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and tax environments**

Professionals of the Financial Sector
(PSF) in Luxembourg

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Foreword



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

In line with the changes that have occurred in the last decade, 2020's range of regulatory and tax developments included the amended CSSF regulation and new CSSF circulars relating to AML/CTF and IT requirements, alongside new tax reporting such as DAC 6. There has been a constant need to familiarize, comply, and adapt.



This 2021 edition of our guide aims to provide you with a detailed view of this ecosystem, without being strictly exhaustive as per the latest changes. This is an overview.

In the first chapter, we address the essential aspects of the legal and regulatory framework. We primarily cover the authorization 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 describes the tax environment of PSF from a direct corporate tax and VAT perspective. This chapter further highlights some hot tax topics applicable to PSF and gives an overview of incentives relevant to 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 and gain further insight into PSF.

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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 2020, 269 PSFs (Professionals of the Financial Sector) were subject to the prudential supervision of the CSSF compared to 278 as of 31 December 2019. By the end of August 2020, they employed about 16,000 people in total compared to 16,878 as of 31 December 2019, with their total balance sheet having amounted to €8,970 million as of 31 August 2020, compared to €8,839 million as of 31 December 2019. Their net results year-on-year decreased from €520 million in 2018 to €458 million for the year 2019.

Over the first three quarters of 2020, there has been a concentration of the employment and number of PSF under CSSF supervision, which is a sign of consolidation in the sector. There are disparities within the three categories of PSF. Between 2018 and 2019, the net result of investment firms recorded a high increase of 53%, while the net result for specialized PSF and support PSF saw a decrease of 22% and 18% respectively.

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 is 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 summarizing the advantages and conditions of obtaining PSF status licenses. 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 licenses.

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.

Evolution in the number of PSF by category

| Year | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 |
|-------------------------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|
| Investment firms | 88 | 85 | 92 | 100 | 110 | 109 | 116 | 109 | 110 | 112 | 107 | 108 | 102 | 97 | 99 | 99 |
| Specialized PSF | 97 | 111 | 68 | 90 | 102 | 113 | 119 | 124 | 126 | 123 | 124 | 119 | 108 | 109 | 105 | 99 |
| Support PSF | 0 | 0 | 55 | 67 | 74 | 79 | 87 | 83 | 82 | 81 | 78 | 77 | 79 | 74 | 74 | 71 |
| Total | 185 | 196 | 215 | 257 | 286 | 301 | 322 | 316 | 318 | 316 | 309 | 304 | 289 | 280 | 278 | 269 |

A close-up photograph of a dandelion seed head. The seeds are long, thin, and reddish-brown, radiating from a central point. The background is a soft, out-of-focus light blue. A semi-transparent teal rectangular box is overlaid in the center, containing the text "Legal Environment" in white, bold, sans-serif font.

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 three 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 or OTF)

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 recognized clearing houses or are subject to regular margin calls

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 or an OTF, are cleared and settled through recognized 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, authorized 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.

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

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

Specialized PSF²

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

Specialized 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 79).

Investment firms benefit from the European passport to offer their services and products

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. Dematerialization service providers
6. Conservation service providers

A comprehensive definition of the services provided by this category of PSF is given below in section III, paragraph 3-b (page 95).

PSCD (*Prestataires de Services de Communication de Données*)

These actors (Art. 29-12 to 29-14 of the Law) introduced by the law dated 30 May 2018 are entities providing at least one of the following activities:

- Approved Publication Arrangement (APA)
- Consolidated Tape Provider (CTP)
- Approved Reporting Mechanism (ARM)

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 reorganization and winding up of financial sector professionals, as well as deposit guarantee and investor compensation schemes.

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 the amended 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 organization 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

PSF must set up relevant measures and internal procedures in order to prevent and combat money laundering and terrorist financing

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

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*



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.

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 authorized 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.

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

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. In February 2018, Article 40 of the Law was modified. The aim of this amendment was to modernize the current provisions and to facilitate the provisions on outsourcing.

Applicable only to investment firms

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

Even though all PSF are subject to organizational requirements, Article 37-1 strengthens these organizational obligations for investment firms since they provide investment services and operations for third-party clients who must be protected by sound and standardized 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 organizational 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-organized 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 organizational 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 authorized 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. Reorganization, 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 authorization procedure.

1. Reorganization 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 reorganization 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 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:

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

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

Appointed by the judicial authorities, the administrator is responsible for managing the reorganization measures, and as such must authorize 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 authorization 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 authorization 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 jeopardize 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 Authorization 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 authorization procedure to obtain the required PSF license

a. License

To ensure that the financial sector is recognized 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 license procedure to obtain the desired status. In addition, such activities may not be carried out (and the license will not be issued) through another person or as an intermediary.

However, pursuant to Article 1-1 (2) of the Law, the license 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;

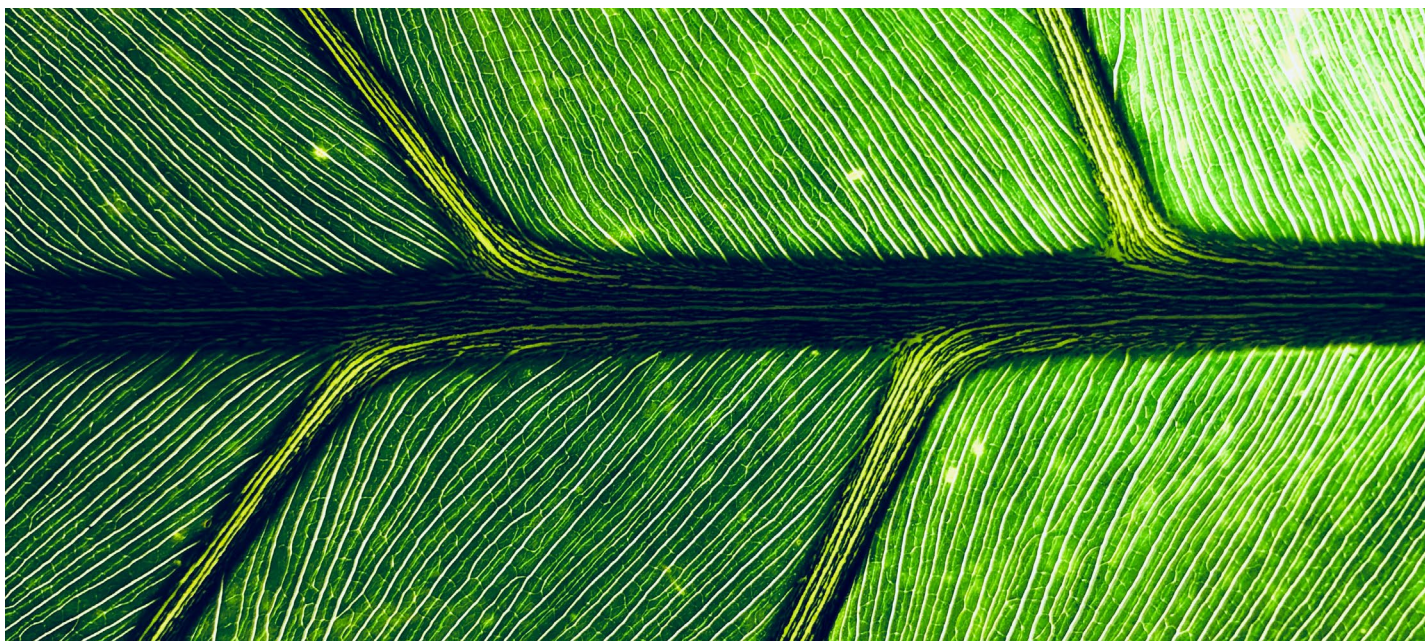
c) which provide a service under this Law, exclusively to one or more undertakings forming part of the same group as the undertaking providing the service, unless otherwise provided; [...]"

Legal entities whose company's purpose requires that they obtain a license under the Law may be incorporated with this company purpose even before obtaining such a license from the Minister, provided they applied for a license 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 license 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 license.

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

A company or other legal person, which has a license 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 license.



b. License procedure

The license is subject to obtaining a written authorization from the Ministry of Finance, which handles the license 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 license 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 authorization 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 license.

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

Moreover, the Law specifies that once a license 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.

c. Application file

The license 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 license:

- 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

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

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 license

- Presentation and demonstration by the applicant of the existence in Luxembourg of the central administrative office in accordance with CSSF circular 95/120 or 20/758 and of its registered offices¹³
- 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 authorized beforehand by the CSSF
- Authorization 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:
 - 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.

d. Professional standing and experience

The personal data of authorized 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 authorization 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. 441-3 of the modified law of 10 August 1915 on commercial companies). Under Article 441-9 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 organization

As the decision-making center, the PSF must have a sound internal governance system in Luxembourg with a clear and consistent organization 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.

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

¹³ A natural person must prove that he/she effectively conducts business in Luxembourg

¹⁴ On this subject, refer to CSSF circular 95/120 for specialized and support PSF or 20/758 for investment firms



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), specialized PSF or support PSF (least restrictive environment)¹⁵.

f. Shareholding

Authorization 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 licenses, it must comply with the highest minimum capital of the statuses obtained.

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

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



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 430-19 (1) of the modified law of 10 August 1915 on commercial companies which stipulates: "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.

h. External audit

Authorization 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 authorized in advance by the CSSF.

i. License withdrawal

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

- The PSF does not make use of the license within 12 months of it being granted
- The PSF expressly waives its license
- The PSF has not conducted any of the activities for which the license was obtained over a period of 6 months
- The conditions of granting PSF status are no longer met
- The license was obtained through misrepresentation or by any other irregular means
- In the case of a market operator operating an MTF or an OTF or of an investment firm, it has seriously and systematically infringed one of the provisions governing the operating conditions applicable to it
- 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 license 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.

It is essential that the shareholders or partners of a PSF have sufficient financial resources that may be used if necessary

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 organized 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' 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 circulars 10/486 and 13/571) 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 specialized 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 authorized management shall confirm compliance with CSSF circular 20/758 by way of a single written sentence followed by the signatures of all the members of the authorized 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 authorization
- By virtue of CSSF regulation 16-07, 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 authorization 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 organization 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 summarizes 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 authorized 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 month |
| III. 2. | P&L | Quarterly | The 20 th of the next month |

4 Key CSSF regulations and circulars

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)

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 organizational 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 16-07 and CSSF circular 17/671 relating to the out-of-court resolution of complaints¹⁸

These are applicable to all PSF.

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 formalized 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 analyzed, 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 17/671 provides details concerning the regulation, mentioning namely that the recording of complaints

¹⁸ www.cssf.lu section Laws, regulations and other texts, then Professionals of the Financial Sector (PSF)

must be computerized 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.

b. CSSF regulation 12-02 on the fight against money laundering and terrorist financing¹⁹ as amended by CSSF regulation 20-05

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 17/660 on instructing party information accompanying transfers of funds. This is in accordance with the EU regulation 2015/847 and the CSSF circular 17/650 relating to predicate tax offences. CSSF regulation 12-02 was amended in August 2020 by the CSSF regulation 20-05, and CSSF circular 17/650 was amended in July 2020 by the CSSF circular 20/744.

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 organization (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 2015/847 dated 20 May 2015 on instructing party information accompanying transfers of funds



¹⁹ www.cssf.lu section financial crime, then anti-money laundering and counter-terrorist financing

CSSF regulation 12-02, as amended, reinforces and completes the applicable regulatory framework (which evolved following the law dated 18 February 2018) with regards to the following topics:

- Risk-based approach: equivalent countries are not exempted from risk assessment
- Overall risk related to the activity
- Individual risk related to the business relationship
- 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
- Adequate internal management requirements: 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 categorize these risks, and afterwards define and implement measures to mitigate the identified risks.

CSSF circular 17/650 introduced new requirements for professionals subject to the CSSF supervision and to requirements relating to money laundering and terrorist financing as amended by CSSF circular 20/744:

PSF now must consider the new predicate tax offenses such as aggravated tax fraud and tax evasion; namely the tax crimes related to direct and indirect taxes. CSSF circular 17/650 includes in its appendix examples of indicators likely to reveal potential laundering of a predicate tax offense. CSSF circular 20/744 issued in July 2020 amended annex 1 of the CSSF circular 17/650 and introduced new indicators to be taken into account in the context of collective investment activities.

c. CSSF circular 20/758 (replacing 12/552 as amended) – central administration, internal governance, and risk management²⁰

This circular replaces CSSF circular 12/552 as amended for investment firms and is applicable from January 1, 2021.

