



Commission de Surveillance
du Secteur Financier

CSSF Regulation No 12-02 of 14 December 2012 on the fight against money laundering and terrorist financing

as amended by CSSF
Regulation No 20-05 of 14
August 2020 amending CSSF
Regulation No 12-02 of 14
December 2012 on the fight
against money laundering
and terrorist financing

CSSF Regulation No 12-02 of 14 December 2012 on the fight against money laundering and terrorist financing

(Mémorial A – No 5 of 9 January 2013)

as amended by:

- by CSSF Regulation No 20-05 of 14 August 2020 amending CSSF Regulation No 12-02 of 14 December 2012 on the fight against money laundering and terrorist financing
(Mémorial A – No 695 of 20 August 2020)

The Executive Board of the Commission de Surveillance du Secteur Financier;

Considering Article 108a of the Constitution;

Considering the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended,¹ and in particular Article 9(2);

Considering the Law of 12 November 2004 on the fight against money laundering and terrorist financing", as amended,² and the Grand-ducal Regulation of 1 February 2010 providing details on certain provisions of that law", as amended³;

Considering the opinion of the Consultative Committee for prudential regulation;

decides:

Chapter 1 Definitions

Article 1

(1) For the purposes of this regulation, the following definitions shall apply:

(CSSF Regulation No 20-05)
"ML/TF":

Money Laundering/Terrorist Financing;

¹ CSSF Regulation No 20-05

² CSSF Regulation No 20-05

³ CSSF Regulation No 20-05

"customer":	natural or legal person with whom a business relationship exists or for whom an occasional transaction is carried out within the meaning of point (b) of Article 3(1) of the Law, including persons purporting to act on behalf of the customer.
	As regards investment funds, the notion of customer encompasses the notion of investor registered in the investment fund register;"
"FIU":	the Financial Intelligence Unit "under the administrative supervision of the Chief Public Prosecutor" ⁴ ;
"CSSF":	the Commission de Surveillance du Secteur Financier;
"Directive (EU) 2015/849":	Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC, as amended, and its implementing acts;" ⁵
"management":	the persons having a real influence on the overall management of the professional's business;
"authorised management":	the persons responsible for the "daily" ⁶ management of the professional, authorised by the CSSF (...)"; ⁷
"FATF":	the Financial Action Task Force;

⁴ CSSF Regulation No 20-05

⁵ CSSF Regulation No 20-05

⁶ CSSF Regulation No 20-05

⁷ CSSF Regulation No 20-05

(CSSF Regulation No 20-05)

“IFM”:

the Investment Fund Manager;”

“AML/CFT”:

Anti-Money Laundering and Countering the Financing of Terrorism

“Law”:

the Law of 12 November 2004 on the fight against money laundering and terrorist financing”, as amended”⁸. “This definition includes the European regulations implementing Directive (EU) 2015/849 which are published on the CSSF website and which are directly applicable in Luxembourg.”⁹

““Law implementing restrictive measures in financial matters”: the Law of 27 October 2010 implementing United Nations Security Council resolutions as well as acts adopted by the European Union concerning prohibitions and restrictive measures in financial matters in respect of certain persons, entities and groups in the context of the combat against terrorist financing or any law repealing and replacing this law and which implements restrictive measures in financial matters, including its implementing measures;”¹⁰

“professional obligations”:

the obligations for professionals as regards AML/CFT;

“professionals”:

“the persons referred to in Article 2-1(1) of the Law”;¹¹

““Regulation (EU) 2015/847”:

Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006;”¹²

⁸ *CSSF Regulation No 20-05*

⁹ *CSSF Regulation No 20-05*

¹⁰ *CSSF Regulation No 20-05*

¹¹ *CSSF Regulation No 20-05*

¹² *CSSF Regulation No 20-05*

“Grand-ducal Regulation”: the Grand-ducal Regulation of 1 February 2010 providing details on certain provisions of the Law”, as amended”¹³;

(CSSF Regulation No 20-05)

““compliance officer in charge of the control of compliance with the professional obligations”: the person who shall implement AML/CFT, for example, the compliance officer, where applicable, and designated for the purposes of this regulation as “compliance officer”;

“person responsible for compliance with the professional obligations: the member of the authorised management responsible for the fight against money laundering and terrorist financing and designated for the purposes of this regulation as “person responsible for compliance”. For professionals which do not have an authorised management, this person is a member of the Board of Directors or the Board of Directors as a whole;”

(2) As for the notions which are not otherwise defined in this article, the definitions given, where appropriate, in the Law or the Grand-ducal Regulation shall apply.

Chapter 2 Scope

Article 2

(1) The provisions of this regulation shall apply to the professionals referred to in Article 2 of the Law “which are supervised, authorised or registered by the CSSF, including Luxembourg branches of foreign professionals notified to the CSSF, as well as foreign professionals notified to the CSSF which provide services in Luxembourg without establishing a branch”¹⁴.

¹³ CSSF Regulation No 20-05

¹⁴ CSSF Regulation No 20-05

(2) The provisions of “Article 4-1(3)”¹⁵ of the Law relating to the application of at least equivalent measures in foreign branches and “majority-owned”¹⁶ subsidiaries shall also apply for the enforcement of this regulation.

(CSSF Regulation No 20-05)

“(3) The *réviseurs d’entreprises* (statutory auditors), the *réviseurs d’entreprises agréés* (approved statutory auditors), the *cabinets de révision* (audit firms), the *cabinets de révision agréés* (approved audit firms) and the audit firms within the meaning of point (3) of Article 1 of the Law of 23 July 2016 concerning the audit profession, as amended, are not referred to in this regulation.”

(CSSF Regulation No 20-05)

“Chapter 3 Risk-based approach

Section 1 Identification, assessment and understanding of risks

Subsection 1 Risk relating to the intermediary”

Article 3

“(1)”¹⁷ Where the units or shares of an undertaking for collective investment or an investment company in risk capital are subscribed through an intermediary acting on behalf of “others”¹⁸, the undertaking for collective investment, its management company, the investment company in risk capital or, where applicable, the respective proxy of the professionals shall put in place enhanced customer due diligence measures for this intermediary which are applied *mutatis mutandis* pursuant to the terms of Article 3-2(3) of the Law, Article 3(3) of the Grand-ducal Regulation and Article 28 of this regulation in order to ensure that all the obligations under the Law, the Grand-ducal Regulation and this regulation or at least equivalent obligations are complied with.

¹⁵ *CSSF Regulation No 20-05*

¹⁶ *CSSF Regulation No 20-05*

¹⁷ *CSSF Regulation No 20-05*

¹⁸ *CSSF Regulation No 20-05*

(CSSF Regulation No 20-05)

“(2) In accordance with the preceding paragraph, the due diligence measures which apply to the relationship with the intermediary shall be at two levels: (i) the intermediary, the persons purporting to act on its behalf and its beneficial owners shall be identified and their identity verified, where applicable, according to a risk-based approach and (ii) enhanced due diligence measures shall be implemented for the business relationship qualified as similar to correspondent relationship with the intermediary which invests on behalf of others. These enhanced due diligence measures, referred to in the above paragraph 1, aim notably to analyse the robustness of the AML/CFT control framework of this intermediary.”

(...) ¹⁹

(CSSF Regulation No 20-05)

“Subsection 2 Overall risk related to the activity”

Article 4

“(1) The identification, assessment and understanding of risks by the professional, as provided for in Article 2-2 of the Law, shall allow it to determine which due diligence measures shall be applied to the business relationship based on the materiality of the risk.

To this end, the professional shall incorporate different sources in its risk management procedures, including:

- supranational report of the European Commission on the risks of money laundering and terrorist financing (“Supranational Risk Assessment”);
- national assessment of the risks of money laundering and terrorist financing (“National Risk Assessment”);
- sub-sectoral ML/TF risk assessments (“Sub-Sector Risk Assessments”);
- joint guidelines issued by the three European Supervisory Authorities (ESMA, EBA and EIOPA) (hereinafter referred to as the “European Supervisory Authorities”) on money laundering and terrorist financing risk factors (“Risk Factor Joint Guidelines”);
- the relating CSSF publications.

(2) The professionals shall have communication means allowing them to provide information on their risk assessment to the CSSF.

(3) The professionals shall be organised so as to be able to correctly and exhaustively fill in annually the CSSF questionnaire on the collection of information regarding risks of money laundering and terrorist financing and to submit it to the CSSF within the time limits via the channel it determines.

¹⁹ *CSSF Regulation No 20-05*

(4) The determination by the professional of its “risk-based approach” shall be based on the definition of the ML/TF risk appetite, as approved by the Board of Directors and implemented by the authorised management. The strategy shall be consistent with this approach. Policies, procedures and controls with respect to AML/CFT implemented within the professional shall be consistent with the previously defined risk appetite. This definition and strategy shall be communicated in a precise, clear and comprehensible form to the whole staff.”²⁰

(CSSF Regulation No 20-05)

“Subsection 3 Individual risk related to the business relationship”

“Article 5

(1) For the purposes of Article 3(2a) of the Law, the professionals shall categorise all their customers according to the different risk levels with regard to money laundering and terrorist financing. These risks shall be subject to an identification and assessment based on the understanding by the professional of the nature and type of its business relationships as well as to a periodic review.

Besides the cases where the risk level shall be considered as high pursuant to the Law, the Grand-ducal Regulation or this regulation, this level shall be assessed according to a consistent combination of risk factors defined by each professional according to the activity exercised and inherent to the following risk categories:

- type of customers (including the customer, proxy, beneficial owner);
- countries and geographic areas;
- products, services and transactions, or
- delivery channels.

(2) In order to determine whether it finds itself in a situation which presents a higher risk, and except cases explicitly provided for in Article 3-2 of the Law or its implementing measures, the professional shall rely on the non-exhaustive list of factors and types of evidence of risk laid down in Annex IV of the Law. As this list under Annex IV of the Law is a *de minimis* list of situations with potentially higher risks, the professional shall also take into account all the other risk factors it deems relevant in order to determine whether a business relationship requires the application of enhanced due diligence measures.

²⁰ *CSSF Regulation No 20-05*

In order to determine if it finds itself in a situation which presents a lower risk, the professional shall rely on the non-exhaustive list of factors and types of evidence of risk laid down in Annex III of the Law. The list under Annex III of the Law is a *de minimis* list. The professional may also take into account other lower risk factors it deems relevant before determining whether the business relationship may be considered for the application of simplified due diligence measures. The application of simplified due diligence measures must be justifiable and demonstrable to the Luxembourg authorities responsible for AML/CFT.

(3) The assessment of the risk level shall not allow derogating from the application of enhanced due diligence measures in the cases laid down in the Law, the Grand-ducal Regulation or this regulation."²¹

(4) The assessment of the risk level to be assigned to a customer shall take place before the customer is accepted by the professional. During the monitoring of the business relationship, the professional shall keep account of the development of the risks and adapt its assessment according to any significant change affecting them or any new risk.

