archiving do not fall under this present article.

CSSF and ILNAS collaborate for the purposes of the performance of their respective duties of supervision of conservation service providers of the financial sector.

RECENT DEVELOPMENTS



Law of 25 July 2015 on electronic archiving

In February 2013 the Government Council approved a draft bill with a view to creating a dematerialisation and conservation service provider (hereinafter the 'PSDC') in order to reduce the use of paper for economic, practical and logistic reasons.

What are the objectives?

The draft bill aims at:

- Recognising the legal value of the dematerialised documents and establishing the legal presumption of the copies' conformity to the original
- Establishing a high level of requirements in order to ensure that dematerialised archived documents are reliable and will remain identical and accessible whatever the circumstances
- Organising the PSDC activity

The new law allows to guarantee that paperless documents maintained in accordance with applicable legal and regulatory requirements will not be rejected by a judge solely on the ground that they are in electronic form or that they have not been handled by a dematerialisation service provider : article 1333 of the Civil Code is no longer applicable to electronic archives.

What is the status for these new players?

This law on electronic archiving creates two new support PSF licenses : the dematerialisation service provider (Art. 29-5) and the conservation service provider (Art. 29-6).

The PSDC will have to be certified by a conformity assessment body recognised and monitored by the Luxembourg Normalisation Institute (ILNAS²⁹).

Why regulate electronic archiving activity?

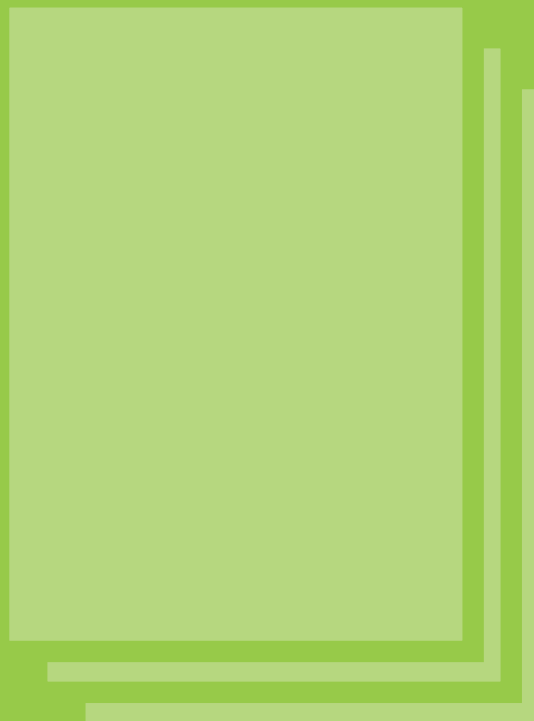
The main purpose of this law bill is for Luxembourg to strengthen the attractiveness and integrity of its market on a European and international level. On the European side, there is no EU regulation applicable to electronic archiving.

Such regulation meets a market need in allowing businesses to generate savings. It also allows Luxembourg to position itself as an 'information trust center', thus possibly attracting large companies interested in legal and safe 'cloud' archiving.

The law on electronic archiving was adopted on 25 July 2015

²⁹ Institut Luxembourgeois de la Normalisation, de l'Accréditation, de la Sécurité et qualité des produits et services (ILNAS)

Appendices



1

Summary of main regulations and circulars applicable to PSF

(as at September 26, 2016)

CIRCULAR/REGULATION	TOPIC			
		Investment firms	Specialised PSF	Support PSF
Organisation and internal control				
91/78	Segregation of assets for private portfolio managers	X (1)		
91/80 and 96/124	Staff numbers	X	X	X
93/95 and 11/515	Licence requirements	X	X	X
93/102	Activities of brokers or commission agents	X (2)		
95/120	Central administration		X	X
96/126	Administrative and accounting organisation		X	X
98/143	Internal control		X	X
00/17	Investor compensation schemes	X (3)		
04/146	Protection of undertakings for collective investment and their investors against Late Trading and Market Timing practices	X (3)	X (3)	X (3)