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 of the amended CSSF circular 12/552 shall apply (Part III Chapter 3, except sub-chapter 3.4, and Part III Chapter 2 paragraph 12).

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, 17/651, 17/656, and 06/240.

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 the CSSF circular 20/758 (replacing CSSF circular 12/552) are not new per se, there is a strong emphasis on further formalization needed in order to document internal governance arrangements and the way internal control activities are conducted.

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

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

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

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

The three-lines-of-defense are complementary, each line of defense 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 a board of directors 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. The CSSF circular 20/758 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 authorized 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 organizational 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 authorized management?

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

Regularly and at least annually the authorized 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 the CSSF circular 20/758 shall be transmitted to the CSSF and explanations in case of non-full compliance.

The authorized 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 authorized 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 specialized committees for approval and to the authorized 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 authorized 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 specialized and support PSF. It has been replaced by CSSF circular 12/552 as amended for investment firms and recently by CSSF circular 20/758. However, the concepts, the principles are the same.

This circular reflects Article 17 of the Law and stipulates that to obtain a license 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 center and its administrative center 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 'center' 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) authorized 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.

The second notion of 'center' 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

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



**e. The amended CSSF circulars 96/126²²
17/656²² and 06/240²²
– administrative and accounting
organization and IT subcontracting**

These circulars are applicable to specialized and support PSF. They have been replaced by CSSF circular 12/552 for investment firms and recently by CSSF circular 20/758. 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 organization, these circulars follow on from the previous circular 95/120 and provide guidelines on how such an organization 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 organization 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 organization and accounting, plus definitions of positions and related responsibilities.



More specifically, the organization 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 organizational 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 centralize 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

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

As regards IT, CSSF circular 17/656 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 organizing 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 jeopardized.

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 17/656.

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 license, on the qualification of a subcontracted technical service to determine whether or not it requires an OSIRC license (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.

The CSSF circular 17/654 is intended to clarify the regulatory framework applicable to the use of a cloud computing infrastructure provided by a third party. This circular discloses the definition of cloud computing and the requirements to respect in case of outsourcing based on a cloud computing infrastructure.

f. CSSF circular 98/143 – internal control²³

This circular is applicable to specialized and support PSF. It has been replaced by CSSF circular 12/552 for investment firms and recently by CSSF circular 20/758. 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 specialized and support PSF and CSSF circular 20/758 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 organizational 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 organizational requirements, chapter 3 of this circular includes the board of directors' responsibility, the authorized 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 annex V of CSSF circular 07/307.

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

1. Client categorization (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

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 (PFS)

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 authorized 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 authorized 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 - optimization 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 organization 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)

I. CSSF circular 13/554 – evolution of the usage and control of the tools for managing IT resources and management access

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 centralized 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.

m. CSSF circular 18/697 – relating to alternative investment fund managers

This circular applies to depositaries of alternative investment fund managers AIFs. It presents the depositaries' duties with regard to asset custody, supervisory obligations, and obligations regarding the monitoring of financial flows. It establishes a custodian liability regime for alternative investment funds and their investors.

It presents the legal framework applicable to the AIFs, the criteria of eligibility, and approval in order to be depository of AIFs. It also presents in terms of governance and organization, the need for conflict of

interest policies and internal procedures, internal rules, and the specific obligations of the depository.

The CSSF states that in order to avoid any conflict of interest, no delegation or sub-delegation of the investment management function can be accepted by the depository.

n. CSSF circular 18/698 – relating to investment fund managers incorporated under Luxembourg law

This circular applies to investment fund managers under Luxembourg law (IFM) and sets out the specific anti-money laundering and terrorist financing provisions applicable to IFMs and entities exercising the function of registrar agent.

The important points of this circular are:

- A list of all important definitions, such as “delegate” and “key functions”
- The conditions for obtaining and maintaining approval for an IFM
- The organization of the IFM with the conditions of exercise for the members of the IFM governing body (1,900 hours and 20 mandates maximum per year)
- The system of central administration and internal governance, with the requirements in terms of organization, procedures, and reporting.
- The specific organizational arrangements including the framework and limits of the delegation
- The conditions for obtaining and maintaining the approval of IFMs that have UCI management activities.

Any new IFM must, as part of the approval file, be submitted to the CSSF, include a risk management procedure (RMP) in accordance with the appropriate framework. Next, an update must be communicated to the CSSF at least once a year within five months of the end of the IFM financial year.

o. CSSF circular 20/750 – relating to requirements regarding information and communication technology (ICT) and security risk management

This circular implements in Luxembourg the EBA Guidelines on ICT and security risk management (EBA/GL/2019/04, “the guidelines”). The guidelines establish the requirements for credit institutions, investment firms, payment institutions and electronic money institutions to mitigate and manage their ICT risks, aiming to ensure a consistent and robust approach across all European Union (EU) member states. However, the circular extends the scope of the guidelines to include all PSF. The guidelines give financial institutions a better understanding of the supervisory expectations for risk management, covering areas such as ICT governance and strategy, ICT risk management frameworks, information security, ICT operations management, ICT project and change management, and business continuity management. The guidelines are principle-based and flexible enough to be applied to all the sector's relevant institutions.

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 the amended CSSF circular 03/113 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 analyzed 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 as amended
- 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 as amended 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 20/758 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 organization
 - 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. Organization 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 analytical 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.

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

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

For both specialized 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.

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:



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

- 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 as amended
- Article 36-1 of the Law
- CSSF circular 95/120 on central administration
- CSSF circular 96/126 on administrative organization 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
- The amended CSSF circulars 17/656 and 06/240 relating to administrative organization and accounting procedures and IT outsourcing 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 organization
3. Internal branch supervision and internal audit
4. The branch's IT organization 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)



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

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.

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 |
|--|---|
| <p>A. Subscribed capital unpaid</p> <ul style="list-style-type: none"> I. Subscribed capital not called II. Subscribed capital called but unpaid | <p>A Capital and reserve</p> <ul style="list-style-type: none"> I. Subscribed capital II. Share premium III. Revaluation reserve IV. Reserves <ul style="list-style-type: none"> 1. Legal reserve 2. Reserve for own shares or corporate units 3. Reserves provided for by the articles of association 4. Other reserves, including the fair value reserve <ul style="list-style-type: none"> a. Other available reserves b. Other non-available reserves V. Results brought forward VI. Result for the financial year VII. Interim dividends VIII. Capital investment subsidies |
| <p>B. Formation expenses</p> | <p>B. Provisions</p> <ul style="list-style-type: none"> 1. Provisions for pensions and similar obligations 2. Provisions for taxation 3. Other provisions |
| <p>C. Fixed assets</p> <ul style="list-style-type: none"> I. Intangible fixed assets <ul style="list-style-type: none"> 1. Development costs 2. Concessions, patents, licenses, trademarks and similar rights and assets if they were: <ul style="list-style-type: none"> 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 | <p>C. Creditors</p> <ul style="list-style-type: none"> 1. Bonds <ul style="list-style-type: none"> a. Convertible bonds: <ul style="list-style-type: none"> i. becoming due and payable within one year ii. becoming due and payable after more than one year b. Non-convertible bonds: <ul style="list-style-type: none"> i. becoming due and payable within one year ii. becoming due and payable after more than one year 2. Amounts owed to credit institutions: <ul style="list-style-type: none"> a. becoming due and payable within one year b. becoming due and payable after more than one year |

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

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 check accounts, checks, and cash in hand

D. Deferred income

E. Deferred charges

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

- | | |
|---|--|
| <ul style="list-style-type: none"> 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 capitalized 4. Other operating income 5. a) Raw materials and consumables b) Other external expenses 6. Staff costs <ul style="list-style-type: none"> a) Wages and salaries b) Social security costs <ul style="list-style-type: none"> i) relating to pensions ii) other social security costs c) Other staff costs 7. Value adjustments <ul style="list-style-type: none"> 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 <ul style="list-style-type: none"> a) from affiliated undertakings b) from other participating interests | <ul style="list-style-type: none"> 10. Income from other investments, other securities, and loans forming part of the fixed assets <ul style="list-style-type: none"> a) from affiliated undertakings b) other income not shown under a) 11. Other interest receivables and other financial income <ul style="list-style-type: none"> 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 <ul style="list-style-type: none"> 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 |
|---|--|

The Accounting Law permits small-size undertakings to draw up abridged balance sheets, profit and loss accounts, and notes to annual accounts.

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 Accounting Law permits small-size undertakings to draw up abridged balance sheets, profit and loss accounts, and abridged notes to annual accounts provided they do not exceed at least two of the three limits mentioned in the Law dated 18 December 2015 (relating to the total balance sheet, the net turnover and the average number of full-time staff employed during the financial year). These options do not apply to undertakings whose securities are admitted to trading on a regulated market of any Member State of the European Union. Please refer to our brochure "Illustrative Annual Accounts in accordance with Luxembourg GAAP" dated November 2020 for more detail.

Support PSF are, since the law of 30 July 2013, required to comply with the standard chart of accounts.





Tax Environment

1 Corporate Income Tax (CIT)

Taxable income

CIT 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 CIT and from MBT if the following conditions are met:

- 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 Law on Income Tax (LITL).

Exemption from withholding tax on dividends:

Dividends paid by 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.

Nevertheless, there is an anti-abuse clause included in the Law in order to prevent artificial schemes.

This regime includes eligible parent companies based in a country with which Luxembourg has signed a double taxation treaty (DTT) and is fully liable for a tax corresponding to the CIT.

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. However, a permanent entity or real estate assets are meant to capture taxation in the related country.

The "Parent-Subsidiary" Directive has been 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 and 166 LITL

Circular no. 153-1 LITL of 22 November 2004

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 provides 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-recognized organizations
- Expenses relating to exempt income
- Non-deductible taxes (including CIT, MBT and NWT)
- Additional provisions for payments depicted in section 9.10 regarding ATAD

For further details:
Art. 12, 45 and 168 LITL

Other deductions from the taxable base

- Donations and gifts paid to organizations recognized by law and subject to certain conditions
- Losses which can be carried forward to future results for 17 years only for losses incurred as from 2017

For further details:
Donations and gifts: Art. 109 and 112 LITL
Losses available for carry-forward: Art. 114 LITL and LITL circular No. 114/2 of 2 September 2010

Tax rate

Since 1 January 2020:

- If the taxable base is less than €175,000, the CIT rate is 15% (or 16.05% including the employment fund contribution tax)
- Between €175,000 and €200,000, the CIT rate is €26,250 plus 31% of the revenue above €175,00
- Above €200,001, the rate is set at 17% (or 18.9% including the employment fund contribution tax)

For further details:
Art. 173 and 174 LITL

Tax relief

The tax law makes provisions for various types of tax credit applicable to the CIT base such as tax relief for investments (see hereafter).

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

- The relief is equal to 13% 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:

- 8% 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 2% for the investment range in excess of €150,000 as regards investments in fixed assets eligible for special depreciation
- Since 1 January 2018, 8% for the first range up to €150,000 and 2% for the investment range in excess of €150,000 as regards investments in purchased of software. The credit will not apply to software created by the company, which would be able to benefit from the intellectual property (IP) hereinafter.

Within a single corporate group, each software purchase will be able to benefit from the credit regime only once, and no credit will be allowed for software purchased from another group entity. Once a taxpayer requests the tax credit for the purchase of software, it would not be allowed to request the application of the IP regime for the income generated by such software.

The tax benefit from the regime may not exceed 10% of the tax due for the year of the software acquisition.

However, the following investments are excluded:

- Assets ordinarily depreciated over a period of less than three 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 LITL
Circular no. 152 bis LITL of 14 November 1994
Grand-Ducal regulation of 29 October 1987

2 Municipal Business Tax (MBT)



Taxable income

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

Tax rate

The MBT 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 CIT, MBT, and the employment fund tax, the effective rate is therefore 24.94%.

For further details:

Art.11 MBT law

MBT circular No. 37 of 15 September 2003

3 Net wealth tax (NWT)

Net Wealth Tax

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 CIT and MBT, restatements must be made to determine the unitary value including the exemption of significant interests (special 'parent company and subsidiaries' regime).

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

Once the unitary value of the entity is determined, the applicable rate to be applied on the company's total net assets is:

- A rate of 0.5% on the total net assets up to €500 million
- A rate of 0.05% on the total net assets as from €500 million and more.