(5) The professionals shall have appropriate arrangements to communicate the information on their risk assessment to the CSSF.

Section 2 Risk management and mitigation

Article 6

(1) The professionals shall have policies, controls and procedures that enable them to effectively manage and mitigate their money laundering and terrorist financing risks. "These policies shall be approved by the professional's Board of Directors. The relevant procedures shall be approved by the authorised management or by the Board of Directors for investment funds subject to the supervision of the CSSF."²²

²¹ CSSF Regulation No 20-05

²² CSSF Regulation No 20-05

(2) In accordance with “Article 3(2a) of the Law”²³, the professionals shall set the extent of the due diligence measures laid down in Article 3(2) of the Law according to the risk level assigned to each customer pursuant to Section 1 of this chapter. Where enhanced due diligence measures are required pursuant to the Law, (...) ²⁴ the Grand-ducal Regulation “or this regulation”²⁵, all such measures shall be applied although the extent of such measures may vary according to the specific level of risk set by the professional.

(3) The adaptation of the extent of due diligence measures to the risk level shall take place during the identification and identity verification period within the meaning of points (a) to (c) “of the first subparagraph” of Article 3(2)²⁶ of the Law and shall “be adapted afterwards”²⁷ in the framework of the ongoing monitoring within the meaning of point (d) “of the first subparagraph”²⁸ of Article 3(2) of the Law.

Article 7

(1) For the purposes of applying Articles 3-1 and 3-3”, Annex III”²⁹ of the Law and Articles 4 and 5 of this regulation, it is for each professional to assess if a Member State or a third country imposes obligations which are equivalent to those laid down in the Law or Directive “(EU) 2015/849”³⁰. The reasons for concluding that a Member State or a third country imposes equivalent obligations shall be documented when the decision is taken and shall be based on relevant and up-to-date information. The obligations imposed by a Member State shall be considered equivalent, except where relevant information points to the fact that this assumption cannot be upheld. The conclusion that these obligations are equivalent shall be regularly reviewed, in particular when new relevant information about the country concerned is available.

²³ CSSF Regulation No 20-05

²⁴ CSSF Regulation No 20-05

²⁵ CSSF Regulation No 20-05

²⁶ CSSF Regulation No 20-05

²⁷ CSSF Regulation No 20-05

²⁸ CSSF Regulation No 20-05

²⁹ CSSF Regulation No 20-05

³⁰ CSSF Regulation No 20-05

(2) The conclusion that a Member State or a third country imposes obligations which are equivalent to those laid down in the Law or Directive “(EU) 2015/849”³¹ does not relieve the professional from carrying out a risk assessment pursuant to this chapter when accepting the customer and from the obligation to apply enhanced due diligence measures in situations which present a high risk of money laundering or terrorist financing.

Chapter 4 Customer due diligence

Section 1 Acceptance of a new customer

Article 8

The professionals shall decide on and put in place a customer acceptance policy which is adapted to the activities they carry out, so that the entry into business relationship with customers may be submitted to a prior risk “identification,”³² assessment “and understanding”³³ as provided for in Chapter 3, Section 1 of this regulation.

Article 9

“(1)”³⁴ Without prejudice to the obligations laid down in Article 3-2 “(2),”³⁵ (3) and (4) of the Law and in Article 3 “(1),”³⁶ (3) and (4) of the Grand-ducal Regulation “and this regulation”³⁷, the acceptance of a new customer shall be submitted to a superior or to a specifically appointed professional body for written authorisation by providing for an adequate hierarchical decision-making level and, where appropriate, “for customers with a high-risk profile, at least the systematic intervention”³⁸ (...) ³⁹ of the (...) ⁴⁰ compliance officer (...) ⁴¹.

³¹ CSSF Regulation No 20-05

³² CSSF Regulation No 20-05

³³ CSSF Regulation No 20-05

³⁴ CSSF Regulation No 20-05

³⁵ CSSF Regulation No 20-05

³⁶ CSSF Regulation No 20-05

³⁷ CSSF Regulation No 20-05

³⁸ CSSF Regulation No 20-05

³⁹ CSSF Regulation No 20-05

⁴⁰ CSSF Regulation No 20-05

⁴¹ CSSF Regulation No 20-05

(CSSF Regulation No 20-05)

"(2) The acceptance of a new customer with a low ML/TF risk profile, according to the risk-based approach as implemented by the professional, may be carried out based on an automated acceptance process which does not require the intervention of a natural person for the professional, so as to constitute an efficient and reliable alternative to the validation by a natural person of the professional. This process shall be configured and tested beforehand and regularly reviewed by the professional so as to analyse the robustness of the process. This process shall be in line with the AML/CFT policies and procedures of the professional and with the instructions to be issued by the CSSF."

Article 10

(1) The (...) ⁴² customer acceptance policy shall include a specific examination "and acceptance procedure" ⁴³ for (...) ⁴⁴ the customers likely to represent a high risk level of money laundering or terrorist financing.

(2) The acceptance of a customer who seeks to open a numbered account as referred to in Article 5 of the Grand-ducal Regulation is subject to the production of evidence by the customer demonstrating the necessity of such an account. This evidence shall be documented in writing "and the opening of such an account shall be submitted for written authorisation at least to the person responsible for compliance. The opening of an account, passbook or safe-deposit box which is anonymous or under a fictitious name is prohibited." ⁴⁵

(CSSF Regulation No 20-05)

"(3) The opening of a safe-deposit box is considered as a business relationship and as such, the professional shall conduct all the related due diligence measures."

Article 11

(1) The customer acceptance policy shall require the documentation of all contact, no matter in which form, and shall notably envisage a customer questionnaire adapted to the nature of the contact and the business relationship.

⁴² CSSF Regulation No 20-05

⁴³ CSSF Regulation No 20-05

⁴⁴ CSSF Regulation No 20-05

⁴⁵ CSSF Regulation No 20-05

(2) The customer acceptance policy shall also provide for procedures to be followed when there is suspicion of or “when there are reasonable grounds to suspect”⁴⁶ money laundering”, an associated predicate offence⁴⁷ or terrorist financing in case contact with a possible customer fails. The reasons for a customer or professional to refuse to enter into a business relationship or to execute a transaction shall be documented “and retained in accordance with the arrangements provided for in Article 25 of this regulation”⁴⁸, even if the professional's refusal does not ensue from the observation of a money laundering or terrorist financing indication.

Section 2 Timing of identification and verification of the identity

Subsection 1 Opening an account before “or during”⁴⁹ the completion of the measures for the verification of the identity

Article 12

“In accordance with the third subparagraph of Article 3(4) of the Law which derogates from the first subparagraph of Article 3(4) of the Law and without prejudice to the first subparagraph of Article 3(2a) of the Law, the professionals may enter into a business relationship, open a customer account or carry out a transaction for an occasional customer before or during the verification of the identity of the customer and beneficial owner pursuant to points (a) and (b) of the first subparagraph and to the second subparagraph of Article 3(2) of the Law, provided that the following conditions are fulfilled:”⁵⁰

- the money laundering and terrorist financing risk is low “and efficiently managed”⁵¹;
- “it is necessary not to interrupt the normal conduct of business;”⁵²
- the verification of the identity is carried out at the earliest opportunity after the first contact with the customer. The impossibility to verify the identity of the “customer and beneficial owner”⁵³ within the timeframe set by the internal rules shall be subject to an internal report which will be transmitted to the (...) ⁵⁴ compliance officer for the required purposes;

⁴⁶ CSSF Regulation No 20-05

⁴⁷ CSSF Regulation No 20-05

⁴⁸ CSSF Regulation No 20-05

⁴⁹ CSSF Regulation No 20-05

⁵⁰ CSSF Regulation No 20-05

⁵¹ CSSF Regulation No 20-05

⁵² CSSF Regulation No 20-05

⁵³ CSSF Regulation No 20-05

⁵⁴ CSSF Regulation No 20-05

- sufficient measures shall be put in place so that no exit of assets from the account can be carried out before completing this verification.

Subsection 2 Opening an account for a company in the process of incorporation

Article 13

The professionals may open an account for a company in the process of incorporation, insofar as the following conditions are met:

- the professionals shall identify and verify the identity of the company's founders pursuant to "the first and second subparagraphs of"⁵⁵ Article 3(2) of the Law. They shall receive a declaration from the founders stating that they act, either for their own account or for the account of beneficial owners which they name, and where appropriate, the professionals shall take measures to identify and verify the identity of the beneficial owners pursuant to point (b) "of the first subparagraph and to the second subparagraph"⁵⁶ of Article 3(2) of the Law;
- at the earliest opportunity after the incorporation of the company, the professionals shall complete the measures for the identification and verification of the company's identity through information and documents referred to in Articles 16(2) and 19 of this regulation as well as, where applicable, of the beneficial owners pursuant to Articles 21 to 23 of this regulation. The impossibility to verify the identity of the "founders, of the company and of the beneficial owners"⁵⁷ within the timeframe set by the internal rules shall be subject to an internal report which will be transmitted to the (...) ⁵⁸ compliance officer for the required purposes;
- sufficient measures shall be put in place so that no exit of assets from the account can be carried out before completing this verification.

⁵⁵ CSSF Regulation No 20-05

⁵⁶ CSSF Regulation No 20-05

⁵⁷ CSSF Regulation No 20-05

⁵⁸ CSSF Regulation No 20-05

Subsection 3 Occasional transactions carried out

Article 14

(1) “When”⁵⁹ an occasional transaction of an amount higher than or equal to EUR 15,000 within the meaning of Article 3(1)(b)(i)⁶⁰ of the Law “is carried out, the professional”⁶¹ shall apply the measures for the identification and verification of the identity required pursuant to “the first and second subparagraphs of”⁶² Article 3(2) of the Law before the transaction is carried out and according to the same arrangements as during the establishment of a business relationship.

(2) Where a transaction within the meaning of Article 3(1)(b)(i)⁶³ of the Law is carried out in several operations, the professional shall apply the due diligence measures at the latest when it acknowledges that the total volume of the operations reached the threshold referred to in paragraph 1 above. The professionals shall have procedures or systems allowing them to detect that this threshold was reached, where appropriate.

Subsection 4 “Transfers of funds within the meaning of Regulation (EU) 2015/847”⁶⁴

“Article 15

(1) Pursuant to Regulation (EU) 2015/847, Article 39(2) of the Law of 5 April 1993 on the financial sector and Article 3(1)(b)(ii) of the Law, where the professional carries out an occasional transaction in the form of a transfer of funds within the meaning of point (9) of Article 3 of Regulation (EU) 2015/847, it shall apply the identification measures required by point (a) of the first subparagraph of Article 3(2) of the Law before placing an order for the transfer of funds, according to the same arrangements as for customers in business relationship. It shall make sure that the transfer of funds comes with information on the payer and on the payee pursuant to Articles 4 to 6 of Regulation (EU) 2015/847.

