

Banking in Luxembourg

Financial Services
Banking

December 2011



Foreword

Banking in Luxembourg is designed to provide foreign bankers with basic insights into the structure of the banking industry in Luxembourg together with the legal, regulatory, accounting and tax framework. Also summarised are the requirements for setting up a new banking operation and the various audit requirements.

This guide has been prepared by auditors, tax and business advisers, who are members of the banking group of PwC in Luxembourg.

Every effort has been made to make sure that the information provided in this guide is accurate. In view of its purpose, the reader will appreciate that PwC Luxembourg is unable to accept any liability for any errors or omissions included therein.

Table of contents

Foreword	1	2.4 The financial sector associations	25
Introduction	5	3 Establishment of a credit institution in Luxembourg	27
1 Luxembourg financial centre: key competitive advantages	6	3.1 Legal form of the undertaking	28
1.1 At the heart of Europe	8	3.1.1 Banking activity through a branch	28
1.2 A responsive and responsible regulatory environment	8	3.1.2 Banking activity through a subsidiary	28
1.3 A highly qualified and multilingual workforce	9	3.1.3 Undertakings established under public law	28
1.4 A favourable tax location for doing business	9	3.1.4 Raiffeisen cooperative entity	28
1.4.1 Corporate taxes	9	3.1.5 Information office	28
1.4.2 VAT	10	3.2 Authorisation procedure	29
1.4.3 Taxation on salaries	10	3.2.1 Banking activity through a branch of a EU head office	29
1.5 An optimal balance between low business costs and a high purchasing power	11	3.2.2 Banking activity through a subsidiary or a branch of a non-EU head office	29
1.5.1 Labour productivity	11	3.2.3 Banking activity from a Luxembourg bank within the EU	30
1.5.2 Labour costs	11	3.3 Central administration and infrastructure	31
1.5.3 Office rental costs	12	3.4 Shareholdings	31
1.5.4 Domestic purchasing power	12	3.5 Professional standing and experience	32
1.5.5 Excellent basic infrastructure	13	3.6 Capital base	32
2 The financial marketplace	14	3.7 External audit	32
2.1 Luxembourg market dynamics	15	3.8 Participation in a deposit guarantee scheme and in an investor indemnification system	32
2.2 The banking industry	16	3.9 Withdrawal of authorisation	32
2.2.1 Structure and size	16	4 Supervision and control of credit institutions	33
2.2.2 The Private Banking industry	17	4.1 «Commission de Surveillance du Secteur Financier» (CSSF)	34
2.2.3 Corporate Banking activities	18	4.2 «Banque centrale du Luxembourg» (BcL)	35
2.2.4 Categories of credit institutions	18	5 Laws and regulations	36
2.3 Other players of the financial sector	19	5.1 Amended Law of 5 April 1993	38
2.3.1 The Professionals of the Financial Sector	19	5.1.1 Access to professional activities in the financial sector (Part I)	38
2.3.2 Electronic money institutions and payment institutions	20		
2.3.3 The asset management industry	21		
2.3.4 The insurance sector	22		
2.3.5 The Stock Exchange	23		

5.1.2	Professional duties, prudential rules and rules of conduct in the financial sector (Part II)	38	6.3	Prudential and financial reporting	69
5.1.3	Prudential supervision of the financial sector (Part III)	40	7	Audit requirements	70
5.1.4	Reorganisation and winding up of certain professionals of the financial sector (Part IV)	42	7.1	Internal audit	71
5.1.5	Deposit guarantee schemes with credit institutions (Part IV bis)	43	7.2	External audit	72
5.1.6	Indemnification system for investors with credit institutions (Part IV ter)	43	8	Taxation	75
5.1.7	Penalties (Part V)	44	8.1	Corporate income tax (“Impôt sur le Revenu des Collectivités”, IRC)	76
5.2	Law of 17 June 1992 related to annual accounts, as amended by the Law of 16 March 2006	44	8.1.1	Basic tax rules	76
5.3	The main CSSF Circulars applicable to credit institutions	44	8.1.2	Tax valuation rules specific to banks	76
5.3.1	Organisation and the control environment	45	8.1.3	Withholding tax	80
5.3.2	Prevention of money laundering and financing of terrorism	52	8.2	Determination of the corporate income tax (Impôt sur le Revenu des Collectivités, IRC)	83
5.3.3	Compliance with limits and ratios	54	8.2.1	Investment incentives	83
5.3.4	Company administration services	57	8.2.2	Branches	84
5.3.5	Supervision on a consolidated basis	59	8.2.3	Municipal Business Tax (“Impôt Commercial Communal”, ICC)	84
5.3.6	Reporting and disclosure requirements	60	8.2.4	Net Wealth Tax (“Impôt sur la Fortune”, IF)	84
6	Accounting framework	63	8.3	Value Added Tax	85
6.1	Introduction	64	8.3.1	Basic VAT rules	85
6.2	Annual accounts prepared under Lux GAAP	64	8.3.2	VAT status of banks	85
6.2.1	Generally accepted accounting principles for credit institutions	64	8.3.3	Taxable transactions	86
6.2.2	Presentation of the annual accounts under Luxembourg GAAP	65	8.3.4	Exempt transactions	86
6.2.3	Specific Luxembourg banking GAAP accounting principles	66	8.3.5	Transactions out of the VAT scope	88
6.2.4	Filing of the annual accounts	69	8.3.6	VAT rates	88
			8.3.7	Input VAT deduction	88
			8.4	Capital contribution duty	90
			8.5	Foreign source of income	90
			8.6	Double tax treaties	90
			8.7	Absence of tax treaties	92
			9	Appendices	93
				Appendix 1 Glossary	94
				Appendix 2 Useful Luxembourg addresses	95
				Appendix 3 Luxembourg contacts	96
				Appendix 4 Global PwC contacts	97

Introduction

The sophistication of the financial services industry in Luxembourg is recognised globally. Luxembourg ranks 2nd in the world for Technological Readiness, 3rd for Availability of Financial Services and 6th for Financial Market Development¹.



Rima Adas
Banking Leader

With a total balance sheet of EUR 776 billion in credit institutions, and EUR 2,086 billion in Assets under Management (AuM) in the funds sector², Luxembourg plays a pivotal role in both the European and global financial markets. Its strategic location, the synergies between the banking, insurance and asset management sectors, and the multi-lingual abilities of its highly skilled workforce make it a leading soft-landing place for the servicing of the financial sectors of the EU and abroad.

Luxembourg's international reputation, the strengths of its national economy and high standards of living continues to attract premier talent from across all of Europe and beyond. Over 40% of Luxembourg's population are foreigners³, many of whom have relocated from other financial centres to enjoy the Luxembourg lifestyle. This combination of financial services expertise and varied linguistic ability makes Luxembourg the perfect location for those firms which need to access and service major European markets. Other major European hubs (including London, Paris and Frankfurt) are accessible in a two hours travel, facilitating coordination between international offices, service providers and clients. An estimated 70% of the European Union's wealth is concentrated within a 700 km radius around Luxembourg⁴.

From a governmental point of view the Luxembourg authorities have demonstrated considerable foresight regarding their anticipation of business needs and have displayed remarkable agility in transposing crucial EU legislation. In addition they have created legal frameworks for new financial products. A recent example was Luxembourg's transposition of UCITS IV into national legislation in December 2010, the first EU member state to do so. Luxembourg's financial regulator, the "Commission de Surveillance du Secteur Financier" (CSSF), is respected as being tough but fair, while at the same time remaining responsive and accessible.

In addition to these unparalleled advantages, Luxembourg remains highly competitive in terms of cost and labour productivity and benchmarks quite favourably against other EU financial hubs. Luxembourg did not see the cost rises that many other European States experienced, and the country continues to enjoy stable government, policy orientation and economic wellbeing.

In the following pages we will demonstrate even more advantages for those firms wishing to take advantage of the opportunities that Luxembourg offers, and we will also provide more details on the structure of the banking market. We are confident that you will be convinced.

Rima Adas
Banking Leader

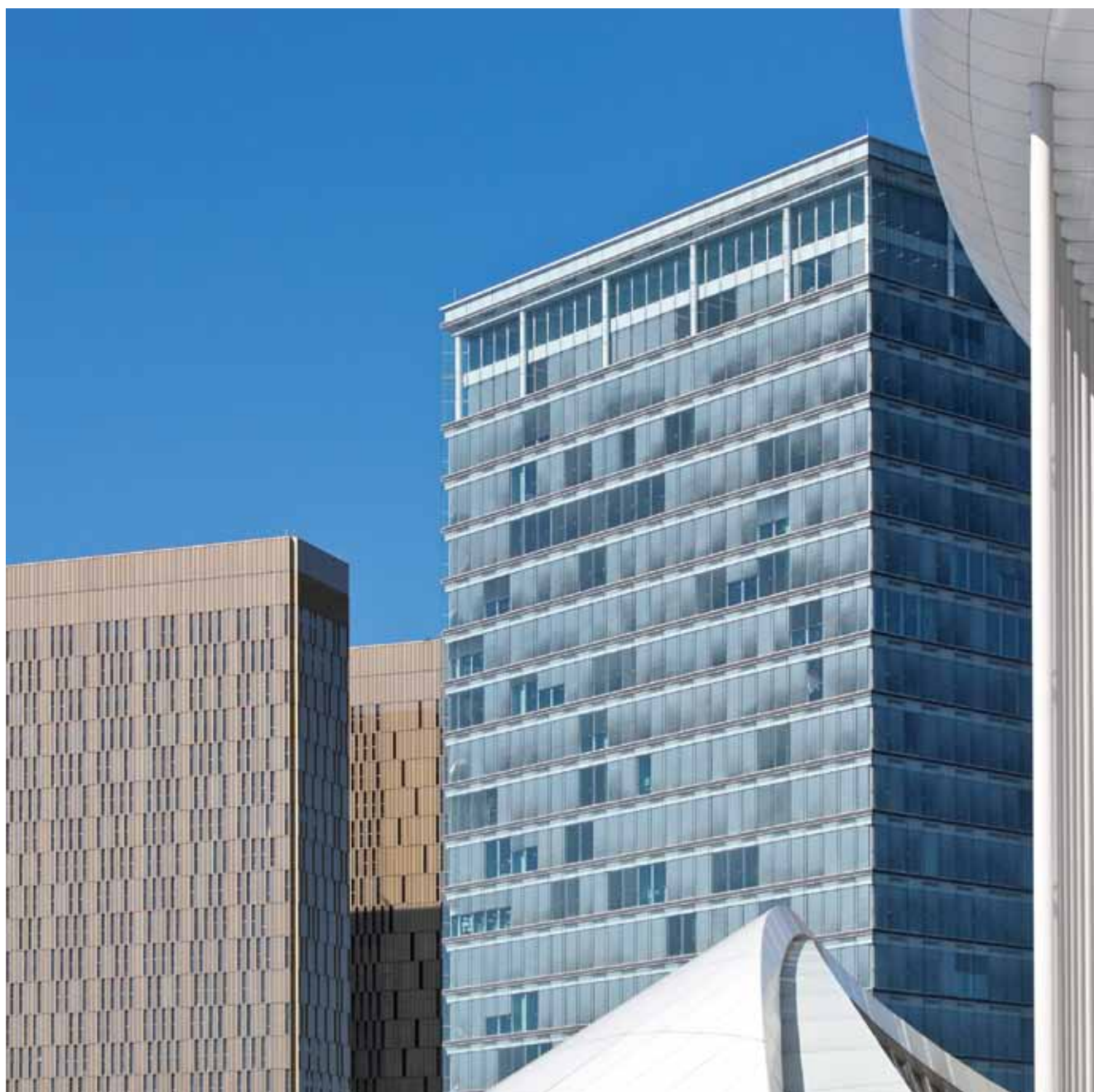
¹ The Global Competitiveness Report, 2010-2011, World Economic Forum

² CSSF Newsletter, October 2011

³ STATEC, Luxembourg in Figures, 2010

⁴ Luxembourg, where else? June 2011, PwC/Chambre de Commerce Luxembourg

1 Luxembourg financial centre: key competitive advantages



Luxembourg is a truly unique financial services centre. Developing from an international Private Banking market, for which it is still world-renowned, Luxembourg is now a world leader in many areas of the financial services sector.

The business friendly environment has been the foundation for Luxembourg's success. The government rapidly set up key legislation which either develops new and innovative financial products, or provides a crucial first-mover advantage to firms in the Luxembourg market. The resulting booming of financial services groups locating in Luxembourg, the high value-added interaction between these players and a stream of innovation have strengthened Luxembourg's status as a global financial services hub.

Luxembourg's banking sector offers an unparalleled range of financial services to the discerning client, and the firms which are willing to establish a bank in Luxembourg - whether a new entity or a branch of an existing group - find that the sector has an excellent regulatory environment, a world-class financial infrastructure and a deep pool of skilled staff.

	Rank	Source
Technological Readiness	N° 1 Sweden	The Global Competitiveness Report 2010-2011, World Economic Forum
Availability of financial services	N° 1 Switzerland N° 3 Luxembourg	The Global Competitiveness Report 2010-2011, World Economic Forum
Financial Market Development	N° 1 Hong Kong N° 6 Luxembourg	The Global Competitiveness Report 2010-2011, World Economic Forum
Regulation of securities exchanges	N° 1 South Africa N° 8 Luxembourg	The Global Competitiveness Report 2010-2011, World Economic Forum
World Competitiveness	N° 1 Hong Kong N° 11 Luxembourg	IMD World Competitiveness Yearbook 2011
Global Enabling Trade Index	N° 1 Singapore N° 9 Luxembourg	The Global Enabling Trade Report 2010, World Economic Forum
Index of Economic Freedom	N° 1 Hong Kong N° 13 Luxembourg	Index of Economic Freedom World Rankings 2011, The Heritage Foundation & The Wall Street Journal

1.1 At the heart of Europe

Luxembourg is at the centre of Europe and enjoys excellent transport connections to other major European cities, including London, Paris, Brussels, Berlin, Frankfurt, Zurich and Milan. In addition to easy access for investors from the most affluent countries within Europe, Luxembourg also hosts a significant number of key EU institutions,

notably the European Investment Bank, the European Investment Fund, offices of the European Commission and the European Parliament (secretariat). Luxembourg's expertise is also recognised at the international political level, with Jean- Claude Juncker, the Prime Minister of Luxembourg, serving numerous consecutive terms as President of the Eurozone Finance Ministers (known as the "Eurogroup").

1.2 A responsive and responsible regulatory environment

The Commission de Surveillance du Secteur Financier (CSSF) is the supervisory and regulatory authority for Luxembourg's financial sector. The CSSF has received extensive praise for its ability to react quickly and responsively to the needs of the financial industry without diluting the high levels of investor security and protection that exist in Luxembourg.

The CSSF aims at:

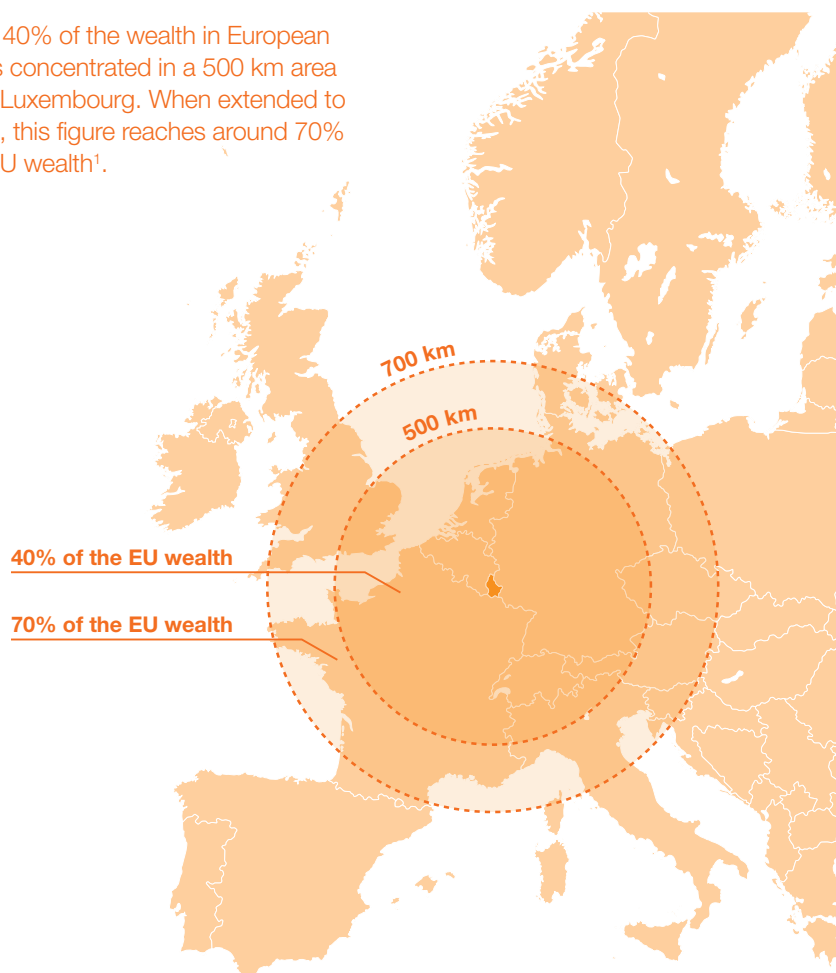
- promoting a considered and prudent business policy in compliance with the regulatory requirements;
- protecting the financial stability of the supervised companies and of the financial sector as a whole;
- supervising the quality of the organisation and internal control systems;
- strengthening the quality of risk management.

The CSSF represents Luxembourg at European and global levels in negotiations with regard to the financial sector and is responsible for coordinating the implementation of any international regulation or recommendation at the national level.

One field in which Luxembourg has been excelling for many years is quick time-to-market innovation. This was only made possible through a liberal legislation framework and close communication between the financial centre and authorities. Examples of this are the quick adoption by the authorities of innovations in EU law that offered opportunities for the sector, such as the UCITS IV directive or the Payment Services Directive.

Further information can be found on the CSSF website: www.cssf.lu

Around 40% of the wealth in European Union is concentrated in a 500 km area around Luxembourg. When extended to 700 km, this figure reaches around 70% of the EU wealth¹.



One of the prime features of Luxembourg's success is its geographical location. Luxembourg has a strategic position at the crossroads of Europe, with direct routes to the most important European cities: Paris (just 2h15 by train), London, Amsterdam, Brussels, Berlin, Zurich, Milan and Geneva.

Sharing borders with Belgium to the west and the north, with Germany to the east and the north, and France to the south, Luxembourg has a high level of cross-border trade, investment and employment.

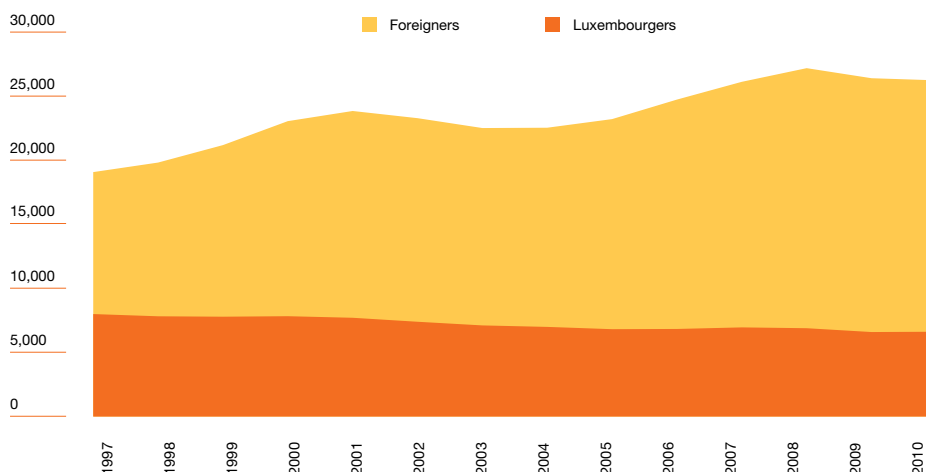
¹ "EU27", Eurostat, 2010

1.3 A highly qualified and multilingual workforce

Currently the banking sector represents over 60% of the financial centre's direct and indirect workforce. While the Luxembourg financial sector still draws on a large pool of labour from the cross-border regions of Belgium, France and Germany, this has been complemented in growing number by graduates from the best universities in Europe and experienced professionals from other financial centres. These expatriate and commuting workers provide Luxembourg with a vast array of languages and technical skills drawn from every level of the banking industry. In December 2010, Luxembourg banks employed 26,254 workers, with 66% of this figure representing foreign workers.

