

Luxembourg: recent developments in anti-money-laundering and combat terrorist financing

In Luxembourg, entities, including collective investment schemes, and physical persons are subject to a wide range of anti-money-laundering (AML) and combat terrorist financing (CFT) rules. These draw on both international and domestic sources. At the international level, the key texts are those adopted by the EU and the Financial Action Task Force (FATF). The EU legal frameworks apply directly or indirectly to professionals supervised by the CSSF, in particular the Directive 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and the Regulation 2015/847 on information accompanying transfers of funds. Published in 2004, the so-called FATF Recommendations establish a complete set of measures against money laundering covering the criminal justice system and law enforcement, the financial system and its regulation, as well as international cooperation. Domestic sources include several legislations, especially the Law of 12 November 2004 on the fight against money laundering and terrorist financing, various ministerial and grand-ducal regulations, as well as documents provided by the *Commission de Surveillance du Secteur Financier* (CSSF), such as regulations and circulars.

1. Circular 19/730 and Circular 19/732

At the end of 2019, the CSSF has published two new circulars on AML/CFT. Circular 19/730 relates to recent statements of the financial action task force (FATF) on jurisdictions whose respective AML and CFT regimes have substantial and strategic deficiencies, or jurisdictions for which increased supervision and control measures must be applied, including enhanced mechanisms for reporting suspicious transactions or systematic reporting of financial transactions. Circular CSSF 19/732 aims to provide guidance to professionals subject to the CSSF's AML/CFT supervision in relation to the legal requirements applicable to identifying and verifying the ultimate beneficial owner (UBO) of the customer, with a view to enhancing financial transparency. The Circular comprises three parts. Part I describes the UBO identification requirements for customers that are natural persons, legal persons or legal arrangements; Part II specifies the verification of identity requirements; and Part III summarises a July 2018 FATF report, providing helpful indicators to detect the potential concealment of beneficial ownership information.

2. CSSF clarifications on AML/CFT measures and reporting duties

At the end of the past year, the Grand Duchy has also undertaken or published the following AML/CFT-related measures pursuant to the FATF Recommendations, as well as in light of the upcoming on-site visit to Luxembourg by FATF peer member countries.

2.1. National Risk Assessment made available to interested parties

According to FATF Recommendation 1, Luxembourg conducted a national risk assessment (NRA), the result of which continue to impact Luxembourg's AML/CFT measures framework. The NRA has identified the investment fund and private banking sectors as sectors with high inherent money laundering and terrorist financing risks.

2.2. Forms for investment funds and investment fund managers

On 7 November 2019, the CSSF updated the AML/CFT investment market entry forms for funds and investment fund managers (IFMs). It published an updated version of a form that aims to collect standardised key information in relation to money laundering and terrorist financing risks for the fund vehicles that are set up under Luxembourg law and regulated by the CSSF (e.g. UCITS, Part II UCIs, SIFs, SICARs). Moreover, the CSSF introduced a new form in relation to IFMs under its supervision. This form concerns alternative investment fund managers (AIFMs) that are authorised and supervised by the CSSF, as well as those that are below the threshold for authorisation but are nevertheless registered with the CSSF. Both forms must be provided for any new application by a Fund or an IFM; and renewed for any modification to an existing application by a Fund or an IFM (e.g., launch of a new sub-fund, addition/extension of a license, or change of an IFM's shareholder structure).

2.3. New frequently asked questions

The CSSF has also published new frequently asked questions (FAQs) in relation to persons involved in AML/CFT for an investment fund or a supervised IFM. The FAQs provide guidance for those appointed as members of the management bodies responsible for AML/CFT compliance (*Responsables du Respect*, RRs); and certain high-level compliance officers (*Responsables du Contrôle du Respect*, RCs).

By means of the FAQs, the CSSF provides, among others, the following three clarifications. First, every Luxembourg fund and IFM subject to its AML/CFT supervision is legally required to appoint both an RR and an RC, in light of the results of the NRA regarding AML/CFT risk exposure of the Grand Duchy's fund industry. Second, the RR can be the board of directors (or other governing body) acting as a collegial body; alternatively, the board may appoint one of its members as the RR. Third, the RC must be mandated *intuitu personae* by the board of directors (or other governing body) of the fund, whereby he or she may be a member of the board with relevant experience.