In accordance with Article 4(4) of Regulation (EU) 2015/847, prior to the transfer of funds, the payment service provider of the payer shall verify the accuracy of the information on the payer for the transfers of funds within the European Union exceeding EUR 1,000.

⁵⁹ CSSF Regulation No 20-05

⁶⁰ CSSF Regulation No 20-05

⁶¹ CSSF Regulation No 20-05

⁶² CSSF Regulation No 20-05

⁶³ CSSF Regulation No 20-05

⁶⁴ CSSF Regulation No 20-05

(2) In the framework of the detection of missing or incomplete information on the payer or the payee as referred to in Article 7 of Regulation (EU) 2015/847, where the transfer of funds within the European Union exceeds EUR 1,000, the payment service provider of the payee shall, before crediting the payee's payment account or making the funds available to the payee, verify the accuracy of the information on the payee.

Where the payment service provider of the payee detects missing or incomplete information on the payer or payee, it shall, according to its risk assessment, either reject the transfer of funds or ask the payment service provider of the payer for the missing information. To this end, the payment service provider of the payer shall, within three working days of receiving a request for information from the payment service provider of the payee or from the intermediary payment service provider, make available the information referred to in points (a) and (b) of Article 5(2) of Regulation (EU) 2015/847.

In case of transfers of funds where the payment service provider of the payee is established outside the European Union and notwithstanding the paragraph 3 below, the payment service provider of the payer need not verify the information on the payer for transfers of funds which do not exceed EUR 1,000.

(3) In accordance with Article 5(3) and the last subparagraph of Article 6(2) of Regulation (EU) 2015/847, measures to identify and verify the identity of the payer shall apply to the payment service provider of the payer where it has received funds to be transferred in cash or in anonymous electronic money or where it has reasonable grounds for suspecting money laundering or terrorist financing, irrespective of any threshold.

(4) In accordance with Article 7(4) of Regulation (EU) 2015/847, the measures to identify and verify the correctness of the information on the payee shall apply to the payment service provider of the payee where it effects the pay-out of the funds in cash or in anonymous electronic money or where there are reasonable grounds for suspecting money laundering or terrorist financing, irrespective of any threshold.

(5) The professional which provides services of transfer of funds or values shall comply with all the obligations applicable with respect to wire transfers in countries in which it operates, directly or through agents. In the case this professional controls both the ordering and beneficiary side of a wire transfer, it shall take into account all the information from both the ordering and beneficiary sides in order to decide whether it is confronted with a suspicious transaction requiring a suspicious transaction report.

(6) The professionals shall apply the joint guidelines of the European Supervisory Authorities adopted pursuant to Article 25 of Regulation (EU) 2015/847 on the measures that the payment service providers shall take to detect missing or incomplete information on the payer or the payee, as well as the procedures to be put in place to manage a transfer of funds which is not accompanied by the required information as communicated via a CSSF circular.⁶⁵

Section 3 "Standard"⁶⁶ measures for the identification and verification of the identity of customers

Subsection 1 Identification

Article 16

For the purposes of the identification of customers pursuant to point (a) "of the first subparagraph"⁶⁷ "and to the second subparagraph"⁶⁸ of Article 3(2) of the Law, the professionals shall gather and register at least the following information:

1. as regards customers who are natural persons:
 - surname"(s)"⁶⁹ and first name"(s)"⁷⁰;
 - place and date of birth;
 - nationality"(ies)"⁷¹;
 - "full postal"⁷² address "of the customer's main residence"⁷³;
 - where appropriate, "the"⁷⁴ official national identification number.
2. as regards customers which are legal persons or legal arrangements:
 - denomination;
 - legal form;

⁶⁵ CSSF Regulation No 20-05

⁶⁶ CSSF Regulation No 20-05

⁶⁷ CSSF Regulation No 20-05

⁶⁸ CSSF Regulation No 20-05

⁶⁹ CSSF Regulation No 20-05

⁷⁰ CSSF Regulation No 20-05

⁷¹ CSSF Regulation No 20-05

⁷² CSSF Regulation No 20-05

⁷³ CSSF Regulation No 20-05

⁷⁴ CSSF Regulation No 20-05

- address of the registered office "as well as"⁷⁵, if different, "the"⁷⁶ principal place of business;
- where appropriate, "an"⁷⁷ official national identification number;
- "name of the"⁷⁸ directors (*dirigeants*, members of the authorised management) (for the legal persons) and directors (*administrateurs*) or persons exercising similar positions (for the legal arrangements) "and involved in the business relationship with the professional"⁷⁹;
- provisions governing the power to bind the legal person or arrangement;
- authorisation to enter into a relationship.

(CSSF Regulation No 20-05)

"3. The information listed under point (1) above shall also be gathered and registered for initiators, promoters who launched an investment fund supervised by the CSSF and which will be the customer of the professional."

Article 17

At the time of the customer identification and for the purposes of the obligations to identify and verify the beneficial owner laid down in Section 5 of this chapter, the professionals shall determine if the customers act for their own account or, where appropriate, for the account of other persons pursuant to "point (b) of the first subparagraph and to the second subparagraph of Article 3(2) of the Law"⁸⁰. The customers shall sign an explicit declaration in that respect and commit to communicate any subsequent changes "of the beneficial ownership"⁸¹ without delay to the professional. "The professional shall ensure the credibility of this declaration."⁸²

⁷⁵ CSSF Regulation No 20-05

⁷⁶ CSSF Regulation No 20-05

⁷⁷ CSSF Regulation No 20-05

⁷⁸ CSSF Regulation No 20-05

⁷⁹ CSSF Regulation No 20-05

⁸⁰ CSSF Regulation No 20-05

⁸¹ CSSF Regulation No 20-05

⁸² CSSF Regulation No 20-05

Subsection 2 Verification of the identity

Article 18

(1) The verification of the identity, within the meaning of point (a) “of the first subparagraph”⁸³ of Article 3(2) of the Law, of customers who are natural persons shall be made at least with one valid “authentic”⁸⁴ official identification document issued by a public authority and which bears the customer’s signature and picture such as (...) ⁸⁵ the customer’s passport, his ID, (...) ⁸⁶ his residence permit”, his driving licence or any other similar document”⁸⁷.

(CSSF Regulation No 20-05)

“Electronic identification means, including relevant trust services as set out in Regulation (EU) No 910/2014 or any other secure, remote or electronic, identification process regulated, recognised, approved or accepted by the relevant national authorities may be used by the professional to fulfil its due diligence obligation referred to in point (a) of the first subparagraph of Article 3(2) of the Law.”

(2) According to their risk assessment “and without prejudice to other enhanced due diligence obligations”⁸⁸, the professionals shall take additional verification measures such as, for example, the verification of the address indicated by the customer through the proof of address or by contacting the customer, among others, per registered letter with acknowledgement of receipt.

Article 19

(1) In accordance with point (a) “of the first subparagraph”⁸⁹ of Article 3(2) of the Law (...) ⁹⁰, the verification of the identity of customers who are legal persons or other legal arrangements shall be made at least with the following documents of which a copy shall be kept”, where appropriate, in electronic (digital) form”⁹¹:

- the last coordinated or up-to-date articles of incorporation (or an equivalent incorporation document);

⁸³ CSSF Regulation No 20-05

⁸⁴ CSSF Regulation No 20-05

⁸⁵ CSSF Regulation No 20-05

⁸⁶ CSSF Regulation No 20-05

⁸⁷ CSSF Regulation No 20-05

⁸⁸ CSSF Regulation No 20-05

⁸⁹ CSSF Regulation No 20-05

⁹⁰ CSSF Regulation No 20-05

⁹¹ CSSF Regulation No 20-05

- a recent and up-to-date extract from the companies register (*registre des sociétés*) (or equivalent supporting evidence).

(2) According to their risk assessment “and without prejudice to other enhanced due diligence obligations”⁹², the professionals shall take additional verification measures, such as, for example:

- an examination of the last management report and the last accounts, where appropriate certified by a *réviseur d'entreprises agréé* (approved statutory auditor);
- the verification, after consulting the companies register or any other source of professional data, that the company was not or is not subject to a dissolution, deregistration, bankruptcy or liquidation;
- the verification of the information collected from independent and reliable sources such as, among others, public and private databases;
- a visit to the company, if possible, or contact with the company through, among others, registered letter with acknowledgement of receipt.

Section 4 Measures for the identification and verification of the identity of “persons purporting to act on behalf of the customer”⁹³

Article 20

(1) “Without prejudice to the enhanced due diligence obligations or, where applicable, to the application of simplified due diligence measures,”⁹⁴ the identification and identity verification measures of “persons (natural or legal, including legal arrangements) purporting to act in the framework of the business relationship on behalf of the customer”⁹⁵ in accordance with point (a) “of the first subparagraph” of Article 3(2) of the Law, (...) ⁹⁶ are subject to the provisions of Section 3 of this chapter.

(2) Moreover, the professionals shall know the power of representation of the person“(s)”⁹⁷ acting on behalf of the customer “in the framework of the business relationship with the professional”⁹⁸ and verify his identity through evidencing documents of which they shall keep a copy”, where appropriate, in electronic (digital) form”⁹⁹.

⁹² CSSF Regulation No 20-05

⁹³ CSSF Regulation No 20-05

⁹⁴ CSSF Regulation No 20-05

⁹⁵ CSSF Regulation No 20-05

⁹⁶ CSSF Regulation No 20-05

⁹⁷ CSSF Regulation No 20-05

⁹⁸ CSSF Regulation No 20-05

⁹⁹ CSSF Regulation No 20-05

(3) The following are particularly referred to in this article:

- legal representatives of customers who are unfit natural persons;
- natural or legal persons authorised to act on behalf of customers pursuant to a mandate;
- persons authorised to represent customers which are legal persons or legal arrangements in the relations with the professional.

Section 5 Measures for the identification and verification of the identity of beneficial owners

Article 21

“Without prejudice to the enhanced due diligence obligations or, where applicable, to the application of simplified due diligence measures, the identification of beneficial owners under Article 1(7), under point (b) of the first subparagraph and under the second subparagraph of Article 3(2) of the Law concerns their surname(s), first name(s), nationality(ies), date and place of birth as well as the full postal address of the main residence. According to the professional’s assessment, it shall also include the official national identity number.”¹⁰⁰

Article 22

(1) The verification of these data shall be made, notably using information obtained from customers, “central”¹⁰¹ registers “within the meaning of Articles 30(3) and 31(3a) of Directive (EU) 2015/849”¹⁰² or any other independent and reliable source available. “The sole use of the central registers as referred to above shall not constitute sufficient means to fulfil the due diligence obligations;”¹⁰³ “thus,”¹⁰⁴ the professional shall take all reasonable measures in order to ensure that the real identity of the beneficial owner is known. The reasonable nature of these measures shall be defined, notably according to the level of money laundering or terrorist financing risk that the professional considers to be linked to the customer profile or the nature of the business relationship or of the transaction contemplated by the customer.