CIRCULAR/REGULATION	TOPIC			
		Investment firms	Specialised PSF	Support PSF
05/178 and 06/240 as amended by 13/568	IT outsourcing		X	X
07/307 as amended by 13/560, 13/568 and 14/585	MiFID: Conduct of business rules in the financial sector	X		
07/325 and 07/326 as amended by 10/442 and 13/568	Branches in Luxembourg or activities exercised in Luxembourg by way of free provision of services; branches in another Member State or activities exercised in another Member State by way of free provision of services	X (3)		
09/392	Prudential assessment of acquisitions and increases in holdings in the financial sector	X	X	X
12/536	Guidelines of the European Securities and Markets Authority on systems and controls in an automated trading environment	X (3)		
12/538	Lending in foreign currencies	X	X (4)	
12/552 as amended by 13/563, 14/597 and 16/642	Central administration, internal governance and risk management	X	X (5)	
13/554	Evolution of the usage and control of the tools for managing IT resources and the management access to these resources	X	X	X
Reg. 13-02 and 14/589	Out-of-court resolution of complaints	X	X	X
15/611	Managing the risks related to the outsourcing of systems that allow the compilation, distribution and consultation of management board/ strategic documents	X	X	X
Regs G-D of 25 July 2015	Dematerialization and conservation of documents / Electronic archiving			X (3)
15/631	Dormant or inactive accounts	X	X	X
Remuneration				
10/437	Remuneration policies in the financial sector	X	X	X
Fight against money laundering and terrorist financing				
Reg. 12-02 10/495, 15/609, 16/639	Fight against money laundering and terrorist financing	X	X	X
11/528	Abolition of the transmission to the CSSF of suspicious transaction reports	X	X	X
11/529	Risk analysis regarding the fight against money laundering and terrorist financing	X	X	X

CIRCULAR/REGULATION	TOPIC			
		Investment firms	Specialised PSF	Support PSF
Prudential ratios				
06/260 07/290 as amended by 10/451, 10/483, 10/497 and 13/568 07/301 as amended by 08/338, 09/403, 11/506 and 13/568 10/494 11/501 11/505 12/535 13/572	Capital adequacy ratios / large exposures; assessment process	X		
Reg. 14-01, 15-01 and 15-02 and 13/575, 14/582, 14/583, 15/606, 15/618, 15/620 and 15/622 as well as Regulation (EU) No 575/2013, ad hoc Commission Delegated Regulations (EU) and ad hoc Commission Implementing Regulations (EU)	Supervisory reporting requirements (CRR/CRD IV / FINREP)	X (3)		
09/403	Sound liquidity risk management	X		
11/506	Principles of a sound stress testing programme	X		
Reporting				
05/187 completed by 10/433	Financial information to be submitted to the CSSF on a periodic basis	X	X	X
07/302 , 07/306 and 08/365	Reporting on transactions in financial instruments	X (3)		
08/334 and 08/344	Encryption specifications for reporting firms to the CSSF	X	X	X
08/364	Financial information to be submitted to the CSSF on a quarterly basis by the support PSF			X
08/369	Prudential reporting	X	X	X
10/457	Electronic transmission to the CSSF of the long-form report and of the management letter	X		
11/503	Transmission and publication of financial information and relating deadlines	X	X	X
11/504	Frauds and incidents due to external computer attacks	X	X	X
13/577	Table "Responsible persons for certain functions and activities"	X		

CIRCULAR/REGULATION	TOPIC			
		Investment firms	Specialised PSF	Support PSF
Domiciliation				
01/28, 01/29, 01/47 and 02/65	Domiciliation		X (6)	
Supervision				
00/22	Supervision of investment firms on a consolidated basis	X (3)		
08/350 as amended by 13/568	Prudential supervisory procedures for support PSF			X
12/544	Optimisation of the supervision exercised on the support PSF by a risk-based approach			X
External audit				
03/113 and 13/571	Practical rules concerning the mission of external auditors of investment firms	X		

(1) applicable only to private portfolio managers (art. 24-3)

(2) applicable only to brokers in financial instruments (art. 24-1) and commission agents (art. 24-2)

(3) depending on the activity of the PSF

(4) applicable only to professionals performing lending operations (art. 28-4)

(5) applicable only to professionals performing lending operations (art. 28-4) and only chapter 3 of part III of the circular is applicable

(6) applicable only to PSF providing domiciliation activities



2 PSF in a nutshell

Investment firms

PSF	Article	Minimum capital or capital base EUR	Professional indemnity insurance EUR	Activity covered by the status
Investment advisers	24	50.000	EUR 1.000.000 per claim and an aggregate of EUR 1.500.000 per year	"Investment advisers are professionals whose activity consists in providing personal recommendations to a client, either at the initiative of the investment firm, or upon request of that client, in respect of one or more transactions relating to financial instruments. Investment advisers are not authorised to intervene directly or indirectly in the implementation of the advice provided by them. The mere provision of information is not covered by this law."
Brokers in financial instruments	24-1	50.000	EUR 1.000.000 per claim and an aggregate of EUR 1.500.000 per year	Brokers in financial instruments are professionals whose activity consists in receiving or transmitting orders in relation to one or more financial instruments, without holding funds or financial instruments of the clients. This activity includes bringing two or more parties together with a view to the conclusion of a transaction between the parties.
Commission agents	24-2	125.000		Commission agents are professionals whose activity consists in the execution on behalf of clients of orders in relation to one or more financial instruments. Execution of orders on behalf of clients means acting to conclude agreements to buy or sell one or more financial instruments on behalf of clients.
Private portfolio managers	24-3	125.000		Private portfolio managers are professionals whose activity consists in managing portfolios in accordance with mandates given by clients on a discretionary client-by-client basis where such portfolios include one or more financial instruments.
Professionals acting for their own account	24-4	730.000		Professionals acting for their own account are professionals whose business is in trading against proprietary capital resulting in the conclusion of transactions in one or more financial instruments where they also provide investment services or perform in addition other investment activities or deal on own account outside a regulated market or an MTF on an organised, frequent and systematic basis, by providing a system accessible to third parties in order to engage in dealings with those third parties.
Market makers	24-5	730.000		Market makers are professionals whose business is to hold itself out on the financial markets on a continuous basis as being willing to deal on own account by buying and selling financial instruments against its proprietary capital at prices fixed by it.
Underwriters of financial instruments	24-6	125.000 or 730.000 (if they carry out placements on a firm commitment basis)		Underwriters of financial instruments are professionals whose business is to underwrite financial instruments and/or place financial instruments with or without a firm commitment.