All collective entities with their statutory seat or central administration in Luxembourg are liable to the minimum NWT, regardless of whether they are regulated. Luxembourg permanent establishments of foreign companies are beyond the scope of the minimum NWT on the basis that, in principle, foreign companies have their statutory seat or central administration outside of Luxembourg.

The amount of minimum NWT 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 irrespective of being regulated or not, that have

qualifying holding and financial assets (i.e. fixed financial assets, transferable securities and cash at bank) exceeding both 90% of their total gross assets, and the amount of €350,000 will be subject to a minimum NWT of €4,815 (including the unemployment fund surcharge)

- Tax resident entities other than those that hold mainly financial items (broadly speaking such as operating companies). Those are subject to a progressive minimum NWT depending on the total assets of their balance sheet. The tax ranges vary from:
 - €535 (for a total balance sheet up to €350,000) to...
 - €32,100 (for a total balance sheet exceeding €30 million). These amounts include the unemployment fund surcharge.

For further details:

NWT Law

Contributions Director circular net wealth tax of 28 March 2014

Tax reduction

Luxembourg law allows a NWT reduction by creating a special reserve that equals five times the amount of the NWT due given fiscal year for which the reduction is requested and by keeping the said special reserve during the following five years. The amount of NWT that can be reduced is limited to the amount of CIT (including the contribution to the unemployment fund) before any tax credits, which is due for the preceding tax year.

The NWT reduction cannot exceed the difference between the Net Wealth computed based on the unitary value and the minimum Net Wealth after reduction.

Just like CIT and MBT, restatements must be made to determine the unitary value including the exemption of significant interests.

4 Obligations to declare— CIT, MBT, and NWT



Failure to pay or late payment:
interest charge of 0.6% per month

Failure to submit or late
submission of tax return:
10% of tax due and a fine of
up to €25,000

Tax returns

Must be filed by 31 May following the fiscal year for CIT, MBT, and NWT.

However, in practice tax returns can be filled until the 31 December of the following year. Since 1 January 2018, tax returns must be completed online except for specific cases.

Subject to an expected tax law enactment, the deadline to file 2020 direct tax returns is likely to be extended from 31 March 2021 to 30 June 2021 for both individuals and companies (Luxembourg residents and non-residents). Please consult your tax advisor for further advice.

Payment of tax

Advance payments are to be paid on a quarterly basis:

- CIT: 10 March, 10 June, 10 September, and 10 December
- MBT and NWT: 10 February, 10 May, 10 August, and 10 November

Tax notices

Taxes assessed are payable within one month of notification by Luxembourg 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 group

Persons established in Luxembourg, including Luxembourg fixed establishment of foreign persons, legally independent but closely bound by economic, organizational and financial links could set up a VAT group. The main effects of the VAT group are that supplies of goods and services between members of the VAT group are disregarded for VAT (i.e. not subject to VAT), that members of the VAT group are jointly liable for the VAT due by the VAT group and that consolidated VAT returns must be filed by the VAT group including all transactions of the members with third parties

VAT rate

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.

The standard, intermediary, and (super) reduced rates are respectively 17%, 14%, 8% and 3%.

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 among others the following services:

- Outsourced services could also be VAT exempt should conditions defined by the Court of Justice of the European Union be met.
- 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, ASSEPs and SEPCAVs Subject to the supervision of the *Commission de Surveillance du Secteur Financier* (CSSF), as well as pension funds covered by the law on the insurance sector subject to the supervision of the Commissariat aux Assurances (CAA).
 - Collective life insurance funds under the supervision of the CAA
 - 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 CAA

- Securitization vehicles covered by the Luxembourg law on securitization and similar vehicles performing securitization transactions within the meaning of the Regulation 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, however these services entitle to deduct input VAT when rendered to non-EU beneficiaries or are linked to exportation of goods outside the EU).

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, 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, 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 sum of annual sales, and the sum of annual intra-community acquisition of goods and annual purchase of services from EU foreign service

providers subject to reverse charge in Luxembourg. Thus, when the annual sales or the sum of the annual intra-community acquisition of goods and services subject to reverse charge in Luxembourg 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 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

VAT returns and EC Sales list must be filed via the Internet using the eCDF system of the Luxembourg VAT authorities: Registration Duties, Estates and VAT Authority (*Administration de l'Enregistrement, des Domaines et de la TVA - AEDT*).

The EU FS VAT review: to be looked after

In 2019, the European Commission ordered a study to be conducted on his behalf by

a consortium of consultants. Based on the results of this study, the Commission will decide to undertake or not a review of the VAT exemptions applicable to financial and insurance services. This consortium has interrogated European and national associations, national VAT authorities and businesses. The current views are that it is necessary to maintain the VAT exemptions as well as to clarify and modernized them. Moreover, many voice that cross-border cost sharing associations ("independent group of persons"), and VAT group should be available for the financial and insurance sectors. Other topics of interest include e.a. the option for tax.

The consultants presented a summary of their study during the call of 25 May 2020 of the Group on the Future of VAT (GFV, a consultative body to the European Commission composed of representatives of the national VAT authorities). This summary presented various options, including the taxation of all or some financial services at a standard or a reduced rate. The minutes of this call indicated that national VAT authorities have no clear and common views on these questions. In October 2020, the European Commission published a "roadmap". Based on the information currently available and in line with the process applicable to such projects, the next steps in 2021 should be a European Commission impact assessment and a public consultation. Subsequently, the European Commission would prepare a draft of legislative texts that the different stakeholders would have the opportunity to discuss. Therefore, the entire process would take several years.

6 Double taxation treaties

Luxembourg has a fabric of 83 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 (DTT) 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 in principle, 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 0.6% i.e. 0.5% registration fees increased by 2/10. This amount is increased by +0.5% in transcription fees
- The contribution for payment of a real-estate asset is subject to the registration fee of 6% i.e. 5% registration fees increased by 2/10 + 1% transcription fees.

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 tax 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 unless for specific activities.

Distribution of liquidation proceeds

0%

Directors' fees

The tax regime applicable to directors' fees is provided by article 152 title 2 LITL. 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 withholding tax on directors' fees must be declared on paper or electronically and paid within eight days following the date of payment of the income. The tax withheld is to be paid in a lump sum, without designation of the beneficiaries of the directors' fees.

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 on gross directors' fees may be final if the director has no other Luxembourg-source professional income, and if the total gross directors' fees do not exceed €100,000 during the calendar year concerned.

Finally, whenever the directors' fees exceed €100,000, it is compulsory for the taxpayer to file a personal tax declaration after year-end.

As a result, this leads to the application of the progressive income tax rates (with a maximum of 45.78%) on the Luxembourg-source directors' fees, with a subsequent credit of the 20% withholding tax against the Luxembourg final income tax due.

Note that non-executive self-employed activities may also trigger at the level of the non-executive director social security, VAT, and bookkeeping requirements in Luxembourg.

For further details: Art. 146 et seq. LITL

9 Specific tax aspects

9.1. Transfer-pricing

For a few years now, the ultra-globalized environment is heading in a direction where transfer pricing (and the arm's length principle on which it is built) is at the top of the agenda of companies involved in intra-group transactions, such as the supply of goods or services and debt financing. The increasing volume of intra-group transactions (representing about two-thirds of the total trade volume) and the evolution of local regulations make transfer pricing planning and documentation a key risk management milestone for 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 prices or profit that would have arisen if the transactions had been carried out under comparable circumstances by independent parties. Based on this principle, tax authorities are, in many jurisdictions, allowed to adjust the taxable basis of a company that would have deviated from market conditions. These adjustments can result either in an increase of the taxable income or in a reduction of the tax loss.

As from 1 January 2015, Luxembourg formalized the application of the arm's length principle by introducing art.56 of LITL.

Any taxpayers (including PSF) carrying out intra-group transactions must be able to deliver, upon request, the appropriate transfer pricing documentation

demonstrating that the price or remuneration applied with the related party is at arm's length²⁷.

As with other countries, the Luxembourg tax practice essentially relies on the OECD Transfer Pricing Guidelines that provide tax authorities and taxpayers with a wide range of transfer pricing recommendations. In addition to these OECD Guidelines and the below mentioned circulars, there are general provisions in the LITL²⁸ allowing Luxembourg 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 becoming increasingly sophisticated and making more inquiries, it has become essential for both Luxembourg and foreign companies carrying out intra-group transactions and/or supply of services on a cross-border basis, including Luxembourg PSF, to ensure upfront compliance with transfer pricing aspects. They must also monitor this compliance on an on-going basis to avoid future possible readjustments of the taxable base by tax authorities, and be able to quickly fulfill any tax authority request for transfer-pricing documentation.

Since mid-2020, the Luxembourg tax authorities have become more active in requesting transfer pricing documentation for entities involved in intra-group financing activities. A steep increase in scrutiny of

the transfer pricing aspects of financial transactions has been observed on the side of the Luxembourg tax authorities since Chapter X of the OECD TP Guidelines was published.

In fact, more and more regular tax audits have been conducted in this area, and a “wave” of standard information requests associated with the tax return review process was sent to a large number of taxpayers. Most of these requests are not part of a formal tax audit. However, these requests may lead to a further, in-depth investigation of the transfer pricing position of a taxpayer based on the information and documentation provided.

Besides the aforementioned requests, tax authorities have also recently started several formal audit procedures in respect of intra-group financing entities.

Handling the transfer pricing analysis by anticipation ensures functions carried out by a Luxembourg company are duly remunerated and provides valuable comfort to the taxpayers when transfer pricing justification inquiries knock on the door.

Furthermore, it must be acknowledged that different exchange of information mechanisms—at both the European Union and OECD level—allow the communication of relevant information in different fields, including transfer pricing. Multinational groups with a consolidated turnover of €750 million or more fall under the country-by-country reporting obligation.

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 Internal Revenue Service (IRS) on U.S. persons and their assets, as well as on certain types of entities and their controlling US persons holding directly or indirectly significant shares (i.e. shares representing at least 25% of the total value or of total voting rights) within a Passive Non Financial Foreign Entity (Passive NFFE).

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 person Where 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.)

- 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 centers 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 institutions 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 to direct U.S.-source (Fixed, Determinable, Annual or Periodic income or FDAP) 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.

On 14 December 2018, the Treasury and the IRS issued Proposed Regulations that substantially reduce the burden under FATCA by eliminating withholding on the payments of gross proceeds and deferring withholding on foreign pass through payments. The final regulations published in the Federal Register on 2 January 2020 adopted selected provisions from the Proposed Regulations.

9.3. 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 several 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 (ABBL and ALFI) have also published their guidelines and Q&A documents ("local guidelines") to implement FATCA.

Finally, on 18 June 2020, the Luxembourg Parliament passed bill 7527 on the modification of the FATCA law into Luxembourg domestic tax law, introducing new explicit obligations for Luxembourg reporting financial institutions and strengthening the Luxembourg tax authorities' prerogative to carry out audits of financial institutions.

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.

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, which can be used by financial institutions wishing to elaborate their own self-certification form for the purposes of FATCA.

For further details:

Intergovernmental Agreement Model 1, signed between Luxembourg and the United States on 28 March 2014

FATCA Luxembourg implementation law of 24 July 2015

Law of 18 June 2020 amending the FATCA and CRS legislation

Circulars ECHA 2 and ECHA 3 published by the Luxembourg Tax Authorities

FATCA temporary regulations and coordination regulations dated 20 February 2014

9.4. 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 as well as certain PSF have adopted this status allowing them to preserve the identity of account holders that are non-US citizens while allowing them the benefit of the status against double taxation.

On 30 December 2016, the IRS released Notice 2017-15, 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 as from 1st January 2017.

The most substantial change introduced by this 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 (the next certification is required in 2021). 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.

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



9.5. Automatic exchange of information—CRS based reporting

OECD 2010 modified convention on Mutual Administrative Assistance in Tax Matters implements tax cooperation to tackle tax evasion and avoidance. This convention was signed by more than 100 countries including Luxembourg and will create more obligations dealing with automatic exchange of information with countries considered as CRS Partners towards tax residents of those countries. Since 2017, and according to the previous mentioned convention, more than 49 “early adopter” countries have implemented automatic exchange of information on the basis of CRS. In 2018, more than 51 additional countries implemented the CRS standards.