¹⁰⁰ CSSF Regulation No 20-05

¹⁰¹ CSSF Regulation No 20-05

¹⁰² CSSF Regulation No 20-05

¹⁰³ CSSF Regulation No 20-05

¹⁰⁴ CSSF Regulation No 20-05

(2) Where, despite these measures, the professional has a doubt as to the real identity of the beneficial owner, and, where it cannot remove this doubt, the professional shall refuse to enter into a business relationship or carry out the transaction contemplated by the customer and, (...) ¹⁰⁵ “where it knows, suspects or has reasonable grounds to suspect that money laundering, an associated predicate offence or terrorist financing is being or has been committed or attempted,” ¹⁰⁶ the professional shall make a report “in accordance with” ¹⁰⁷ Article 5(1) “and (1a)” ¹⁰⁸ of the Law and Article 8(2) of the Grand-ducal Regulation.

(CSSF Regulation No 20-05)

“(3) Article 21 and paragraphs 1 and 2 of Article 22 above shall also apply to beneficial owners of *fiducies*, trusts or similar legal arrangements but, in accordance with Article 3(2c) of the Law, the identification and verification may take place at the time of the payout or at the time of the exercise by the beneficiary of its vested rights.

Where the professional is not able to identify the beneficiary of a trust, *fiducie* or similar legal arrangement and where the beneficiary is designated by characteristics or by class, the professional shall obtain sufficient information concerning the beneficiary to ensure that it will be able to establish its identity at the time of the payout or at the time of the exercise by the beneficiary of its vested rights.”

Article 23

“The beneficial owner, within the meaning of Article 1(7) of the Law, shall be any natural person who ultimately owns or controls the customer or any natural person on whose behalf a transaction or activity is being conducted.

This may be the case even if the threshold of the participation or control as indicated in point (a)(i) of Article 1(7) of the Law is not met.” ¹⁰⁹

¹⁰⁵ *CSSF Regulation No 20-05*

¹⁰⁶ *CSSF Regulation No 20-05*

¹⁰⁷ *CSSF Regulation No 20-05*

¹⁰⁸ *CSSF Regulation No 20-05*

¹⁰⁹ *CSSF Regulation No 20-05*

Section 6. "Assessing, understanding and"¹¹⁰ obtaining information on the purpose and intended nature of the business relationship

Article 24

The professionals' obligation to know their customer includes the obligation to gather, (...) ¹¹¹ register, "analyse and understand" ¹¹² at the time of the customer identification, "the" ¹¹³ information about the origin of the customer's funds and the types of transaction for which the customer requests a business relationship, as well as any adequate information allowing the determination of the customer's purpose of the business relationship in accordance with point (c) "of the first subparagraph" ¹¹⁴ of Article 3(2) of the Law. This information shall allow the professional to carry out an efficient ongoing customer due diligence as referred to in Section 9 of this chapter. "Depending on the risk assessment, this obligation may include the obligation to obtain supporting evidence." ¹¹⁵

Section 7 Obligation to retain documents and information

Article 25

(1) The obligation to retain documents", data"¹¹⁶ and information "regarding business relationships"¹¹⁷ pursuant to point (a) "of the first subparagraph"¹¹⁸ "and to the third subparagraph"¹¹⁹ of Article 3(6) of the Law and Article 1(5) of the Grand-ducal Regulation, covers all documents", data"¹²⁰ and information obtained under the customer due diligence measures as required in points (a) to (d) "of the first subparagraph"¹²¹ of Article 3(2) of the Law, including the results of any performed analysis.

¹¹⁰ CSSF Regulation No 20-05

¹¹¹ CSSF Regulation No 20-05

¹¹² CSSF Regulation No 20-05

¹¹³ CSSF Regulation No 20-05

¹¹⁴ CSSF Regulation No 20-05

¹¹⁵ CSSF Regulation No 20-05

¹¹⁶ CSSF Regulation No 20-05

¹¹⁷ CSSF Regulation No 20-05

¹¹⁸ CSSF Regulation No 20-05

¹¹⁹ CSSF Regulation No 20-05

¹²⁰ CSSF Regulation No 20-05

¹²¹ CSSF Regulation No 20-05

(2) The obligation to retain certain documents”, data”¹²² and information relating to (...) ¹²³ transactions, as defined in point (b) “of the first subparagraph”¹²⁴ of Article 3(6) of the Law and Article 1(5) of the Grand-ducal Regulation, also includes the obligation to retain the written reports transmitted to the (...) ¹²⁵ compliance officer (...) ¹²⁶ in accordance with Articles 12, 13 and 39(4) of this regulation, as well as the analyses of the transactions and facts included in these reports that the (...) ¹²⁷ compliance officer drew up and the decisions taken accordingly and the results of any other performed analysis.

(3) The retention of the documents pursuant to Article 3(6) of the Law and Article 1(5) of the Grand-ducal Regulation may be carried out on any archiving medium, provided that the documents meet the conditions to be used as evidence in (...) ¹²⁸ an investigation”, criminal investigation”¹²⁹ or analysis of money laundering or terrorist financing by the AML/CFT competent authorities.

Section 8 “Enhanced and simplified customer due diligence obligations”¹³⁰

Subsection 1 Enhanced due diligence measures “and simplified due diligence measures”¹³¹

Article 26

Without prejudice to the cases where enhanced due diligence measures are specifically prescribed by the Law, (...) ¹³² the Grand-ducal Regulation “or this regulation”¹³³, examples of enhanced due diligence measures that could be applied for higher-risk business relationships”, according to the risk assessment carried out by the professional,”¹³⁴ include:

¹²² CSSF Regulation No 20-05

¹²³ CSSF Regulation No 20-05

¹²⁴ CSSF Regulation No 20-05

¹²⁵ CSSF Regulation No 20-05

¹²⁶ CSSF Regulation No 20-05

¹²⁷ CSSF Regulation No 20-05

¹²⁸ CSSF Regulation No 20-05

¹²⁹ CSSF Regulation No 20-05

¹³⁰ CSSF Regulation No 20-05

¹³¹ CSSF Regulation No 20-05

¹³² CSSF Regulation No 20-05

¹³³ CSSF Regulation No 20-05

¹³⁴ CSSF Regulation No 20-05

- obtaining additional information on the customer and updating more regularly the identification data of customer and beneficial owner;
- obtaining additional information"/documents"¹³⁵ on the intended nature of the business relationship "or on the source of funds involved and of wealth"¹³⁶;
- obtaining information (...) "¹³⁷ "and, where applicable, evidence on"¹³⁸ the reasons for "and economic background of"¹³⁹ the intended or performed transactions "and on the plausibility of these transactions"¹⁴⁰;
- obtaining the approval of the authorised management to commence or continue the business relationship;
- requiring the first payment to be carried out through an account in the customer's name with a professional subject to similar customer due diligence standards;
- verifying the additional information obtained by using independent and reliable sources;
- visiting the customer/company or contacting the customer/company via registered letter with acknowledgement of receipt;
- conducting enhanced monitoring of the business relationship, by increasing the number and timing of controls applied, and selecting patterns of transactions that need further examination.

*(CSSF Regulation No 20-05)
"Article 26a*

Simplified due diligence measures that professionals may apply to the business relationship in case of a justified low risk include, for example:

- for customers subject to a compulsory authorisation or registration regime for AML/CFT purposes, the verification that the customer is subject to this regime by performing, for example, a search on the official website of the regulator and documenting the results of the search;
- the presumption that a payment debited from an individual or joint account held in the name of a customer by a credit institution or financial institution regulated in a country member of the European Economic Area or a third country imposing equivalent AML/CFT obligations, fulfils the requirements provided for in points (a) of the first subparagraph of Article 3(2) of the Law;
- the exceptional acceptance of other types of ID documents which meet the criteria of reliable and independent sources, for example a letter addressed to

¹³⁵ CSSF Regulation No 20-05

¹³⁶ CSSF Regulation No 20-05

¹³⁷ CSSF Regulation No 20-05

¹³⁸ CSSF Regulation No 20-05

¹³⁹ CSSF Regulation No 20-05

¹⁴⁰ CSSF Regulation No 20-05

the customer by a governmental body or other reliable public body, where the customer cannot provide the usual identification documents and, insofar as there are no grounds for suspicion;

- the update of the information on the customer due diligence measures only in case of certain trigger events, for example if the customer requests a new or riskier product or service or in the event of changes in the behaviour or transaction profile of the customer which seem to indicate that the risk associated with the relationship is no longer low;
- for persons purporting to act on behalf of a customer as provided for in Article 20 of this regulation and for initiators, promoters who launched an investment fund, obtaining information on the country of residence of these persons instead of asking for the full postal address;
- for persons purporting to act on behalf of a customer as provided for in Article 20 of this regulation, where a customer is a regulated credit or financial institution, instead of asking the complete identification of these persons, obtaining a letter confirming that the institution applied due diligence measures to these persons and that it carried out regular controls of these persons with respect to the applicable lists of restrictive measures in financial matters."

Subsection 2 Remote entering into business relationships "without any other appropriate guarantees"¹⁴¹

Article 27

"Where the customer is not physically present or has not been met by or on behalf of the professional for identification purposes, the so-called "non face-to-face" relationship, and where the professional has not taken the necessary guarantees as indicated in point (2)(c) to Annex IV of the Law, specific measures shall be applied by the professional to compensate the potentially higher risk that this type of relation presents."

These measures may notably be:

- measures ensuring that the customer's identity is established by additional identification documents, data or information;
- additional measures ensuring the verification or certification of the provided documents by a public authority;
- confirmatory certification by a credit institution or a financial institution subject to the Law or subject to equivalent professional obligations as regards the fight against money laundering and terrorist financing;

¹⁴¹ CSSF Regulation No 20-05

- measures ensuring that the first payment of the transactions is carried out via an account opened in the customer's name with a credit institution or a financial institution subject to the Law or subject to equivalent professional obligations as regards the fight against money laundering and terrorist financing."¹⁴²

Subsection 3 Cross-border correspondent (...) ¹⁴³ relationships "and other similar relationships" ¹⁴⁴

Article 28

(1) The obligations laid down in points (a) and (b) of Article 3-2(3) of the Law and in the first two indents of Article 3(3) of the Grand-ducal Regulation include the obligation to gather information on:

- the country of establishment of the respondent institution as well as the applicable legal and regulatory provisions "and effectiveness of the controls" relating to AML/CFT;
- the applicable supervisory authority and regime;
- the property and control structure of the respondent institution.