PSF	Article	Minimum capital or capital base EUR	Professional indemnity insurance EUR	Activity covered by the status
Distributors of shares/units in UCIs	24-7	50.000 or 125.000 (if they accept or make payments)		Distributors of shares/units in UCIs are professionals whose business is to distribute units/shares of UCIs admitted to trading in Luxembourg.
Financial intermediation firms	24-8	125.000	EUR 2.000.000 per claim and an aggregate of EUR 3.000.000 per year	Financial intermediation firms are professionals whose business is to: (a) provide personal recommendations to a client, either at their own initiative, or upon request of the client, in respect of one or more transactions relating to financial instruments or insurance products, and (b) receive and transmit orders relating to one or more financial instruments or insurance products without holding funds or financial products of the clients. This activity includes bringing two or more parties together with a view to the conclusion of a transaction between the parties, and (c) perform on behalf of investment advisers and brokers in financial instruments and/or insurance products affiliated to them administrative and client communication services which are inherent to the professional activity of these affiliates, by means of an outsourcing contract.
Investment firms operating an MTF in Luxembourg	24-9	730.000		Investment firms operating an MTF in Luxembourg are those professionals whose business is to operate an MTF in Luxembourg, excluding the professionals that operate markets within the meaning of the law on markets in financial instruments.



Specialised PSF

PSF	Article	Minimum capital or capital base EUR	Professional indemnity insurance EUR	Activity covered by the status
Registrar agents	25	125.000		Registrar agents are professionals whose business is to maintain the register of one or more financial instruments. The maintaining of the register includes the reception and execution of orders relating to such financial instruments, of which they are the necessary accessory.
Professional depositaries of financial instruments	26	730.000		Professional depositaries of financial instruments are professionals who engage in the receipt into custody of financial instruments exclusively from the professionals of the financial sector, and who are entrusted with the safekeeping and administration thereof, including custodianship and related services, and with the task of facilitating their circulation.
Professional depositaries of assets other than financial instruments	26-1	500.000		"Professional depositaries of assets other than financial instruments are professionals whose activity consists in acting as depositary for: <ul style="list-style-type: none"> - specialised investment funds within the meaning of the law of 13 February 2007, as amended, - investment companies in risk capital within the meaning of the law of 15 June 2004, as amended, - alternative investment funds within the meaning Directive 2011/61/EU, which have no redemption rights that can be exercised during five years as from the date of the initial investments and which, pursuant to their main investment policy, generally do not invest in assets which shall be held in custody pursuant to Article 19(8) of the law of 12 July 2013 on alternative investment fund managers or which generally invest in issuers or non-listed companies in order to potentially acquire control thereof in accordance with Article 24 of the law of 12 July 2013 on alternative investment fund managers."
Operators of a regulated market authorised in Luxembourg	27	730.000		Operators of a regulated market in Luxembourg are persons who manage and/or operate the business of a regulated market authorised in Luxembourg, excluding investment firms operating an MTF in Luxembourg.
Currency exchange dealers	28-2	50.000		Currency exchange dealers are professionals who carry out operations involving the purchase or sale of foreign currencies in cash.
Debt recovery	28-3			The recovery of debts owed to third parties, to the extent that it is not reserved by law to certificated bailiffs, shall be authorised only with the assent of the Minister of Justice.
Professionals performing lending operations	28-4	730.000		"Professionals performing lending operations are professionals engaging in the business of granting loans to the public for their own account. The following, in particular, shall be regarded as lending operations for the purposes of this article: (a) financial leasing operations involving the leasing of moveable or immovable property specifically purchased with a view to such leasing by the professional, who remains the owner thereof, where the contract reserves unto the lessee the right to acquire, either during the course of or at the end of the term of the lease, ownership of all or any part of the property leased in return for payment of a sum specified in the contract;