In addition to the existing skills of the workforce, Luxembourg also offers an effective training infrastructure

Employment growth in the banking sector



Source: "Commission de Surveillance du Secteur Financier" (CSSF), Annual Report 2010

which hones the abilities of employees and allows for continuous learning within the sector. Master degrees, an internationally accredited MBA and

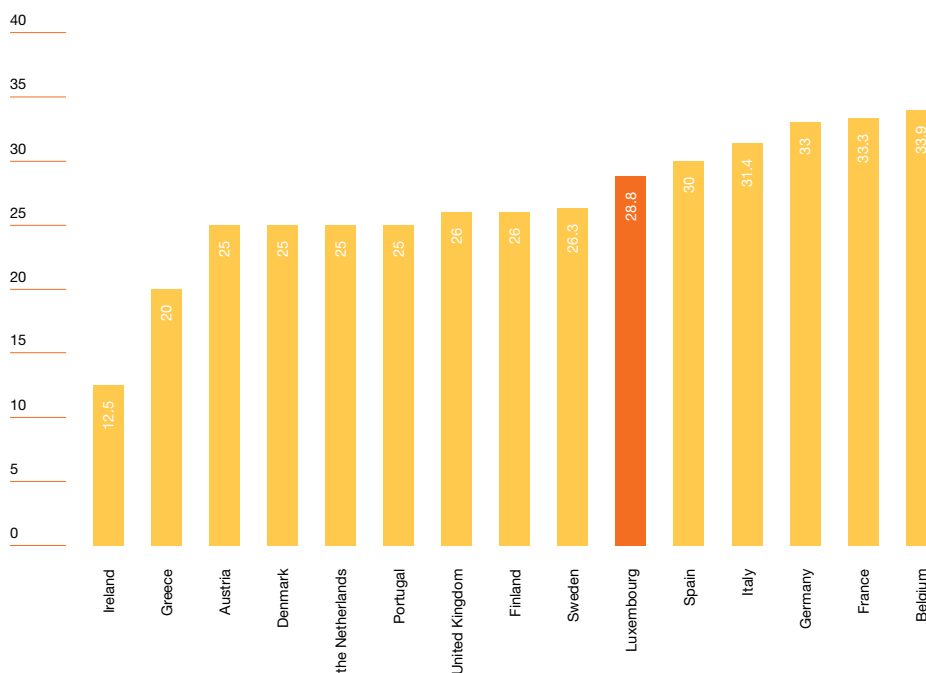
executive training for professionals of the wealth, asset, and fund management industries are all available.

1.4 A favourable tax location for doing business

1.4.1 Corporate taxes¹

The combined income tax rate for Luxembourg City (i.e. both corporate income tax and Municipal Business Tax) is 28.8% in 2011.

Corporate income tax rates in the EU (in %)



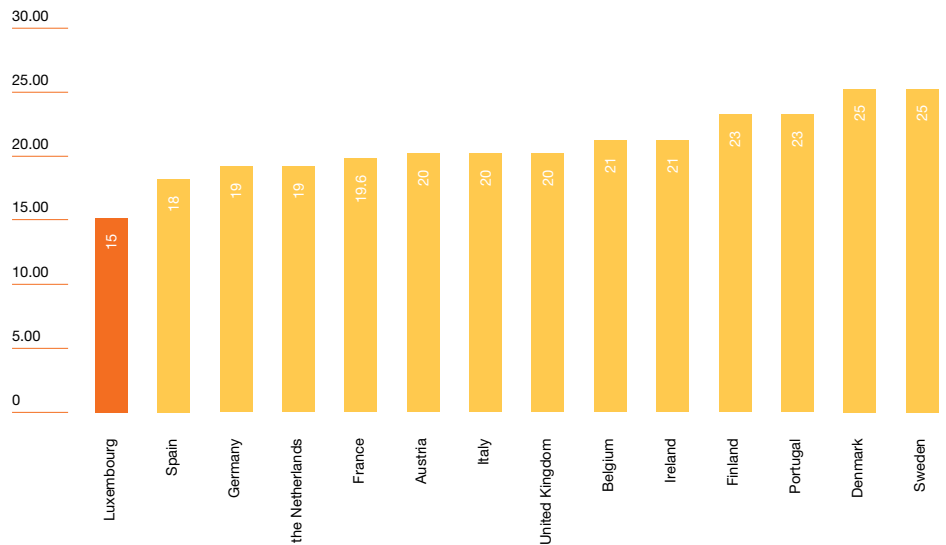
¹ The German rate varies from 30.2% (Berlin) to 31.9% (Frankfurt) and 33% (Munich). In Portugal, an additional taxation of 2.5% applies on profits in excess of EUR 2 million. In the Netherlands, taxable amounts up to EUR 200,000 are subject to 20% CIT. In Ireland, the standard rate on income is 12.5% while the rate on "passive income" and on capital gains is 25%. In the UK the rate will drop to 25% in April 2012 if approved by the UK parliament.

Source: PwC, August 2011

1.4.2 VAT

Luxembourg currently applies the lowest standard VAT rates in the EU27. The different rates applicable in Luxembourg are 3%, 6%, 12% and 15%. Domestic supplies are therefore taxed less than in any other EU country. This advantage may also benefit supplies to non-Luxembourg customers.

VAT standards rates in the EU (in %)

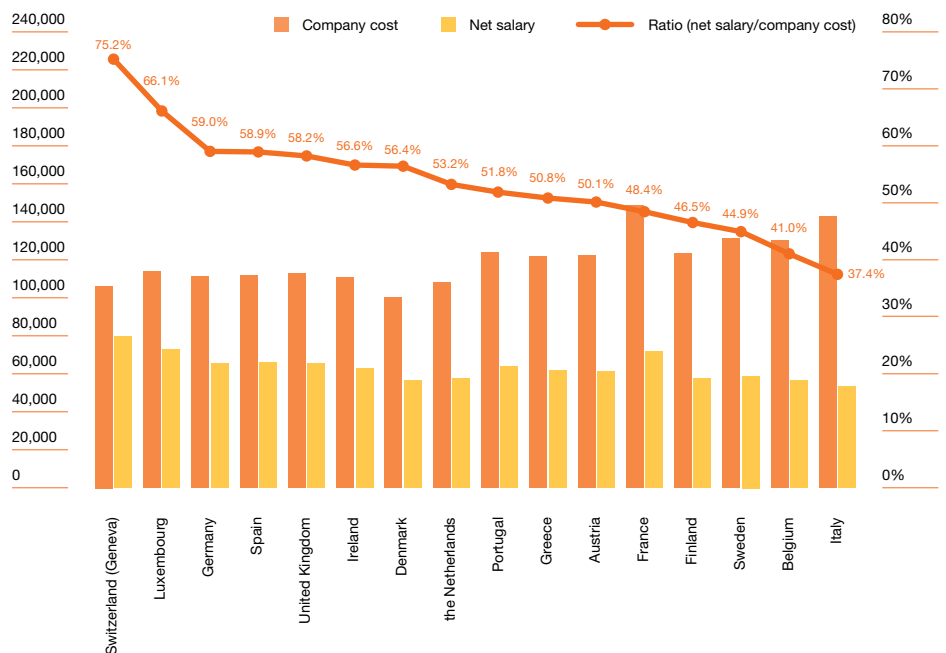


Source: European Commission 2011, Taxation and Customs Union, taxud.c.1(2011)759291 - EN

1.4.3 Taxation on salaries

The Luxembourg tax regime on salaries is more attractive compared to other EU countries. On a gross salary of EUR 100,000 about 66% goes directly to the employee as net salary while about 40% is paid in tax and social contributions.

Net salary after tax and social security vs. company costs on gross annual salary of EUR 100,000¹



¹ Net salary in euros after tax and social contributions (based on a married couple with two children where one parent earns EUR 100,000 per annum and is the sole earner) using income tax rates and social security rates applicable as at 15 August 2011.

Source: PwC, August 2011

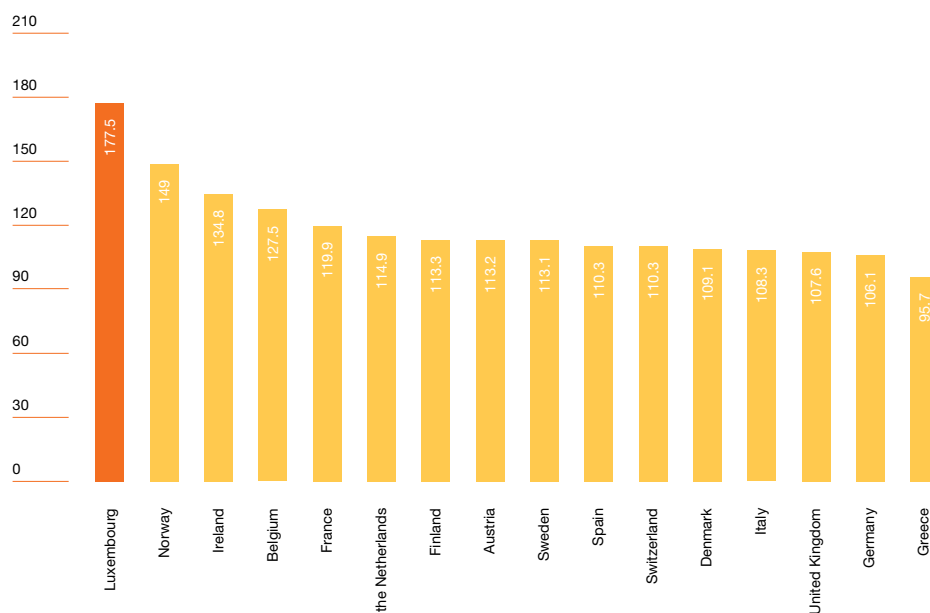
1.5 An optimal balance between low business costs and a high purchasing power

1.5.1 Labour productivity

Luxembourg has one of the highest workforce productivity levels in the world, and its GDP amount per employee continues to grow, widening the gap with other countries. The financial sector generates over 28% of Luxembourg's gross added value and accounts for 12% of the country's workforce¹.

¹ STATEC, Luxembourg in Figures, 2010.

Labour productivity per person employed (Index: EU27 = 100)

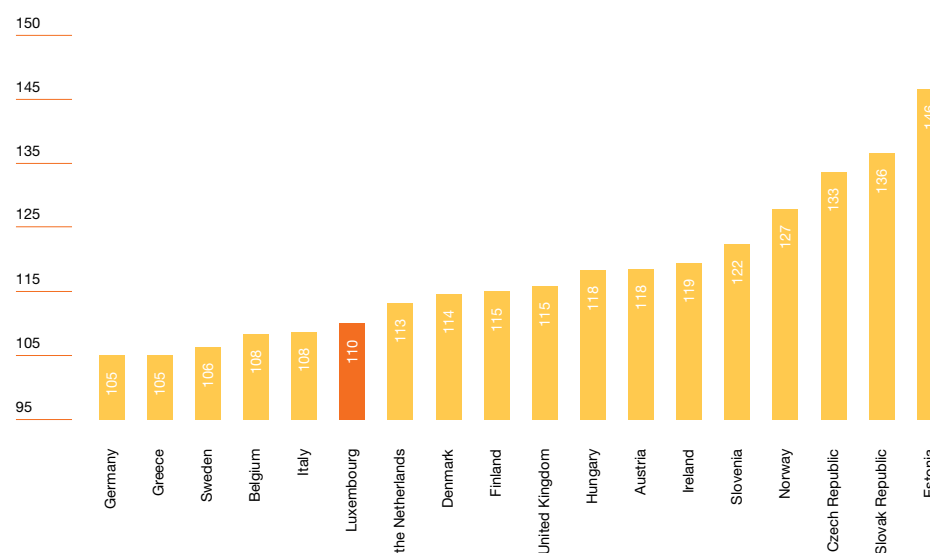


Source: Eurostat, 2010 (in purchasing power standards)

1.5.2 Labour costs

Labour costs in the financial and business services industry have grown slower in Luxembourg compared to other European countries since 2005.

Labour cost index (2005 level = 100)²

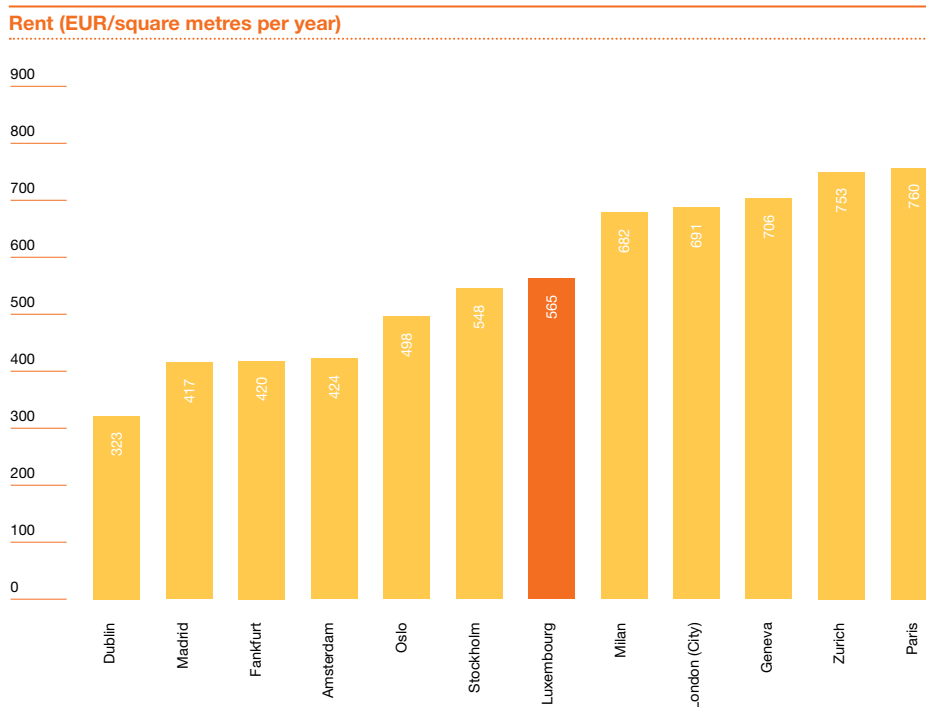


² Labour compensation per unit labour input in the financial and business services industry (2005 is the base year).

Source: OECD, 2011 figures

1.5.3 Office rental costs

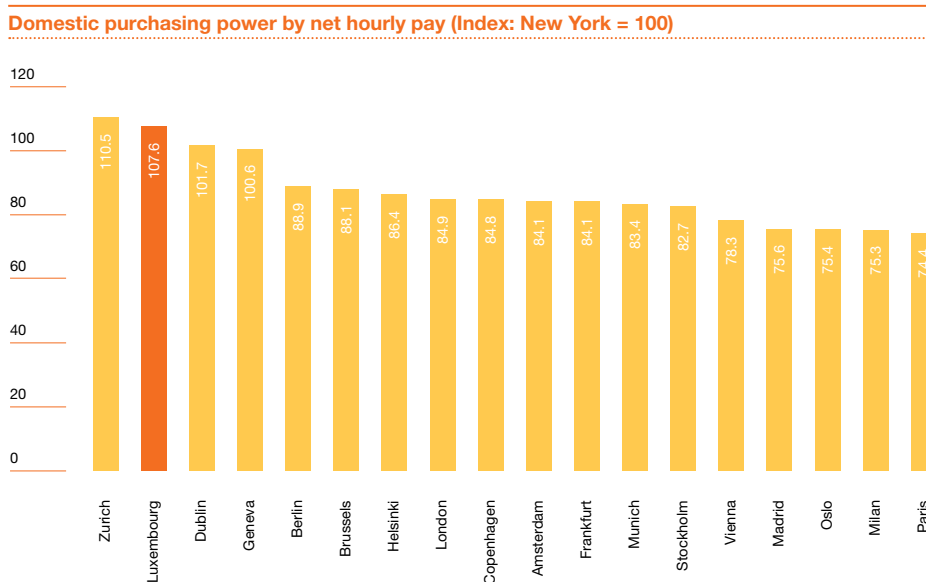
As a leading financial hub, Luxembourg office rental costs remain extremely competitive.



Source: Office Space Across the World 2011, Cushman & Wakefield Research, 2011 figures

1.5.4 Domestic purchasing power

Luxembourg has a strong domestic purchasing power thanks in part to low taxes and social security contributions.



Source: Prices and Earnings Report, UBS, 2011 update

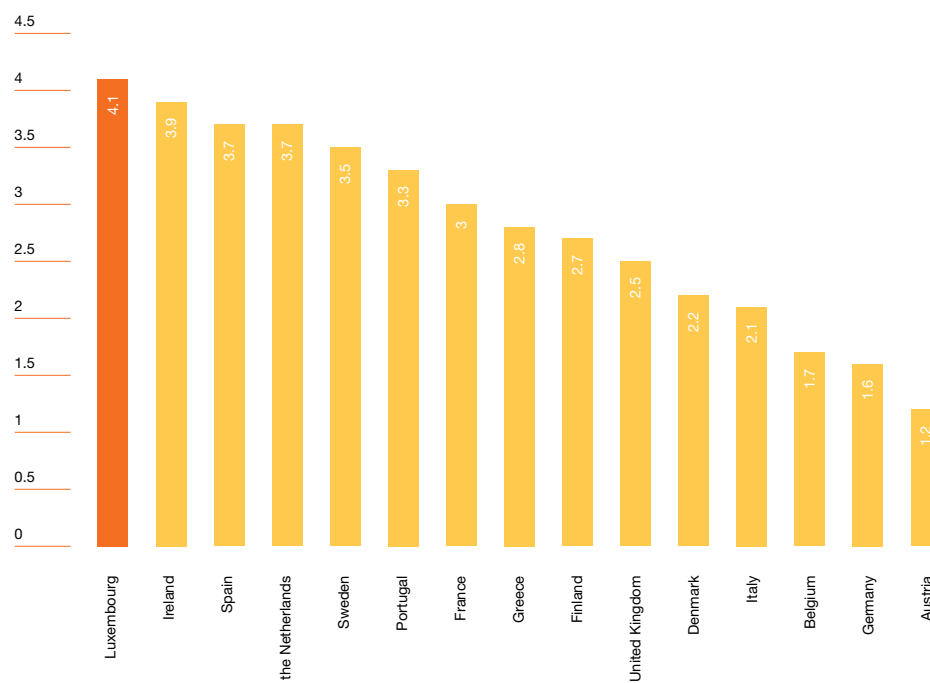
1.5.5 Excellent basic infrastructures

Luxembourg is among the countries in Europe with the highest public investment in public infrastructure.

Examples of recent investments by the Luxembourg government include:

- the creation of an additional terminal at the Luxembourg airport,
- the launch of a high-speed train (TGV) connecting Luxembourg to Paris in about two hours,
- the enlargement of the European School,
- the openings of the Luxembourg Philharmonie and the Museum of Modern Art.

Public investment (% of GDP)



Source: Eurostat, 2011

2 The financial marketplace



Luxembourg is one of the foremost destinations for financial services providers due to its status as a global hub, its constant innovation and business friendly culture. While Private Banking and Investment Management continue to underpin the sector, the financial marketplace in Luxembourg has a high degree of synergy and diversification, appealing to a wider range of investors, including international entrepreneurs and corporations.

2.1 Luxembourg market dynamics

Innovative financial solutions including pension funds, Hedge Funds, Family Office services, real estate vehicles, securitisation vehicles and private equity structures such as the SICAR, have been added to the already vast array of products and services available on the Luxembourg marketplace. A recent example of innovation is the implementation of the Specialised Investment Fund (SIF) vehicle to provide more flexibility to investors.

In May 2010, the Luxembourg Financial Community launched a Central Securities Depository compliant with the future European Central Bank's platform for securities settlement, effectively future-proofing the industry in that area for some years to come.

Regarding electronic infrastructure, the country is connected to all major European Internet Exchanges, data centres and Points of Presence through redundant optical networks.

Many international groups are currently redomiciling their headquarters in Luxembourg in order to take advantage of a favourable economic environment and stable policy outlook. Non-financial groups have also set up corporate banks in Luxembourg in order to optimise their own financial operations within a dynamic environment.



2.2 The banking industry

2.2.1 Structure and size

As at September 2011, the Luxembourg banking sector comprised 143 credit institutions from over 20 different countries¹. Almost 20% of Luxembourg banks come from non-European countries.

Despite the credit and liquidity crunch that hit global financial markets and an increasingly complex regulatory context, the Luxembourg banking sector has been resilient. While the total balance sheet decreased to a level of EUR 776 billion in mid-2011, compared to its 2008 peak, 60% of the banks' balance sheet increased in 2010, according to the CSSF. This result implies that the trend is to reverse in the future.