(2) The analysis of the obtained information and the resulting decision shall be documented in writing and be available to the competent authorities. Moreover, the professional shall carry out:

- a periodic review according to the risk, and, where applicable, an update of the information on which the decision to enter into a relationship was based;
- a re-examination of this relationship, where information is obtained which is likely to weaken the trust in the AML/CFT mechanism of the respondent's country of establishment or in the efficiency of the AML/CFT controls set by the latter;
- verifications and periodic assessments according to the risk so that the respondent institution ensures at all times the compliance with the subscribed commitments, notably with respect to the communication, without delay and upon request, of relevant identification data of customers with direct access to payable-through accounts opened for them.

¹⁴² CSSF Regulation No 20-05

¹⁴³ CSSF Regulation No 20-05

¹⁴⁴ CSSF Regulation No 20-05

(CSSF Regulation No 20-05)

"(3) The cross-border correspondent services and other similar relationships may present different high risk levels which justify, based on an analysis by the professional, the application of enhanced due diligence measures with variable degree of intensity by the professional.

(4) For the purposes of point (c) of Article 3-2(3) of the Law, "senior management", as defined in Article 1(19) of the Law, shall mean at least the person responsible for compliance."

Article 29

The "relationships similar" to cross-border correspondent (...) ¹⁴⁵ relationships as referred to in Article 3-2(3) of the Law include notably those established for securities transactions or fund transfers, whether on behalf of the cross-border professional as principal or of its customers.

Subsection 4 Politically exposed persons

Article 30

"(1) The appropriate risk management systems (including the risk-based procedures) allowing the determination whether a customer or the person purporting to act on behalf of the customer or the beneficial owner is a politically exposed person as defined in Article 1(9) to (12) of the Law and required in point (a) of the first subparagraph of Article 3-2(4) of the Law shall include at least seeking relevant information from the customer, referring to publicly available information or having access to electronic databases of politically exposed persons. The identification of politically exposed persons during the business relationship shall be carried out at least every six months.

(2) For the purposes of point (b) of Article 3-2(4) of the Law, "senior management", as defined in Article 1(19) of the Law, shall mean at least the person responsible for compliance." ¹⁴⁶

¹⁴⁵ *CSSF Regulation No 20-05*

¹⁴⁶ *CSSF Regulation No 20-05*

Subsection 5 "High-risk countries"¹⁴⁷

Article 31

(1) "Pursuant to Article 3-2(2) of the Law and Article 3(1) of the Grand-ducal Regulation, the professionals shall give special attention and apply enhanced due diligence measures to business relationships and transactions involving customers, persons purporting to act on behalf of them or beneficial owners from high-risk countries within the meaning of Article 1(30) of the Law."¹⁴⁸

(2) The professionals shall apply a specific procedure for the acceptance and monitoring of business relationships and transactions, referred to above, which requires enhanced due diligence measures which are efficient and proportionate to the risks as, among others:

- systematic involvement of the (...) ¹⁴⁹ compliance officer in the customer acceptance procedure and written authorisation of the authorised management. "For the purposes of point (e) of Article 3-2(2) of the Law, "senior management", as defined in Article 1(19) of the Law, shall mean at least the person responsible for compliance"¹⁵⁰;
- enhanced identification and verification of the identity including, in particular, the verification of the origin of the funds involved "and of wealth"¹⁵¹;
- enhanced monitoring of the business relationship and transactions carried out", notably by increasing the number and timing of controls applied, and selecting patterns of transactions that need further examination (irrespective of the fact that the transactions originate from or are destined to high-risk countries referred to in Article 3-2(2) of the Law) and, where appropriate, obtaining supporting evidence"¹⁵².

(3) The professionals shall implement procedures and systems ensuring the application of specific measures", including countermeasures"¹⁵³ specified, where appropriate, by the CSSF in accordance with the third subparagraph of Article 3(1) of the Grand-ducal Regulation.

¹⁴⁷ CSSF Regulation No 20-05

¹⁴⁸ CSSF Regulation No 20-05

¹⁴⁹ CSSF Regulation No 20-05

¹⁵⁰ CSSF Regulation No 20-05

¹⁵¹ CSSF Regulation No 20-05

¹⁵² CSSF Regulation No 20-05

¹⁵³ CSSF Regulation No 20-05

Section 9 Ongoing due diligence

Subsection 1 (...) ¹⁵⁴ Complex and unusual transactions

Article 32

“(1)”¹⁵⁵ With respect to the professionals' ongoing due diligence laid down in point (d) “of the first subparagraph”¹⁵⁶ of Article 3(2) of the Law and Article 1(3) of the Grand-ducal Regulation, the professionals shall identify complex or unusual transactions as referred to in Article 3(7) of the Law and Article 1(3) of the Grand-ducal Regulation by taking into account, notably:

- the importance of the incoming and outgoing assets and the volume of the amounts involved. The transactions which involve small amounts but which are unusually frequent are also concerned;
- the differences compared to the nature, volume or frequency of the transactions usually carried out by the customer in the framework of the business relationship concerned or the existence of differences compared to the nature, volume or frequency of the transactions normally carried out in the framework of similar business relationships;
- the differences compared to the declarations made by the customer during the acceptance procedure and which concern the purpose and nature of the business relationship, in particular, as regards the origin and destination of the funds involved.

(CSSF Regulation No 20-05)

“To this end, the professionals shall take into account the guidance published on this matter, particularly through CSSF circulars.”

(CSSF Regulation No 20-05)

“(2) Pursuant to the ongoing due diligence of the professionals laid down in point (d) of the first subparagraph of Article 3(2) of the Law, the professional shall analyse the economic background of the funds involved in the transactions presenting an ML/TF risk or which are complex transactions, of an unusually large amount or with an unusual pattern in the light of the risk profile of the customer and, where appropriate, of the beneficial owner within the meaning of Article 1(7) of the Law. In order to corroborate these transactions with respect to the customer's profile or in order to remove any doubt concerning these transactions, appropriate measures shall be taken by the professional.”

¹⁵⁴ CSSF Regulation No 20-05

¹⁵⁵ CSSF Regulation No 20-05

¹⁵⁶ CSSF Regulation No 20-05

Subsection 2 "States, persons, entities and groups subject to restrictive measures in financial matters"¹⁵⁷

Article 33

(1) Ongoing due diligence referred to in point (d) "of the first subparagraph"¹⁵⁸ of Article 3(2) of the Law shall include "at least"¹⁵⁹ the obligation to identify "without delay"¹⁶⁰:

- pursuant to Article 8(2) of the Grand-ducal Regulation and in accordance with the Law "implementing restrictive measures in financial matters, the States,"¹⁶¹ (...) ¹⁶² persons, entities or groups involved in a transaction or business relationship subject to (...) ¹⁶³ restrictive measures in financial matters in the context of the fight against terrorist financing, including, notably, those implemented in Luxembourg via EU regulations directly applicable in national law or through the adoption", among others,"¹⁶⁴ of ministerial regulations; and
- the "States,"¹⁶⁵ persons, entities or groups involved in a transaction or business relationship subject to (...) ¹⁶⁶ restrictive measures in financial matters, including, notably, those implemented in Luxembourg via EU regulations directly applicable in national law "or, where appropriate, through the adoption of regulatory texts implementing them at national level"¹⁶⁷.

¹⁵⁷ CSSF Regulation No 20-05

¹⁵⁸ CSSF Regulation No 20-05

¹⁵⁹ CSSF Regulation No 20-05

¹⁶⁰ CSSF Regulation No 20-05

¹⁶¹ CSSF Regulation No 20-05

¹⁶² CSSF Regulation No 20-05

¹⁶³ CSSF Regulation No 20-05

¹⁶⁴ CSSF Regulation No 20-05

¹⁶⁵ CSSF Regulation No 20-05

¹⁶⁶ CSSF Regulation No 20-05

¹⁶⁷ CSSF Regulation No 20-05

(2) Where persons, entities or groups referred to in this article are identified, and without prejudice to the obligations laid down in Article 5 of the Law and Article 8 of the Grand-ducal Regulation, the professional shall apply“, without delay”¹⁶⁸ the required restrictive measures and inform the authorities competent “for financial sanctions”¹⁶⁹ (...)¹⁷⁰. A copy of this communication shall be sent to the CSSF at the same time.

(CSSF Regulation No 20-05)

“(3) Following the adoption or update of the official lists as referred to in paragraph 1, the professional shall ensure that the internal system used for this control or made available by an external service provider which it uses for the purposes of this control is adapted without delay in order to be able to comply with the obligations under paragraphs 1 and 2 of this article.”

Subsection 3 Activities requiring particular attention

Article 34

“(1)”¹⁷¹ In the framework of ongoing due diligence, the following activities, among others, require particular attention pursuant to Article 3(7) of the Law:

- activities of customers whose acceptance was subject to a specific examination in accordance with the customer acceptance procedure referred to in Article 10 of this regulation; (...)¹⁷²
- “transfers of funds within the meaning of Regulation (EU) 2015/847 and the respective requirements specified in that regulation or in this regulation.”¹⁷³

(CSSF Regulation No 20-05)

“(2) In the framework of investment business, the professionals shall carry out an analysis of the ML/TF risk posed by the investment and take due diligence measures adapted to the risk assessed and documented. Such analyses shall be formalised. The risk analysis on investments shall be reviewed annually and when particular events require it.”

¹⁶⁸ CSSF Regulation No 20-05

¹⁶⁹ CSSF Regulation No 20-05

¹⁷⁰ CSSF Regulation No 20-05

¹⁷¹ CSSF Regulation No 20-05

¹⁷² CSSF Regulation No 20-05

¹⁷³ CSSF Regulation No 20-05

Subsection 4 "Reviewing and"¹⁷⁴ keeping information up to date

Article 35

(1) Ongoing due diligence includes the obligation to verify and, where appropriate, to update", in accordance with the maximum time limit provided for by, and taking into account the appropriate times specified in, Article 1(4) of the Grand-ducal Regulation¹⁷⁵, within an appropriate timeframe to be set by the professional according to its risk assessment, the documents, data or information gathered while fulfilling the customer due diligence obligations, as specified in Chapter 4 of this regulation. "With respect to high-risk business relationships, the frequency of review shall be at least annual."¹⁷⁶

"(2) Irrespective of the frequency of review of the business relationship, the professional shall verify at least once a year whether the conditions which allowed the application of simplified due diligence measures are still met. If there were no transactions during this period, the professional shall carry out this verification during the following reactivation of the business relationship."¹⁷⁷

(CSSF Regulation No 20-05)

"(3) During the review and update of the documents, data and information on the customers referred to above, the professional may take into account different sources of information, among others:

- public data and information;
- national ML/TF risk assessment report from the customer's country;
- mutual evaluation reports in relation to AML/CFT of the customer's country;
- other information obtained from reliable and independent sources.