PSF	Article	Minimum capital or capital base EUR	Professional indemnity insurance EUR	Activity covered by the status
Professionals performing lending operations (continued)	28-4	730.000		<p>(b) factoring operations, either with or without recourse, whereby the professional purchases commercial debts and proceeds to collect them for his own account "when he makes the funds available to the transferor before maturity or before payment of the transferred debts".</p> <p>This article shall not apply to persons engaging in the granting of consumer credit, including financial leasing operations as defined in paragraph (a) above, where that activity is incidental to the pursuit of any activity covered by the law of 28 December 1988 on the right of establishment.</p> <p>This article shall not apply to persons engaging in securitisation operations."</p>
Professionals performing securities lending	28-5	730.000		Professionals performing securities lending are professionals engaging in the business of lending or borrowing securities for their own account.
Family Offices	28-6	50.000		Those persons carrying out the activity of Family Office within the meaning of the law of 21 December 2012 relating to the Family Office activity and not registered in one of the other regulated professions listed under Article 2 of the above-mentioned law are Family Offices and regarded as carrying on a business activity in the financial sector.
Mutual savings fund administrators	28-7	125.000		<p>"Mutual savings fund administrators are natural or legal persons engaging in the administration of one or more mutual savings funds. No person other than a mutual savings fund administrator may carry on, even in an incidental capacity, the business of administering mutual savings funds.</p> <p>For the purposes of this article, "mutual savings fund" means any undivided fund of cash deposits administered for the account of joint savers numbering not less than 20 persons with a view to securing more favourable financial terms."</p>
Managers of non co-ordinated UCIs	28-8			repealed
Corporate domiciliation agents	28-9	125.000		Corporate domiciliation agents referred as other professionals of the financial sector in the list of paragraph 1 of Article 1 of the law of 31 May 1999 governing the domiciliation of companies and referred to in this Article, are natural or legal persons who agree to the establishment at their address by one or more companies of a seat and who provide services of any kind connected with that activity. This Article does not refer to the other persons listed in the above-mentioned list.
Professionals providing company incorporation and management services	28-10	125.000		Professionals providing company incorporation and management services are natural and legal persons engaging in the provision of services relating to the formation or management of one or more companies.
Central account keepers	28-11	730.000		Central account keepers are persons whose activity is to keep issuing accounts for dematerialised securities.

Support PSF

PSF	Article	Minimum capital or capital base EUR	Professional indemnity insurance EUR	Activity covered by the status
Client communication agents	29-1	50.000		<p>"Client communication agents are professionals engaging in the provision, on behalf of credit institutions, PSF, payment institutions, electronic money institutions, insurance undertakings, reinsurance undertakings, pension funds, UCIs, SIFs, investment companies in risk capital (sociétés d'investissement en capital à risque) and authorised securitisation undertakings established under Luxembourg law or foreign law, of one or more of the following services:</p> <ul style="list-style-type: none"> - the production, in tangible form or in the form of electronic data, of confidential documents intended for the personal attention of clients of credit institutions, PSF, payment institutions, electronic money institutions, insurance undertakings, reinsurance undertakings, contributors, members or beneficiaries of pension funds and investors in UCIs, SIFs, investment companies in risk capital and authorised securitisation undertakings; - the maintenance or destruction of documents referred to in the previous indent; - the communication to persons referred to in the first indent, of documents or information relating to their assets and to the services offered by the professional in question; - the management of mail giving access to confidential data by persons referred to in the first indent; - the consolidation, pursuant to an express mandate given by the persons referred to in the first indent, of positions which the latter hold with diverse financial professionals."
Administrative agents of the financial sector	29-2	125.000		<p>Administrative agents of the financial sector are professionals who engage in the provision, on behalf of credit institutions, PSF, payment institutions, electronic money institutions, UCIs, pension funds, SIFs, investment companies in risk capital, authorised securitisation undertakings, reserved alternative investment funds, insurance undertakings or reinsurance undertakings established under Luxembourg law or foreign law, pursuant to a sub-contract, of administration services forming an integral part of the business activities of the originator.</p>
Primary IT systems operators of the financial sector	29-3	370.000		<p>Primary IT systems operators of the financial sector are those professionals who are responsible for the operation of IT systems allowing to draw up accounts and financial statements that are part of the IT systems belonging to credit institutions, PSF, "payment institutions", electronic money institutions, UCIs, pension funds, insurance undertakings or reinsurance undertakings established under Luxembourg law or foreign law.</p>
Secondary IT systems and communication networks operators of the financial sector	29-4	50.000		<p>Secondary IT systems and communication networks operators of the financial sector are those professionals who are responsible for the operation of IT systems other than those allowing to draw up accounts and financial statements and of communication networks that are part of the IT systems belonging to credit institutions, PSF, "payment institutions", electronic money institutions, UCIs, pension funds, insurance undertakings or reinsurance undertakings established under Luxembourg law or foreign law.</p>