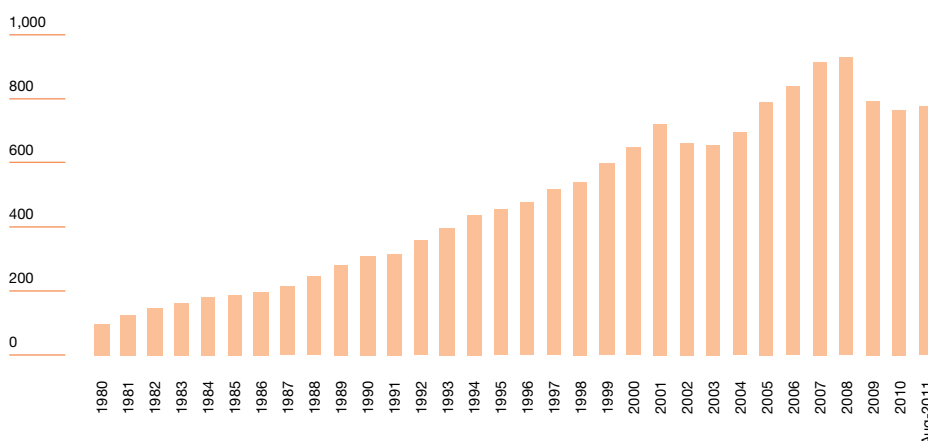
¹ Source: CSSF

Luxembourg credit institutions by country of origin

Germany	42	Andorra	2
France	13	Brazil	2
Belgium	11	Denmark	2
Switzerland	10	Norway	2
Italy	8	Portugal	2
United Kingdom	8	Belgium/Canada	1
Sweden	7	Canada	1
United-States	6	Greece	1
Japan	5	Ireland	1
Luxembourg	5	Liechtenstein	1
China	4	Russia	1
the Netherlands	4	Turkey	1
Israel	3		

Source: CSSF website, September 2011

Evolution of Luxembourg banks' balance sheet (in EUR billion)



Source: CSSF Annual Report, 2010

2.2.2 The Private Banking industry

With more than 40 years of experience, Luxembourg is a centre of excellence in Private Banking, ranking number three in the world in terms of market share of cross border Private Banking¹. Within the Eurozone, Luxembourg occupies the first place regarding AuM. The Private Banking industry is a key aspect of the Luxembourg financial sector with EUR 3.4 billion in revenues; AuM held by banks involved in Private Banking amount to approximately EUR 300 billion².

The Private Banking industry contributes to the development of the Luxembourg financial sector not only through its own activity, but it is also an important source of revenues for the Undertakings for Collective Investment (UCI) and insurance industries since it is a distribution platform for investment funds and life insurance products.

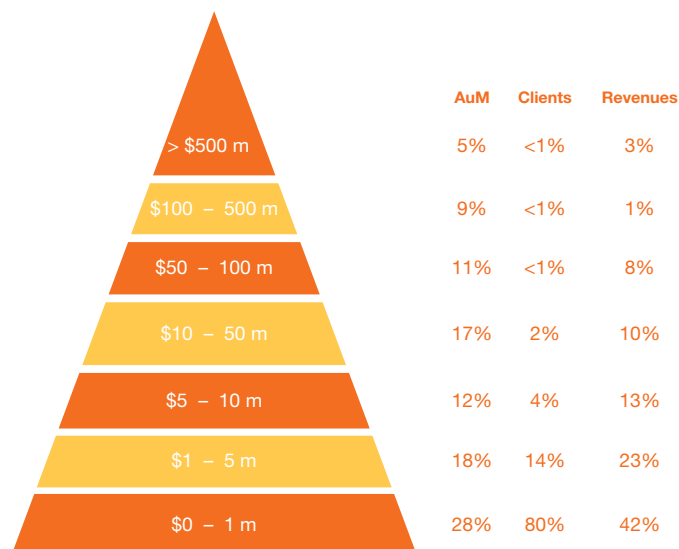
While it is estimated that nearly 90% of AuM in Luxembourg's Private Banking sector originates from Western Europe, over half of Luxembourg banks intend to open up operations in new geographic markets by 2013. Also, Luxembourg can be considered to have a dynamic Private Banking market, with 63% of clients considered to be active or semi-active, and 17% of the client base being made up of international entrepreneurs. This means that Luxembourg clients have specific needs related to their current work activities in terms of financial structuring, tax optimisation, etc.³

¹ Compendium 2010, The Swiss Banking Sector, Swiss Bankers Association

² Luxembourg Private Banking Cockpit 2.0, February 2011, Private Banking Group Luxembourg

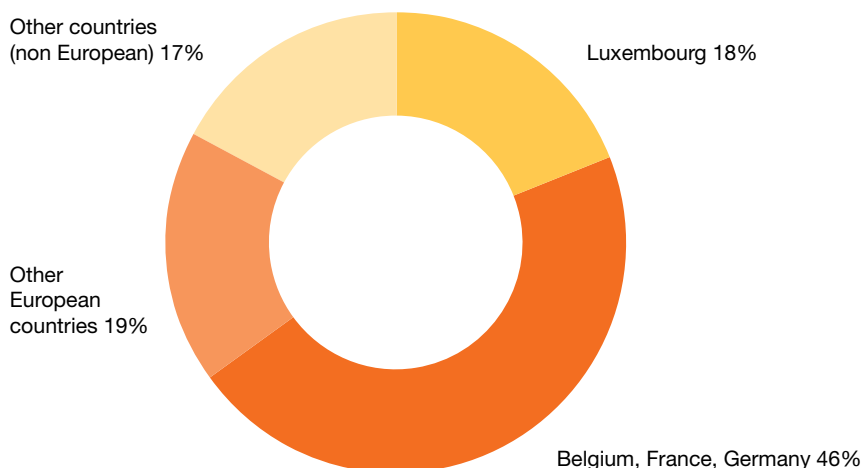
³ PwC 2011 Global Private Banking and Wealth Management Survey

Client segments in Private Banking, Luxembourg



Source: PwC Global Private Banking and Wealth Management Survey 2011

Origin of Luxembourg Private Banking AuM



Source: ABBL, Luxembourg Private Banking Cockpit 2.0, February 2011

Luxembourg offers a comprehensive range of products and personalised services, from traditional, classic savings products, to sophisticated solutions for creating, maintaining, maximising and transmitting wealth. Luxembourg has developed solid financial engineering capabilities and know-how in cross-border wealth engineering, asset structuring, fund constitution, and tax optimisation.

Luxembourg benefits from a competitive fiscal environment for the development of Private Banking activities, including:

- no wealth tax;
- no withholding tax on interest payments (except for EU resident private individuals);
- no stamp duty on securities transactions;
- no tax on capital gains for non-residents;
- no inheritance tax for non-residents (except for real estate in Luxembourg);
- a 15% withholding tax on dividends (compared to 35% in Switzerland);
- and a large Double Taxation Treaty network¹.

¹ See section 8.7 Double tax treaties

2.2.3 Corporate Banking activities

Luxembourg is a recognised international business centre for corporate clients. Luxembourg authorities favour the development of new activities such as e-commerce, health sciences, technologies, private equity, real estate, securitisation, and factoring. Several multinationals have been setting up their European headquarters or their treasury centres in Luxembourg.

Therefore the Luxembourg corporate banking market is thriving, providing a broad range of services to the old and new companies established in Luxembourg or having part of their activities run from Luxembourg.

Corporate services offered by Luxembourg banks to small, medium-sized, large and multinational companies include:

- daily business and account services;
- custody;
- settlement;
- cash management;
- brokerage and advisory services;
- financing business;
- capital investments and partnerships;
- foreign exchange.

Some corporate groups also acquire the banking license to operate financing activities out of Luxembourg:

- a specialised platform for electronic payments between professionals and individuals at the European level;
- a leading producer of agricultural equipment whose primary activity in Luxembourg is the provision of finance to clients who want to purchase its equipment;
- others are looking to settle in Luxembourg to benefit from the EU passport and for operating activities throughout Europe.

2.2.4 Categories of credit institutions

Credit institutions operating out of Luxembourg are granted an operating licence and supervised by the Luxembourg regulator, the CSSF.

The Luxembourg legislation provides two types of licences: a universal banking licence and a mortgage banking license.

Today, Luxembourg banks have established several areas of expertise, which include:

- private and institutional wealth management;
- life insurance;
- retail and corporate banking;
- and the full range of investment fund services.

As at September 2011, Luxembourg has 143 credit institutions that can be grouped together under the following categories, based on their legal status and geographical origin²:

- Banks under Luxembourg law (102 banks as at September 2011);
- Banks issuing mortgage bonds (5 banks as at September 2011);
- Branches of banks originating from a member state of the European Union (30 branches as at September 2011);
- Branches of banks originating from a non-member state of the European Union (6 branches as at September 2011).

² Source: CSSF

2.3 Other players of the financial sector

2.3.1 The Professionals of the Financial Sector

The Professionals of the Financial Sector (PFS) may be defined as regulated companies performing non-banking financial services. These services may be offered in the form of a single financial activity as well as in the form of connected and/or complementary activities.

The number of players continues to grow at a rapid pace, totalling 312 in July 2011 compared to 216 in July 2007, thanks to a flexible legal framework which has also paved the way for new forms of servicing the financial sector. PFS have helped the Luxembourg financial sector¹ develop in two ways:

- Leveraging on specialisation and expertise in different financial activities.
- Adding flexibility and capacity to the Luxembourg financial place to adapt to new market demands emanating from Luxembourg and the EU financial sector.

PFS are subject to the authorisation and supervision of the CSSF. PFS fall into three main groups:

- **Investment firms** - they offer financial services in relation to the investment of assets to private investors and/or conduct financial operations for their own account; they are allowed to operate under the European passport provision.
- **Specialised PFS** - they offer other services of a financial nature to private investors and/or professionals of the

financial sector; they are not allowed to operate under the European passport provision.

- **Support PFS** - they offer support services of an organisational and technical nature to professionals of the financial sector; they are not allowed to operate under the European passport provision.

¹ Source: CSSF

Investment firms

- Investment advisers
- Brokers in financial instruments
- Commission agents
- Private portfolio managers
- Professionals acting for their own account
- Market makers
- Underwriters of financial instruments
- Distributors of units/shares of UCIs
- Financial intermediation firms
- Investment firms operating a MTF in Luxembourg

Specialised PFS

- Registrar agents
- Professional custodians of financial instruments
- Operators of a regulated market authorised in Luxembourg
- Persons carrying out foreign exchange cash operations
- Debt recovery
- Professionals carrying on lending operations
- Professionals carrying on securities lending operations
- Mutual savings fund administrators
- Managers of non-coordinated UCIs
- Corporate domiciliation agents
- Professionals providing company formation and management services

Support PFS

- Client communication agents
- Administrative agents of the financial sector
- Primary IT systems operators of the financial sector
- Secondary IT systems and communication networks operators of the financial sector

Players established in Luxembourg as PFS come from over 30 different countries of origin, especially Luxembourg entities, followed by Belgian and Dutch entities.

Number of PFS per country of origin as at July 2011	
Luxembourg	93
Belgium	40
the Netherlands	29
Germany	24
UK	23
France	22
Switzerland	13
USA	12
Italy	7
Denmark	5
Liechtenstein	2
Sweden	2
Other	40
Total	312

Source: CSSF website

2.3.2 Electronic money institutions and payment institutions

a) Electronic money institutions

Electronic money institutions are legal entities whose main business consists in issuing means of payment in the form of electronic money. These institutions may not receive deposits from the customers or other repayable funds unless they are immediately exchanged for electronic money.

“Electronic money” is defined by the law as the monetary value represented by a claim on the issuer, which is:

- Electronically, including magnetically, stored;
- Issued on receipt of funds for the purpose of making payment transactions;
- Accepted by a natural or legal person other than the electronic money issuer.

Electronic money is an electronic surrogate for coins and banknotes, which is to be used for making payments, usually of limited amount.

Electronic money institutions are required to redeem, upon request by the electronic money holder, at any moment and at par value, the monetary value of the electronic money held.

However, electronic money institutions are allowed to carry out, besides the provision of payment services, other activities than the activity of issuing electronic money (e.g. telecommunication, transport, retail, etc.). The purpose is to facilitate the development of innovating services in the payment market.

Authorisation is subject to evidence of a subscribed and paid-in share capital with a value of EUR 350,000.

As at October 2011, there is one electronic money institution in Luxembourg.

b) Payment institutions

Payment institutions are legal entities whose main business consists in providing payment services.

“Payment services” are defined by the law as follows:

- Services enabling cash to be placed on a payment account as well as all the operations required for operating a payment account.
- Services enabling cash withdrawals from a payment account as well as all the operations required for operating a payment account.
- Execution of payment transactions, including transfers of funds on a payment account with the user’s payment service provider or with another payment service provider:
 - execution of direct debits, including one-off direct debits,
 - execution of payment transactions through a payment card or a similar device,
 - execution of credit transfers, including standing orders.
- Execution of payment transactions where the funds are covered by a credit line for a payment service user:

- execution of direct debits, including one-off direct debits,
- execution of payment transactions through a payment card or a similar device,
- execution of credit transfers, including standing orders.
- Issuing and/or acquiring of payment instruments.
- Money remittance.
- Execution of payment transactions where the consent of the payer to execute a payment transaction is given by means of any telecommunication, digital or IT device and the payment is made to the telecommunication, IT system or network operator, acting only as an intermediary between the payment service user and the supplier of the goods and services.

In addition to offering payment services, payment institutions may offer operational services and ancillary linked services (such as the guarantee of the execution of payment services, foreign exchange services, data protection, keeping and processing services). They may also manage payment systems and carry out business activities other than payment services.

These institutions are not allowed to receive deposits from the public and may not issue electronic money. They are allowed to grant credits under certain conditions if linked to the payment services.

Authorisation is subject to evidence of a subscribed and paid-in share capital with a value of EUR 20,000 or EUR 50,000 or EUR 125,000 depending on the services provided as described within the law.

As at October 2011, there are three payment institutions operating under Luxembourg law and one branch of payment institutions from another member of the European Economic Area registered in Luxembourg.

2.3.3 The asset management industry

Luxembourg is a major centre for the domiciliation of investment funds. At the end of 2010, Luxembourg had over EUR 2.19 trillion in net assets domiciled in over 3,667 funds - which positions Luxembourg as the second largest fund centre in the world after the United-States.

Historically, Luxembourg's success has been fuelled by its ability to offer an attractive platform for the distribution of retail funds in Europe (and later everywhere in the world). Luxembourg's position as a key domicile for internationally distributed funds began in the 1980s when Luxembourg was the first member state to transpose the provisions of the 1985 Directive on UCITS into domestic

law. Investment funds include UCITS funds (Undertakings for Collective Investment in Transferable Securities, carrying a European passport), which are well tailored for the retail market, and non-UCITS funds generally geared to institutional or informed investors.

Since the 1980s, the number of assets and funds has tremendously grown in Luxembourg. At mid-2011, net assets in Luxembourg domiciled funds represented 27% of the European market.

Promoters originating from over 57 different countries have domiciled funds in Luxembourg in order to benefit from the international fund distribution platform it offers.

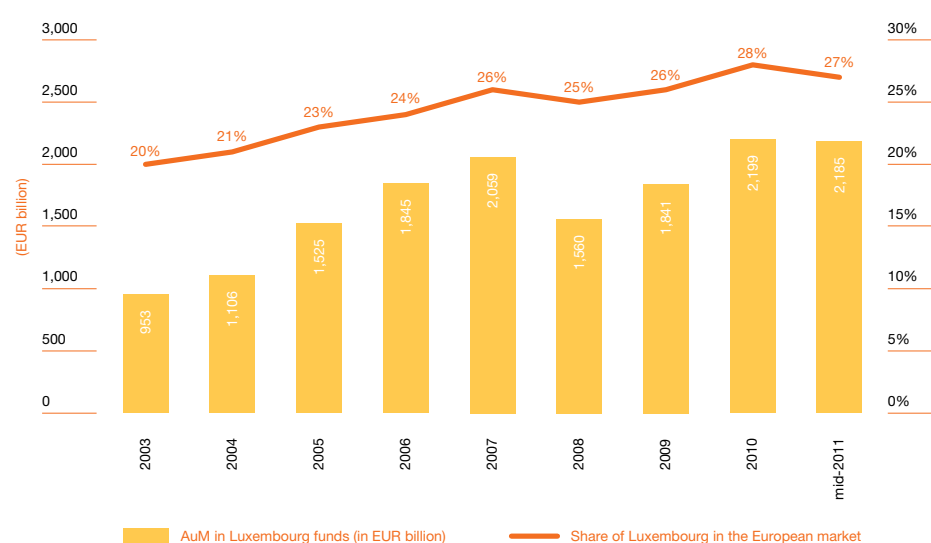
Origin of the promoters of funds	Net assets (in EUR billion)	%
United States	505	23.1
Germany	372	17.0
Switzerland	334	15.3
United Kingdom	286	13.1
Italy	177	8.1
France	170	7.8
Belgium	116	5.3
the Netherlands	45	2.1
Luxembourg	37	1.7
Sweden	36	1.7
Others	107	4.9
Total	2,185	100

Source: CSSF website, September 2011

In addition to its positioning on mainstream funds, Luxembourg is a major centre for each of the primary alternative asset classes.

- Real Estate funds have been a particular success story with Luxembourg now recognised within this market segment as the leading domicile for structured real estate products targeting international investment and distribution.
- Private Equity funds are emerging as the third significant alternative asset class with Luxembourg building on its dominance as a location for structuring transactions to become a leading centre for establishing the fund-level vehicles themselves.
- Luxembourg's long-standing focus on Hedge funds and fund of Hedge funds products has enjoyed rapid growth in recent years as a result of regulatory and market developments (with the so-called Alternative UCITS scheme).
- Other categories of funds are also rapidly growing, such as Sharia funds and Microfinance funds.

AuM in UCITS and non-UCITS funds



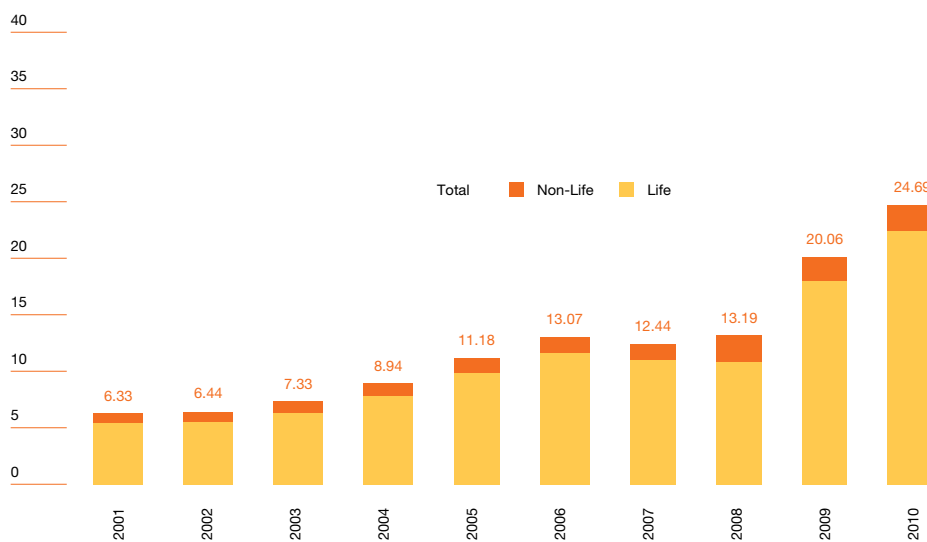
Source: CSSF and EFAMA

Finally, the positioning of Luxembourg has led to the establishment of significant depth and expertise within the service provider community to support the complexities of internationally invested and distributed funds. Within the generic value chain of the asset management

industry, Luxembourg is positioned with a strong focus on back-office tasks. However, the substance and governance requirements introduced by the UCITS III regulation have broadened the competencies of the Luxembourg service providers and management companies

(e.g. Risk Management, distribution reporting, etc.). With UCITS IV and the new structures it allows, this well established sophistication in back-office tasks comes as a true competitive advantage as compared to other domiciles.

Gross Premiums (in EUR billion)

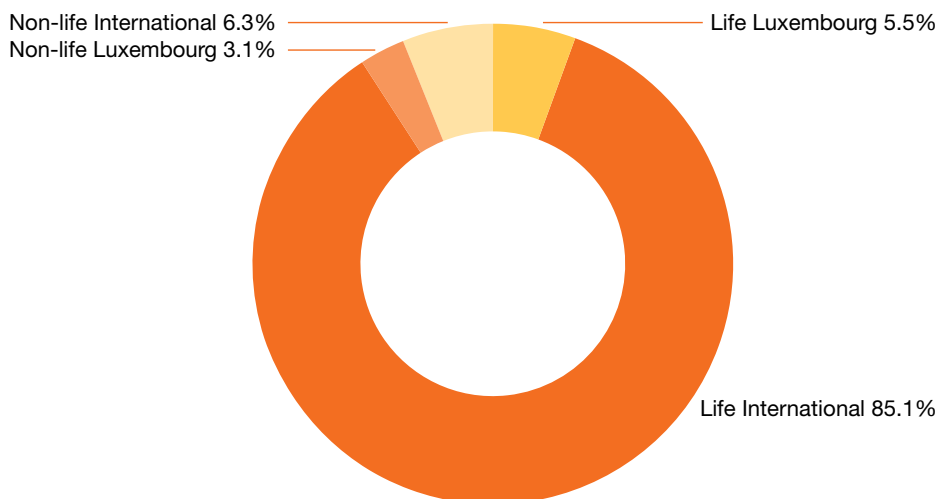


Source: Commissariat aux assurances (CAA), Annual Reports

2.3.4 The insurance sector

In 2010, the direct insurance sector in Luxembourg comprises 95 companies (of which 52 life insurance undertakings, 40 non-life insurance undertakings and 3 mixed undertakings) employing 3,956 people. Premiums amounted to EUR 24.69 billion, an increase of nearly 23% compared to the previous year. The sector achieved double-digit growth in premiums for the second consecutive year.