(4) Internal follow-up actions shall be adopted in the event the professional cannot meet the deadlines for the update of the documentation."

¹⁷⁴ CSSF Regulation No 20-05

¹⁷⁵ CSSF Regulation No 20-05

¹⁷⁶ CSSF Regulation No 20-05

¹⁷⁷ CSSF Regulation No 20-05

Section 10 Performance of due diligence by third parties

Subsection 1 Third-party introducers

Article 36

"(1)"¹⁷⁸ The intervention of a third-party introducer within the meaning of Article 3-3 "(1) to (4)"¹⁷⁹ of the Law is subject to the following conditions:

- prior to the introducer's intervention, the professional shall ensure that the former complies with the definition of third-party laid down in Article 3-3(1) of the Law (...) ¹⁸⁰. The documentation used to verify the quality of the third-party introducer shall be retained in compliance with the provisions of point (a) of Article 3(6) of the Law;
- first, the third-party introducer commits in writing to fulfil the obligations specified in "Article 3-3(2) of the Law"¹⁸¹, notwithstanding any confidentiality or professional secrecy rule applicable to the third-party introducer, where appropriate.

(CSSF Regulation No 20-05)

"(2) The responsibility as regards its professional obligations laid down in the applicable legal framework, including those of this regulation shall continue to lie with the professional using the third-party introducer."

Subsection 2 Outsourcing "and agency relationship"¹⁸²

Article 37

(1) The contract between the professional and the third-party "delegate"¹⁸³ in the context of outsourcing or agency relationships as referred to in Article 3-3(5) of the Law shall at least include:

- a detailed description of the due diligence measures and procedures to be implemented in accordance with the Law (...) ¹⁸⁴ and this regulation and, in particular, of the information and documents to be requested and verified by

¹⁷⁸ CSSF Regulation No 20-05

¹⁷⁹ CSSF Regulation No 20-05

¹⁸⁰ CSSF Regulation No 20-05

¹⁸¹ CSSF Regulation No 20-05

¹⁸² CSSF Regulation No 20-05

¹⁸³ CSSF Regulation No 20-05

¹⁸⁴ CSSF Regulation No 20-05

the third-party delegate "(service provider in case of outsourcing or agent in case of an agency relationship)"¹⁸⁵;

- the conditions regarding the transmission of information to the professional, including, notably, to make available immediately, regardless of confidentiality or professional secrecy rules or any other obstacle, the information gathered while fulfilling the customer due diligence obligations and the transmission, upon request and without delay, of a copy of the original supporting evidence received in this respect.

"(2) The policies relating to outsourcing and agency relationship as well as the internal procedures of the professional wishing to use third-party delegates shall notably include detailed provisions on the process for the selection and evaluation of third-party delegates, including of subcontractors at different levels in case of sub-outsourcing. In particular, the professional shall ensure that the service provider has the necessary resources to carry out all the outsourced functions (outsourced process, service or activity).

The professionals shall carry out a regular control of compliance by the third-party delegate with the commitments arising from the contract. In accordance with the risk-based approach, the regular control shall ensure that the professional is provided with means to test (for example, through sampling) and monitor regularly and occasionally (for example, by carrying out on-site visits) compliance with the obligations incumbent upon the third-party delegate. As regards its customers' data, the professional and the CSSF shall have access rights to the systems/databases of the third-party delegate."¹⁸⁶

(CSSF Regulation No 20-05)

"(2a) A risk assessment with respect to the outsourced functions and, where appropriate, the outsourcing chain shall be carried out prior to the conclusion of the outsourcing contract. In particular, any IFM shall implement due diligence measures regarding notably registrar agents and transfer agents, portfolio managers to which it outsources the management and investment advisers in accordance with a risk-based approach."

(3) The responsibility as regards compliance with the provisions of the Law, the Grand-ducal Regulation and this regulation remains (...) ¹⁸⁷ with the professional using the third-party delegate "and, where applicable, the third-party sub-delegate"¹⁸⁸.

¹⁸⁵ CSSF Regulation No 20-05

¹⁸⁶ CSSF Regulation No 20-05

¹⁸⁷ CSSF Regulation No 20-05

¹⁸⁸ CSSF Regulation No 20-05

(CSSF Regulation No 20-05)

"(4) In the framework of the outsourcing of AML/CFT functions, the rights and obligations of the professional and service provider as well as their roles, responsibilities and duties shall be clearly listed, distributed and defined in the outsourcing contract.

In particular, where the service provider is a registrar and transfer agent which acts on behalf of the investment fund, the Board of Directors of the fund (or equivalent) and/or the IFM which outsource(s) some tasks to the registrar and transfer agent shall remain liable. Thus, the Board of Directors of the fund (or equivalent) and the IFM shall ensure that the relating contracts include detailed clauses specifying the roles and responsibilities of each party. They shall also ensure that the contract allows them to have access to any information necessary for the performance of their function and to carry out an ongoing and formalised supervision of the service providers. The fact that a registrar and transfer agent is considered, pursuant to the outsourcing contract, as part of the investment fund and/or IFM does not exempt it from its own AML/CFT obligations.

(5) The professionals using third-party delegates and third-party sub-delegates shall ensure that the legal and regulatory provisions applicable in Luxembourg and relating to professional secrecy and personal data protection are complied with.

(6) The CSSF may specify the above conditions via a circular."

Chapter 5 Adequate internal management requirements

Section 1 AML/CFT "policies and procedures"¹⁸⁹

Article 38

(1) The internal management procedures, policies and measures as referred to in Article 4(1) "and in Article 4-1"¹⁹⁰ of the Law and Article 7(1) of the Grand-ducal Regulation shall take into account the specificities of the professional such as, among others, its activity, structure, size, organisation and resources.

(2) The professional's AML/CFT "policies and procedures"¹⁹¹ shall cover all the professional obligations and, where appropriate, include the following, among others:

¹⁸⁹ *CSSF Regulation No 20-05*

¹⁹⁰ *CSSF Regulation No 20-05*

¹⁹¹ *CSSF Regulation No 20-05*

- "1."¹⁹² the customer acceptance policy as laid down in Chapter 4, Section 1 of this regulation;
- "2." the detailed procedures as regards the identification, assessment, supervision, management and mitigation of money laundering or terrorist financing risks as laid down in Chapter 3 of this regulation. These procedures shall allow monitoring the development of the identified risks, reassessing them on a regular basis and identifying any significant change affecting them or any new risk;
- "3." the specific risk management mechanisms relating to business relationships or transactions not requiring the physical presence of the parties "and without further guarantees being in place as referred to in Article 27 of this regulation"¹⁹³;
- "4." the measures designed to prevent the misuse of the products or the execution of transactions that might favour anonymity pursuant to Article 3-2(6) of the Law, in particular, as regards new technologies;
- "5." the procedures to be followed in case of a request to enter into a business relationship or to execute an occasional transaction for a person whose normal activity implies the holding of third-party funds with a professional or the opening of a group account;
- "6." the procedure for accepting and monitoring business relationships referred to in Chapter 4, Section 8 of this regulation;
- "7." the procedures to be followed when using a third-party introducer within the meaning of Article 3-3 of the Law;
- "8." the procedures to be followed when using third-party "delegates"¹⁹⁴ intervening in the context of an outsourcing "or agency"¹⁹⁵ contract as referred to in Article 37 of this regulation;
- "9." the procedures to observe in order to monitor the development of business relationships as well as transactions executed for customers, notably to detect suspicious transactions;

¹⁹² CSSF Regulation No 20-05, point (2)(b): "Each indent before each item shall be replaced by a number [...]"

¹⁹³ CSSF Regulation No 20-05

¹⁹⁴ CSSF Regulation No 20-05

¹⁹⁵ CSSF Regulation No 20-05

- "10." the procedures to be followed in case of suspicion or "reasonable grounds for suspicion"¹⁹⁶ of money laundering", an associated predicate offence"¹⁹⁷ or terrorist financing;
- "11." the procedures to be followed in case an account is opened "during or"¹⁹⁸ before the measures to verify the customer's and, where applicable, the beneficial owner's identity have been completed pursuant to (...) ¹⁹⁹ Article 3(4) of the Law;
- "12." the procedures to be followed for opening numbered accounts under the second subparagraph of Article 5 of the Grand-ducal Regulation. These procedures, applicable to all numbered accounts opened with the professional, including those opened before the entry into force of the Grand-ducal Regulation, shall ensure strict compliance with the professional obligations during the customer acceptance procedure as well as the monitoring of the business relationships. These procedures shall require that the customer's identity is known by all the persons within the professional who must know the identity in order to effectively carry out due diligence;
- "13." the procedures to be followed in order to fulfil the obligations of Regulation "(EU) 2015/847"²⁰⁰;
- "14." "the policy for the selection of staff which guarantees the hiring of employees according to stringent criteria,"²⁰¹ a training and awareness-raising programme as laid down in Section 5 of this chapter;
- "15." the accurate definition of the respective responsibilities of the various AML/CFT functions of the personnel "as well as the procedure for the appointment of the compliance officer and the person responsible for compliance"²⁰².
- (CSSF Regulation No 20-05)
- "16. the procedure allowing the internal report of breaches of the AML/CFT professional obligations through a specific, independent and anonymous channel as referred to in Article 4(4) of the Law;
17. the procedures with respect to financial restrictive measures;

¹⁹⁶ CSSF Regulation No 20-05

¹⁹⁷ CSSF Regulation No 20-05

¹⁹⁸ CSSF Regulation No 20-05

¹⁹⁹ CSSF Regulation No 20-05

²⁰⁰ CSSF Regulation No 20-05

²⁰¹ CSSF Regulation No 20-05

²⁰² CSSF Regulation No 20-05

18. the procedures to be followed in case of identification of the beneficiary of *fiducies*, trusts or similar legal arrangements at the time of the payout or at the time of the exercise by the beneficiary of its vested rights pursuant to Article 3(2c) of the Law.”

“(3) In order to comply with Article 2(2) of the Law, Article 4-1(1) of the Law and Article 4 of the Grand-ducal Regulation and subject to other applicable laws and regulations, including Commission Delegated Regulation (EU) 2019/758 of 31 January 2019 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council with regard to regulatory technical standards for the minimum action and the type of additional measures credit and financial institutions must take to mitigate money laundering and terrorist financing risk in certain third countries (“Delegated Regulation (EU) 2019/758”), the professionals shall coordinate their AML/CFT policy and procedures as well as their group-wide implementation with their branches and majority-owned subsidiaries abroad. Where a foreign country’s law does not permit the implementation of the group-wide policies, the professionals shall take additional measures and ensure that their branches and majority-owned subsidiaries in that country apply additional measures to effectively handle the risk of money laundering and terrorist financing. To this end, the professionals shall take into account the provisions laid down in Delegated Regulation (EU) 2019/758 and any other regulation issued to this end.