A legal instrument through which the EU implemented CRS, is the directive 2014/107/EU from the 9 December 2014 modifying the directive 2011/16/EU on administrative cooperation in the field of taxation (DAC2) applicable since 1 January 2016. EU Member States had to transpose the directive before the end of 2015. In Luxembourg, the directive has been transposed into national law framework through the law of 18 December 2015.

It is 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.

Under DAC 2, Luxembourg Financial Institutions (FIs) that include, among others, banks, funds, life insurers, but also certain holding companies and PSF must automatically and annually exchange relevant personal and financial information regarding any reportable account they maintain to the Luxembourg tax authorities, which will subsequently transmit this information to the relevant foreign tax authorities.

Moreover, FIs should also closely monitor the Grand-Ducal regulation that updates the list of reportable jurisdictions for the purpose of CRS in Luxembourg.

Finally, on 18 June 2020, the Luxembourg Parliament passed bill 7527 on the modification of the CRS law into Luxembourg domestic tax law, introducing new explicit requirements for Luxembourg reporting financial institutions (notably to keep for 10 years a register of engaged actions to ensure they are CRS compliant); a nil report obligation in the absence of

reportable accounts (in case of absence of a nil report in this specific case, a penalty of €10,000 should apply besides the existing one of €250,000) and strengthening the Luxembourg tax authorities' prerogative to carry out audits of FIs.

For further details:

Law 23 July 2016 transposing Directive 2015/2060 OECD Convention on administrative cooperation in the field of taxation

Law of 18 June 2020 amending the FATCA and CRS legislation

Handbook on automatic exchange of information on financial accounts

Directive 2014/107/EU of 9 December 2014 modifying Directive 2011/16/EU as regards mandatory exchange of information in the field of taxation.

Grand-Ducal Regulation of 24 January 2020

9.6. Taxation of savings income

The Tax Circular issued on 27 February 2017 completed the Relibi Law following the Luxembourg 2017 tax reform (tax rate modification from 10% to 20%).

The law introduced a final withholding tax regime for interest income from fixed-income investment such as:

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

The law provides a rate of 20% 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 20% 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 20% 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 recognized in Luxembourg or in any other Member State of the European Union.

Income that is not subject to the 20% flat-rate withholding is taxable at progressive rates as referenced in the taxpayer's normal tax return (with a small exemption threshold).

For further details: Contributions Director circular Flat-rate discharge payment (relib No. 1) of 24 January 2006 law of 23 December 2005 Law of 27 November 2014

9.7. 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 described in the 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) significantly modifying the procedure that has to be followed upon the reception of a request.

Since the publication of the law of the 1 of March 2019 (Article 3), it is now also possible to contest the "foreseeable relevance" of the Luxembourg Tax Authority injunction decision directly before the *Luxembourg Administrative Tribunal* (specific and dedicated procedure).

9.8. EU Directive relating to administrative cooperation in tax matters

Administrative cooperation is related to the cooperation between tax and customs administration in order to share relevant information to track and reduce tax evasion.

The Commission launched several initiatives in the field of taxation in the EU:

- Directive 2011/16/UE (DAC1) aiming to generalize the exchange of information on demand and also automatic exchange of information between EU member states
- Directive 2014/107/UE (DAC2): introduced automatic exchange of financial account information
- Directive 2015/2376/UE (DAC3): on automatic exchange of tax rulings and advance pricing agreements
- Directive 2016/881/UE (DAC4): on automatic exchange of country by country
- Directive 2016/2258/EU (DAC5): ensures tax authorities have access to beneficial ownership information collected pursuant to anti-money laundering legislation
- Directive 2018/822/UE (DAC6): on automatic exchange of reportable cross-border arrangements and how the Directive operates.

The last directive entered into force on the 25 June 2018 tends to increase the scope of exchange of information according to a new type of reporting.

DAC 6, amending the Directive (DAC1) on administrative cooperation, tends to have the taxpayers and intermediaries declaring certain cross-border transactions with certain hallmark as defined in the Directive.

Its entry into force was initially scheduled for 1 July 2020, meaning that transactions with the hallmark indicated in the Directive and put in place after 25 June 2018 would have to be reported.

However, due to the sanitary crisis, certain Member States (including Luxembourg) have opted for a deferral period of six months as per the following new dates of application and deadlines:

- For reportable cross-border arrangements where the first step was implemented between 25 June 2018 and 30 June 2020, the filing deadline is 28 February 2021;
- For reportable cross-border arrangements where the triggering event took place between 1 July 2020 and 31 December 2020, the period of 30 days for filing information starts on 1 January 2021;
- For marketable arrangements, the first periodic report will be made by intermediaries by 30 April 2021; and
- The first automatic exchange of information between EU Member States will take place by 30 April 2021.

All EU Member States, except Austria, Finland and Germany, have opted to implement a deferral period.

It is therefore important to anticipate and establish process to allow the identification of transactions falling within the scope of this new obligation in order to facilitate their subsequent reporting.

DAC 6 amends Directive 2011/16 /EU in order to (i) implement mandatory

disclosure of information on cross-border tax planning schemes potentially aggressive and (ii) extend the scope of the automatic exchange of information between tax authorities to include these schemes.

In application of this Directive, tax planning devices of a potentially aggressive nature (in other words having several characteristics and particularities: Hallmark) with a cross-border dimension within the European Union will have to be declared by intermediaries towards their national tax administrations.

The hallmark listed in Annex IV of the Directive constitute a compilation of the characteristics and elements of the operations, which indicate an abusive practice.

These hallmarks are called general or specific. General hallmarks and some specific hallmarks can only be taken into account when they fulfill the “main benefit criterion”. The latter will be filled when the main advantage that a person can reasonably expect from a device (or a series of devices) is to obtain a tax benefit.

The provisions of the Directive had to be transposed into national law by the Member States no later than 31 December 2019 for implementation as from 1 July 2020. In Luxembourg, the law transposing the Directive was voted on 25 March 2020. Since then, some guidance has been issued as well as information regarding the reporting itself, i.e., a user guide to complete the manual form (the manual form itself is not yet available) and a xsd scheme for an xml file format.

9.9. System of exemption for intellectual property rights “IP Box”

The Law of April 17, 2018 inserted a new article 50ter LITL, which provides an exemption of 80% on the net income from eligible intellectual property assets. It should be noted that, in line with the OECD recommendations in Action 5 of the BEPS program (Base Erosion and Profit Shifting) and those of the European Union and its Code of Conduct, the net income of intellectual property qualifying for the exemption must be adjusted by the amount of eligible expenditure, that is to say those necessary for the R & D activities exhibited by the taxpayer. Also, note that under this new regime, eligible intellectual property assets are exempt from NWT. The eligible assets for this new regime are patents in the broad sense, as well as copyrighted software. Intellectual property assets need to be built, developed and/or improved by the taxpayer himself directly or by a Luxembourg permanent establishment or part of the EEA after 31 December 2007.

9.10. BEPS (Base Erosion and Profit Shifting)—ATAD (Anti-Tax Avoidance Directive)

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 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.

Some of these measures have been implemented at the level of the European Union through the Anti-Tax Avoidance Directive (ATAD).

On 18 December 2018, the law implementing ATAD 1 entered into force. This law is effective as of 1 January, 2019 (except for the exit tax provisions) and specific dispositions are applicable as of 1 January 2020. ATAD 2 extends the scope of ATAD 1 to hybrid mismatches involving third countries (i.e., non-EU countries) and concerns forms of hybrid mismatches not covered by ATAD 1.

Certain measures, such as the introduction of a limitation on the deductibility of interest and the rule on controlled foreign companies, have a significant impact on certain Luxembourg companies.

Although all Member States should have implemented this directive, it should be mentioned that some of its provisions offer different transposition options. Therefore, not all Member States have necessarily adopted the same ATAD 1 and 2 provisions in their national legislation as they are seen as a kind of minimum standard.

The law contains the following main provisions:

- a. The adoption of specific rules regarding controlled foreign companies (CFC rules)
- b. The limitation of interest deductibility
- c. Taxation at the exit
- d. The fight against hybrid arrangements
- e. The introduction of an anti-abuse clause General (GAAR)

In order to amplify the impact of the BEPS Action Plan and to make it more effective, the OECD had foreseen the introduction of certain measures through a Multilateral Agreement for the Implementation of the Tax Treaty Measures (MLI). The MLI aims to modify, through a single multi-party agreement, multiple bilateral tax treaties without further negotiations.

The law implementing MLI in Luxembourg has been voted on the 15 February 2019 and the ratification instrument has been deposited on the 9 April 2019 with the OECD. MLI has entered into force in Luxembourg on 1 August 2019. Implementation of these provisions will follow the pace of transposition of the other signatory States of the bilateral tax treaties referred to in the MLI.

The objective of the MLI is mainly to implement some of the BEPS actions quickly, without waiting for bilateral negotiations on the existing double tax treaty.

The MLI also provides for (i) a declaration of intent against treaty shopping strategies, (ii) introduces a general anti-abuse rule based on the primary purpose of set-ups and transactions and (iii) proposes a reinforcement of the rules applicable during the sale of so-called property-dominated entities. Finally, the convention also deals with the question of the artificial avoidance of permanent establishments and mandatory arbitration. Each signatory State must list the bilateral tax treaties it wishes to be affected by the provisions of the multilateral instrument.

In order for the provisions of the multilateral instrument to become part of a bilateral convention, the two States must have designated the tax treaty that binds them as a “covered convention”. In addition, each Member State must notify the “specific” provisions of the multilateral instrument they wish to see incorporated into these conventions. Indeed, MLI contains mandatory and optional provisions. The mandatory provisions qualified as “minimum standards”, such as provisions on misuse of conventions or dispute settlements, are necessarily included in covered tax treaties (unless they have the same standards). However, specific provisions (such as those relating to permanent establishment or hybrid arrangements) offer some flexibility to States. This process of identifying and notifying existing provisions is important. In the event of a failure to notify or if the notification differs from the one of the partner State in the bilateral convention, the provisions of the multilateral instrument, which do not concern minimum standards, are then inapplicable.

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 in principle 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/her services, typically base salary plus discretionary bonuses and other cash incentives.

The basis of taxation of benefits in kind is founded on the general income tax 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 individual tax.

Employment income is subject to tax at progressive rates ranging from zero to 42 percent and subject to monthly withholding taxes and social security.

(i.e. 45.78% including the top 9% surcharge of the amount of tax due, covering the Employment Fund contribution)

Impatriate tax regime

In order to increase the attractiveness of Luxembourg, in 2011 the Luxembourg tax authorities introduced a favorable tax regime for highly skilled employees (also called impatriates) 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 applied to expatriates who arrived in Luxembourg as of 1 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 that 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 (e.g., moving expenses of the employee and his/her 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, the employee benefits from a total or partial tax exemption.

The exemption applies to the employee but may benefit the employer (assuming the

tax is borne by the employer as part of a tax equalization policy). Furthermore, the eligible costs are considered as operating expenses at the employer level. The 2021 budget law provides modernization and legal provisions to govern the Impatriate Tax Regime (e.g., an increase of the number of years during which impatriates would benefit from the regime, an increase in the minimum yearly base salary which would apply, a new impatriate premium which would be personal tax exempt, several conditions that would be cancelled, etc.). This measure applies as from the 2021 tax year. To that end, the Luxembourg tax authorities already repealed the 2014 Circular on 14 December, 2020, with effect from tax year 2021. However, they specified that the tax regime described in the Circular continues to apply to impatriate workers who started their activity in Luxembourg during tax years 2016 through 2020 (within the limits and under the conditions stated in the circular and provided that the employees concerned do not benefit from the provisions of article 115, number 13b of the individual income tax law (LITL)). This does not apply to impatriate workers whose tax regime ended, for one reason or another, during the same period covering tax years 2016 through 2020.

See also the **Abolition of the "stock option" regime** and the **Introduction of a profit-sharing bonus (prime participative)**.

Luxembourg 2021 budget law | Deloitte Luxembourg | Tax | News

Withholding tax and formalities

An employer has the obligation to withhold wage 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 1 January 2015, the tax card no longer needs to be returned to the tax administration. It is to be archived by the employer in order to be provided to the tax administration in case of wage tax audit. The 2021 budget law also provides some modernization regarding employees' tax cards, which would be managed electronically as from 2022, and that would be valid for multiple years.