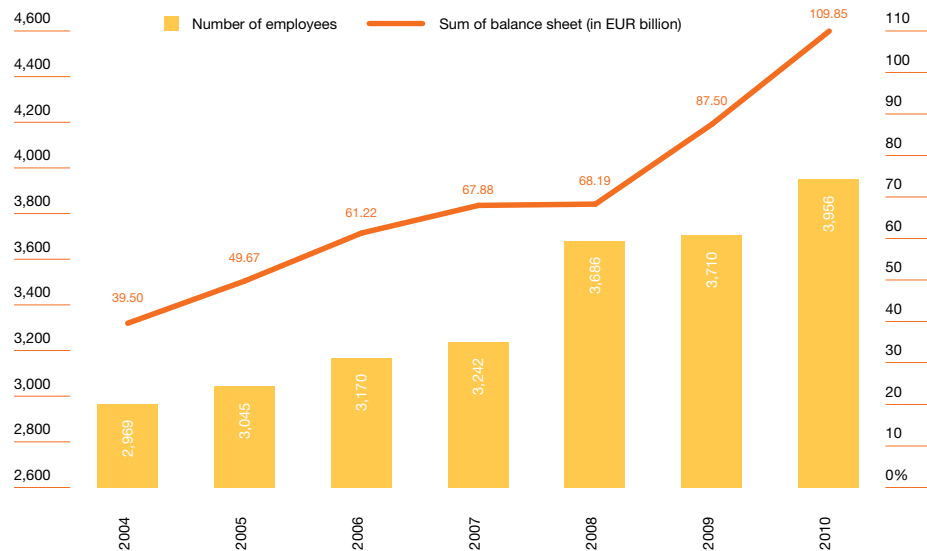
Premiums issued in 2010



With total premiums amounting to over EUR 24 billion in 2010, Luxembourg has a substantial insurance industry. While the domestic industry is relatively small, it is the large volume of the business being written for international markets which makes up the bulk of the activity. Life insurance accounts for almost 91% of the total premiums.

Source: Commissariat aux assurances (CAA), Annual Report 2010

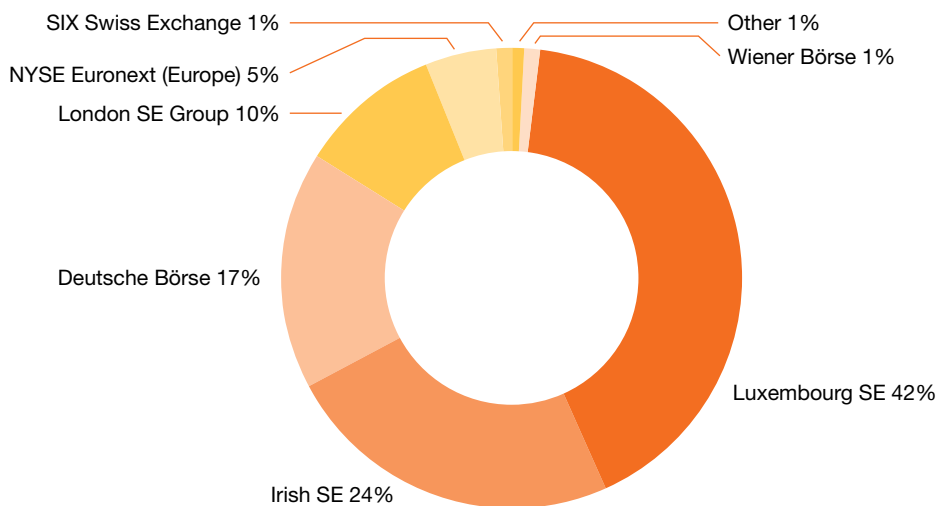
Evolution of the total balance sheet and workforce



Source: Commissariat aux assurances (CAA), Annual Reports

Although the number of insurance companies remained relatively stable over the last number of years, the total balance sheet increased consistently, reaching EUR 109.8 billion at the end of 2010.

International bond listings in Europe



Source: World Federation of Exchanges, 2010 data

2.3.5 The Stock Exchange

The Luxembourg Stock Exchange began operating as a limited company in 1929. Today, with 44,916 quotation lines from a total of 3,290 issuers coming from 103 countries, it has become a major listing centre in particular for international bonds. The exchange also lists investment funds, equities, depository receipts and warrants. In view of the current regulatory changes impacting European capital markets, it has become an attractive international listing marketplace for a wide range of securities.

As of December 2010, the Luxembourg Stock Exchange listed 29,564 international bond issues representing 42% of total international bonds listed on EU markets.

The Luxembourg Stock Exchange also lists equities and units of investment funds in around twenty currencies. In December 2010, there were 324 shares listed as well as 7,445 units of investment funds and 7,581 warrants.

The market capitalisation of shares listed amounted to EUR 309.7 billion. Of these, EUR 53.2 billion were issued as Global Depository Receipts (GDRs) originating mainly from Indian and Taiwanese companies in search of European exposure.

Geographical origin of listed depository receipts				
Country of origin	Quotation lines	Number of companies	Market cap. (EUR million)	Weight %
Argentina	3	2	1,187.27	2.23
Brazil	2	2	2,758.01	5.19
British Virgin Islands	1	1	46.53	0.09
Colombia	1	1	27.24	0.05
Cyprus	3	1	1,274.23	2.40
Hungary	3	3	3,846.29	7.23
India	176	163	16,512.12	31.06
Japan	2	2	306.29	0.58
Kazakhstan	4	1	218.45	0.41
Korea (Rep. of)	13	11	15,745.46	29.61
Lebanon	1	1	572.84	1.08
Pakistan	1	1	108.94	0.20
Sri Lanka	2	2	104.44	0.20
Taiwan	51	46	10,041.73	18.89
Thailand	1	1	0.21	0.00
Turkey	1	1	313.39	0.59
United Kingdom	1	1	103.43	0.19
Total	266	240	53,167.87	100.00

With the transposition of Directive 2003/71/EC into Luxembourg legislation in 2005, the Luxembourg Stock Exchange offers listing opportunities for all types of securities and financial vehicles via two markets:

- The main regulated market also called “Bourse de Luxembourg” market opened in May 1929. It later became a European regulated market and as such is regulated by the Luxembourg financial supervisor (the CSSF) and offers a European passport for securities.
- The Euro MTF is a Multilateral Trading Facility as defined by the European MiFID Directive, and was created in July 2005 in order to provide issuers with an alternative market to the traditional EU-regulated market. As such, it allows issuers to take advantage of a more liberal regime, which is particularly useful for international issuers that do not require a European passport for their securities issues.

Luxembourg Stock Exchange opportunities

An international marketplace	<ul style="list-style-type: none"> • A high level of know-how for international issuers • A neutral place for listing in Europe 3
A choice between two markets	<ul style="list-style-type: none"> • The main EU-regulated market providing issuers with an European passport • The exchange-regulated market (Euro MTF)
Listing of all types of securities and a variety of financial vehicles	<ul style="list-style-type: none"> • The broadest range of securities listed in Europe: bonds, investment funds, warrants, certificates, global depository receipts and shares • Financial vehicles currently listed include securitisation, SICARs, SIFs
Access to the Euronext market	<ul style="list-style-type: none"> • A cross-membership agreement with NYSE Euronext • A business partnership on corporate bonds 1
A flexible and transparent listing and trading platform	<ul style="list-style-type: none"> • Access to a fast, flexible and secure listing process • All listed securities are negotiable on a trading system open to the public with pre- and post-trade transparency features • An ideal market for companies, particularly for UCIs

Further information can be found on the Luxembourg Stock Exchange website (www.bourse.lu) and in the publication “The Luxembourg Stock Exchange: A prime location for listing”, 2010, co-authored by the Luxembourg Stock Exchange and PwC.

2.4 The financial sector associations

a) ABBL

The “Association des banques et banquiers, Luxembourg” (ABBL) represents the interests of the banks and PFS established in Luxembourg.

The objectives of the association are to protect and develop the professional interests of its members, to develop the financial sector as a whole, to promote the Luxembourg financial marketplace within Europe and beyond, and to participate in the shaping of the local market by their involvement in a number of local bodies.

The ABBL also relies on the Luxembourg Institute for Training in Banking (IFBL), whose mission is to develop the skills of financial sector employees. Since 1991, the IFBL has been organising vocational training courses covering the whole range of services offered by the Luxembourg financial marketplace.

Further information can be found on the association’s website at www.abbl.lu

The “Private Banking Group, Luxembourg” (PBGL) is a sub-group of ABBL members working in the Private Banking sector. The PBGL serves as an exchange platform for protecting Luxembourg Private Banks’ interests and reinforcing the promotion of the Luxembourg Private Banking centre abroad.

Created in June 2007, the PBGL is ABBL’s first sub-corporative group, and includes around 60 institutions.

In collaboration with the Luxembourg School of Finance, this group launched the first Private Banking training, the Certified Private Banker Training Programme Luxembourg, dedicated to client advisers and Private Banking business line directors. It aims at bringing an international credibility to the industry

and the financial centre.

Further information can be found on the association’s website at www.abbl.lu/private-banking-group

The “Retail Banking Group” (RBG) is an association of members of the ABBL active in the field of Retail banking. Launched in 2008, the RBG’s missions include defining initiatives and actions to be taken in the Retail banking profession, representing and defending the interests of the field of Retail banking, promoting standards and best practices, and developing training programmes adapted to the needs of the profession.

Further information can be found on the association’s website at www.abbl.lu/retail-banking-group

The “Depositary Bank Forum” (DBF) is a joint sub-organisation of the ABBL and ALFI composed of members of those associations specialised in custody and/or depositary activities. The objectives of the Forum are to define the actions to be taken for the promotion, to develop and defense the specific activities of operators specialised in custody and/or depositary activities; to enhance the qualifications and professionalism of members by promoting norms and by developing appropriate training; and to promote the specific interests of this category of members vis-à-vis regulatory developments at national or international level.

Further information can be found on the association’s website at www.abbl.lu/depositary-bank-forum

b) ALFI

The “Association of the Luxembourg Fund Industry” (ALFI) is the official representative body in charge of promoting the Luxembourg investment fund industry.

The objectives of the association are to help members to make the most of industry trends, participate in the

shaping of local regulations, encourage professionalism and promote the Luxembourg fund industry in the international marketplace.

The ALFI counts approximately 1,000 members, in which can be found a majority of investment funds and a number of service providers: custodian banks, fund promoters and administrators, transfer agents, fund distributors, legal advisers, consultants and legal experts, auditors, IT providers, etc.

ALFI’s training commission works closely with IFBL in the development of a large offer of courses and seminars specialised in the investment fund market, to respond to the industry’s need for highly qualified employees.

Further information can be found on the association’s website at www.alfi.lu

c) ALPP

The “Association Luxembourgeoise des Professionnels du Patrimoine” (ALPP) includes over 100 independent companies covering a wide range of financial and asset management services for private and institutional international clients.

The objective of the association is to promote and develop the sector of independent and experienced specialists in the financial sector. Among the association’s members are financial advisers, asset managers, domiciliation companies and administrators, investment funds and life insurance operators, traders, fiduciaries and legal advisers.

Further information can be found on the association’s website at www.alpp.lu

d) ACA

The “Association des Compagnies d’Assurance” (ACA) is the official representative body of insurance companies based in the Grand-Duchy of Luxembourg.

Created in 1956, the ACA counts approximately 70 members and has as its main goals the protection and development of professional interests as well as the improvement of services offered to public.

Further information can be found on the association's website at: www.aca.lu

e) ALCO

The "Association Luxembourgeoise des Compliance Officers" (ALCO) is the representative body of compliance officers from banks, PFS and insurance undertakings based in Luxembourg.

Created in 2000, ALCO has more than 400 members today, representing more than 150 institutions. The association aims at enhancing communication and exchanging of ideas between its members through regular meetings, participation in internal and external working groups, as well as by organising conferences and debates regarding ethical and compliance issues for the financial sector in the Grand Duchy of Luxembourg.

Further information can be found on the association's website at: www.alco.lu

f) PRiM

PRiM is the Luxembourg association for Risk Management Professionals. Its members come not only directly from the risk management functions in the sectors of banking, insurance, audit and consulting, but also from a broad range of related functions such as compliance, internal audit or operational and general management.

Created in 1997, PRiM aims at providing a Luxembourg-based forum for networking and exchange of information between professionals of the risk management world and to contribute actively to the institutional and regulatory world in the Luxembourg financial sector through membership of commissions, working groups and other similar initiatives.

Further information can be found on the association's website at: www.prim.lu

g) LAFO

The "Luxembourg Association for Family Offices" (LAFO) is the representative body for family offices established in Luxembourg.

Created in 2010 by about twenty members, the association is currently lobbying the Luxembourg authorities

to obtain the creation of an official status for family offices established in Luxembourg.

The association members have to adhere to a code of ethics promoting the following values and principles: loyalty towards the client, independence from service providers, expertise, implementation capacity at all levels, transparency and auto regulation.

Further information can be found on the association's website at: www.lafo.lu

h) IIA

The "Institute of Internal Auditors Luxembourg" (IIA Luxembourg) is the local chapter of the Institute of Internal Auditors, an international professional association established in 1941, headquartered in the United States, and whose main goal is to be the voice of the internal audit profession throughout the world.

IIA Luxembourg has about 400 members employed by some 100 Luxembourg based corporations from all economic sectors.

Further information can be found on the association's website at: www.iaa.lu

3 Establishment of a credit institution in Luxembourg



3.1 Legal form of the undertaking

Banking activity in Luxembourg can be exercised either by the establishment of a branch or the incorporation of a subsidiary of a foreign credit institution. Several foreign credit institutions operate in Luxembourg as a branch as well as a subsidiary, to take advantage of the benefits that accrue from the two structures.

3.1.1 Banking activity through a branch

All credit institutions authorised and supervised by competent authorities of another member state of the European Union can exercise their activities in Luxembourg, either by the establishment of a branch or by way of the free provision of services, as long as these activities are covered by the authorisation of the other member state. The undertaking of these activities is not subject to authorisation by the Luxembourg authorities.

Credit institutions not originating from the European Union that wish to establish a branch in Luxembourg are subject to the same authorisation rules as the Luxembourg subsidiaries of foreign credit institutions.

Branches are considered part of the foreign credit institution from a legal point of view; however, their assets must be segregated from those of their parent company.

The funded capital of the branch of a credit institution not originating from the European Union must be at least EUR 6,200,000. This requirement is waived for branches of credit institutions originating from another member state of the European Union.

Finally, branches are not required to publish their annual accounts as long as the accounting principles in force in their home country are equivalent to those prevailing in Luxembourg. Should this not be the case, the branch

is then required to prepare and have its accounts audited in accordance with the Luxembourg regulations. Branches have to publish the annual accounts of their head office in Luxembourg.

3.1.2 Banking activity through a subsidiary

A banking subsidiary in Luxembourg is defined as a legal entity established under Luxembourg law, whose activities consist of accepting deposits or other repayable funds from the public, and granting credits for its own account. The credit institution must have the form of a public institution (“établissement de droit public”), a public limited liability company (“société anonyme”), a limited partnership with a share capital (“société en commandite par actions”) or a co-operative (“société coopérative”).

The undertaking of the activities of a credit institution requires prior written authorisation from the Ministry of Finance seeking advice from the CSSF. No legal entity may be authorised to exercise the activity of a credit institution acting either through another person or as an intermediary for the exercise of this activity.

The choice of the legal status should be driven by an analysis of the advantages and disadvantages of each legal form and by the nature and level of banking activities that would be undertaken in Luxembourg.

3.1.3 Undertakings established under public law

There are two public banking entities in Luxembourg which are governed by specific legal requirements:

- “Banque et Caisse d’Epargne de l’Etat” (BCEE), a fully-fledged universal credit institution, which aims - as a state credit institution - at contributing to the economic and social development of the Grand Duchy by providing credit facilities and promoting savings. This credit institution also offers Private Banking

services and acts as a custodian bank for in-house and third-party funds.

- “Société Nationale de Crédit et d’Investissement” (SNCI), whose objective is to support the development of the Luxembourg economy (in particular the industry sector) by granting various types of loans to companies and making investments in venture capital projects. Funding is obtained from the Luxembourg State or by making State guaranteed debt issues.

3.1.4 Raiffeisen cooperative entity

“Banque Raiffeisen” is a co-operative universal credit institution operating on the domestic market, whose activities were confined in the past to collective savings from and granting loans to farmers. This credit institution nowadays also offers Private Banking and fund administration services. The “Banque Raiffeisen” has affiliated organisations, Caisses Raiffeisen, all over the Grand Duchy.

3.1.5 Information office

Foreign credit institutions may wish to set up an information office (“Bureau d’information”) in Luxembourg. The wording “representative office” is not permitted by the CSSF because it might imply the authority to conduct commercial transactions.

The activity of an information office is restricted to the collection and distribution of information for the sole purpose of promoting relationships with the financial community. All kinds of banking activities are prohibited.

The name of the information office must always be accompanied by a designation to exclude all appearances of banking activities. The premises of the information office must not have the appearance of a credit institution agency.

Before opening an information office, a credit institution must undergo an administrative procedure enabling the CSSF to assess whether the planned

activity is within the legal restrictions. The information office must issue an activity report to the CSSF each year.

3.2 Authorisation procedure

The authorisation procedure is described in Part 1 of the amended Law of 5 April 1993, which notably incorporates into Luxembourg law the European Banking Directive of 14 June 2006 (2006/48/EC), the Markets in Financial Instruments Directive (“MiFID”) of 24 April 2004 (2004/39/EC) and its implementing measures (in particular the Law of 13 July 2007).

Its objective is to coordinate the legislative, regulatory and administrative dispositions relating to access to the activities of credit institutions, as well as the exercise of these activities.

3.2.1 Banking activity through a branch of a EU head office

The law enacts, in Article 30, the concepts of “Free branching” and “Free provision of services” which permits all credit institutions authorised and supervised by the competent authorities of another EU member state (home country) to exercise their activities in Luxembourg (host country), either by the establishment of a branch or by way of free provision of services as long as these activities are covered by the authorisation of the home country. The exercise of these activities is not subject to authorisation by the Luxembourg authorities.

Consequently, a credit institution authorised in an EU member state, wishing to establish a branch in Luxembourg, must inform the home country authorities of its intention beforehand, accompanying this notification with the following information:

- a business plan indicating, in particular, the type of transactions envisaged, the organisational structure of the branch and whether the latter intends to use tied agents.

The business plan specifies the banking activities, investment services, investment activities and ancillary services that the branch intends to provide or carry out;

- address at which branch related documents may be obtained in the host country;
- names of the management representatives responsible for the branch.

In addition to the information referred to above, the home country authority also communicates to the CSSF the amount of own funds and solvency ratio of the credit institution making the application, as well as details of any deposit guarantee system and any investor compensation system aimed at protecting the depositors and investors of the branch of the applicant credit institution.

The home country authorities will communicate the above information to the CSSF in the three months following receipt of all information and will notify the applicant accordingly.

This process is further detailed in Circular CSSF 07/325.

3.2.2 Banking activity through a subsidiary or a branch of a non-EU head office

Applicants that wish to incorporate a Luxembourg banking legal entity or to set up a branch of a non-EU head office have to obtain prior authorisation from the Luxembourg authorities and have to follow the licence application procedure described hereafter.

A banking licence is granted by the Ministry of Finance (the Minister responsible for overseeing the CSSF) seeking advice from the CSSF.

The authorisation procedure aims at coordinating the legislative, regulatory and administrative dispositions relating to access to the activities of credit institutions, as well as the exercise of these activities.

Before taking a formal decision to set up a banking operation in Luxembourg, it is advisable that senior representatives of the applicant have an introductory meeting with the CSSF in order to give a general overview of the project to the authorities, which will at the same time be able to advise on the licence application procedures to be followed.

The CSSF is determined to maintain the good standing of the financial centre and takes care that only reputable applicants establish operations in Luxembourg. During these preliminary discussions they will seek information on the applicant's history and beneficial owners, the reasons for coming to Luxembourg, the planned business activities, the targeted clientele and countries, the shareholders' support, the administrative organisation and the staffing.

The standard procedure when applying for a banking licence is to first submit an application file to the CSSF and thereafter to the Ministry of Finance containing the following information based on the amended Law of 5 April 1993 (Article 3) and on Circular CSSF 09/392 which endorses the CESR, CEBS and CEIOPS joint "Guidelines for the prudential assessment of acquisitions and increases in holdings in the financial sector":

- presentation of the applicant wishing to establish in Luxembourg together with audited financial statements for the last three years;
- rationale for establishing in Luxembourg together with a list of proposed activities indicating the nature and volume of intended operations;
- details on the shareholders and beneficial owners (identity, standing);
- description of the administrative and accounting infrastructure of the Luxembourg undertaking;
- three-year business plan for the Luxembourg entity (balance sheet, profit and loss account, capital adequacy ratio and large exposures);
- draft articles of incorporation;

- curriculum vitae (current resume) and affidavit (certificate of good standing) of the Board members and management of the Luxembourg entity accompanied by a police certificate issued by the authorities of their resident country. There is a minimum of three Board members required by company law and a minimum of two managers resident in Luxembourg or in the near borders;
- name of the Luxembourg entity's external auditor, who must qualify as a Luxembourg certified accountant ("Réviseur d'entreprises agréé") and have adequate professional experience.