PSF	Article	Minimum capital or capital base EUR	Professional indemnity insurance EUR	Activity covered by the status
Dematerialisation service providers of the financial sector	29-5	50.000		Dematerialisation service providers of the financial sector are dematerialisation or conservation service providers within the meaning of the law of 25 July 2015 on e-archiving in charge of the dematerialisation of documents on behalf of credit institutions, PSF, payment institutions, electronic money institutions, UCIs, SIFs, investment companies in risk capital (SICARs), pension funds, authorised securitisation undertakings, insurance undertakings or reinsurance undertakings, governed by Luxembourg law or by foreign law.
Conservation service providers of the financial sector	29-6	125.000		Conservation service providers of the financial sector are dematerialisation or conservation service providers within the meaning of the law of 25 July 2015 on e-archiving in charge of the conservation of electronic documents on behalf of credit institutions, PSF, payment institutions, electronic money institutions, UCIs, SIFs, investment companies in risk capital (SICARs), pension funds, authorised securitisation undertakings, insurance undertakings or reinsurance undertakings, governed by Luxembourg law or by foreign law.



AIFM	Alternative Investment Fund Manager	IRS	Internal Revenue Service
AR	Analytical Report	KYC	Know Your Customer
CI	Credit Institution	Law	Modified law relating to the financial sector of 5 April 1993
CSSF	<i>Commission de Surveillance du Secteur Financier</i>	LIR	<i>Loi de l'Impôt sur le Revenu</i> : law on income tax
DR	Descriptive Report	MiFID	Markets in Financial Instruments Directive
EC	European Commission	MTF	Multilateral Trading Facility
EEA	European Economic Area	NFFE	Non-Financial Foreign Entity
FATCA	Foreign Account Tax Compliance Act	OECD	Organisation for Economic Co-operation and Development
FFI	Foreign Financial Institution	PSDC	<i>Prestataire de Services de Dématérialisation ou de Conservation</i> : dematerialisation and conservation service provider
PSF	Financial Sector Professional	RAR	Risk Assessment Report
ICAAP	Internal Capital Adequacy Assessment Process	UCI	Undertaking for Collective Investment
ICC	<i>Impôt Commercial Communal Municipal</i> : business income tax	SICAR	<i>Société d'investissement à Capital Risque</i> : venture capital investment company
IF	<i>Impôt sur la Fortune</i> : net wealth tax	VAT	Value Added Tax
ILNAS	<i>Institut Luxembourgeois de la Normalisation, de l'Accréditation, de la Sécurité et qualité des produits et services</i>		
IRC	<i>Impôt sur le Revenu des Collectivités</i> : corporate income tax		

References

Modified law relating to the financial sector of 5 April 1993,
 CSSF regulations and circulars
 CSSF annual report 2009, 2010, 2011, 2012, 2013, 2014, 2015
 CSSF statistics on PSF
 Questions/answers relating to the PSF licenses and statuses granted by the CSSF
 Professionals of the Financial Sector (PSF) in Luxembourg - Overview and outlook of a promising sector
 (Deloitte Luxembourg)

4

Organisations representing PSF

Expanding representation across professional associations

PSF are subject to the supervisory authority of the CSSF. Holding the PSF status is subject to a licence granted by the Minister of Finance, in consideration of the opinion given by the CSSF. The conditions for granting such a licence include in particular initial capitalisation, credit standing, the competence of the management and adequate governance, relying on a central administrative office based in Luxembourg.

The professional associations set out below are the most representative in terms of defending the interests of PSF:

Finance & Technology Luxembourg

This association, formed in 2007, currently combines over 50 companies providing services to financial institutions. The mission of the association's platform is to inform its members about changes in prospects for the professions in question, synergy between players with a view to securing for Luxembourg projects with an international dimension. It also proactively handles current topics related directly to support PSF and FinTech companies.

Tel : +352 43 53 66 – 1
www.supportpsf.lu

Association Luxembourgeoise des Family Office (LAFO)

This Luxembourg professional association has about fifty members and is specialised in Family Offices. The Family Officer serves as a service provider for 'families and asset entities', i.e. it coordinates, controls and supervises all professionals involved in the provision of services to its clients (asset management, attorneys, tax advisers, banks, trustees, notaries, etc.).

Tel: +352 621 349 636
www.lafo.lu

Association Luxembourgeoise des Professionnels du Patrimoine (ALPP)

A non-profit organisation including over 100 independent companies, established in Luxembourg, whose interaction with each other covers the entire range of financial and asset-management services for an international clientele.

Tel : +352 26 26 491
www.alpp.lu

Luxembourg International Management Services Association (LIMSA)

Created in 2004, the purpose of this association is to promote the Luxembourg trust industry and the representation of the professional interests of its members. It organises seminars and other meetings and develops initiatives on a central level, which would be too costly or difficult for individual members. It safeguards the promotion of the commercial interests of trust companies and defend their interests with the authorities, in particular by participating in commissions and working groups. It enters into and maintains contacts with government bodies, professional organisations and Chambers of Commerce.