In particular, they shall establish procedures for the communication to the CSSF in case the application of certain measures is prohibited or restricted and shall observe the communication deadlines set in this regulation.

For the purposes of Delegated Regulation (EU) 2019/758, “senior management” shall mean at least the person responsible for compliance.”²⁰³

(4) “The AML/CFT policy shall be subject to validation by the Board of Directors. The AML/CFT procedures shall be subject to validation by the authorised management or, for investment funds supervised by the CSSF by the Board of Directors, and a regular review by the compliance officer and the internal audit function in order to assess whether the procedures remain adapted to the activities, customers and to the AML/CFT standards and measures.”²⁰⁴

(CSSF Regulation No 20-05)

“(5) The professionals shall implement procedures and systems ensuring the application of particular measures relating to:

- arrangements for the control of AML/CFT compliance;
- an independent audit function to test the internal control system;

²⁰³ CSSF Regulation No 20-05

²⁰⁴ CSSF Regulation No 20-05

- the policy regarding the definition of ML/TF risk appetite;
- the policy for sharing information at group level."

Section 2 Systems for the supervision of business relationships and transactions

Article 39

(1) Professionals shall have procedures and implement control mechanisms that allow them, when accepting customers or monitoring the business relationships, to identify, among others:

- the persons as referred to in Articles 30, 31 and 33 of this regulation;
- the funds coming from or going to "States,"²⁰⁵ persons, entities or groups as referred to in Article 33 of this regulation, or countries as referred to in Article 31 of this regulation;
- the complex or unusual transactions as referred to in Article 32 of this regulation;
- "a transfer of funds with missing or incomplete information within the meaning of Regulation (EU) 2015/847 as referred to notably, in Article 15 of this regulation"²⁰⁶.

(CSSF Regulation No 20-05)

"(1a) For the purposes of Article 33 of this regulation, the professional also has the obligation to identify the States, persons, entities and groups subject to restrictive measures in financial matters with respect to the assets it manages and to ensure that the funds will not be made available to these States, persons, entities or groups."

²⁰⁵ *CSSF Regulation No 20-05*

²⁰⁶ *CSSF Regulation No 20-05*

(2) "The implementation of a complete and up-to-date "customer" database shall be an integral part of this supervisory system. Where a natural person of the professional performs the encoding, this work shall be subject to a 4-eyes principle."²⁰⁷ This supervisory system shall include all the accounts of customers and their transactions and shall apply to customers, "persons purporting to act on behalf of the customer, initiators"²⁰⁸ and beneficial owners as well as, as regards the supervision of transfers of funds, to the payer of an incoming transfer "of funds"²⁰⁹ and the recipient of a transfer "of funds"²¹⁰ going out of the customer's account. The system shall take into account the risks identified by the professional and which impact it according, in particular, to the characteristics of its activity and customers. The system shall be automated, except when the professional can prove that the volume and nature of the customers and the transactions to be supervised do not require such automation.

(3) The identification researches carried out using this supervisory system shall be duly documented, including in cases where there are no positive results.

(4) The identified transactions or persons, as well as the criteria which led to the identification, shall be subject to written reports. These reports shall be transmitted to the (...) ²¹¹ compliance officer for the required purposes, in particular, for compliance with Article 5 of the Law. The professional shall specify in writing the procedure relating to the transmission of written reports to the (...) ²¹² compliance officer and the required transmission deadlines.

(5) The supervisory system shall allow the professional to take rapidly and, where appropriate, automatically the required measures where a suspicious activity or transaction is identified. The (...) ²¹³ compliance officer shall be solely competent to decide on the application and scope of these measures and their termination, where appropriate, in consultation with the management "and the person responsible for compliance"²¹⁴.

²⁰⁷ CSSF Regulation No 20-05

²⁰⁸ CSSF Regulation No 20-05

²⁰⁹ CSSF Regulation No 20-05

²¹⁰ CSSF Regulation No 20-05

²¹¹ CSSF Regulation No 20-05

²¹² CSSF Regulation No 20-05

²¹³ CSSF Regulation No 20-05

²¹⁴ CSSF Regulation No 20-05

(6) The supervisory system shall be subject to initial validation “at least by the person responsible for compliance”²¹⁵ and regular control by the (...) ²¹⁶ compliance officer in order to adapt this system, where necessary, to the development of the activities, the customers and the AML/CFT standards and measures.

(CSSF Regulation No 20-05)

“(7) The adequate and effective supervisory system shall be part of a sound governance and internal management with respect to AML/CFT as laid down in Article 4 of the Law. This governance and internal management system with respect to AML/CFT shall follow the three lines of defence:

- the first line of defence shall be composed of operational units (persons in charge of the execution of business), which is, in principle, in direct contact with the customers and which shall have a good understanding of ML/TF risks;
- the second line of defence shall be composed of the compliance officer, including other support, control and compliance functions involved in AML/CFT. The role of the second line of defence includes providing support, verifying the controls carried out by the first line of defence and contributing to the independent risk control. The involvement of the second line of defence shall increase according to the level of risk attributed to a customer;
- the third line of defence shall be composed of the internal audit function which assesses independently the first two lines of defence and which verifies also the effectiveness of the implemented AML/CFT policies, procedures and programmes.”

Section 3 “Person responsible for compliance with the AML/CFT professional obligations and compliance officer in charge of the AML/CFT professional obligations”²¹⁷

Article 40

(1) “Pursuant to the fourth subparagraph of Article 4(1) of the Law, the professionals shall appoint a person responsible for compliance with the AML/CFT professional obligations at the level of the authorised management or Board of Directors according to the arrangements specified in Article 1 of this regulation.

Pursuant to point (a) of the second subparagraph of Article 4(1) of the Law, the professionals shall appoint a compliance officer in charge of the control of compliance with the AML/CFT professional obligations.

²¹⁵ CSSF Regulation No 20-05

²¹⁶ CSSF Regulation No 20-05

²¹⁷ CSSF Regulation No 20-05

The IFMs and investment funds subject to AML/CFT supervision by the CSSF may appoint a third party.

In this context, the professional shall take into account the guidance published by the CSSF, notably via circulars or frequently asked questions.”²¹⁸

(2) “The names”²¹⁹ of the person responsible for compliance and the (...)”²²⁰ compliance officer appointed in accordance with the above paragraph 1 as well as “any information prior to”²²¹ changes regarding “these functions”²²² shall be communicated to the CSSF.

(3) “The compliance officer and the person responsible for compliance”²²³ shall have the professional experience, knowledge of the Luxembourg legal and regulatory framework relating to AML/CFT, the hierarchy and powers within the entity (including the power to access on a timely basis the identification data of customers and other information and documentation required by the due diligence measures), as well as the availability necessary to the effective and autonomous exercise of their functions.

Article 41

Without prejudice to his responsibility, the “compliance officer may delegate the exercise of his function to one or more employees connected to”²²⁴ the professional, provided that the latter fulfil the criteria of Article 40(3) of this regulation.

Article 42

“(1) The compliance officer shall apply the AML/CFT policy and procedures of the professional and shall have the power to propose to the authorised management, on his own initiative, any measure necessary or useful to this end, including the release of required means.

(1a) The compliance officer shall ensure the quality of the AML/CFT controls carried out by the first line of defence and, as the second line of defence, he shall verify compliance by the professional with all the AML/CFT professional obligations.

²¹⁸ CSSF Regulation No 20-05

²¹⁹ CSSF Regulation No 20-05

²²⁰ CSSF Regulation No 20-05

²²¹ CSSF Regulation No 20-05

²²² CSSF Regulation No 20-05

²²³ CSSF Regulation No 20-05

²²⁴ CSSF Regulation No 20-05

(2) He controls compliance with the professional obligations applicable to branches and majority-owned subsidiaries by the professional in Luxembourg and abroad. To this end, he analyses, among others, the summary of all the reports of the audit missions and, where appropriate, of the compliance function of these entities that the professional must obtain.

He shall ensure compliance by the professional with the group-wide policies, procedures and measures concerning, in particular, data protection and sharing of information within the group for the purposes of AML/CFT in accordance with the legal provisions in force in Luxembourg.

(3) He shall prepare, implement and ensure the realisation of the continuing training and awareness-raising programme of the personnel as referred to in Article 46 of this regulation.

(4) The compliance officer shall be the privileged contact person for the Luxembourg authorities in charge of AML/CFT as regards AML/CFT issues and for the competent authorities with respect to the application of restrictive measures in financial matters. He shall also be in charge of the transmission of any information or statement to these authorities.

(5) The compliance with the AML/CFT policy shall be subject to regular controls and verifications, at a frequency determined according to the money laundering and terrorist financing risks to which the professional is exposed. The compliance officer shall report in writing on a regular basis and, if necessary, on an ad hoc basis to the person responsible for compliance, to the authorised management and, where appropriate, to the Board of Directors (or specialised committees). These reports concern the follow-up of the recommendations, problems, shortcomings and irregularities identified in the past as well as the new problems, shortcomings and irregularities identified. Each report shall specify the risks related thereto as well as their seriousness (measuring the impact) and propose corrective measures, as well as in general the position of the persons concerned. These reports shall allow assessing the scale of the suspicions or reasonable grounds for suspicion of money laundering, an associated predicate offence or terrorist financing which were identified and expressing a judgement on the adequacy of the AML/CFT policy, procedures and systems and on the collaboration between the professional's departments as regards AML/CFT. In this context, the compliance officer shall take into account, among others, the written reports transmitted pursuant to Articles 12, 13 and 39(4) of this regulation.

(6) The compliance officer shall prepare, at least once a year, a summary report on his activities and his operation. This summary report shall be submitted by the compliance officer to the person responsible for compliance, the authorised management and the Board of Directors and, where appropriate, the specialised committees.

(7) The person responsible for compliance shall submit to the CSSF on an annual basis the summary report referred to in the above paragraph 6 which covers the past year within five months following the end of the professional's financial year. This requirement is not applicable to Luxembourg investment funds which designated a Luxembourg management company submitting this annual report."

Article 43

The accumulation of the function of (...) ²²⁵ compliance officer and one or more other functions shall not impede the independence, objectivity and decision-making autonomy of the (...) ²²⁶ compliance officer. His workload shall be adapted so that the efficiency of the AML/CFT framework is not compromised.

(CSSF Regulation No 20-05)

"The accumulation of the function of the person responsible for compliance and one or more other functions shall not impede his independence and objectivity."