The CSSF will examine the application file and may address additional queries to the applicant. The Ministry of Finance will seek advice from the CSSF before granting the banking licence for an unlimited duration.

The decision taken by the Ministry of Finance with respect to the application for a banking licence must include the grounds on the basis of which it was taken and be notified to the applicant within six months of reception of the application or if the latter is incomplete, within six months of the reception of the complementary information needed to take a decision.

In any event, a decision must be given within twelve months of reception of the application and if it is not given, the absence of a decision is equivalent to notification of refusal. The decision is final unless it is referred, within one month, to the Administrative Court ("Tribunal Administratif") which shall determine the matter as a court adjudicating on the substance.

An authorisation from the CSSF is also required for a credit institution established in Luxembourg wishing to modify the object, the name or legal form as well as the creation or acquisition of agencies, branches or subsidiaries in Luxembourg or abroad without prejudice

of the provisions of the MiFID Directive ("Free branching").

A banking licence is withdrawn if the conditions governing its granting are no longer fulfilled. It also lapses if the credit institution does not make use of the authorisation within twelve months of it being granted, expressly relinquishes such authorisation or has ceased carrying out its activity during the last six months.

3.2.3 Banking activity from a Luxembourg bank within the EU

The law applies in chapter 4 the concept of "Free branching" and "Free provision of services" (as mentioned above in point 3.2.1) to credit institutions incorporated in Luxembourg. These entities are allowed to provide their services from Luxembourg to any EU member state either by establishment of a branch (Article 33) or by way of the free provision of services (Article 34), as long as these activities are covered by the authorisation granted by the CSSF. The exercise of these activities is not subject to authorisation by the host member state authorities.

Consequently, a credit institution authorised in Luxembourg, wishing to establish a branch in the territory of another EU member state, must inform the CSSF of its intention beforehand, accompanying this notification with the following information:

- name of the EU member state in whose territory it plans to establish a branch;
- a business plan indicating, in particular, the type of transactions envisaged, the organisational structure of the branch and whether the latter intends to use tied agents. The business plan specifies the banking activities, investment services, investment activities and ancillary services that the branch intends to provide or carry out;
- address at which branch related documents may be obtained in the host country;
- names of the management representatives responsible for the branch.

In addition to the information referred to above, the CSSF also communicates to the competent authority of the host member state the amount of own funds and solvency ratio of the credit institution making the application, as well as details of any deposit guarantee system and any investor compensation system aimed at protecting the depositors and investors of the branch of the applicant credit institution.

The CSSF will communicate the above information to the host country authorities in the three months following receipt of all information and will notify the applicant accordingly.

This process is detailed in Circular CSSF 07/326 as modified by Circular CSSF 10/442, which provides specific forms to be completed in order to require CSSF authorisation for opening a branch or for acting through the free provision of services in another EU member state.

3.3 Central administration and infrastructure

Authorisation is subject to proof of the existence in Luxembourg of the central administration and of the registered office of the applicant undertaking.

The requirements of central administration are detailed in Circular IML 95/120 which essentially covers the concepts of central administration and centre of decision-making:

- the administration of the credit institution must be located in Luxembourg and have the presence of a minimum of two senior officials, approved by the CSSF, responsible for the daily management, empowered to make decisions and of an appropriate executive infrastructure;
- the credit institution must also satisfy the organisational requirements defined in Article 37-1 of the amended Law of 5 April 1993.

Credit institutions need to have robust internal governance arrangements, which include a clear organisational structure

with well defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks they are or might be exposed to, and adequate internal control mechanisms, including sound administrative and accounting procedures, as well as security arrangements for information processing systems. These concepts are further expanded in Circular IML 96/126, Circular IML 98/143 and Circular CSSF 05/178, as summarised in Section 5 below.

If they entrust third parties with the execution of operating functions essential to the continuous and satisfactory provision of services to clients or for continuously and satisfactorily carrying out activities, credit institutions must take reasonable steps to avoid an excessive increase in the operational risk.

The outsourcing of important operating functions must not be done in such a way that it significantly damages the quality of the credit institutions' internal control, or in such a way that it prevents the CSSF from checking that credit institutions are complying with their obligations.

3.4 Shareholdings

Authorisation is subject to the communication to the CSSF of the identity of shareholders or partners, either direct or indirect, individuals or legal entities, which hold in the applicant undertaking a qualifying holding which permits them to exercise a significant influence over the conduct of its affairs, and the total amount of these holdings. The suitability and reputation of these said shareholders or partners must be of a satisfactory level, taking into consideration the need to guarantee a sound and prudent management of the credit institution. A qualifying holding is understood to be a holding in an undertaking, directly or indirectly, of at least 10% of the share capital, voting rights or any other means of influencing the management of the undertaking concerned.

Authorisation is subject to the condition that the structures of direct and indirect shareholdings of the undertaking and, if the case arises, of the group to which it belongs, is transparent and organised in such a way that the authorities responsible for the supervision of the undertaking are clearly identified. This supervision might be exercised without restriction and to assure supervision on a consolidated basis of the group to which the undertaking forms part.

Before taking a direct or indirect holding in a Luxembourg credit institution, a potential shareholder must notify the CSSF of his/her intention to do so.

In addition, when a shareholder foresees an increase in his qualifying holding such that it will reach or exceed 20%, 33% or 50% of the voting rights or shares of the undertaking, he/she must inform the CSSF. The latter can oppose the said project if, taking into account the need to guarantee sound and prudent management of the credit institution, they are not satisfied with the quality of the shareholder. The CSSF must also be given prior notification of the sale of qualified holdings by the shareholders, as well as any decrease in shareholding.

Finally, credit institutions are required to communicate to the CSSF, once a year, the identity of shareholders or partners who possess qualifying holdings, as well as the total size of the said holdings.

3.5 Professional standing and experience

Authorisation is subject to the members of the Board of Directors, management and individuals responsible for supervision, as well as the shareholders or partners, providing proof of their professional standing. This reputation is assessed on the basis of past history and by any other evidence, which shows that the persons concerned have a good reputation and present every guarantee of irreproachable conduct (also known as "fit and proper test").

The persons responsible for the management of the undertaking must be at least two and be able to effectively determine the orientation of the undertaking's activity. They must show evidence of professional experience deemed to be adequate by the fact that they have already carried out similar activities at a high level of responsibility and autonomy.

Any change in the persons required fulfilling the legal conditions of professional standing and experience must receive prior agreement from the CSSF. To this end the CSSF may request background information about the persons required to meet the legal conditions.

3.6 Capital base

Authorisation is subject to proof of a subscribed share capital of EUR 8,700,000 of which at least EUR 6,200,000 must be paid up.

A branch of a non-EU head office is required to have at its disposal an endowment capital of EUR 6,200,000.

The shareholders' equity of a credit institution cannot fall below the minimum level of share capital stated above. If the shareholders' equity falls below this amount, the CSSF can, if the circumstances justify it, grant a limited time extension for the credit institution to regularise its position or cease its activities.

3.7 External audit

Authorisation is subject to the condition that the undertaking has its annual accounts audited by one or more external auditors, who must be established as a Luxembourg certified accountant ("Réviseurs d'entreprises agréés") and have adequate professional experience. The appointment of external auditors is made by the Board of Directors of the credit institution.

Any change in external auditors must be authorised beforehand by the CSSF.

3.8 Participation in a deposit guarantee scheme and in an investor indemnification system

The authorisation is subject to the credit institution's participation in a deposit guarantee system and in an investor indemnification system instituted in Luxembourg and recognised by the CSSF.

For further detailed information, please read Sections 5.1.5 and 5.1.6.

3.9 Withdrawal of authorisation

The authorisation is withdrawn if the conditions under which it was granted are no longer fulfilled. The authorisation lapses if it is not utilised during an uninterrupted period of more than twelve months, if the credit institution expressly relinquished such authorisation or has ceased carrying out its activity during the last six months.

The decision of withdrawal of authorisation is final unless it is referred, within one month to the Administrative Court, which shall determine the matter as a court adjudicating on the substance.

For further information, do not hesitate to contact:



Gregoire Huret
Corporate Finance
+352 49 48 48 2527
gregoire.huret@lu.pwc.com



Emmanuelle Caruel-Henniaux
Regulatory Compliance
+352 49 48 48 2549
emmanuelle.henniaux@lu.pwc.com



François Génaux
Advisory Financial Services
+352 49 48 48 2509
francois.genaux@lu.pwc.com

4 *Supervision and control of credit institutions*



Article 42 of the amended Law of 5 April 1993 outlines the principle of supervision of credit institutions. Credit institutions are subject to the control of the CSSF. The supervision by the CSSF extends equally to activities exercised by these undertakings in another member state of the European Union, whether by means of the establishment of a branch or by the free provision of services.

4.1 “Commission de Surveillance du Secteur Financier” (CSSF)

The CSSF is the competent authority for the prudential supervision of credit institutions, Professionals of the Financial Sector, Undertakings for Collective Investment, pension funds, SICARs, certain securitisation vehicles, regulated markets and their operators, multilateral trading facilities, payment institutions and electronic money institutions. It also supervises the securities markets including their operators.

The CSSF took over the responsibilities of the “Institut Monétaire Luxembourgeois” (IML) which became the “Banque centrale du Luxembourg” (BcL) on 1 June 1998.

The CSSF’s prudential supervision of financial institutions aims at:

- promoting a considered and prudent business policy in compliance with the regulatory requirements;
- protecting the financial stability of the supervised companies and of the financial sector as a whole;
- supervising the quality of the organisation and internal control systems;
- strengthening the quality of risk management.

The CSSF only acts in the public interest, ensures that the laws and regulations related to the financial sector are both enforced and observed and that international agreements and European Directives in the fields under its responsibility are implemented.

The responsibility of supervision in the financial sector is defined in Part III of the amended Law of 5 April 1993 and the CSSF has regulatory power by means of circulars or instructions which are addressed to financial institutions.

The CSSF supervision is effected through a review of periodic reports sent to the CSSF by electronic means. Two types of reporting are due to the CSSF:

- 1) Periodic reporting: for prudential supervisory purposes, supervised entities are required to transmit to the CSSF financial data relating to their activities on a monthly, quarterly, half-yearly or annual basis, depending on the object.
- 2) TAF/MiFID reporting (“Transactions sur Actifs Financiers”): transactions on financial assets): for the purpose of supervising markets in financial instruments, credit institutions are required to report to the CSSF all transactions in financial instruments admitted to trading on a regulated market in the European Economic Area whether or not these transactions have been made on a regulated market.

The “Recueil des instructions aux banques”, drawn up by the CSSF, includes all the instructions for periodic reporting and certain ad hoc reports that banks must submit to the CSSF, as well as details concerning legal publication of their accounts.

The periodic reporting to the CSSF has to be established in accordance with IAS/IFRS. Further details on the periodic reporting are given in Section 5.3.6 hereafter.

The published accounts may be established under Luxembourg GAAP, or Luxembourg GAAP with IAS options, or IFRS, as detailed in Section 6 hereafter.

4.2 “Banque Centrale du Luxembourg” (BcL)

The BcL was created on 1 June 1998 and is member of the European System of Central Banks. It is an independent establishment as stated in its organic Law of 1 January 1999 and in the EU treaties.

The BcL is in charge of all monetary and financial competencies which deal with the national central banks within the European System of Central Banks (“ESCB”).

The basic tasks to be carried out by the ESCB include:

- to define and implement the monetary policy of the Community;
- to conduct foreign exchange operations consistent with the provisions of Article 219 of the Maastricht Treaty;
- to hold and manage the official foreign reserves of the EU Member States;
- to promote the smooth operation of payment systems.

The BcL’s main task is to contribute to the fulfillment of the ESCB’s missions. It also provides services to public institutions, to the financial sector and to the national economy as a whole. In general, it opens accounts only to monetary and financial institutions.

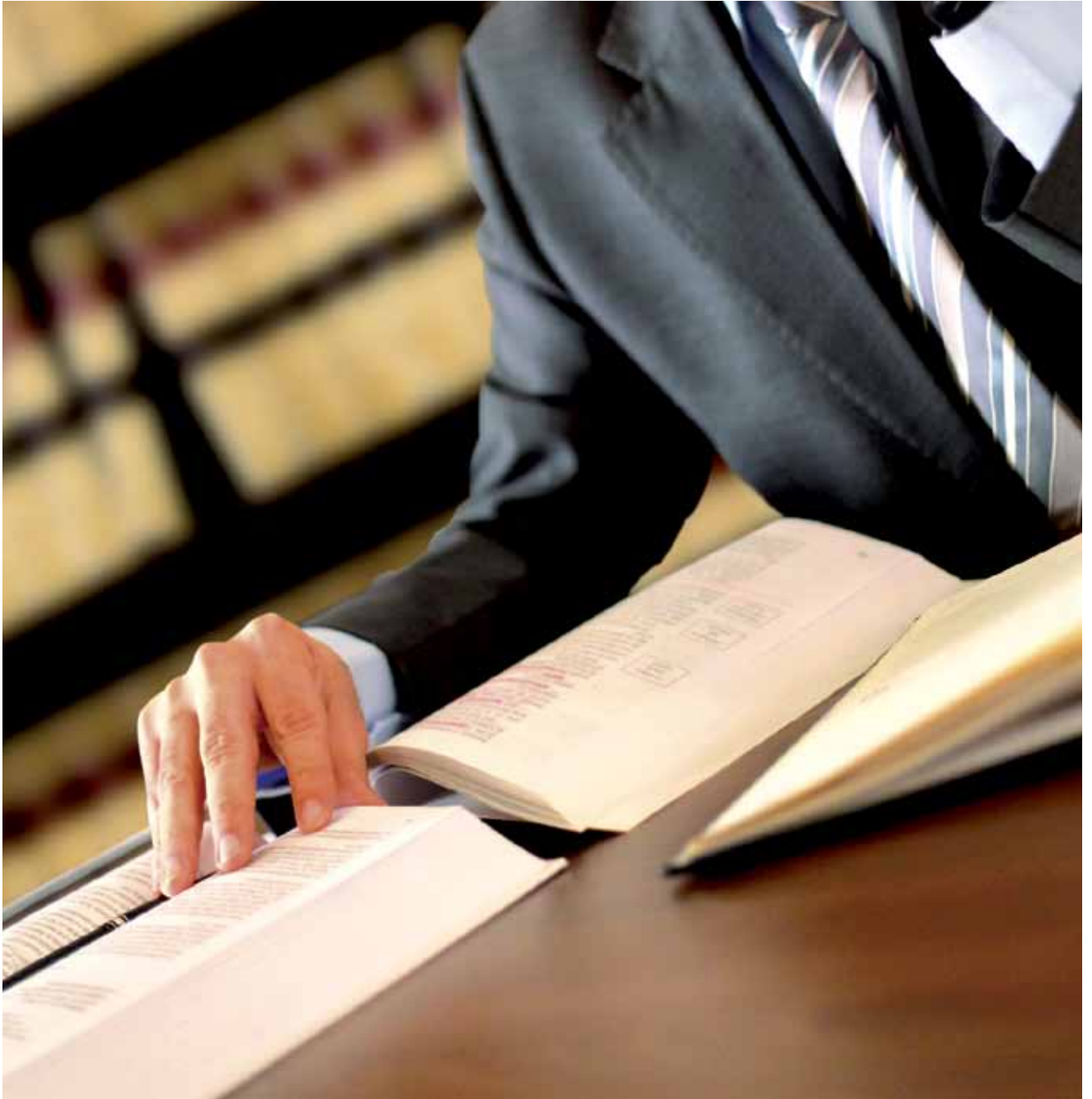
The BcL has an important role in the collection, analysis and diffusion of economic and financial information. It is entitled to collect the necessary statistical information, either from the competent national authorities, or directly from economic agents. It has the right to check this information

on the spot. The BcL collects from its counterparts of the Luxembourg financial centre elements for the analyses concerning the development of the markets and cooperates closely with the “Service Central de la Statistique et des Etudes Economiques” (STATEC), the statistics institution of the Luxembourg State.

It collects, analyses and publishes statistical information, especially in the monetary and balance of payments fields. It uses these statistics for its own analyses or for those of the Eurosystem. These statistics are essential for the preparation of European monetary policy, and also for good economic governance.

Besides managing its own reserves, the BcL also manages part of the exchange reserves of the Eurosystem. It may also offer its reserve management services to central banks which are not members of the ESCB or manage the cash reserves of international institutions. The BcL then puts its resources and its know-how in terms of analysis and research at the disposal of those central banks and international institutions.

5 *Laws and regulations*



As a result of their legal form, credit institutions are subject to the amended Law of 10 August 1915 relating to commercial companies, except for sections XIII and XVI relating respectively to the annual and consolidated accounts. The accounts of credit institutions are specifically subject to the amended Law of 17 June 1992 relating to the annual and consolidated accounts of Luxembourg credit institutions.

The financial sector is subject to the amended Law of 5 April 1993. This is complemented by various Grand-Ducal regulations and also by Circulars issued by the CSSF. In addition, a number of supplementary laws cover various aspects of financial activities.

A credit institution (or a bank) is defined by Article 1(12) of the amended Law of 5 April 1993 as a “legal person whose activities consist in receiving from the public deposits or other repayable funds and in granting credits for its own account”.

Article 3(7) provides that credit institutions authorised in Luxembourg are ipso jure authorised:

- to perform all the activities listed in Annexe I of the Law;
- to provide all the investment services and to perform all the investment activities listed in Section A of Annexe II of the Law;
- to provide all ancillary services listed in Section C of Annexe II of the Law, and
- to perform any other activity falling under the scope of this law.

Banking activities (Annexe I of the amended Law of 5 April 1993)

- Acceptance of deposits and other repayable funds.
- Lending, including, inter alia, consumer credit, mortgage credit, factoring, with or without recourse, financing of commercial transactions (including forfeiting).
- Financial leasing.
- Payment services within the meaning of Article 1(38) of the Law of 10 November 2009 on payment services.
- Issuing and administering other means of payment (e.g. travellers' cheques and bankers' drafts) insofar as this activity is not covered by point 4.
- Guarantees and commitments.

- Trading for own account or for account of customers in:
 - (a) money-market instruments (cheques, bills, certificates of deposit, etc.);
 - (b) foreign exchange;
 - (c) financial futures and options;
 - (d) exchange and interest-rate instruments;
 - (e) transferable securities.
- Participation in securities issues and the provision of services related to such issues.
- Advice to undertakings on capital structure, industrial strategy and related questions and advice as well as services relating to mergers and the purchase of undertakings.
- Money broking.
- Portfolio management and advice.
- Safekeeping and administration of securities.
- Credit reference services.
- Safe-custody services.
- Issuance of electronic money.

Investment services and investment activities (Section A of Annexe II of the amended Law of 5 April 1993)

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

5.1 Amended Law of 5 April 1993

The amended Law of 5 April 1993, relating to the financial sector, incorporates into Luxembourg law among others the European Banking Directive of 14 June 2006 (2006/48/EC), which addresses the taking-up and pursuit of the business of credit institutions, the Markets in Financial Instruments Directive of 24 April 2004 (2004/39/EC) and its implementing measures (in particular the Law of 13 July 2007).

This law regulates:

- the access to professional activities in the financial sector (Part I);
- the professional duties, prudential rules and rules of conduct in the financial sector (Part II);
- the prudential supervision of the financial sector (Part III);
- the reorganisation and the liquidation of certain financial sector professionals (Part IV);
- the deposit guarantee schemes with credit institutions (Part IV bis);
- the indemnification system for investors in credit institutions and investment firms (Part IV ter);
- the penalties (Part V);
- and the amendments, repeals and transitional provisions (Part VI).

This publication gives below a description of the salient features of this law.

5.1.1 Access to professional activities in the financial sector (Part I)

For more information on the access to professional activities, the reader should refer to Section 3 of this publication.

5.1.2 Professional duties, prudential rules and rules of conduct in the financial sector (Part II)

The law establishes certain rules relating to (i) organisational requirements and rules of conduct (Articles 37-1 to 37-8) and to (ii) anti-money laundering and financing of terrorism and professional secrecy (Articles 39 to 41) and refers to the Law of 12 November 2004 that has been amended on 17 July 2008 and on 27 October 2010. This law specifically addresses the fight against money laundering and terrorism financing by adding some more explanations to the obligations described below.