Tax administration and rates

In Luxembourg, the tax year closes on 31 December. 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. In any case, the due personal tax return must be filed before 31 December of the filing calendar year. Subject to an expected tax law enactment, the deadline to file 2020 direct tax returns is likely to be extended from 31 March 2021 to 30 June 2021 for both individuals and companies (Luxembourg residents and non-residents). Please consult your tax advisor for further advice.

Returns may not be required from employees who are taxed at source.

As from 1 January 2018, separate/individual taxation is possible upon election for

Luxembourg married couples for calendar year 2018 and onwards. This is subject to certain filing requirements and notices.

Social security

Both the employee and the employer's contributions apply to the employee's yearly gross remuneration capped at €132,115.80 (for 2021). See rates below.

In addition, the employee is subject to a 1.4% dependence contribution, that applies


Self-employed workers support the entire amount of social security due on their annual net self-employment profits capped at €132,115.80 for 2021. See rates below.

In addition, the self-employed worker is subject to a 1.4% dependence contribution, that applies to his/her annual net self-employment profits – uncapped.

| EMPLOYEE | | | INDEPENDENT | |
|------------------|--------------------|--------------|------------------|-----------------------|
| Coverage | Employee % | Employer % | Coverage | % |
| Sickness | 2.8/3.05 | 2.8/3.05 | Sickness | 6.10 |
| Pension | 8.00 | 8.00 | Pension | 16.00 |
| Accident | - | 0.75 | Accident | 0.75 |
| Mutual insurance | - | 0.53 to 2.88 | Mutual insurance | 0.53 to 2.88 |
| Health at work | - | 0.14 | Health at work | 0.14 |
| Dependence | 1.4 | - | Dependence | 1.40 |
| Total | 12.20/12.45 | 14.82 | Total | 24.92 to 27.27 |

to his/her yearly gross remuneration

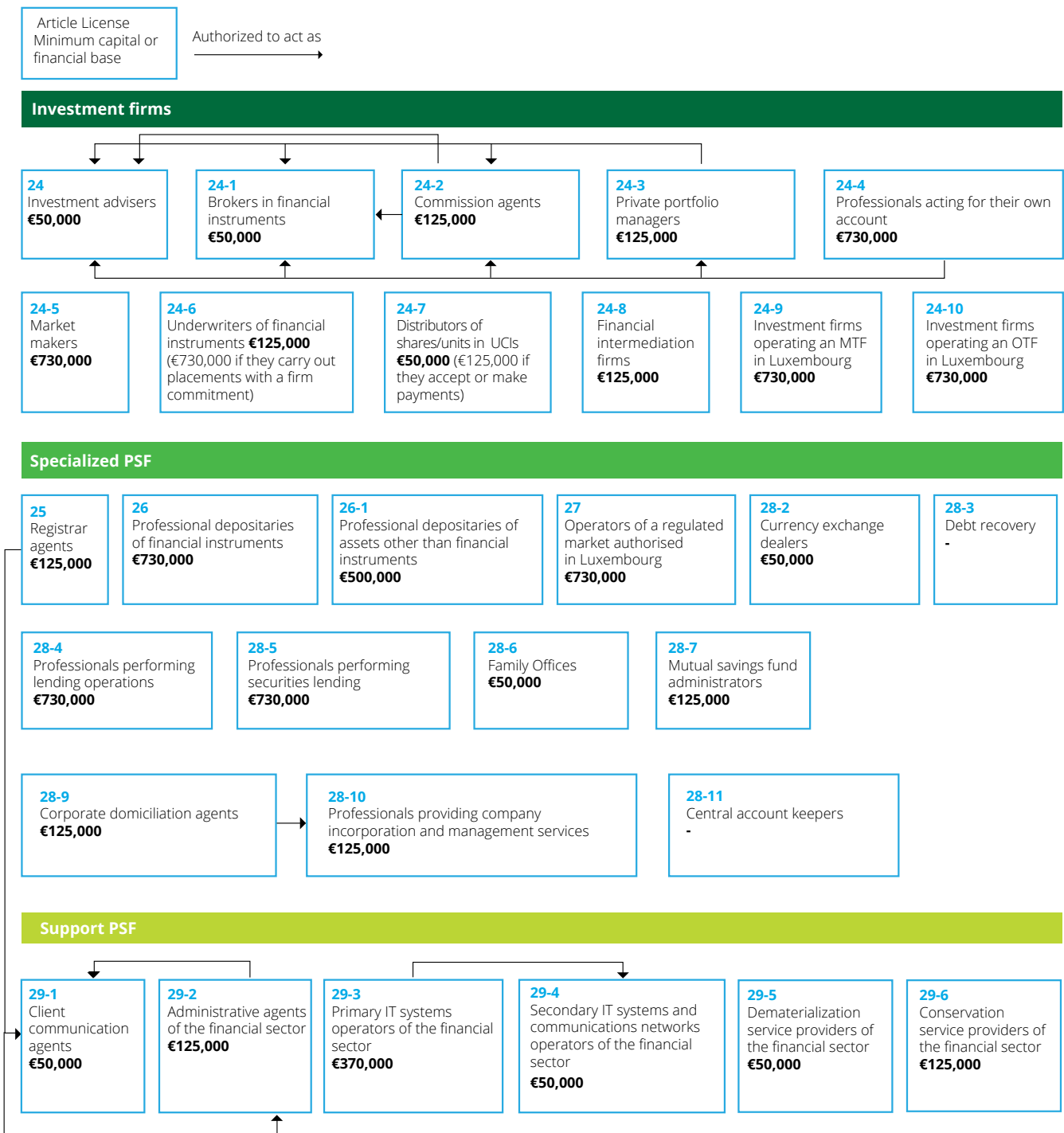


A close-up photograph of a fan palm frond, showing the intricate pattern of its ribs radiating from a central stem. The frond is a vibrant green color. A semi-transparent green rectangular box is overlaid on the lower half of the image, containing white text.

PSF profile analysis and specific data

Licenses in detail

The following table schematically sets out the various categories, as well as the different PSF license types.



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

Article 24-10 Investment firms operating an OTF 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 organizational 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 24-11 has been introduced in 2016, which is not a license 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 directly holding 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 |
| Authorized form | Physical* or legal person |
| Authorization procedure | The license is subject to obtaining a written authorization from the Ministry of Finance which handles the license 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 | 03/113 (long form), 07/290 (prudential ratios), 07/301 (ICAAP), 07/307 (MiFID), 09/403 (liquidity), 10/437 (remuneration), 11/506 (stress tests), Reg. 12-02 (AML), 13/554 (IT), Reg. 16-07 and 17/671 (complaints), Regs 15-01, 15-02 and 18-03 (CRR/CRD IV / FINREP), 18/697, 18/698 and 20/750 (ICT and security risk management), 20/758 (governance) |

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 specialized investment funds referred to in the modified Law of 13 February 2007. Nevertheless, if they do not provide personalized 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 specialized investment funds to which they belong, do not need an authorization 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 | Brokers in financial instruments 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 |
| Authorized form | Physical* or legal person |
| Authorization procedure | The license is subject to obtaining a written authorization from the Ministry of Finance which handles the license 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 | 03/113 (long form), 07/290 (prudential ratios), 07/301 (ICAAP), 07/307 (MiFID), 09/403 (liquidity), 10/437 (remuneration), 11/506 (stress tests), Reg. 12-02 (AML), 13/554 (IT) , Reg. 16-07 and 17/671 (complaints), Reg. 15-01, 15-02 and 18-03 (CRR/CRD IV / FINREP), 18/697, 18/698 and 20/750 (ICT and security risk management), 20/758 (governance) |
| 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 Commissariat aux Assurances to carry on this type of business. |

* subject to not being CRR

Individual sheet 3

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 |
| License granted automatically | Investment adviser (Article 24) and Brokers in financial instruments (Article 24-1) |
| Minimum capital | €125,000 |
| Authorized form | Legal person |
| Authorization procedure | The license is subject to obtaining a written authorization from the Ministry of Finance which handles the license 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 | 03/113 (long form), 07/290 (prudential ratios), 07/301 (ICAAP), 07/307 (MiFID), 09/403 (liquidity), 10/437 (remuneration), 11/506 (stress tests), Reg. 12-02 (AML), 13/554 (IT), Reg. 16-07 and 17/671 (complaints), Regs 15-01 , 15-02 and 18-03 (CRR/CRD IV / FINREP), 18/697 18/698 and 20/750 (ICT and security risk management), 20/758 (governance) |
| Status-specific CSSF circular | 93/102 (commission agents) |

Individual sheet 4

Private portfolio managers

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| 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 |
| License granted automatically | Investment adviser (Article 24), Brokers in financial instruments (Article 24-1) and Commission agents (Article 24-2) |
| Minimum capital | €125,000 |
| Authorized form | Legal person |
| Authorization procedure | The license is subject to obtaining a written authorization from the Ministry of Finance which handles the license 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 | 03/113 (long form), 07/290 (prudential ratios), 07/301 (ICAAP), 07/307 (MiFID), (liquidity), 10/437 (remuneration), 11/506 (stress tests), Reg. 12-02 (AML), 13/554 (IT), Reg. 16-07 and 17/671 (complaints), Regs 15-01, 15-02 and 18-03 (CRR/CRD IV / FINREP), 18/697, 18/698 and 20/750 (ICT and security risk management), 20/758 (governance) |

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 authorized 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 favor of clients' assets. In addition, the management agreement must highlight the objective of the portfolio management, the nature of authorized 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 license.

Individual sheet 5

Professionals acting for their own account

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|--|---|
| 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, an MTF or an OTF, on an organized, frequent and systematic basis in order to engage in dealings with third parties. |
| Legal reference | Article 24-4 of the Law |
| License 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 |
| Authorized form | Legal person |
| Authorization procedure | The license is subject to obtaining a written authorization from the Ministry of Finance which handles the license 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 | 03/113 (long form), 07/290 (prudential ratios), 07/301 (ICAAP), 07/307 (MiFID), 09/403 (liquidity), 10/437 (remuneration), 11/506 (stress tests), Reg. 12-02 (AML), 13/554 (IT), Reg. 16-07 and 17/671 (complaints), Regs 15-01, 15-02 and 18-03 (CRR/CRD IV/ FINREP), 18/697, 18/698 and 20/750 (ICT and security risk management), 20/758 (governance) |
| 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

License granted automatically

None

Minimum capital

€730.000

Authorized form

Legal person

Authorization procedure

The license is subject to obtaining a written authorization from the Ministry of Finance which handles the license 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

03/113 (long form), 07/290 (prudential ratios), 07/301 (ICAAP), 07/307 (MiFID), 09/403 (liquidity), 10/437 (remuneration), 11/506 (stress tests), Reg. 12-02 (AML), 13/554 (IT), Reg. 16-07 and 17/671 (complaints), Regs 15-01, 15-02 and 18-03 (CRR/CRD IV / FINREP), 18/697, 18/698 and 20/750 (ICT and security risk management), 20/758 (governance)

Individual sheet 7

Underwriters of financial instruments

| | |
|--|---|
| Definition | Underwriters of financial instruments 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 |
| License granted automatically | None |
| Minimum capital | €125,000 or €730,000 in the event of placements with underwriting |
| Authorized form | Legal person |
| Authorization procedure | The license is subject to obtaining a written authorization from the Ministry of Finance which handles the license 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 | 03/113 (long form), 07/290 (prudential ratios), 07/301 (ICAAP), 07/307 (MiFID), 09/403 (liquidity), 10/437 (remuneration), 11/506 (stress tests), Reg. 12-02 (AML), 13/554 (IT), Reg. 16-07 and 17/671 (complaints), Regs 15-01, 15-02 and 18-03 (CRR/CRD IV / FINREP), 18/697, 18/698 and 20/750 (ICT and security risk management), 20/758 (governance) |

Individual sheet 8

Distributors of UCI units

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|--|--|
| 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 |
| License granted automatically | None |
| Minimum capital | €50,000 or €125,000 if the distributor accepts or makes payments |
| Authorized form | Legal person |
| Authorization procedure | The license is subject to obtaining a written authorization from the Ministry of Finance which handles the license 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 | 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), Reg. 12-02 (AML), 13/554 (IT), Reg. 16-07 and 17/671 (complaints), Regs 15-01, 15-02 and 18-03 (CRR/CRD IV / FINREP), 18/697, 18/698 and 20/750 (ICT and security risk management), 20/758 (governance) |

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 license as a distributor of UCI units.