Section 4 Internal audit control

Article 44

(1) The control of the AML/CFT "policies and procedures" ²²⁷ shall be an integral part of the mission of the professional's internal audit function. "To this end, the internal audit shall test and assess the risk management and control, the AML/CFT policies and procedures in an independent manner." ²²⁸

(2) (...) ²²⁹ "It shall" ²³⁰ report to the authorised management and Board of Directors (or specialised committees) by providing them, at least once a year, with a summary report on the compliance with the AML/CFT "policies and procedures" ²³¹. It shall show due diligence by ensuring that its recommendations or corrective measures are acted upon.

(CSSF Regulation No 20-05)

"(3) The internal audit shall analyse the information on the branches and majority-owned subsidiaries made available pursuant to Article 4-1(1) of the Law."

²²⁵ CSSF Regulation No 20-05

²²⁶ CSSF Regulation No 20-05

²²⁷ CSSF Regulation No 20-05

²²⁸ CSSF Regulation No 20-05

²²⁹ CSSF Regulation No 20-05

²³⁰ CSSF Regulation No 20-05

²³¹ CSSF Regulation No 20-05

Section 5 Recruitment, training and awareness-raising of the personnel

Article 45

The professionals shall set up recruitment procedures for all the staff and particularly for the (...) ²³² compliance officer “and person responsible for compliance” ²³³ in order to ensure that each staff member fulfils the criteria of adequate professional standing and experience according to the risk of money laundering and terrorist financing related to the duties and functions to be carried out. In particular, information as regards the possible judicial record of the persons concerned shall be obtained when hiring members of the management by requiring, among others, an extract of the police record or an equivalent document from the person concerned.

Article 46

(1) The “ongoing” ²³⁴ training and awareness-raising measures for the staff taken by the professional pursuant to Article 4(2) of the Law (...) ²³⁵ “shall cover all the members of staff, including the members of the management bodies and authorised management. These measures” ²³⁶ shall be adapted to the participants' needs (...) ²³⁷. “As regards” ²³⁸, in particular, “the” ²³⁹ staff members who are in direct contact with customers or whose duties expose them to the risk of being confronted with attempts of money laundering or terrorist financing or whose duties directly or indirectly consist in AML/CFT”, specific training programmes in relation to their function shall be developed” ²⁴⁰.

(2) Every professional shall have a training and awareness-raising programme for the whole personnel which observes highly qualitative criteria and whose content and calendar take into account the specific needs of the professional. This programme, as well as its realisation, shall be documented in writing. The programme shall take into account the development of money laundering and terrorist financing techniques and shall be adapted when relevant legal or regulatory requirements change.

²³² CSSF Regulation No 20-05

²³³ CSSF Regulation No 20-05

²³⁴ CSSF Regulation No 20-05

²³⁵ CSSF Regulation No 20-05

²³⁶ CSSF Regulation No 20-05

²³⁷ CSSF Regulation No 20-05

²³⁸ CSSF Regulation No 20-05

²³⁹ CSSF Regulation No 20-05

²⁴⁰ CSSF Regulation No 20-05

The training and awareness-raising programme of the personnel shall include, among others:

- for all the newly hired employees, the participation to an internal or external basic training as soon as they are hired, making them aware of the professional's AML/CFT policy as well as of the relevant legal and regulatory requirements;
- for all the employees, the regular participation to internal or external continuing education which is addressed, in particular, to the members of the personnel in direct contact with customers in order to help them identify unusual transactions and recognise money laundering or terrorist financing attempts. This continuing education shall also concern the professional's internal procedures to be followed by the employees in case they suspect "or have reasonable grounds to suspect"²⁴¹ money laundering", an associated predicate offence"²⁴² or terrorist financing;
- regular informative meetings for employees in order to keep them up to date with the developments as regards the techniques, methods and trends with respect to money laundering and terrorist financing as well as the preventive rules and procedures to be followed in this matter;
- the appointment of one or more contact person(s) for employees who is/are competent and available to answer any questions which relate to money laundering or terrorist financing and which may concern, notably, all the aspects of the laws and obligations regarding AML/CFT, the internal procedures, the customer due diligence duties and the report of suspicious transactions;
- the periodic distribution of an AML/CFT documentation which includes, in particular, examples of money laundering or terrorist financing transactions.

(3) Where the professionals adopt a training and awareness-raising programme developed abroad, e.g. by their registered office or parent company, they are required to adapt this programme to the "legal and regulatory"²⁴³ rules applicable in Luxembourg", as well as with respect to ML/TF typologies and their specific activities"²⁴⁴.

²⁴¹ CSSF Regulation No 20-05

²⁴² CSSF Regulation No 20-05

²⁴³ CSSF Regulation No 20-05

²⁴⁴ CSSF Regulation No 20-05

Chapter 6 Cooperation requirements with the authorities

Article 47

In accordance with Articles 4(3) and 5(1) of the Law and Article 8“(3) and”²⁴⁵ (4) of the Grand-ducal Regulation, the professionals shall be able to answer quickly and comprehensively all information requests from the “Luxembourg”²⁴⁶ authorities “in charge of AML/CFT”²⁴⁷, and, in particular, those which tend to determine whether they are or were in business relationships or whether they do or did carry out transactions in relation to specific persons including those referred to in Articles 31 and 33 of this regulation. This cooperation requirement does not end with the business relationship or the transaction.

Article 48

(1) The requirement to inform the FIU “without delay”²⁴⁸, as provided for in point (a) of Article 5(1) of the Law, also covers the cases in which the professional came into contact with a natural or legal person, or “a”²⁴⁹ legal arrangement without entering into a business relationship or carrying out a transaction, insofar as there are (...)²⁵⁰ suspicions “or reasonable grounds for suspicion”²⁵¹ of money laundering”, an associated predicate offence”²⁵² or terrorist financing.

²⁴⁵ CSSF Regulation No 20-05

²⁴⁶ CSSF Regulation No 20-05

²⁴⁷ CSSF Regulation No 20-05

²⁴⁸ CSSF Regulation No 20-05

²⁴⁹ CSSF Regulation No 20-05

²⁵⁰ CSSF Regulation No 20-05

²⁵¹ CSSF Regulation No 20-05

²⁵² CSSF Regulation No 20-05

(2) The professional shall equip itself with the means required with respect to procedures and organisation of the (...) ²⁵³ compliance officer function which allows the analysis of the reports transmitted to him and the determination of the necessity to communicate a fact or transaction to the FIU pursuant to point (a) of Article 5(1) of the Law. "To this end, the professional shall register itself in the tool implemented by the FIU." ²⁵⁴ The procedures shall include the conditions, deadlines and steps for the customer relationship manager to communicate reports to the (...) ²⁵⁵ compliance officer. The analysis and the resulting decision shall be retained in writing and made available to the competent authorities.

(3) Without prejudice to the obligations laid down in Article 5(3) of the Law, a business relationship which is subject to a report of suspicion with the FIU, shall be monitored with enhanced due diligence and, where appropriate, in line with the FIU instructions by the professional. In case of new indications, the professionals shall carry out a complementary suspicious transaction report (...) ²⁵⁶.

(CSSF Regulation No 20-05)

"(4) The professional shall communicate in parallel to the CSSF the information transmitted to the FIU based on Article 5(1) and (1a) of the Law, where this information identifies as suspect a professional subject to the CSSF's supervision, or, according to its knowledge, a member of the personnel or management bodies of such a professional or where this information is likely to have a more material impact on the financial sector."

Chapter 7 Audit by "an external audit function" ²⁵⁷

"Article 49

(1) The audit of the professional's annual accounts by the *réviseur d'entreprises agréé* (approved statutory auditor) shall also include the compliance with the legal and regulatory AML/CFT obligations and provisions. In that respect, the *réviseur d'entreprises agréé* (approved statutory auditor) shall, among others, carry out sampling tests, the methodology and the results of which he shall describe and comment.

²⁵³ *CSSF Regulation No 20-05*

²⁵⁴ *CSSF Regulation No 20-05*

²⁵⁵ *CSSF Regulation No 20-05*

²⁵⁶ *CSSF Regulation No 20-05*

²⁵⁷ *CSSF Regulation No 20-05*

(2) Without prejudice to the application of paragraph 3 of this article, the long form report of the *réviseur d'entreprises agréé* (approved statutory auditor) mentioned in the above paragraph 1 shall include, among others:

- the description of the AML/CFT policy set up by the professional in order to prevent money laundering and terrorist financing, the verification of its compliance with the provisions of Part II, Chapter 5 of the Law of 5 April 1993 on the financial sector, the Law, the Grand-ducal Regulation, Regulation (EU) 2015/847, CSSF regulations and circulars relating to AML/CFT and the control of their sound application;
- the assessment of the professional's analysis of money laundering and terrorist financing risks to which it is exposed. The *réviseur d'entreprises agréé* (approved statutory auditor) shall verify if the implemented procedures, infrastructures and controls, as well as the scope of the AML/CFT measures are appropriate considering the money laundering and terrorist financing risks to which the professional is exposed, particularly through its activities, the nature of its customers and the provided products and services;
- a declaration on the performance of a regular audit of compliance with the professional's AML/CFT policy by the internal audit function and the compliance officer;
- the verification of the training and awareness-raising measures for employees as regards money laundering and terrorist financing, and, in particular, with respect to the identification of money laundering and terrorist financing transactions;
- the historical statistics concerning the detected suspicious transactions which indicate the number of suspicious transaction cases reported to the FIU by the professional, as well as the total amount of funds involved;
- the control of the application of the provisions of Regulation (EU) 2015/847 by the professional, in its respective role, and the percentage of transfers of funds for which data on the payer or payee were missing or incomplete and the measures taken in this context by the professional.

(3) The above-mentioned long form report shall encompass the professional's branches and majority-owned subsidiaries abroad. It shall cover, in particular, the branches' and majority-owned subsidiaries' compliance with the applicable provisions as regards the prevention of money laundering and terrorist financing and it shall include, in that respect:

- an analysis of money laundering and terrorist financing risks incurred by the branches and majority-owned subsidiaries;
- a description and assessment of the risk management in the branches and majority-owned subsidiaries;
- the verification of the implementation of and compliance with the professional's AML/CFT policy in the branches and majority-owned subsidiaries.

(4) The CSSF may require the substitution of the AML/CFT section of the long form report referred to in this article, with a report to be submitted to the CSSF and dedicated to AML/CFT. In that case, a CSSF circular will define the arrangements for the completion, content and transmission of this report dedicated to AML/CFT.

(5) The professionals which are not legally obliged to have a *réviseur d'entreprises agréé* (approved statutory auditor) to audit their annual accounts shall mandate the drawing-up of a report dedicated to AML/CFT which will be submitted to the CSSF as soon as the arrangements for the completion, content and transmission have been specified in a specific circular addressed to these professionals."²⁵⁸

Luxembourg, 14 December 2012

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²⁵⁸ CSSF Regulation No 20-05



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