5.1.2.1 Organisational requirements and rules of conduct (Articles 37-1 to 37-8)

In accordance with MiFID, the Law provides for specific rules as regards:

- Organisational requirements (article 37-1) (refer to Section 3.3).
- Conflicts of interest: take reasonable measures to identify circumstances which may give rise to a conflict of interest in the course of providing investment and ancillary services or a combination thereof (article 37-2).
- Conduct of business when providing investment services to clients (article 37-3):
 - a) carry out its work in a loyal and fair manner;
 - b) inquire for a client's or potential client's knowledge and experience in the investment field depending on the type of product or transaction envisaged, the financial situation and investment objectives of the client;
 - c) provide adequate reports to clients on the service provided including transaction costs;
 - d) address fair, clear and not misleading information to clients.

- Provision of services through the medium of another credit institution or another investment firm (article 37-4).
- Obligations to execute orders on terms most favourable to the client (article 37-5):
 - a) take reasonable measures to obtain when executing orders the best possible result (price, cost, probability of execution, etc.);
 - b) implement an execution policy of orders, provide clients with appropriate information on the execution policy and obtain their approval on this policy, monitor the efficiency of the execution of orders and improve potential gaps identified, and be able to demonstrate, on demand of the client, the execution of orders in compliance with the execution policy.
- Client order handling rules: implement procedures to ensure a fair execution of client orders and ensure that orders executed on behalf of clients are promptly and accurately recorded and allocated (article 37-6).
- Transactions with eligible counterparties (article 37-7).
- Obligations when appointing tied agents (article 37-8).

These requirements have been further detailed in Grand Ducal Regulation of 13 July 2007 and in various circulars, notably Circular CSSF 07/307.

5.1.2.2 Professional obligations as regards combating money laundering and financing of terrorism (Article 39)

A credit institution has to require the identification of its clients with conclusive documentation when it establishes business relationships, in particular when it opens an account, deposit accounts or offers custodian services of assets.

Following the amended Law of 12 November 2004 credit institutions have to perform customer due diligence i.e.:

- identify the customer and verify the client's identity on the basis of documents, data or information obtained from a reliable and independent source;
- identify, where applicable, beneficial owner and take reasonable measures to verify his identity so that the credit institution knows the identity of the beneficial owner;
- with regard to legal persons, trusts and similar legal arrangements, take reasonable measures to understand the ownership and control structure of the client;
- obtain information on the purpose and intended nature of the business relationship;
- conduct ongoing monitoring of the business relationship, including scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the credit institution's knowledge of the client, the business and risk profile, including where necessary, the source of funds and ensuring that the documents, data or information held are kept up-to-date.

A credit institution has to apply customer due diligence measures in the following cases:

- when establishing a business relationship;
- when carrying out occasional transactions amounting to EUR 15,000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;
- when there is a suspicion of money laundering or the financing of terrorism, regardless of any derogation, exemption or threshold;
- when there are doubts about the accuracy or adequacy of previously obtained customer identification data.

In case of doubt in knowing whether the clients act for their own account, or not, credit institutions must take reasonable steps with a view to obtaining information with respect to the real identity of the persons on whose account the clients act.

Credit institutions have a duty to pay particular attention to transactions that they consider susceptible by their nature to being linked to money laundering or the financing of terrorism (complex transactions, unusual transactions, transactions with no apparent economic reason, etc.).

Moreover, the credit institutions have to implement a risk-based approach, whereby they are required to adapt their customer due diligence to the assessed level of money laundering and financing of terrorism risks.

The amended Law of 12 November 2004 lists the cases for which:

- a simplified customer due diligence is possible, e.g. quoted companies, Luxembourg public authorities, etc. (Article 3-1);
- an enhanced customer due diligence is necessary: customer not physically present for identification purposes, cross-frontier correspondent banking relationships with respondent institutions from third countries, politically exposed persons (PEP), and all other situations representing a high risk of money laundering and financing of terrorism (Article 3-2).

The credit institutions must keep various documents which could be used as evidence in the event of inquiries relating to money laundering. They must keep the documents regarding the identification of a client for five years after the end of the relationship with the client, and the supporting documents and records regarding the transactions for five years from the execution of the transaction or after the end of the relationship.

Credit institutions are also required:

- to perform an analysis of the risks inherent to their business activities and to set down in writing the findings of this analysis;
- to implement adequate procedures of internal control and communication in order to prevent and hinder the execution of operations linked to money laundering or the financing of terrorism;
- to take appropriate measures to make their employees aware of the provisions contained in the law. These measures include special training programs for the employees concerned in order to help them to recognise operations which could be linked to money laundering or financing of terrorism and to instruct them in the manner in which to proceed in such cases;
- to incorporate information on the originator to wire transfers.

5.1.2.3 Obligation to cooperate with the authorities (Article 40)

Credit institutions, their management and employees are required to fully cooperate with the Luxembourg authorities responsible for the fight against money laundering and financing of terrorism (i.e. Public Prosecutor of the Luxembourg District Court and the CSSF):

- in supplying to these authorities, on their request, all necessary information;
- in informing, on their own initiative and without delay, the financial intelligence unit of the Public Prosecutor to the District Court of Luxembourg of all acts suspected of being money laundering or financing of terrorism.

The above information is usually communicated to the appropriate authorities by the person(s) designated to this effect by the credit institution.

Credit institutions must refrain from executing a transaction they know or suspect to be linked to money laundering or financing of terrorism. They must first of all inform the Public Prosecutor who may give instructions not to execute the transaction.

Credit institutions may not reveal to their client or outside parties that they have transmitted information to the authorities or that an inquiry regarding money laundering has been launched against him. However, under certain specific conditions described in article 5(5) of the amended Law of 12 November 2004, credit institutions are authorised to communicate information on suspicious cases notified to the financial intelligence unit of the Public Prosecutor of the Luxembourg District Court to other professionals (for example, under certain conditions, to another credit institution belonging to the same group or to another credit institution that entered into business relationship with the same client, etc.).

5.1.2.4 Duty of professional secrecy (Article 41)

Natural and legal persons, subject to the prudential supervision of the CSSF pursuant to the Law of 5 April 1993, as well as administrators, members of managing and supervisory bodies, directors, employees and other persons in the service of these natural and legal persons are bound to secrecy concerning the information entrusted to them in the context of their professional activities or mandate. Disclosure of any such information is punishable by the penalties laid down in Article 458 of the Penal Code (imprisonment from eight days to six months and a fine from EUR 500 to EUR 5,000).

The requirement for secrecy ceases when the disclosure of information is authorised or imposed by or because of a legal provision, even when prior to the amended Law of 5 April 1993.

The duty of secrecy shall not be applicable to:

- National or foreign authorities, responsible for supervising the financial sector if they are acting within their legal capacity for the purposes of this supervision and if the communicated information is covered by the code of professional secrecy of the receiving supervisory authority. The transmission of the necessary information to a foreign authority for the supervision must be done via the intermediary of the parent company or the shareholders or partners involved in the same supervision.
- Shareholders or partners upon whose integrity the establishment's authorisation depends, to the extent that the information communicated to these shareholders or partners is necessary for the sound and prudent management of the undertaking and does not reveal directly the commitments of the undertaking with regards to a client other than a professional of the financial sector.

By way of derogation from the preceding paragraph, credit institutions belonging to a financial group shall assure the internal supervisory bodies of that group that it will allow access, where necessary, to information concerning particular business relations, in so far as it is necessary for the overall management of legal and reputational risks connected to money laundering or the financing of terrorism within the meaning of Luxembourg law.

The confidentiality requirement shall not be applicable to client communication agents, administrative agents of the financial sector and IT system and communication network operators of the financial sector in so far as the extent to which the information transmitted to such professionals is transmitted under a service agreement for the provision of services.

5.1.3 Prudential supervision of the financial sector (Part III)

5.1.3.1 Competent authority for supervision and its role (Chapter 1)

The Commission de Surveillance du Secteur Financier (CSSF) is the competent authority, which acts exclusively in the public interest, supervises the application of the laws and regulations relating to the financial sector, as well as watches over the respect of the enforcement of international conventions and laws of the European Union.

Members and former members of the CSSF, as well as auditors or experts nominated by the CSSF, are bound to professional secrecy. The CSSF may, however, exchange with other supervisory authorities, the information necessary for the supervision of the financial sector on condition that the information falls under the duty of secrecy of the authority that receives it and only to the extent where the other authority grants the same information rights to the CSSF.

5.1.3.2 The supervision of credit institutions, certain financial institutions and investment firms exercising their activities in more than one member state (Chapter 2)

The supervision of a credit institution established under Luxembourg law extends equally to activities exercised by this undertaking in another member state of the European Union, whether by means of the establishment of a branch or by the free provision of services. If a credit institution, having a branch in Luxembourg, originates from another member state, the supervision falls on the authorities of that other member state.

The CSSF as a competent authority of the host member state remains responsible, in conjunction with the competent authorities of the member state of origin, for supervising the liquidity of the Luxembourg branches of credit institutions authorised in another member state, as well as certain rules of conduct, particularly Article 37-3 of the amended Law of 5 April 1993 (rules of conduct for the provision of investment services to clients), Article 37-5 (obligation to execute orders under the most favourable conditions to the client) and Article 37-6 (rules for handling client orders) of the same law.

For the purposes of supervising the activity of the branches established in another member state, the CSSF may, after having informed the competent authority of the host member state, proceed by itself or through persons that it has appointed for this purpose, with the onsite verification of information relating to the company directors, management and ownership of the credit institution concerned, likely to facilitate its supervision and examination of the credit institution's approval terms and conditions, as well as all information likely to facilitate the control of this credit institution particularly in terms of capital adequacy, liquidity, solvency, deposit guarantees, major risk limitation, administrative and accounting organisation and internal control.

5.1.3.3 The supervision of credit institutions on a consolidated basis (Chapter 3)

The CSSF exercises a prudential supervision based on the consolidated financial situation on any Luxembourg parent company institution which holds, directly or indirectly, 20% or more of the capital or voting rights of another credit or financial institution.

The CSSF also exercises prudential supervision based on the consolidated financial situation of Luxembourg parent financial holding company which has a Luxembourg bank as a subsidiary.

Where the Luxembourg parent financial holding company has various banking subsidiaries established in different EU member states, CSSF exercises the supervision on a consolidated basis if the Luxembourg banking subsidiary shows the largest balance sheet total.

The form and extent of consolidation, cooperation with the other authorities responsible for consolidated supervision and means used to exercise consolidated supervision are further detailed in Articles 50 to 51-1a of the Law.

5.1.3.4 Additional supervision of credit institutions in a financial conglomerate (Chapter 3ter)

The Law of 5 November 2006 on the supervision of financial conglomerates and amending the Law of 5 April 1993 introduces a supplementary supervision on financial conglomerates into Luxembourg law.

A financial conglomerate is a group that includes at least one important regulated entity within the banking or investment services sector and one important entity within the insurance sector.

The law requires the CSSF to perform a supplementary supervision of the financial conglomerates for which it exercises the role of coordinator of the supervision, the coordinator being the authority responsible for the coordination and supplementary supervision of the financial conglomerate. The CSSF's supplementary supervision of financial conglomerates does not affect at all the sectoral prudential supervision, both on the individual and consolidated level, by the relevant competent authorities.

5.1.3.5 The means for supervision (Chapter 4)

The CSSF has several means of supervision, the main being:

a) CSSF's powers (Article 53)

The CSSF's supervisory and investigative powers include the right to:

- access any document in whatever form and to receive a copy of it;
- request information from any person and, if necessary, to summon a person in order to obtain information;
- proceed with onsite inspections or investigations with persons subject to its prudential supervision;
- require existing telephone and existing data traffic records;
- enjoin to cease any practice contrary to the provisions of the amended Law of 5 April 1993 and the measures taken for its execution;
- apply to the magistrate of the district court of Luxembourg hearing appeals for the freezing and/or confiscation of assets;
- pronounce the temporary banning of professional activities against persons subject to its prudential supervision, as well as members of administrative and management bodies, employees and tied agents of these persons;
- require external auditors of persons subject to its prudential supervision to provide information;
- adopt any measure necessary to ensure that persons subject to its prudential supervision continue to comply with the requirements of the amended Law of 5 April 1993 and the measures taken for its execution;
- transmit information to the State Prosecutor with a view to criminal proceedings;
- instruct company auditors or experts to carry out onsite verifications or investigations with persons subject to its prudential supervision.

The CSSF may also require credit institutions to hold funds in excess of the minimum level, require reinforcement of the arrangements, processes, mechanisms and strategies implemented to comply with central administration and infrastructure requirements and to the internal process for internal capital adequacy assessment process.

b) The relationship with the external auditors (“Réviseurs d’entreprises agréés”) (Article 54)

Every credit institution subject to the supervision of the CSSF, and whose accounts are subject to an audit by a “Réviseur d’entreprises agréé”, is required to communicate immediately to the CSSF the reports, Long Form Reports and written comments issued by the “Réviseur d’entreprises agréé” in the course of his/her audit of the annual accounts. The CSSF can establish regulations relating to the scope of the audit mandate and the content of the audit report on the annual accounts.

The CSSF can also request a “Réviseur d’entreprises agréé” to perform an audit of one or more specified aspects of the activity and the operations of an undertaking.

c) Ratios (Article 56)

The CSSF sets ratios, which credit institutions subject to its supervision are required to observe. It defines the elements entering into the calculation of these ratios and ensures that those set by international conventions or by European Union Directives are respected.

d) Authorisation of investments (Article 57)

A credit institution that wishes to have a qualifying investment (more than 10% of the share capital and/or voting rights of the investee company) must obtain prior authorisation of the CSSF. Limits apply when the investee is not a financial institution.

e) Complaints by clients (Article 58)

The CSSF is competent to receive complaints from clients of entities subject to its supervision and to mediate with those entities, with the objective of settling these complaints on an amicable basis. The treatment of customer complaints is subject to Circular IML 95/118.

f) The right of injunction and suspension by the CSSF (Article 59)

When an undertaking subject to the supervision of the CSSF does not apply the legal, regulatory or statutory provisions relating to its business, or when its management or financial situation does not provide sufficient guarantees for satisfactorily meeting its commitments, the CSSF will direct, by registered letter, this entity to remedy the situation within a specified time limit.

If, at the end of the time limit specified by the CSSF, the entity has not remedied the noted situation, the CSSF can:

- suspend the members of the Board of Directors, the members of management or any other persons who, by their action, their negligence or their imprudence, have incurred the situation or whose continuation in this function might potentially be detrimental to the application of the rescue measures or re-organisation of the entity;
- suspend the exercise of voting rights attached to the shares or units held by the shareholders or partners, whose influence is likely to be detrimental to the sound and prudent management of the entity concerned;
- suspend the continuation of activities of the entities, or, where the situation relates to a specific area of activity, suspend the continuation of that specific area.

5.1.4 Reorganisation and winding up of certain professionals of the financial sector (Part IV)

5.1.4.1 Suspension of payments (Chapter 1)

The suspension of payments may come into effect when:

- the institution ceases to be creditworthy or there is a shortage of liquidity, whether suspension of payments is in force or not;
- full honouring of the institution’s obligations is compromised;
- the institution’s authorisation has been withdrawn and that decision is not yet final.

Only the CSSF or the institution may ask the Court to declare suspension of payments.

The reasoned application, and the supporting documents, are lodged with the Court Registry.

5.1.4.2 Winding up (Chapter 2)

There are two types of winding up:

- voluntary winding up (Article 60-8) as the credit institution may place itself in voluntary liquidation;
- judicial winding up (Articles 61 to 61-8).

Judicial winding up may come into effect where:

- it is clear that the suspension of payments scheme provided for in the preceding chapter does not allow the situation that justified it to be remedied;
- the financial situation of the institution has deteriorated to the point where it can no longer meet its commitments with respect to all holders of claims or subscription rights;
- the institution’s authorisation has been withdrawn and that decision has become final.

Only the CSSF, which has been duly joined as a party to the proceedings, and the State prosecutor, may ask the Court to declare the dissolution and winding up of an institution.

The reasoned application, and the supporting documents, are lodged with the Court Registry and the applicant shall notify the institution thereof.

5.1.5 Deposit guarantee schemes with credit institutions (Part IV bis)

5.1.5.1 Protection of persons depositing funds with credit institutions governed by Luxembourg law and with Luxembourg branches of credit institutions, that have their head offices based in a third country (Chapter 1)

In order to be recognised by the CSSF, deposit guarantee schemes located in Luxembourg shall, in the case of the unavailability of deposits, ensure repayment to depositors (individuals and legal entities) with credit institutions under Luxembourg law, including their branches in other EU member states and depositors with Luxembourg credit institutions that have their head offices outside the EU according to the provisions laid down in Part IV bis of the law.

The CSSF shall keep an official list of recognised guarantee schemes located in Luxembourg.

Articles 62-2 to 62-6 of the amended Law of 5 April 1993 stipulate in particular the level and scope of the guarantee, the conditions of payment and time limits and the obligation to provide clients with information. Eligible deposits are covered by the “Association pour la Garantie des Dépôts, Luxembourg” (AGDL) up to a total amount of EUR 100,000 as of October 2011.

5.1.5.2 Protection of persons depositing funds with Luxembourg branches of credit institutions governed by the law of another member state (Chapter 2)

The depositors with Luxembourg branches of credit institutions falling under another EU member state’s law shall be covered by one of the official deposit guarantee schemes located in the member state which issued the authorisation to the credit institution to which the Luxembourg branch belongs. When the level or scope of protection is lower in the home member state, the Luxembourg branch may join the AGDL in order to supplement the cover which their depositors enjoy.

5.1.6 Indemnification system for investors with credit institutions (Part IV ter)

Concerning the coverage of investors with credit institutions governed by Luxembourg law and with Luxembourg branches of credit institutions whose registered office is outside the EU, the investor indemnification systems instituted in Luxembourg must, in order to be recognised by the CSSF, provide coverage of credits arising from the inability of a credit institution or investment firm to:

- reimburse investors the funds due to them or belonging to them and held on their account in relation to investment operations; or
- restore to investors instruments belonging to them and held, administered or managed on their account in relation to investment operations, in accordance with the applicable legal and contractual conditions.

The indemnification systems should be recognised by the CSSF and cover investors, individuals or legal entities with credit institutions subject to Luxembourg law, with branches in another member state of credit institutions subject to Luxembourg law, or with Luxembourg branches of credit

Eligible deposits are covered by the “Association pour la Garantie des Dépôts, Luxembourg” (AGDL) up to a total amount of EUR 100,000 as of October 2011.

Eligible claims are covered by the AGDL up to a total amount of EUR 20,000 as of October 2011.

institutions whose registered office is outside the EU, within the limits, under the conditions and in accordance with the procedures laid down herein.

The CSSF shall keep an official table of the investor indemnification systems instituted in Luxembourg and recognised by it. Eligible claims are covered by the AGDL up to a total amount of EUR 20,000 as of October 2011.

Investors, whether individuals or legal entities, with Luxembourg branches of credit institutions subject to the law of another member state are, in principle, covered by one of the official investor indemnification systems instituted in the member state which has issued its approval to the credit institution which controls the Luxembourg branch.

5.1.7 Penalties (Part V)

5.1.7.1 Administrative sanctions (Article 63)

Legal persons subject to the supervision of the CSSF and natural persons in charge of administration and management of these legal persons as well as natural persons subject to such supervision can be sanctioned or fined when:

- they fail to comply with applicable laws, regulations, statutory provisions or instructions;
- they refuse to supply to the CSSF information requested, or such information is supplied but it proves to be incomplete, inaccurate or false;
- they prevent or hinder inspections made by the CSSF;
- they do not meet the rules regarding the publication of annual accounts;
- they fail to act in response to injunctions of the CSSF;

- they act in a manner that jeopardises the sound and prudent management of the credit institution.

If one of the above conditions is met the CSSF may impose various types of sanctions, from a warning to a fine of an amount ranging from EUR 250 to EUR 250,000 or to the definitive prohibition on participation in the profession.

5.1.7.2 Criminal sanctions (Article 64)

Imprisonment and fines are also foreseen for contraventions of the law in the instances outlined in Article 64 of the amended Law of 5 April 1993.

5.2 Law of 17 June 1992 related to annual accounts, as amended by the Law of 16 March 2006

The preparation and publishing of the annual accounts is regulated by the Law of 17 June 1992, as amended by the Law of 16 March 2006.

Please refer to Section 6 for further information with regards to these laws.