Distributors of UCI units authorized to accept or make payments are ipso jure authorized to 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.

Individual sheet 9

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

License granted automatically

None

Minimum capital

€125,000

Authorized form

Legal person

Authorization procedure

The license is subject to obtaining a written authorization from the Ministry of Finance which handles the license 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

03/113 (long form), 07/290 (prudential ratios), 07/301 (ICAAP), 07/307 (MiFID), 09/403 (liquidity), 10/437 (remuneration), 11/506 (stress tests), Reg. 12-02 (AML), 13/554 (IT), Reg. 16-07 and 17/671 (complaints), Regs 15-01, 15-02 and 18-03 (CRR/CRD IV / FINREP), 18/697, 18/698 and 20/750 (ICT and security risk management), 20/758 (governance)

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 license.

Individual sheet 10

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 |
| License granted automatically | None |
| Minimum capital | €730,000 |
| Authorized form | Legal person |
| Authorization procedure | The license is subject to obtaining a written authorization from the Ministry of Finance which handles the license 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 | 03/113 (long form), 07/290 (prudential ratios), 07/301 (ICAAP), 07/307 (MiFID), 09/403 (liquidity), 10/437 (remuneration), 11/506 (stress tests), Reg. 12-02 (AML), 13/554 (IT), Reg. 16-07 and 17/671 (complaints), Regs 15-01, 15-02 and 18-03 (CRR/CRD IV / FINREP), 18/697, 18/698 and 20/750 (ICT and security risk management), 20/758 (governance) |

Additional information

Difference between a regulated market and a MTF.

Regulated markets differ from multilateral trading systems (MTF) due 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 harmonization 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 harmonized 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 authorized to operate a MTF in Luxembourg under their banking license and require no separate license for this investment activity.**

Individual sheet 11

Investment firms operating an OTF in Luxembourg

| | |
|--|---|
| Definition | Investment firms operating an OTF in Luxembourg shall be professionals engaged in the business of operating an OTF in Luxembourg apart from professionals who are market operators within the meaning of the Law on Markets in Financial instruments. |
| Legal reference | Article 24-10 of the Law |
| License granted automatically | None |
| Minimum capital | €730,000 |
| Authorized form | Legal person |
| Authorization procedure | The license is subject to obtaining a written authorization from the Ministry of Finance which handles the license 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 | 03/113 (long form), 07/290 (prudential ratios), 07/301 (ICAAP), 07/307 (MiFID), 09/403 (liquidity), 10/437 (remuneration), 11/506 (stress tests), Reg. 12-02 (AML), 13/554 (IT), Reg. 16-07 and 17/671 (complaints), Regs 15-01, 15-02 and 18-03 (CRR/CRD IV / FINREP), 18/697, 18/698 and 20/750 (ICT and security risk management), 20/758 (governance) |

2 Specialized 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 authorized 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 specialized 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 12

Registrar agents

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| 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 |
| License granted automatically | Client communication agents (Art. 29-1) and Financial sector administrative agents (Art. 29-2) |
| Minimum capital | €125,000 |
| Authorized form | Legal person |
| Authorization procedure | The license is subject to obtaining a written authorization from the Ministry of Finance which handles the license 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 (organization), 98/143 (internal control), 17/656, 06/240 and 13/554 (IT), 10/437 (remuneration), Reg. 12-02 (AML), Reg. 16-07 and 17/671 (complaints), 18/698 and 20/750 (ICT and security risk management) |

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 license is required for this activity.

Individual sheet 13

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 |
| License granted automatically | None |
| Minimum capital | €730,000 |
| Authorized form | Legal person |
| Authorization procedure | The license is subject to obtaining a written authorization from the Ministry of Finance which handles the license 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 (organization), 98/143 (internal control), 17/656, 06/240 and 13/554 (IT), 10/437 (remuneration), Reg. 12-02 (AML), Reg. 16-07 and 17/671 (complaints) and 20/750 (ICT and security risk management) |

Individual sheet 14

Professional depositaries of assets other than financial instruments

Definition

Professional depositaries of assets other than financial instruments are professionals whose activity consists in acting as depositary for:

- Specialized 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
- Professional depositaries of assets other than financial instruments may, through delegation, also ensure the safe-keeping of assets other than liquidities of financial instruments the custody of which may be ensured, where this mission is delegated to them by a single depositary of an alternative investment fund within the meaning of Directive 2011/61/EU

Legal reference

Article 26-1 of the Law

License granted automatically

None

Minimum capital

€500,000

Authorized form

Legal person

Authorization procedure

The license is subject to obtaining a written authorization from the Ministry of Finance which handles the license 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 (organization), 98/143 (internal control), 17/656, 06/240 and 13/554 (IT), 10/437 (remuneration), Reg. 12-02 (AML), Reg. 16-07 and 17/671 (complaints) and 20/750 (ICT and security risk management)

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.

Individual sheet 15

Operators of a regulated market authorised in Luxembourg

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| Definition | Operators of a regulated market in Luxembourg shall be those persons managing or operating a regulated market in Luxembourg authorized in Luxembourg apart from investment firms operating an MTF or an OTF in Luxembourg |
| Legal reference | Article 27 of the Law |
| License granted automatically | None |
| Minimum capital | €730,000 |
| Authorized form | Legal person |
| Authorization procedure | The license is subject to obtaining a written authorization from the Ministry of Finance which handles the license 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 (organization), 98/143 (internal control), 17/656, 06/240 and 13/554 (IT), 10/437 (remuneration), Reg. 12-02 (AML), Reg. 16-07 and 17/671 (complaints) and 20/750 (ICT and security risk management) |

Individual sheet 16

Currency exchange dealers

| | |
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| 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 |
| License granted automatically | None |
| Minimum capital | €50,000 |
| Authorized 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) |
| Authorization procedure | The license is subject to obtaining a written authorization from the Ministry of Finance which handles the license 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 (organization), 98/143 (internal control), 17/656, 06/240 and 13/554 (IT), 10/437 (remuneration), Reg. 12-02 (AML), Reg. 16-07 and 17/671 (complaints) and 20/750 (ICT and security risk management) |

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 out by a physical person.

Individual sheet 17

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 authorized 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 |
| License granted automatically | None |
| Minimum capital | No minimum capital other than the one defined by the Law on commercial companies of 1915, as applicable |
| Authorized form | Not specified (by default, physical or legal person) |
| Authorization procedure | The license is subject to obtaining a written authorization from the Ministry of Finance which handles the license 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 (organization), 98/143 (internal control), 17/656, 06/240 and 13/554 (IT), 10/437 (remuneration), Reg. 12-02 (AML), Reg. 16-07 and 17/671 (complaints) and 20/750 (ICT and security risk management) |

Additional information

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.

A license under Article 28-3 of the Law is required even if the agent providing the debt collection service is not authorized 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 securitization organization does not fall within the scope of Article 28-3 of the Law.

Individual sheet 18

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 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
- (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 2 September 2011 regulating the access to the professions of craftsman, traders, industrialists and certain liberal professions.

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

Legal reference

Article 28-4 of the Law

License granted automatically

None

Minimum capital

€730,000

Authorized form

Legal person

Authorization procedure

The license is subject to obtaining a written authorization from the Ministry of Finance which handles the license 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 (organization), 98/143 (internal control), 17/656, 06/240 and 13/554 (IT), 10/437 (remuneration), Reg. 12-02 (AML), Reg. 16-07 and 17/671 (complaints) and 20/750 (ICT and security risk management)

Status-specific CSSF circulars

12/538 (lending), chapter 3 of part III (except sub-chapter 3.4) and paragraph 12 of chapter 2 of part III of 12/552 (counterparty risk and credit risk)

Additional information

This status covers professionals extending loans to clients for their own account, but which are not authorized 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, and based on the rights in rem in immoveable property or charges on real property securing the mortgage loans.

This status does not govern professionals engaged in securitization 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.

Individual sheet 19

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 |
| License granted automatically | None |
| Minimum capital | €730,000 |
| Authorized form | Legal person |
| Authorization procedure | The license is subject to obtaining a written authorization from the Ministry of Finance which handles the license 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 (organization), 98/143 (internal control), 17/656, 06/240 and 13/554 (IT), 10/437 (remuneration), Reg. 12-02 (AML), Reg. 16-07 and 17/671 (complaints) and 20/750 (ICT and security risk management) |

Additional information

The professionals in question are authorized 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.

Individual sheet 20

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

License granted automatically

None

Minimum capital

€50,000

Authorized form

Legal person

Authorization procedure

The license is subject to obtaining a written authorization from the Ministry of Finance which handles the license 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 (organization), 98/143 (internal control), 17/656, 06/240 and 13/554 (IT), 10/437 (remuneration), Reg. 12-02 (AML), Reg. 16-07 and 17/671 (complaints) and 20/750 (ICT and security risk management)

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 professionalize 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.

Individual sheet 21

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 favorable financial conditions.

Legal reference

Article 28-7 of the Law

License granted automatically

None

Minimum capital

€125,000

Authorized form

Physical or legal person

Authorization procedure

The license is subject to obtaining a written authorization from the Ministry of Finance which handles the license 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 (organization), 98/143 (internal control), 17/656, 06/240 and 13/554 (IT), 10/437 (remuneration), Reg. 12-02 (AML), Reg. 16-07 and 17/671 (complaints) and 20/750 (ICT and security risk management)

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.

Individual sheet 22

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 |
| License granted automatically | Professionals providing company incorporation and management services (Art. 28-10) |
| Minimum capital | €125,000 |
| Authorized form | Physical or legal person |
| Authorization procedure | The license is subject to obtaining a written authorization from the Ministry of Finance which handles the license 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 (organization), 98/143 (internal control), 17/656, 06/240 and 13/554 (IT), 10/437 (remuneration), Reg. 12-02 (AML), Reg. 16-07 and 17/671 (complaints) and 20/750 (ICT and security risk management) |
| 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 emphasizing 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.

Individual sheet 23

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 |
| License granted automatically | None |
| Minimum capital | €125,000 |
| Authorized form | Physical or legal person |
| Authorization procedure | The license is subject to obtaining a written authorization from the Ministry of Finance which handles the license 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 (organization), 98/143 (internal control), 17/656, 06/240 and 13/554 (IT), 10/437 (remuneration), Reg. 12-02 (AML), Reg. 16-07 and 17/671 (complaints) and 20/750 (ICT and security risk management) |

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 authorized 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 organized 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 24

Central account keepers

| | |
|--|--|
| Definition | Central account keepers are persons whose activity is to keep issuing accounts for dematerialized securities. |
| Legal reference | Article 28-11 of the Law |
| License granted automatically | None |
| Minimum capital | None |
| Authorized form | Legal person |
| Authorization procedure | The license is subject to obtaining a written authorization from the Ministry of Finance which handles the license 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 (organization), 98/143 (internal control), 17/656, 06/240 and 13/554 (IT), 10/437 (remuneration), Reg. 12-02 (AML), Reg. 16-07 and 17/671 (complaints) and 20/750 (ICT and security risk management) |

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 Dematerialization 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 license 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 license.

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 organization; IT subcontracting and details about the services subject to a support PSF license, Articles 29-1, 29-2 and 29-3 of the Law; changes to the terms of IT subcontracting of branches abroad.

The Law of 25 July 2015 on electronic archiving broadens the license for all support PSF. These licenses are also required when activities arising from these categories are carried out for payment institutions and electronic money institutions.

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

b. Fast-reference sheets and additional data per status*Individual sheet 25***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, authorized securitization organizations, 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, authorized securitization organizations 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

License granted automatically

None

Minimum capital

€50,000

Authorized form

Legal person

Authorization procedure

The license is subject to obtaining a written authorization from the Ministry of Finance which handles the license 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 (organization), 98/143 (internal control), 17/656, 06/240 and 13/554 (IT), 08/350 (supervision), 08/364 (reporting), 12/544 (supervision), Reg. 12-02 (AML), Reg. 16-07 and 17/671 (complaints) and 20/750 (ICT and security risk management)

Status-specific CSSF circular

04/146 (late trading/market timing)

Individual sheet 26

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, authorized securitization 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

License granted automatically

Client communication agents (Article 29-1)

Minimum capital

€125,000

Authorized form

Legal person

Authorization procedure

The license is subject to obtaining a written authorization from the Ministry of Finance which handles the license 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 (organization), 98/143 (internal control), 17/656, 06/240 and 13/554 (IT), 08/350 (supervision), 08/364 (reporting), 12/544 (supervision), Reg. 12-02 (AML), Reg. 16-07 and 17/671 (complaints) and 20/750 (ICT and security risk management)

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.