Tel : +352 466 111-2749
www.limsa.lu

Numerous other organisations pertain to PSF, including the following:

The International Facility Management Association (IFMA)

IFMA Luxembourg is the local branch of this international association. With over 24,000 members in 94 countries, it is open to facility managers to give them the skills necessary for their business.

Tel : +352 26 65 08 30

www.ifma.lu

Fédération de l'IML - Information Lifecycle Management, du Stockage et de l'Archivage (FedISA)

Established on 26 November 2009, FedISA Luxembourg is a not-for-profit association serving innovation in matters of dematerialisation and electronic archiving. Its aim is to bring together the players in the Luxembourg market experts, users and suppliers of information lifecycle management, dematerialisation, electronic archiving and storage products and services, such as OSIPs and OSISs (support PSF).

www.fedisa.lu

ISACA

With more than 140,000 members in over 180 countries, ISACA is a major global provider of knowledge, certifications, exchange, sponsorship and training in terms of security and assurance of information systems, corporate governance concerning information technologies, IT risk control and conformity. Founded in 1967, ISACA sponsors international conferences, publishes a review, and develops international auditing and control standards for IT systems. The institution is open to IT auditors likely to be involved with PSF.

www.isaca.org



Other useful addresses

Administration des contributions directes

Tel. : +352 40 800-1
www.impotsdirects.public.lu

Administration de l'enregistrement et des domaines

Tel. : +352 44 905-1
www.aed.public.lu

Association des Banques et Banquiers, Luxembourg (ABBL)

Tel. : +352 46 36 60-1
www.abbl.lu

Association Luxembourgeoise des Compliance Officers du Secteur Financier (ALCO)

Tél : +352 28 99 25 00
www.alco.lu

Association Luxembourgeoise des Fonds d'Investissement (ALFI)

Tel. : +352 22 30 26-1
www.alfi.lu

Association Luxembourgeoise du Risk Management (ALRIM)

Tel. : +352 26 94 59 97
www.alrim.lu

Cellule de Renseignement Financier (CRF)

Tel. : +352 47 59 81-447

Chambre de Commerce du Grand-Duché de Luxembourg

Tel. : +352 42 39 39-1
www.cc.lu

Commission de Surveillance du Secteur Financier (CSSF)

Tel. : +352 26 251-1
www.cssf.lu

Fédération des professionnels du secteur financier Luxembourg (PROFIL)

Tel. : +352 27 20 37-1
www.profil-luxembourg.lu

Fonds de Garantie des Dépôts, Luxembourg (FGDL)

Tél. : +352 26 25 11
www.fgdl.lu

House of Training

Tél. : +352 46 50 16-1
www.houseoftraining.lu

Institut des Auditeurs Internes Luxembourg (IIA Luxembourg)

Tel. : +352 26 27 09 04
www.iaa.lu

Institut des Réviseurs d'Entreprises (IRE)

Tel. : +352 29 11 39-1
www.ire.lu

Institut Luxembourgeois des Administrateurs (ILA)

Tel. : +352 26 00 21 487
www.ila.lu

Luxembourg for Finance (LFF)

Tel. : +352 27 20 21-1
www.luxembourgforfinance.com

Luxembourg Private Equity and Venture Capital Association (LPEA)

Tél : +352 28 68 19 602
www.lpea.lu

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Deloitte's proposed services

Over many years, Deloitte has developed its competencies and services to support and advise all types of PSF over the various stages of their development, providing the following services before incorporation and throughout their existence and growth

Upon creation

Regulatory strategy

- Assistance in compiling licence application documents and submissions to the CSSF
- Gap analysis and assistance in establishing a set of procedures covering all administrative aspects and internal controls

Strategy & Corporate finance

- Business plans services including reviews of different scenarios, possibilities of subcontracting administrative and accounting organisation, etc. This business plan is an integral part of the CSSF licence application file

Direct taxation & VAT

- Design an efficient and customized tax structure based on the business plan and the specific licences
- Fiscal optimisation from the beneficiaries' perspective
- Assistance in matters related to direct taxation & VAT
- Due diligence

Technology & Enterprise application

- Design of the IT strategy (as part of the file to be submitted to the CSSF)

Business Risk

- Develop the feasibility study & market entry strategy
- Draft the business case and initial organization, operations and high level IT capabilities assessment
- Refine/confirm strategy including business model and commercial strategy (i.e. products, activities/ services and targeted clients)
- Design governance structure
- Draft the business plan (covering 5 years), including key financials, Opex and Capex, regulatory ratio calculation and scenario analysis
- Analyse the compliance with regulatory requirements
- Describe the products and services
- Draft required policies (i.e. risk management, compliance, AML, internal audit)
- Draft the IT & IT security section
- Compile the application file and appendices to be submitted to the CSSF
- Definition and implementation of policies and processes
- Draft procedures (operational and regulatory)
- HR recruitment
- Implementation of IT systems
- Propose our systems, such as uComply for AML checks
- Accounting & regulatory reportings configuration
- Introduction, selection, negotiation with third party providers