5.3 The main CSSF Circulars applicable to credit institutions

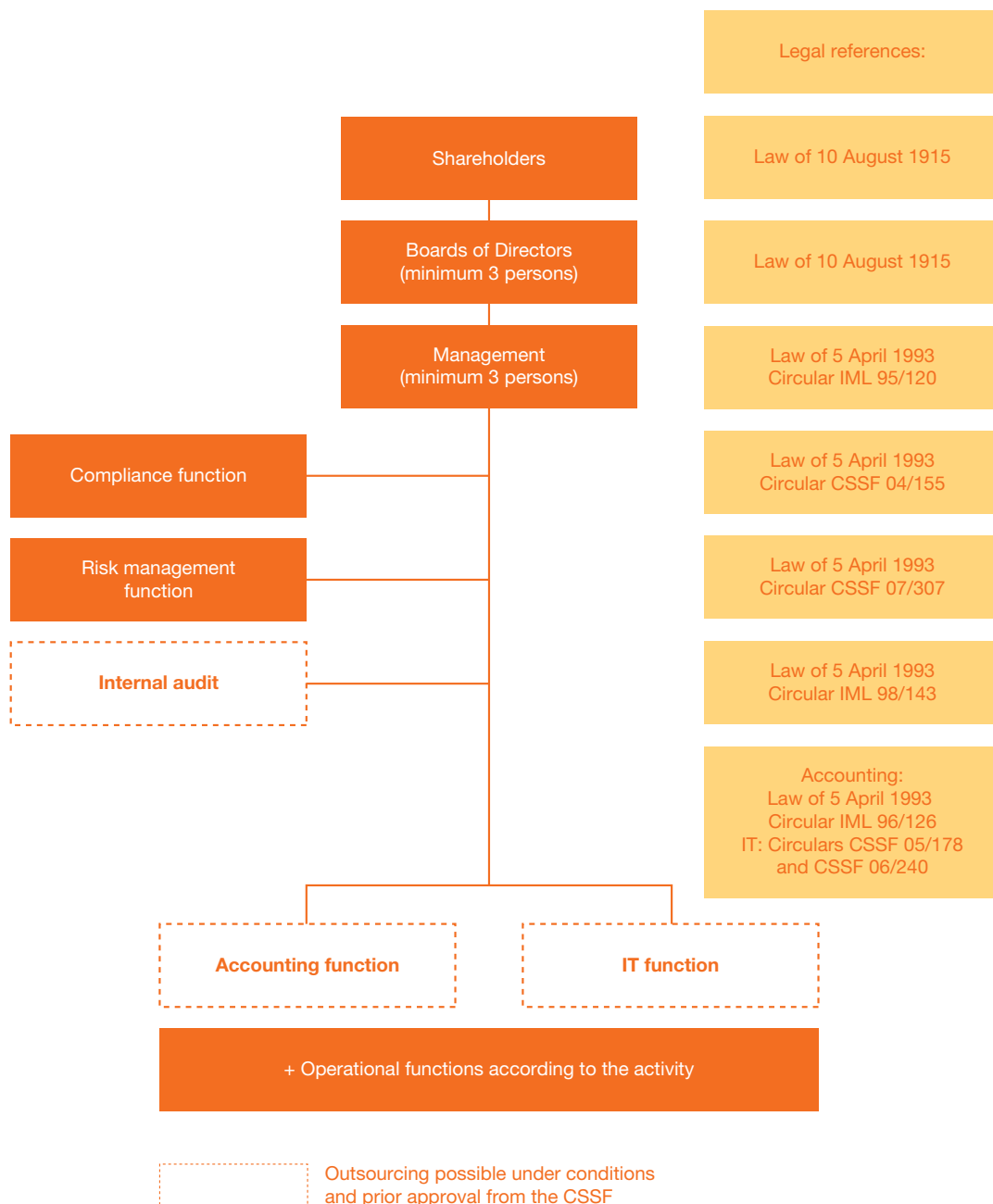
The table below lists the principal circulars applicable to Luxembourg banks.

Circular #	Content
Organisation and control environment (point 5.3.1)	
93/101, 95/119	Organisation and internal control of the dealing activities of credit institutions risk management related to derivatives
95/118	Customer complaints
95/120	Central administration
96/126	Administrative and accounting organisation
98/143	Internal control
04/155	Compliance function
05/178, 06/240	IT function and IT outsourcing
06/257, 07/280 (as amended)	Market abuse
07/305, 07/307	MiFID
07/326	Branches of Luxembourg credit institutions in the EU
09/932	Acquisitions and increases in holdings in the financial sector
10/496, 11/505	Remuneration policies
Prevention of money laundering and financing of terrorism (point 5.3.2)	
08/387 (as amended)	Measures to combat money laundering and financing of terrorism
Compliance with limits and ratios (point 5.3.3)	
93/104	Liquidity ratio
06/260, 06/273 (as amended), 07/301 (as amended), 11/506	Capital adequacy and large exposures ratios; stress testing framework
Company administration services (point 5.3.4)	
01/28, 01/29, 01/47, 02/65	Company administration services ("domiciliation")
Supervision on a consolidated basis (point 5.3.5)	
96/125	Supervision on a consolidated basis by the CSSF
06/268	Supplementary supervision of financial conglomerates
Reporting and disclosure requirements (points 5.3.6 and 6.3)	
93/92, 05/227, 06/251, 08/344	Prudential reporting
07/302, 07/306, 08/365	Transactions reporting ("TAF" reporting)
11/504	Reporting of external computer attacks
External audit requirements (point 7.2)	
01/27 (as amended)	Long Form Report of credit institutions

5.3.1 Organisation and control environment

5.3.1.1 Minimal functions of a credit institution established under Luxembourg law

The graph below illustrates the principal functions of a Luxembourg bank.



The Circular CSSF 09/392 is the reference guide for any new applicant willing to set up or acquire a bank in Luxembourg.

5.3.1.2 Circular CSSF 09/392 related to the publication of CEBS, CESR and CEIOPS' joint guidelines for the prudential assessment of acquisitions in holdings in the financial sector

Circular CSSF 09/392 announces the publication by the three Level-3 Committees of European Financial Supervisors of the joint guidelines for the prudential assessment of acquisitions and increases in holdings in the financial sector, providing useful specifications on the five assessment criteria applicable to any proposed acquirer of an entity in the financial sector in order to reach common understanding on these criteria within the European Union:

- reputation of the proposed acquirer;
- reputation and experience of those who will conduct the business;
- financial soundness of the proposed acquirer;
- compliance with the prudential requirements;
- suspicion of money laundering or terrorist financing.

In addition, Appendix II of the above mentioned guidelines lists information requirements that any proposed acquirer must submit to the CSSF in his notification of the proposed acquisition in a professional of the financial sector as from 21 March 2009.

This circular is the reference guide for any new applicant willing to set up or acquire a bank in Luxembourg.

5.3.1.3 Circular IML 95/120 relating to central administration

Circular IML 95/120 reinforces the legal requirements with respect to the local presence of the credit institution's persons responsible for the day-to-day management and the adequacy of technical, human and other resources in Luxembourg. Any Luxembourg bank should have a minimum of two resident managers. These persons (and any change in their composition) shall be pre-approved by the CSSF.

5.3.1.4 Circular IML 96/126 relating to the administrative and accounting organisation

The persons responsible for the day-to-day management have to implement a proper administrative organisation with respect to the following aspects:

- The credit institution must have at its disposal a sufficient number of competent staff to take decisions in line with the policies defined and based on the powers delegated to them, and to execute the decision taken. The organisation chart must show, for all services or departments, their structure and the hierarchical and functional connections which exist between them and with the management.
- The credit institution needs written procedures for the execution of operations and the necessary controls have to be implemented.
- The credit institution must ensure that it has at its disposal the necessary technical equipment for the execution of operations.
- All transactions which give rise to a commitment or any decisions relating thereto have to be documented.
- Every commercial function has to be supported by an adequate administrative infrastructure.

The accounting function has to meet the following rules and procedures:

- existence within the credit institution of an accounting department whose objective is to manage the credit institution's accounting requirements;
- centralisation and identification of all accounting records;
- preparation of accounts in conformity with the accounting and valuation rules set out in accounting legislation and applicable CSSF regulations;
- production of periodic information and communication with the CSSF;
- preservation of all accounting vouchers in accordance with applicable legal requirements;

The internal audit function is mandatory. It could be, with prior approval from the CSSF and under certain conditions, delegated to the Group internal auditor or to a Luxembourg expert.

- concerning account opening process for counterparts, each credit institution has to define precise rules for the opening of accounts in the accounting system. Conditions under which such accounts are authorised to function and procedures relating to the closure of such accounts have to be defined. There has to be a permanent follow up of the dormant accounts;
- the organisation and accounting procedures have to be described in an accounting procedures manual.
- For each delegated activity, the bank shall designate an employee responsible for the relationship with the IT service provider.
- The credit institution shall be able to operate in the case of exceptional events such as the break of the communication line with the IT service provider.
- The bank shall be able to transfer the outsourced services to another party or to take them back internally, should the quality of the services rendered by the IT service provider be unsatisfactory.
- The credit institution must notify the CSSF and confirm that the various conditions listed in the Circular are met.

5.3.1.5 Circular CSSF 05/178 relating to IT function and IT outsourcing

Generally, the Luxembourg credit institution must have, in its own premises in Luxembourg, its own computers and adequate and duly documented IT programmes and hire competent personnel to manage its IT system. Moreover, the credit institution shall be in a position to ensure normal operations in case of an IT-system outage and shall put in place a backup solution in line with a business continuity plan.

However, as per Circular CSSF 05/178, Luxembourg banks which are willing to outsource (part of) their IT function now need to comply with the following key principles:

- The Board of Directors must document and validate the outsourcing policy that should notably include a deep analysis of the financial, operational, legal and reputational risks incurred by the outsourcing.
- Any outsourcing must be formalised by a Service Level Agreement describing both parties' responsibilities, and more specifically the acceptable conditions under which the IT service provider intends to outsource again to another party.
- The credit institution must ensure if it needs to inform, or not, its third parties and more importantly its customers, with regards to contractual classes, or legal provisions such as data privacy.

- The credit institution must notify the CSSF and confirm that the various conditions listed in the Circular are met. The IT systems operators (as regulated Professionals of the Financial Sector in Luxembourg) are entitled to the Luxembourg professional secrecy, and therefore are authorised to have access to clients' confidential data, if the data is necessary for the execution of the service agreement.
- Luxembourg banks that wish to outsource certain IT services to other parties, even within their own group, are required to ask the prior approval from the CSSF and confirm that the various conditions listed in the Circular are respected. The third party or the group entity which provides outsourcing services, is not authorised to have access to the Luxembourg bank customers' confidential data.

This Circular has been complemented by Circular CSSF 06/240.

5.3.1.6 Circular IML 98/143 related to internal control

Circular IML 98/143 is based on the Article 5(2) of the amended Law of 5 April 1993. The Circular sets out the principles of what constitutes an effective system of internal control and describes what is expected of credit institutions in terms of their internal control systems.

The Circular describes the responsibilities of the Board of Directors and the management. The required system of internal control should:

- be based on the twin principles of central administration and satisfactory accounting and administrative organisation as laid down in Circulars IML 95/120 and IML 96/126;
- contain mechanisms for the identification, measurement, control and reporting of risks to which the credit institutions are exposed, both operational and financial;
- include an internal audit function to review the adequacy of internal control mechanisms on a regular basis.

The system of internal control should also distinguish four levels of control as follows:

- operating controls performed on a daily basis;
- key structural controls performed by those responsible for the administrative processing of transactions;
- controls performed by members of management over activities or functions under their direct responsibility;
- controls performed by the internal audit function.

The internal audit function is mandatory. It could be, with prior approval from the CSSF and under certain conditions, delegated to the Group internal auditor or to a Luxembourg expert.

5.3.1.7 Circular CSSF 04/155 related to Compliance function

Circular CSSF 04/155 requires all credit institutions to set-up a Compliance function.

The Compliance function encompasses all measures aiming to prevent the financial institution from incurring any loss, financial or not, due to the fact that it did not comply with applicable laws and regulations. The scope of applicable laws and regulations includes financial laws and anti-money laundering rules, codes of conduct of professional associations, and eventually social law, labour law, commercial company law and environmental regulations.

The Board of Directors is responsible for the definition of the Compliance principles to which the entity must adhere to in the conduct of its activities and approves the Compliance policy and the Compliance charter defined by the management.

The Compliance function is independent from all commercial, administrative or control functions and shall exist on a permanent basis. It has the power to start investigations and controls on its own initiative, and has the right to access any kind of information.

The Compliance function is mandatory and cannot be fully delegated to the Group Compliance function or to a third party. However, with prior approval from the CSSF, the compliance officer can work on a part-time basis or be one member of the Management of the bank.

Members of the Compliance function must have a high level of professional competence in banking and related areas, as well as in applicable regulation.

5.3.1.8 Circulars CSSF 06/257, 07/280 and 07/323 on insider dealing and market manipulation (market abuse)

The purpose of Circular CSSF 06/257 is to draw attention to the entry into force of the law on market abuse. The law aims to combat insider dealing and market manipulation in order to ensure the integrity of financial markets, to enhance investor confidence in those markets and thereby ensure a level playing field for all market participants. Circular CSSF 06/257 outlines the framework for the prevention, detection and efficient sanction of market abuse, the obligations imposed on market participants, the competences and missions of the CSSF and the preventive measures.

The Compliance function is mandatory and cannot be fully delegated to the Group Compliance function or to a third party. However, with prior approval from the CSSF, the compliance officer can work on a part-time basis or be one member of the Management of the bank.

The Circular CSSF 07/280 provides details and guidelines concerning the Law of 9 May 2006 on market abuse.

The Circular defines the following:

- the elements that could be indications of market manipulation;
- the arrangements and format for suspicious transaction reports;
- the lists to be drawn up by issuers, or persons acting on their behalf or for their account, including those persons having regular or occasional access to inside information;
- the notifications relating to transactions conducted by persons discharging managerial responsibilities within an issuer and persons closely associated with them, as well as the modalities for public disclosure of such transactions.

The Circular CSSF 07/323 aims at modifying Circular CSSF 07/280 following the publication of a second set of Level 3 guidance and information for the implementation of the Market Abuse Directive of 12 July 2007 by the CESR.

This document provides details and clarifications on the definition of some notions disclosed in the Directive.

5.3.1.9 Circulars CSSF 07/305 and 07/307 relating to MiFID

The purpose of Circular CSSF 07/305 is to draw the attention to the publication of the Law of 13 July 2007 on Markets in Financial Instruments transposing Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on Markets in Financial Instruments (the MiFID Directive).

Circular CSSF 07/307 relating to MiFID deals with the following topics:

- organisational and governance requirements covering Compliance, risk management and internal audit functions, and identification and management of conflicts of interests;
- conduct of business rules including client classification, suitability, appropriateness and best execution.

It should be noted that MiFID is currently being revised at European level. When adopted and applicable, “MiFID II” may as a result re-enforce some of the requirements noted here below.

5.3.1.9.1 Organisational and governance requirements

a) Compliance, internal audit and risk management functions

The requirement to have a Compliance function and an internal audit function has been re-emphasised with the Law and the Grand-Ducal Regulation of 13 July 2007. Circular CSSF 04/155 on the Compliance function and Circular IML 98/143 on internal control remain fully applicable.

In addition to these two functions, firms will be required to establish a risk management function according to the proportionate principle i.e. based on the nature, size and complexity of the business.

b) Conflicts of interest

Credit institutions that provide investment services must draw up a comprehensive written policy identifying the steps that will be taken for identifying and managing conflicts of interest that present a risk of damage to client interests. Where the steps taken are insufficient to ensure, with reasonable confidence, that risks of damage to client interests will be prevented, the source of conflicts must be disclosed to the client.

More specifically, banks must inform the client about the nature and the amount (or the calculation method) of any inducement, including retrocession, paid to or received by a third party. This information must be given before providing services and could be disclosed in a summary, providing that details are given on clients' request.

5.3.1.9.2 Conduct of business rules

The key requirements as regards conduct of business rules are:

a) Client classification

In line with MiFID requirements, the Circular distinguishes between three different types of clients, each with a different level of knowledge and sophistication: retail clients, professional clients and eligible counterparties which are professional clients in dealing services. The obligations on firms towards these different categories of clients vary based on that categorisation with retail clients naturally benefiting from the highest degree of protection.

Clients must be informed of their classification and of its consequences as well as of their right to change category to obtain more (or less) protection provided certain criteria are met. The Circular allows firms not to inform their existing non-professional clients of their classification as retail clients, thereby following the industry's wishes in that respect.

Credit institutions may decide to classify their whole client base as retail clients, to simplify their own processes.

b) Suitability and appropriateness

Credit institutions are required to assess the suitability of a service or transaction when providing discretionary portfolio management or investment advice. The suitability test requires banks to obtain information about the client's financial situation, his experience and investment objectives.

The “appropriateness test” applies to other services, where clients do not rely on the bank's recommendations (execution of orders, reception and transmission of orders, etc.). For the “appropriateness test”, credit institutions are only required to assess whether the client has the knowledge and experience necessary to understand the risks in relation to the specific type of product

or service in question. Appropriateness is not tested in circumstances where the client makes his own decision to deal in a non-complex financial instrument.

c) Best execution

“Best execution” means that, when credit institutions execute client orders, they must take all reasonable steps to deliver the best possible result for their clients, taking into account a variety of factors, such as the price of the financial instrument, the speed of execution of the order and cost.

The Circular indicates that the best execution obligation is based on best efforts and is not an obligation based on result.

d) Information and reporting to clients

Credit institutions must provide appropriate information to clients so they can make informed investment decisions before the provision of service. The requirement to provide information to professional clients is less restrictive than for retail clients as the Circular indicates that banks shall provide information to professional clients on their request only. The Circular clarifies some aspects of the reporting obligations to clients on executed transactions and portfolio management. Specifically, the Circular says that reporting must be to both the proxy acting on behalf of a client (“mandataire”) and to the client itself.

In addition, when a retail client account includes an uncovered open position in a contingent liability transaction, the Circular indicates that banks must inform retail clients of any losses exceeding a certain threshold but only if such a threshold was agreed and predetermined with the client.

Finally, the necessary comparison between the performance of a managed portfolio and the performance of a benchmark must be periodically reported to clients only if such a benchmark was agreed with the client.

5.3.1.10 Dealing activities

5.3.1.10.1 Circular IML 93/101 relating to the organisation and internal control of the dealing activities of credit institutions

The aim of this Circular is to define a set of rules for the organisation and internal control of the dealing activities of credit institutions. It sets out, among other matters, rules governing the conclusion of dealing transactions between credit institutions and intermediaries and counterparts.

These rules are intended to improve the transparency of operations and the relationship between intermediaries and counterparts, contributing towards increased standards of quality and ethical behaviour in dealing activities.

The Circular requires that the management of credit institutions assume responsibility for policies with respect to dealing activities and for the quality of the credit institution’s organisation in this area.

The management is required:

- to set out in writing the objectives of the credit institution’s dealing activities, the nature of the transactions that it intends to undertake and a set of rules with respect to the organisation and internal control;
- to establish a procedures manual and a code of good conduct;
- to appoint a member of management who is to be responsible for the implementation of the policy determined by management.

The Circular also sets out a number of precise rules relating to:

- the determination of policies by the management;
- the appointment of dealers and their powers;
- the quantified internal limits;
- the segregation of duties (operational, administrative, accounting and control functions);

- the procedures guide;
- the rules governing the conclusion of transactions;
- the administrative and accounting treatment of transactions;
- the internal control of dealing activities;
- the controls performed by the external auditor.

This Circular has been complemented by Circular IML 95/119 relating more specifically to risk management linked to activities in derivative instruments.

5.3.1.10.2 Circular IML 95/119 concerning risk management related to derivatives

Circular IML 95/119 concerns the requirements for a system of risk management for derivatives operations. It summarises the main principles set out by the Basel Committee on Banking Supervision in a document published in July 1994 and entitled “Risk management guidelines for derivatives”. The document provides a general framework for the management of risks associated with derivative operations. The recommendations of the Basel Committee confirm the applicability of the standards set out in the Circular IML 93/101, which are valid both for traditional dealing activities and for derivative operations.

Circular CSSF 11/505 confirms whether certain banks may benefit from the proportionality principle and establishes two thresholds. This proportionality principle is not granted automatically and has to be duly justified by the bank. In addition, the proportionality principle does not exempt any financial institution to establish, implement and maintain a remuneration policy.

The main principles of prudent internal risk management set out in Circular IML 95/119 are the following:

- definition of a long-term policy with respect to derivative operations (statement in writing);
- definition of limits in relation to derivative instrument operations;
- introduction of a reliable management information system for the control;
- monitoring and reporting of risks;
- establishment of an independent risk management function;
- regular evaluation and audit of the components of a prudent system for the management of risks associated with derivative operations;
- management's general knowledge of the risks associated with derivative instruments, and the capacity of staff involved in derivative operations to understand and master effectively the risks inherent in such operations;
- implementation of a detailed system of internal controls and audit procedures.

5.3.1.11 Circular IML 95/118 relating to customer complaints

The CSSF acts as an intermediary in the conflict settlement between the professionals subject to its supervision and their customers. This assignment is conferred on the CSSF by Article 58 of the amended Law of 5 April 1993 related to the financial sector, which provides that the CSSF "shall be competent to receive complaints" by clients or persons subject to its supervision and to approach those persons with a view to achieving an amicable settlement of such complaints. Details of such conflict settlements have been declined by the Circular IML 95/118.