Individual sheet 27

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 |
| License granted automatically | Secondary IT systems and communication network operators of the financial sector (Article 29-4) |
| Minimum capital | €370,000 |
| Authorized form | Legal person |
| Authorization procedure | The license is subject to obtaining a written authorization from the Ministry of Finance which handles the license 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 (organization), 98/143 (internal control), 17/656, 06/240 and 13/554 (IT), 08/350 (supervision), 08/364 (reporting), 12/544 (supervision), Reg. 12-02 (AML), Reg. 16-07 and 17/671 (complaints) and 20/750 (ICT and security risk management) |
| 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. |

Individual sheet 28

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 |
| License granted automatically | None |
| Minimum capital | €50,000 |
| Authorized form | Legal person |
| Authorization procedure | The license is subject to obtaining a written authorization from the Ministry of Finance which handles the license 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 (organization), 98/143 (internal control), 17/656, 06/240 and 13/554 (IT), 08/350 (supervision), 08/364 (reporting), 12/544 (supervision), Reg. 12-02 (AML), Reg. 16-07 and 17/671 (complaints) and 20/750 (ICT and security risk management) |

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 authorized to set up and maintain the computer systems and networks in question.

Individual sheet 29

Dematerialization service providers of the financial sector

| | |
|--|--|
| Definition | Dematerialization service providers of the financial sector are dematerialization service providers within the meaning of the law of 25 July 2015 on e-archiving in charge of the dematerialization of documents on behalf of credit institutions, PSF, payment institutions, electronic money institutions, UCIs, SIFs, investment companies in risk capital, pension funds, authorized securitization undertakings, insurance undertakings or reinsurance undertakings, governed by Luxembourg law or by foreign law |
| Legal reference | Article 29-5 of the Law |
| License granted automatically | None |
| Minimum capital | €50,000 |
| Authorized form | Legal person |
| Authorization procedure | The license is subject to obtaining a written authorization from the Ministry of Finance which handles the license 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 (organization), 98/143 (internal control), 17/656, 06/240 and 13/554 (IT), 08/350 (supervision), 08/364 (reporting), 12/544 (supervision), Reg. 12-02 (AML), Reg. 16-07 and 17/671 (complaints) and 20/750 (ICT and security risk management) |
| Additional information | CSSF and ILNAS collaborate for the purposes of the performance of their respective duties of supervision of dematerialization service providers of the financial sector. |

Individual sheet 30

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, authorized securitization undertakings, insurance undertakings or reinsurance undertakings, governed by Luxembourg law or by foreign law |
| Legal reference | Article 29-6 of the Law |
| License granted automatically | None |
| Minimum capital | €125,000 |
| Authorized form | Legal person |
| Authorization procedure | The license is subject to obtaining a written authorization from the Ministry of Finance which handles the license 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 (organization), 98/143 (internal control), 17/656, 06/240 and 13/554 (IT), 08/350 (supervision), 08/364 (reporting), 12/544 (supervision), Reg. 12-02 (AML), Reg. 16-07 and 17/671 (complaints) and 20/750 (ICT and security risk management) |

Additional information

The activities consisting solely in basic data storage and that do not consist in the conservation of a recognized 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 10 July 2020 establishing a register of fiducies and trusts

This law dated July 2020 is in line with European regulations on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing.

Under Directive 2018/843 of the European Parliament and the Council of 30 May 2018 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (the Fifth AML Directive), Member States are required to maintain inter-connected and publicly available national ultimate beneficial owner (UBO) registries. Following the adoption of the law of 13 January 2019 (the "RBE Law") establishing a register of beneficial owners of Luxembourg entities, Luxembourg is fully transposing the Fifth AML Directive into national law by establishing a register of fiducies and trusts (the "RFT Law"). The RFT Law repeals the law of 10 August 2018 on the information that Luxembourg fiducies must obtain and hold, as its relevant provisions have been directly incorporated into the RFT Law.

The law has several components:

1. **Obligated entities:** all fiducies (including foreign) and express trusts for which a fiduciaire or a trustee is established or domiciled in Luxembourg, as well as all fiducies and express trusts for which the fiduciaire or trustee is established in a third country, where the fiduciaire or trustee enters into a business relationship in Luxembourg with a professional subject to the AML Law of 12 November 2004.
2. **Obligation for trustees and fiduciaires to obtain and keep data relating to beneficial owners:** trusts or fiducies will need to be transparent about all the parties involved in these particular structures, including the person who set up the fiducies/ trust, the fiduciaire/trustee, and the beneficiaries that the assets belong to. Failing to comply with the new law could lead to fines of up to €1.250 million. Trusts/fiducies can apply for exemptions if the beneficiaries are at risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation, or if the beneficial owner is a minor or legally incapable.

3. **Administration of the register of fiducies and trusts:** the Administration of Registration, Domains and VAT (AED) will oversee the register wherein the trustees and fiduciaries will have to enter certain information they are obliged to collect.

4. **Access to the register of fiducies and trusts:** in principle, access to the register will be reserved for national authorities; self-regulatory bodies exercising their supervisory role in the fight against money laundering and the financing of terrorism; and for professionals in the context of applying customer due diligence measures. However, the law leaves the door open to any natural or legal person who demonstrates a legitimate interest in the prevention of the use of the financial system for the purpose of money laundering or terrorist financing.

5. **Cooperation:** the Financial Intelligence Unit (FIU), supervisory authorities, and self-regulatory bodies will be able to cooperate closely and exchange any information obtained, which is necessary to fulfill their respective missions in the fight against money laundering and the financing of terrorism. In addition, the supervisory authorities will be able to cooperate with their foreign counterpart authorities.

CSSF circular 20/750 requirements regarding information and communication technology (ICT) and security risk management

This circular implements in Luxembourg the EBA Guidelines on ICT and security risk management (EBA/GL/2019/04, "the guidelines"). The guidelines establish the requirements for credit institutions, investment firms, payment institutions and electronic money institutions to mitigate and manage their ICT risks, aiming to ensure a consistent and robust approach across all European Union (EU) member states. However, the circular extends the scope of the guidelines to include all PSF.

The guidelines give financial institutions a better understanding of the supervisory expectations for risk management, covering areas such as ICT governance and strategy, ICT risk management frameworks, information security, ICT operations management, ICT project and change management, and business continuity management. The guidelines are principle-based and flexible enough to be applied to all the sector's relevant institutions.

Key regulatory aspects Along with implementing the guidelines, the circular:

- Updates the existing CSSF Circular 12/552 (replaced by the CSSF Circular 20/758 for investment firms from January 1, 2021) to align it with the guidelines
- Repeals Circular CSSF 19/713, which implemented EBA/GL/2017/17

The circular also includes additional requirements for payment service providers (PSPs), which are required to provide an up-to-date and exhaustive risk assessment to the CSSF annually. The form and deadlines are as follows:

- For credit institutions, this assessment, signed by the management body, must be submitted as soon as possible after the closing of the financial year and no later than 30 April of each year.
- For payment institutions and electronic money institutions, this assessment must be included in a dedicated section of the management report on internal control, which must be published in accordance with the requirements set out in Circular CSSF 15/614, no later than the last day of the third month following the closing date of the financial year.

CSSF circular 20/758

The CSSF circular 20/758 was introduced by the CSSF circular 20/757 and replaces for investment firms the CSSF circular 12/552 from January 1, 2021. The CSSF circular precises the measures to be taken by the investment firms regarding central administration, internal governance and risk management and integrates orientations and recommendations of EBA and ESMA.

A close-up photograph of a green leaf, showing a detailed network of veins. The veins are light green and form a complex, branching pattern across the leaf's surface. The leaf's color is a vibrant, slightly yellowish-green. A semi-transparent green rectangular box is overlaid in the center of the image, containing the word "Appendices" in white, bold, sans-serif font.

Appendices

1 Summary of main regulations and circulars applicable to PSF

(as at 9 December, 2020)

| CIRCULAR/REGULATION | TOPIC | | | |
|--|--|------------------|-----------------|-------------|
| | | Investment firms | Specialized PSF | Support PSF |
| Organization 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 | License 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 organization | | X | X |
| 98/143 | Internal control | | X | X |
| 04/146 | Protection of undertakings for collective investment and their investors against Late Trading and Market Timing practices | X (3) | X (3) | X (3) |
| 17/651 | Credit agreements for consumers relating to residential immovable property | | X | X |
| Information Technology | | | | |
| 17/654 as amended by 19/714 | IT outsourcing relying on a cloud computing infrastructure | | X | X |
| 17/656 and 06/240 as amended by 17/657 | Administrative and accounting organization; IT outsourcing | | | |
| 20/750 | Requirements regarding information and communication technology (ICT) and security risk management | 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) | | |

| CIRCULAR/REGULATION | TOPIC | | | |
|---|--|------------------|-----------------|-------------|
| | | Investment firms | Specialized PSF | Support PSF |
| 17/669 | Prudential assessment of acquisitions and increases in holdings in the financial sector | X | X | X |
| 12/538 | Lending in foreign currencies | X | X (4) | |
| 20/758 (replacing from January 1, 2021, 12/552 as amended by 13/563, 14/597, 16/642, 16/647, 17/655, 20/750 and 20/758 for investment firms) | Central administration, internal governance and risk management | X | | |
| 12/552 as amended by 13/563, 14/597 and 16/642, 16/647, 17/655, 20/750, 20/758 and 20/759) | Central administration, internal governance and risk management | | X (5) | |
| 13/554 | Tools for managing IT resources and the management access to these resources | X | X | X |
| Reg. 16-07 and 17/671 | 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 |
| 18/697 | Organizational arrangements applicable to fund depositaries which are not subject to Part I of the Law of 17 December 2010 relating to undertakings for collective investment, and, where appropriate, to their branches | X | X(3) | |
| Remuneration | | | | |
| 10/437 | Remuneration policies in the financial sector | X | X | X |
| 11/505 | Details relating to the application of the principle of proportionality | X | | |
| 17/658 | Adoption of the European Banking Authority's guidelines on sound remuneration policies | CRR only | | |
| Fight against money laundering and terrorist financing | | | | |
| Reg. 12-02 as amended by CSSF regulation N°20-05 | 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 |
| 17/650 as amended by 20/744 | Application extended to primary tax offences | X | X | X |

| CIRCULAR/REGULATION | TOPIC | | | |
|---|---|------------------|-----------------|-------------|
| | | Investment firms | Specialized PSF | Support PSF |
| Prudential ratios | | | | |
| 06/260 | Capital adequacy ratios / large | X | | |
| 07/290 as amended by 10/451, 10/483, 10/497 and 13/568 | exposures; assessment process | | | |
| 07/301 as amended by 08/338, 09/403, 11/506, 13/568 and 20/753 | | | | |
| 10/494 | | | | |
| 11/501 | | | | |
| 11/505 | | | | |
| 12/535 | | | | |
| 13/572 | | | | |
| 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 as amended by 20/753 | Principles of a sound stress testing programme | X | | |
| 16/02 | Scope of deposit guarantee and investor compensation | X | | |
| 17/03, 17/649 | Adoption of the guidelines issued by the European Banking Authority (EBA) on the methods of providing information in summarized or collective form for the purposes of the Banking Recovery and Resolution Directive (BRRD) | X | | |
| Reporting | | | | |
| 05/187 completed by 10/433 | Financial information to be submitted to the CSSF on a periodic basis | X | X | X |
| 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 |
| 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 | Specialized 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 | Optimization of the supervision exercised on the support PSF by a risk-based approach | | | X |
| 15/629 as amended by 16/641 | Supplementary supervision to be applied to financial conglomerates and definition of structure coefficients to be observed by the regulated entities belonging to these financial conglomerates | X | | |
| 19/716 as amended by 20/743 | Provision in Luxembourg of investment services or performance of investment activities and ancillary services in accordance with Article 32-1 of the LFS | X | | |
| 20/753 | Amendment of Circular CSSF 07/301, as amended by Circulars CSSF 08/338, CSSF 09/403, CSSF 11/506 and CSSF 13/568 on the implementation of the Internal Capital and Liquidity Adequacy Assessment Process (ICAAP and ILAAP) and of circular CSSF 11/506 on principles of a sound stress testing programme | 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 (except sub-chapter 3.4) and paragraph 12 of chapter 2 of part III of the circular applicable