During the development stage

Regulatory strategy	<ul style="list-style-type: none"> • Administrative and accounting organisation, and review of the compliance of services offered to clients in line with the requirements of the CSSF, in particular review the compliance with CSSF circular 12/552 (gap analysis, training, implementation) • Procedures manual covering the following aspects: administrative, IT, accounting, internal controls, etc. • Proposing compliance tools such as uComply • Rules of conduct in line with the best practice of the financial centre and MiFID rules • Training in all the above areas • Assistance in relations with the authorities. Provision of a regulatory hotline • Within the framework of subcontracting, inventory of services to be provided and drafting of Service Level Agreements (SLA) • Support for regulatory intelligence 	IT risks (Information Technology)	<ul style="list-style-type: none"> • One-off advice on long-term implementation, support in terms of IT strategy, review of IT architecture, implementing solutions, IT integration and optimisation • Assistance with all IT projects in terms of banking secrecy, relations with authorities and subcontracting • Business Continuity Plan and Disaster Recovery Plan • Projects and assistance in IT security (Security governance, risk management, ISO27001 implementation and cyber-security) • IT audits and IT investigations Forensic, eDiscovery and Data Analytics • Assistance on compliance with the data protection law
Governance, risks & compliance	<ul style="list-style-type: none"> • Subcontracting or co-sourcing of the internal audit function • Advisory services for the definition of relations with third parties and suppliers, and definition of the corresponding risks • ISAE 3402 and SSAE 16 • ISAE3000 • Regulatory Health Checks • Assistance on regulatory Compliance obligations • Assistance in developing internal control plans (Risk Management, Compliance Monitoring Programme) • Assistance in building the governance model • Compliance Risk Assessment (CRA) • Training in internal control functions 	Strategy & Corporate finance	<ul style="list-style-type: none"> • Assistance in terms of external growth (merger, acquisition, strategic alliance) • Due diligence • Evaluation of PSF • Business Model optimisation • Client and market strategy review • Executive search and coaching
Forensic & AML	<ul style="list-style-type: none"> • Appropriate organisation to deal with money laundering and the financing of terrorism in terms of training and raising awareness, client knowledge, structuring and procedures • Assistance in selection and implementation of anti-fraud and AML systems • Targeted investigation and due diligence 	Capital markets and financial assets	<ul style="list-style-type: none"> • Valuation review and independent valuation of complex financial instruments • Coverage of current applicable valuation procedures • Examination of the valuation model used • Review of market data input into the valuation model
Financial risks	<ul style="list-style-type: none"> • Calculation and optimisation of solvency ratio, production of CoREP reporting and regime relating to broad exposure • Advice, analysis and assistance regarding establishment of the ICAAP • Implementation of a framework for liquidity monitoring and monitoring of Basel regulations, in particular in respect of the advanced method relating to operational risk • Development of quantitative models relating to credit, market and operational risks • Provision of training in all the above areas 	Human resources	<ul style="list-style-type: none"> • Organisational transformation of the HR function • Definition of HR TOM (Target Operating Model) • Career and succession plan management and development • Performance management and compensation system modelling • Recruitment and skills assessment of specialised profiles • Implementation of HR information systems and portals • Change management
		IMS (Investment Management services)	<ul style="list-style-type: none"> • Modular assistance in all issues relating to cross-border financial product distribution networks (registrations; tax reporting, risk, solvency, etc.) • Investment policy: review of monitoring systems for investment policies and valuation, support for complex financial instruments, assistance in designing new products and investment strategies, as well as advice and assistance on the aspects of UCITS V or AIFMD • Corporate governance: advisory services for setting up a code of conduct and assistance with the selection of service providers and domiciles

Accounting	<ul style="list-style-type: none"> Accounting, regulatory reporting and Group reporting Accounting and finance function outsourcing Supply of experienced employees 	Technology & Enterprise application	<ul style="list-style-type: none"> Define a director plan Implement the director plan Define and establish an IT governance Design a sourcing strategy Selection of packages Application development and maintenance Define and implement analytical solutions
Direct taxation & VAT	<ul style="list-style-type: none"> Assistance with tax returns (IRC [corporate income tax], ICC [municipal business income tax], IF [wealth tax], withholding tax, VAT) Ad hoc tax advice on direct taxation and VAT Customized fiscal assistance and optimisation analyses when creating the operational structure Assistance with the tax aspects to consider in the context of operating procedures and assistance in introducing manuals of procedures taking account of the applicable tax framework and its evolution Assistance in respect of transfer pricing Verification of practical aspects of tax residence Optimisation of profit distribution to shareholders Operational assistance (also in respect of problems linked to the EU Savings directive, FATCA, the exchange of tax information (CRS), tax treatment of investors, QI etc.) Tax reclaim for private clients Evaluation of the fiscal structures of the clients Due diligence Personalised training and tax hotlines Assistance on tax optimisation of the salary package of directors Evaluation of the impact of BEPS on the client portfolio 	External audit	<ul style="list-style-type: none"> Audit of company accounts Review of compliance of with circulars and preparation either of analytical audit reports (for investment firms), or compliance reports (for specialised and support PSF) Consultation on regulatory and accounting issues, conversion to IFRS, agreed procedures and other normative aspects Support relating to requests made by the CSSF Certification of continuous training records in order to obtain related subsidies
Until the termination of operations			
Business Risk	<ul style="list-style-type: none"> Training on regulatory requirements IA outsourcing Hot line on risk, regulatory, etc..subject HR support Ongoing Corporate, VAT and personal Tax consulting Any other support they would need, depending on the specific case 	Forensic & AML: Liquidation services	<ul style="list-style-type: none"> Assistance in setting up liquidation plans
Private Wealth Services and Family Office	<ul style="list-style-type: none"> Support and implementation of customised financial structures for private clients (sales of companies, international transfer of assets, transfers of residence, etc.) Family and corporate governance Financial strategy and compliance Development of specific vehicles and products (philanthropy, art funds, Islamic finance, etc.) 	Direct taxation and VAT	<ul style="list-style-type: none"> Tax advice and assistance in connection with a liquidation, merger, demerger or transfer Fiscal assistance with regards to the beneficiaries Communication with the tax authorities
		Business Risk	<ul style="list-style-type: none"> General support during the withdraw process and in particular in analysing the technical subjects addressing the specific requirements in terms of: <ul style="list-style-type: none"> Human resources; Regulatory aspects (e.g. capital, governance, IT security etc.); IT & Operations; M&A and valuation; Tax & VAT
		Technologie & Enterprise application	<ul style="list-style-type: none"> IT transition management

Contacts

PSF



Stéphane Césari
Partner - PSF Leader
+352 451 452 487
scesari@deloitte.lu

Audit



Raphaël Charlier
Partner - Audit
+352 451 452 258
rcharlier@deloitte.lu

Investment Management



Vincent Gouverneur
Partner - EMEA Investment
Management Leader
+352 451 452 251
vgouverneur@deloitte.lu

Tax



Eric Centi
Partner - Global Financial
Service Industry Tax
+352 451 452 162
ecenti@deloitte.lu



Raphaël Glohr
Partner - Indirect Tax-VAT
+352 451 452 665
rglohr@deloitte.lu

Accounting



Alexandre Prost-Gargoz
Partner - Accounting
+352 451 454 407
aprostgargoz@deloitte.lu

Private Wealth Management Services



Benjamin Collette
Partner - EMEA Wealth
Management
& Private Banking Leader
+352 451 452 809
bcollette@deloitte.lu



Pierre-Jean Estagerie
Partner - Private Wealth Services
Leader
+352 451 454 940
pjestagerie@deloitte.lu

Advisory & Consulting

Governance, Risk & Compliance



Laurent Berliner
Partner - Governance, Risk
& Compliance Leader
+352 451 452 328
lberliner@deloitte.lu



Eric Collard
Partner - Forensic & AML
+352 451 454 985
ecollard@deloitte.lu



Xavier Zaegel
Partner - Capital Markets
& Financial Risk
+352 451 452 748
xzaegel@deloitte.lu



Marco Lichtfous
Partner - Business Risk
+352 451 454 876
mlichtfous@deloitte.lu

Strategy & Corporate Finance



Pierre Masset
Partner - Corporate Finance
+352 451 452 756
pmasset@deloitte.lu

Technology & Enterprise Application



Patrick Laurent
Partner - CIO Advisory Services
+352 451 454 170
palaurent@deloitte.lu



Roland Bastin
Partner - Information
& Technology Risk
+352 451 452 213
rbastin@deloitte.lu



Stéphane Hurtaud
Partner - Information
& Technology Risk
+352 451 454 434
shurtaud@deloitte.lu

Operations & Human Capital



Basil Sommerfeld
Partner - Operations Excellence
& Human Capital Leader
+352 451 452 646
bsommerfeld@deloitte.lu

Regulatory Strategy



Lou Kiesch
Partner - Regulatory Strategy
+352 451 452 456
lkiesch@deloitte.lu

Deloitte Luxembourg

560 rue de Neudorf
L-2220 Luxembourg
Grand Duchy of Luxembourg

Tel.: +352 451 451
Fax: +352 451 452 401
www.deloitte.lu

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