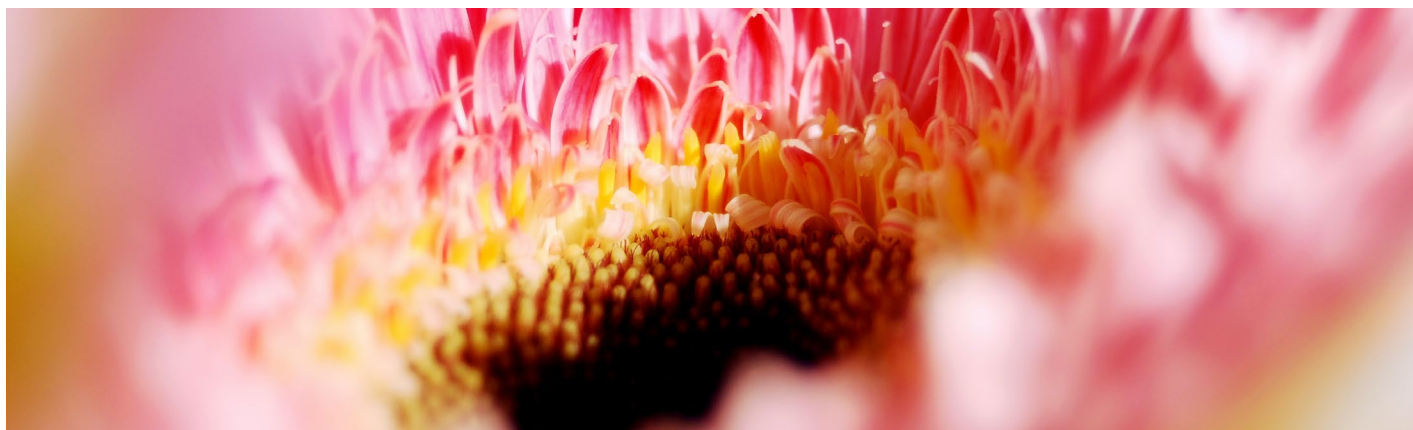
(6) applicable only to PSF providing domiciliation activities

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 | €1,000,000 per claim and an aggregate of €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 authorized 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 | €1,000,000 per claim and an aggregate of €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 accounts outside a regulated market, a Multilateral Trading Facility (MTF) or an Organized Trading facility (OTF) an organized, 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 | €2,000,000 per claim and an aggregate of €3,000,000 per year | Financial intermediation firms are professionals whose business is to: <ul style="list-style-type: none"> 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 point (23-2) of article 1 of the amended law of April 5, 1993. |
| Investment firms operating an OTF in Luxembourg | 24-10 | 730,000 | | Investment firms operating an OTF in Luxembourg are those professionals whose business is to operate an OTF in Luxembourg, excluding the professionals that operate markets within the meaning point (23-2) of article 1 of the amended law of April 5, 1993. |



Specialized 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"> - specialized 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 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." |
| 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 or an OTF 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 authorized only with the assent of the Minister for 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 2 September 2011 regulating the access to the professions of craftsmen, salesmen, industrials as well as to some liberal professions, as amended.</p> <p>This article shall not apply to persons engaging in securitization 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> |
| Corporate domiciliation agents | 28-9 | 125,000 | | Corporate domiciliation agents referred to 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 | - | | Central account keepers are persons whose activity is to keep issuing accounts for dematerialized 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 (<i>sociétés d'investissement en capital à risque</i>) and authorized securitization 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 authorized securitization 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, authorized securitization 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 |
|--|---------|-------------------------------------|--------------------------------------|---|
| Dematerialization service providers of the financial sector | 29-5 | 50,000 | | Dematerialization service providers of the financial sector are dematerialization or conservation service providers within the meaning of the law of 25 July 2015 on e-archiving in charge of the dematerialization of documents on behalf of credit institutions, PSF, payment institutions, electronic money institutions, UCIs, SIFs, investment companies in risk capital (SICARs), pension funds, authorized securitization 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 dematerialization 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, authorized securitization undertakings, insurance undertakings or reinsurance undertakings, governed by Luxembourg law or by foreign law. |

3 Glossary

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

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, 2016, 2017, 2018, 2019
 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 persistent sector in turbulent times (Deloitte Luxembourg)

4 Organizations 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 license granted by the Minister of Finance, in consideration of the opinion given by the CSSF. The conditions for granting such a license include in particular initial capitalization, 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 (FTL)

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, create synergy between players with a view to securing 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.financeandtechnology.lu

Association Luxembourgeoise des Family Office (LAFO)

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

Tel: +352 621 135 933

www.lafo.lu

Luxembourg Association of Wealth Managers (LAWM)

Luxembourg Association of Wealth Managers or LAWM aims to bring together all wealth managers by facilitating relations and contact between them.

In addition, LAWM promotes, organizes and disseminates scientific, technical, ethical, and educational information referring to Wealth Management techniques and its related branches by all appropriate means to its members.

LAWM encourages exchanges between all wealth managers based in Luxembourg and abroad.

email: lawm.info@gmail.com

[Linkedin.com/company/lawm](https://www.linkedin.com/company/lawm)

Luxembourg Alternative Administrators Association (L3A)

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 organizes 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 has contacts with authorities, other professional organizations, professional chambers and other corporate institutions.

Tel : +352 621 33 98 98

contact@l3a.lu

www.l3a.lu

Numerous other organizations pertain to PSF, including the following:

The International Facility Management Association (IFMA)

Founded in 1980, IFMA is the largest international association for facility management professionals. With over 24,000 members in more than 100 countries, it is open to facility managers to give them the skills necessary for their business.

www.ifma.org

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 dematerialization and electronic archiving. Its aim is to bring together the players in the Luxembourg market experts, users and suppliers of information lifecycle management, dematerialization, electronic archiving and storage products and services, such as OSIPs and OSISs

(support PSF). www.fedisa.lu

ISACA

With more than 145,000 members in over 188 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

Foundation LHoFT (Luxembourg House of Financial Technology)

The foundation LHoFT is an initiative by the public and private sectors to stimulate technological innovation for the financial services sector in Luxembourg, connecting up the national and international Financial Technology community to develop the solutions that will shape tomorrow's world.

Tel.: +352 28 81 02 01

www.lhoft.com

Luxembourg Capital Markets Association (LuxCMA)

LuxCMA, constituted on 1 March 2019, is as a not-for-profit association (a.s.b.l.). LuxCMA has established four Working Groups and three Task-Forces. The main goal of the association is to bring all players in the primary capital markets around the table and materialize their common interests. In particular, LuxCMA will focus on facilitating the access to a wide network of capital market professionals; exchanging views about the future of the industry; sharing best practices with peers; sharing the latest information concerning legal and regulatory developments; setting market standards and providing input for capital markets sector proposals in cooperation with other industry associations, thereby influencing future policy-making.

Tel: +352 47 79 36 1

www.luxcma.com

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 (ALCO)

Tel.: +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 de 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

Fedil

Tel.: +352 43 53 66-1

www.fedil.lu

Système d'indemnisation des investisseurs Luxembourg (SIL)

House of Training

Tel.: +352 46 50 16-1

www.houseoftraining.lu

Institut des Auditeurs Internes Luxembourg

(IIA Luxembourg)

Tel.: +352 26 27 09 04

www.theiia.org/sites/luxembourg

Institut des Réviseurs d'Entreprises (IRE)

Tel.: +352 29 11 39-1

www.ire.lu

Institut Luxembourgeois des Administrateurs (ILA)

Tel.: +352 26 00 21 488

www.ila.lu

Luxembourg for Finance (LFF)

Tel.: +352 27 20 21-1

www.luxembourgforfinance.com

Luxembourg Private Equity and Venture Capital Association (LPEA)

Tel.: +352 28 68 19 602

www.lpea.lu

5 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 | <ul style="list-style-type: none"> • Assistance in compiling License application documents and submissions to the CSSF • Gap analysis and assistance in establishing a set of procedures covering all administrative aspects and internal controls | Business Risk | <ul style="list-style-type: none"> • Develop feasibility study & market entry strategy • Draft 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 reporting configuration • Introduction, selection, negotiation with third party providers |
| Strategy & Corporate finance | <ul style="list-style-type: none"> • Business plan services including reviews of different scenarios, possibilities of subcontracting administrative and accounting organization, etc. This business plan is an integral part of the CSSF License application file | | |
| Direct taxation & VAT | <ul style="list-style-type: none"> • Design an efficient and customized tax structure based on the business plan and the specific Licenses • Fiscal optimization from the beneficiaries' perspective • Assistance in matters related to direct taxation & VAT • Due diligence | | |
| Technology & Enterprise application | <ul style="list-style-type: none"> • Design of the IT strategy (as part of the file to be submitted to the CSSF) | | |

During the development stage

| | | | |
|---|---|---|--|
| Regulatory strategy | <ul style="list-style-type: none"> • Administrative and accounting organization, 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 20/758 (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 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 • Digital strategy | 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 optimization • Assistance with all IT projects in terms of banking secrecy, exchanges 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 definitions of the corresponding risks • ISAE 3402 and SOC 1 • ISAE3000 • Regulatory health checks • Assistance on regulatory compliance obligations • Assistance in developing internal control plans (risk management, compliance monitoring program) • 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 Optimization • Client and market strategy review • Executive search and coaching |
| Forensic & AML | <ul style="list-style-type: none"> • Appropriate organization to deal with anti-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 optimization 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 • Assistance with the set-up of finance operations • Finance diagnostics and improvement of financial reporting processes • Internal control remediation • Assistance with the selection and implementation of accounting software • Accounting diagnostics workshops to enhance the closing process | Human resources | <ul style="list-style-type: none"> • Organizational 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 specialized profiles • Implementation of HR information systems and portals • Change management • E-Learning / Face-to-face Learning / DLearn offer |
| | | 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

- Implementation of new accounting laws and standards
- Analysis of complex accounting treatments under different GAAPs
- Provision of accounting opinion based on analysis of transactions under different GAAPs
- Assistance with transition from one GAAP to another
- Review of Financial Statements for compliance with accounting laws and standards
- Provision of external training sessions on accounting laws and standards
- Creation of e-learnings under IFRS
- Accounting and finance function outsourcing
- Support with accounting expertise in the context of mergers and acquisitions, carve-outs or listings
- Account reconciliation

Direct taxation & VAT

- Assistance with tax returns (IRC [corporate income tax], ICC [municipal business tax], IF [wealth tax], withholding tax, VAT)
- Ad hoc tax advice on direct taxation and VAT
- Customized fiscal assistance and optimization 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
- Optimization of profit distribution to shareholders
- Operational assistance (also in respect of problems linked to the EU Savings directive, until the termination of operations FATCA, the exchange of tax information (CRS), tax treatment of investors, QI etc.)
- Tax reclaim for private clients until the termination of operations
- Evaluation of the fiscal structures of the clients
- Due diligence
- Personalised training and tax hotlines
- Assistance on tax optimization of the salary package of directors
- Assistance on tax optimization of the salary
- Evaluation of the impact of BEPS on the client portfolio

Business Risk

- Training on regulatory requirements
- IA outsourcing
- Hot line on risk and regulatory subjects
- HR support
- Ongoing Corporate, VAT and personal Tax consulting
- Any other support as required in each specific case
- Attest services for non-financial information (ISAE 3000, ISRS 4400)
- Certification of compliance with regulatory frameworks, guidelines or laws
- Health and safety certificate
- Validation of training costs (INFPC)

Private Wealth Services and Family Office

- Support and implementation of customized 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.)

Technology & Enterprise application

- 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

External audit

- Audit of company accounts
- Review of compliance with circulars and preparation either of analytical audit reports (for investment firms), or compliance reports (for specialized 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

Forensic & AML: Liquidation services

- Assistance in setting up liquidation plans

Direct taxation & VAT

- 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

- General support during the withdrawal process and in particular in analysing the technical subjects addressing the specific requirements in terms of:
 - Human resources
 - Regulatory aspects (capital, governance, IT security etc.)
 - IT & Operations
 - M&A and valuation
 - Tax & VAT

Technology & Enterprise application

- IT transition management

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