5.3.1.12 Circular CSSF 07/326 related to Luxembourg incorporated credit institutions established in another member state by way of branches or by free provision of services

Circular CSSF 07/326 follows the entry into force of the Law of 13 July 2007 on Markets in Financial Instruments. It informs on the role of the CSSF as competent authority of the home member state and draws the attention of Luxembourg credit institutions to the provisions to be complied with under the new framework established by the Law of 13 July 2007 when establishing a branch or providing services in another member state of the European Union.

The forms to be completed by Luxembourg institutions to notify the establishment of a branch or the free provision of services are appended to the Circular. It should be noted that those forms have been drawn up by CESR to harmonise the content of the information to be sent by the competent home authority to the competent host authority within the scope of the notification procedure.

5.3.1.13 Circulars CSSF 10/496 and 11/505 on remuneration policies

On 10 December 2010, the Committee of European Banking Supervisors (CEBS) published their final guidelines for achieving compliance with the remuneration provisions of the EU Third Capital Requirements Directive.

The Directive and the related Circular CSSF 10/496 applicable to Luxembourg credit institutions include both (i) general requirements which have to be applied on an institution-wide basis to the whole staff (e.g. governance, disclosure, remuneration restrictions, etc.) and (ii) specific requirements that apply only to some categories of employees (e.g. ratio between fixed and variable remuneration, deferred remuneration, pay-out in the form of shares or instruments, etc.).

Banks must establish, implement and maintain a remuneration policy which is consistent with and promotes sound and effective risk management and which does not induce excessive risk-taking. This policy should be in line with the business strategy, objectives, values and long-term interests of the bank and be consistent with the principles relating to the protection of clients and investors.

The remuneration policy should be linked to the size of the bank concerned, as well as to the nature and the complexity of its activities. Internal procedures governing remuneration practices should be documented, clear and transparent. The implementation of the remuneration policy should, at least on an annual basis, be subject to central and independent internal review by control functions (i.e. Risk Management, Internal control and Compliance function) for compliance with policies and procedures defined by the Board of Directors.

Among the specific requirements:

- A portion of the variable component of the remuneration (40% up to 60% for higher risk takers) has to be deferred over at least 3 years.
- At least 50% of the variable remuneration has to be paid in shares and other instruments that reflect the credit quality of the financial institution. This 50% portion is subject to a retention period and applies irrespectively to the immediate payment and the deferral part.

The persons in scope are:

- members of the Board of Directors and of the Management;
- risk takers: staff whose activities materially impact the risk profile of the bank;
- staff responsible for independent control functions (Internal audit, Compliance, Risk Management) and Human Resources;

- any other employee receiving total remuneration that takes him into the same remuneration bracket as Senior Management and risk takers, and having a material impact on the bank's risk profile.

If the Luxembourg bank is of significant size, relevant information on the remuneration policy (and any updated thereof) should be disclosed by the Luxembourg bank in a clear and easily understandable way to relevant stakeholders. Such disclosure may take the form of an independent remuneration policy statement, a periodic disclosure in the annual financial statements or any other form. Luxembourg credit institutions which are part of a group where the mother company, located within the European Union, is subject to this obligation of publication, do not have to disclose relevant remuneration information as this information is included in the consolidated group publication.

The Directive allows banks to “neutralise” a number of requirements based on their size and risk profile (nature, scope and complexity of the activities).

Circular CSSF 11/505 confirms whether certain banks may benefit from the proportionality principle and establishes two thresholds. This proportionality principle is not granted automatically and has to be duly justified by the bank. In addition, the proportionality principle does not exempt any financial institution to establish, implement and maintain a remuneration policy.

A first threshold below which banks should not apply some requirements is based on two criteria:

- total non-consolidated Luxembourg balance sheet < EUR 5 billion; or
- capital requirements to cover risks < EUR 125 million (basis 100%).

Where the bank respects the above conditions, some specific requirements are not applicable.

A second threshold representing a variable remuneration for a specific person (EUR 100,000) below which banks, which are above the first threshold, are not required to differ and pay in the form of equity the remuneration, nor to apply a performance adjustment provision and are thus authorised to pay bonus full in cash. This second remuneration threshold does not apply automatically and the bank must be able to demonstrate whether the said person has a limited material impact on the bank's risk profile.

5.3.2 Prevention of money laundering and financing of terrorism

5.3.2.1 Circular CSSF 08/387 (as amended by Circular CSSF 10/476) relating to measures to combat money laundering and terrorist financing and prevention of the use of the financial sector for the purpose of money laundering and terrorist financing

This Circular details a certain number of rules to be observed by credit institutions with respect to their professional duties, as far as the combat of money laundering (ML) and financing of terrorism (FT) is concerned.

The provisions of this Circular apply to credit institutions authorised in Luxembourg as well as their respective branches and subsidiaries abroad.

This Circular also specifies the way in which these dispositions apply to collective investment funds, taking into consideration their distribution specificities, management companies, pension funds and other PFS.

The amended Law of 5 April 1993, the amended Law of 12 November 2004 and the present Circular include obligations for the operators of the financial sector to know the client with whom they enter into business relations and to cooperate, in a predetermined framework, with the authorities in order to combat money laundering and financing of terrorism as well as implementing an adequate internal organisation.

Circular CSSF 08/387 (as amended by Circular CSSF 10/476) has therefore fixed and detailed a certain number of principles and rules which can be summarised as follows:

- obligation to perform a customer due diligence following a risk-based approach (as defined in section 5.1.2.2 here above);
- obligation to cooperate with the authorities;
- obligation to keep the documents;
- obligation to have an adequate internal organisation.

The important points of Circular CSSF 08/387 can be summarised as follows:

- introduction of a general risk-based approach: given the fact that the risk of money laundering or terrorist financing is not always the same, it is important that the banks concentrate principally on those clients and situations which represent a real risk of money laundering or terrorist financing. On this basis, Circular CSSF 08/387 introduces standard customer due diligence measures which the banks must systematically apply but the extent of which may be determined on a risk-sensitive basis. There is a limited number of specific cases where simplified customer due diligence measures are sufficient. There are situations in which the banks have to perform enhanced customer due diligence over and above the standard measures when there is a higher risk of money laundering or terrorist financing;
- specific provisions regarding customer identification and detailed definitions of certain concepts such as “beneficial owner” and “politically exposed person”;
- detailed description of the customer identification procedure;
- the use of specific third parties in the customer identification procedure.

The legally authorised managers are responsible for guaranteeing compliance with the legal and regulatory provisions,

establishing, in accordance with the provisions of this Circular, internal anti-money laundering and terrorist financing policies and procedures and ensuring their proper implementation. Management must define the human and technical resources needed to reach these objectives. Without prejudice to their own responsibility, they must appoint an anti-money laundering and terrorist financing officer. This person shall be the compliance officer.

5.3.2.2 Circular CSSF 11/519 relating to the AML/CTF risk analysis to be performed by the professionals

This Circular specifies the CSSF requirements relating to the application of Article 3(3) of the amended law of 12 November 2004 that sets out that the professionals are required to perform an analysis of the AML/CTF risks inherent to their business activities and have to set down in writing the findings of this analysis.

According to this Circular two stages shall be distinguished. The Management of the credit institution shall first identify the ML/FT risks to which it is exposed and then set up a methodology in order to categorise these risks and afterwards define and implement measures to mitigate the identified risks.

Circular CSSF 08/387 (as amended by Circular CSSF 10/476) has fixed and detailed a certain number of principles and rules which can be summarised as follows:

- *obligation to perform a customer due diligence following a risk-based approach;*
- *obligation to cooperate with the authorities;*
- *obligation to keep the documents;*
- *obligation to have an adequate internal organisation.*

5.3.2.3 Identification and reporting of business relationships with terrorist groups

Useful information relating to international financial sanctions and list of names of persons or organisations against whom those specific measures are directed are published on the Ministry of Finance web-site.

Credit institutions are required to communicate all information relevant to the application of said measures to the CSSF and the Public Prosecutor.

5.3.3 Compliance with limits and ratios

5.3.3.1 Liquidity

5.3.3.1.1 Quantitative considerations

The liquidity ratio introduced by Circular IML 93/104 applies to all credit institutions incorporated or established in the Grand Duchy of Luxembourg. As a result, branches of EU credit institutions must also respect this ratio in order for the CSSF to monitor their liquidity level.

The liquidity ratio requires that current liabilities should be covered at all times, to a specified level, by assets that are deemed to be liquid. Credit institutions shall be required to maintain the ratio on a permanent basis at a level at least equal to 30%. The CSSF reserves the right to prescribe a minimum ratio higher than 30% if, in its opinion, the activities of a credit institution are not sufficiently diverse with respect to risks, if it exhibits a high degree of concentration among its third-party creditors or if it is not subject to an adequate level of consolidated control on the part of the home country supervisory authority. The CSSF may also authorise a credit institution to depart temporarily from the minimum level prescribed and will, under such circumstances, accord it a time limit to regularise its situation.

In principle, observance of the liquidity ratio is to be verified on a monthly basis by the credit institution and the results of the related calculation are to be communicated to the CSSF. The CSSF may, in individual cases, require a credit institution to calculate this ratio at intervals of less than one month.

5.3.3.1.2 Other considerations

In addition to the above-mentioned liquidity ratio, credit institutions are also required to meet strict criteria pertaining to liquidity risk management in general. The CSSF Circular 09/403 in particular, in amending CSSF Circular 07/301, requires credit institutions to implement the European Banking Authority (EBA) guidelines on this subject. The main aspects are related to, on the one hand, the implementation of a process to identify, measure, manage and report the liquidity risks to which the credit institutions is or may be exposed (in particular in a crisis situation). On the other hand, it also expects institutions to plan and manage their liquidity requirements, which the definition of a liquidity buffer.

5.3.3.2 Capital adequacy aspects

Article 56 of the Law of 5 April 1993 related to the financial sector as amended requires to lay down structural ratios to be observed by credit institutions, pursuant, in particular, to the provisions of EU Directives.

The Circular CSSF 06/273, as amended, which has been applicable since 1 January 2008, transposes the provisions of Directives 2006/48/EC and 2006/49/EC into Luxembourg's banking regulations. Both Directives form an equivalent to the provision of the framework agreement on the international convergence of capital measurement and capital requirements issued by the Basel Committee on Banking Supervision in June 2006 ("Basel II").

This framework consists of three pillars:

- Pillar I, which covers the three essential credit, market & operational risks;
- Pillar II, which includes the entire set of risks a credit institution may be exposed to, from qualitative and quantitative standpoints;
- Pillar III, which covers disclosure requirements.

The capital adequacy ratio applies to all credit institutions incorporated in Luxembourg. Branches of foreign credit institutions, other than those originating from EU member states, must respect the ratios only if the branch is not supervised by a foreign authority which respects regulations offering guarantees comparable to those in Luxembourg.

5.3.3.2.1 Pillar I - the capital adequacy ratio

The Circular CSSF 06/273, as amended, defines capital adequacy ratios (integrated ratio/simplified ratio), in particular:

- the eligible own funds of credit institutions;
- minimum capital requirements to cover credit risk and dilution risk associated with the banking book activities;
- minimum capital requirements to cover operational risk associated with overall banking activities;
- minimum capital requirements to cover foreign exchange risk associated with overall banking activities;
- minimum capital requirements to cover commodity risk associated with overall banking activities;
- minimum capital requirements to cover settlement/delivery risks associated with overall banking activities;
- minimum capital requirements to cover market risks associated with trading book activities.

By the way of derogation, credit institutions that fulfill certain criteria pertaining to the volume of the

prudential trading book may calculate a simplified ratio. The simplified ratio does not include the minimum capital requirements to cover market risks associated with the trading book activities of the credit institution.

Credit institutions have to permanently maintain the ratio at a minimum level of at least 8%. The CSSF reserves the right to fix the norm at a level higher than 8% where it feels that the activities are not sufficiently diversified, as far as risks are concerned, or are not subject to adequate control by the regulatory authority of the country of origin of the undertaking.

The capital adequacy ratio is calculated as follows:

$$\frac{\text{Eligible own funds}}{(\text{Overall capital requirement to cover risks}) \times 12.5}$$

The ratio compares eligible own funds with the minimum capital requirements related to the risks listed above.

Credit institutions are required to provide the CSSF with details of the calculation of their non-consolidated capital requirements on a quarterly basis and of their consolidated capital requirements on a semi-annual basis.

a) Eligible own funds (numerator)

The eligible own funds are essentially made up of the following elements:

- The original own funds (Tier I) mainly include paid-in capital and reserves (less intangible assets).
- The additional own funds (Tier II) mainly include subordinated borrowings with an original maturity over 5 years.
- The super additional own funds (Tier III) mainly include subordinated borrowings with an original maturity over two years.
- Participations in other credit institutions and financial companies must be deducted from the total eligible own funds.

As the financial reporting to the CSSF is based on IFRS accounting rules, certain prudential filters apply to ensure the transition from accounting own funds to prudential own funds. These prudential filters may lead to a decrease of original own funds and/or to an increase/decrease of the additional own funds.

b) Minimum capital requirements to cover risks (denominator)

The Circular 06/273, as amended by Circulars 10/475 and 10/496, segments the different types of quantitative measurable risks into credit risk, market risk and operational risk. All risks, including the Pillar 1 ones, fall under the scope of Pillar II.

Minimum capital requirements to cover credit risk

Credit institutions are required to meet the capital requirements for credit risk and, where applicable, dilution risk, associated with non-trading-book business by the provision of adequate original own funds and additional own funds. For the calculation of their risk-weighted asset amounts, the credit institutions apply either the standardised approach or - where allowed by the CSSF - the Internal Ratings-Based Approach (IRB Approach).

Minimum capital requirements to cover market risk

- For trading book activities, capital requirements are intended to cover interest rate risk and position risk on equities and UCIs, together with settlement/delivery risk, counterparty credit risk and concentration risk associated with trading book activities.
- An additional requirement has been set to cover foreign exchange risk associated with overall banking activities of credit institutions.

- Similarly, and as from 31 December 2011, credit institutions are also expected to monitor and, if necessary, cover with own funds, risks emanating from the late settlement/delivery of a transaction in the whole banking book.
- Credit institutions for which trading activities make up only a small proportion of all their activities may be exempt from the requirement to calculate the ratios with respect to risks associated with trading book activities.
- Credit institutions which intend to calculate their capital requirements to cover foreign exchange risk and market risks using their own internal risk measurement model, instead of adopting the standard approach described in the Circular CSSF 06/273, as amended may do so with the provision of receiving prior CSSF approval.

Minimum capital requirements to cover operational risk

Operational risk means the risk of loss resulting from inadequate or failed internal processes, people and systems or from external events. It includes legal risk.

The three proposed approaches to calculate own funds requirements for operational risk with an increasing degree of complexity are the following:

- a) the Basic Indicator Approach (BIA);
- b) the Standardised Approach (TSA);
- c) the Advanced Measurement Approaches (AMA).

Under the Basic Indicator Approach (BIA), the capital requirements for operational risk are equal to 15% of the basic indicator. The calculation of the basic indicator is based on the simple arithmetic average over three years of the sum of net interest income and net non-interest income, a.k.a. gross income. If, for any given observation, the gross income is equal to zero or negative, this figure shall not be taken into account in the calculation of the average for the determination of the basic indicator.

5.3.3.2.2 Pillar II

As per Circular CSSF 06/273, as amended by CSSF 07/301, 08/338 & 09/403, credit institutions shall have in place an internal capital adequacy assessment process (ICAAP) consisting in a system of sound, effective and complete strategies and processes allowing them to assess and maintain on an ongoing basis the amount and type of internal capital that they consider adequate to cover the nature and level of the risks to which they are or might be exposed. The internal capital adequacy assessment process shall be subject to regular internal reviews to ensure that it remains comprehensive and proportionate to the nature, scale, and complexity of the credit institution's activities. This process supplements the incomplete regulatory framework governing minimum own funds under Pillar I.

In addition to the above, and as required by the CSSF Circular 11/506 and, to a lesser extent Circular 08/338, credit institutions are also expected to have a sound and proportionate stress testing framework in place. This framework is the set of policies and procedures whose objective is to assess to what extent unfavourable yet realistic events might lead to an imbalance between a credit institution's business model, its risk profile and its risk appetite so as to assess what, if any, measures should be taken to ensure the stability and sustainability of the credit institution. This framework typically encompasses methods such as sensitivity analyses (such as that applied to interest rate risk in the banking book introduced by Circular 08/338), scenario testing and reverse stress testing in qualitative and/or quantitative ways, according to the credit institutions' scale, activities and complexity (proportionality principle).

5.3.3.2.3 Pillar III

In addition, the Circular CSSF 06/273 specifies the information that credit institutions should disclose on the different approaches adopted to cover the different risks. However, the credit institutions approved in Luxembourg, which are part of a group whose head is established in the European Union and subject to this disclosure requirement, are not required to publish this information, unless the Luxembourg subsidiary is a significant subsidiary.

5.3.3.3 Large exposures

The Circular CSSF 06/273, as amended by Circular CSSF 10/475, also defines the system of notification and limitation with respect to large risks (i.e. large exposures) taken by credit institutions. The aim of this Circular is to set the requirements of a system of control of large exposures, as adapted to the principles stated in European Directives.

The excessive concentration of risks within the same client or group of connected clients exposes a credit institution to substantial losses in the case of a counterparty's failure and may seriously affect the institution's solvency and, therefore, its survival.

The concept of exposure includes not only on-balance-sheet assets and off-balance-sheet items, such as commitments and potential liabilities, but also, all types of derivatives (not restricted to OTC ones). The Circular CSSF 10/475 enumerates a list of very short term transactions that may be excluded from the definition of exposures. Since 31 December 2010, all risks have to be weighted at 100%, except for a defined list of exposures that may still benefit of a total exemption (i.e. a 0% weighting) or partial exemption. A risk is defined as large when it exceeds 10% of the own funds of the credit institution (as used for purposes of calculating the solvency ratio).

Since 31 December 2010, the maximum exposure a credit institution may have towards a client or a group of connected clients is set at 25%. This limit is valid both for group and non-group exposures. It is to be noted however, that subject to CSSF's approval, credit institutions may be granted a partial or total exemption of the respect of the limit for the exposures they are facing on same-group companies (i.e. subsidiaries, sisters and mother companies).

It is also to be noted that for exposures towards institutions and solely for these exposures, and depending on the level of the eligible own funds of the credit institution, specific limitations have been introduced by Circular CSSF 10/475.

The notion of connection between clients has been strongly reinforced by the Circular CSSF 10/475 and guidelines on the implementation of the revised large exposures regime as issued by the Committee of European Banking Supervisors on 17 December 2009 have to be applied.

Moreover, Circular CSSF 10/475 aligns credit risk mitigation techniques that may be used under the large exposures regime with those of the Capital adequacy ratio and it also introduces specific requirements relating to the treatment of exposures to schemes with underlying assets (for example: investment into UCIs or securitisation vehicles).

Credit institutions are permitted to exceed the limit provided that such excess arises exclusively from their trading activities. They are however required to cover any excesses that may arise with own funds.

The CSSF has to be notified regarding the large exposures every three months, be it on an individual, and if applicable, on a consolidated basis.

5.3.3.4 Other limits

Forward foreign exchange contracts

Luxembourg law does not impose limits with respect to forward foreign exchange positions. Credit institutions are only required to define internal limits and communicate their currency positions (spot and forward) to the CSSF on a quarterly basis. The foreign exchange exposure is limited by the respect of the provisions of the capital adequacy requirements.

Fiduciary agreements

Credit institutions are authorised to carry out fiduciary operations. A fiduciary contract, as defined by the Law of 27 July 2003 is a contract in which an individual or entity (the settler) agrees with an entity (the trustee) that the trustee shall only be the owner in name of the assets subject to the contract (the fiduciary assets) but that the use of the assets subject to the contract will be limited by certain duties (the fiduciary liabilities) as determined by the fiduciary agreement. If fiduciary agreements comply with the Law of 27 July 2003, the transaction is accounted for as an off-balance-sheet item.

Investments

Article 57 of the amended Law of 5 April 1993 defines to what extent credit institutions may hold investments. A credit institution may not hold a qualifying investment (more than 10% of the share capital and/or voting rights of the investee company) which exceeds 15% of its own funds in an undertaking which is neither a credit institution, nor a financial institution, nor an undertaking which is not a statutory credit institution but whose activities are related to banking activities or to auxiliary banking services.

This limit does not apply to holdings in insurance companies that are subject to European Union law harmonisation.

The total amount of a credit institution's qualifying investments in undertakings referred to in the previous paragraph may not exceed 60% of the own funds of the credit institution.

Finally, a qualifying investment is subject to the prior CSSF authorisation.

Legal reserve

Credit institutions, like other legal entities, are required to allocate 5% of each year's profit to the legal reserve. This allocation is no longer required when the legal reserve has reached one-tenth of the subscribed capital.

Minimum reserves

The Council of the European Union has adopted a regulation dealing with the minimum reserve system, which must be applied uniformly across all EU member states.

The objective of the minimum reserve system is to provide a framework for the creation/enlargement of liquidity shortages and to contribute to the stabilisation of money market interest rates.

The system was implemented by the "Banque centrale du Luxembourg" (BcL) and is applicable to all Luxembourg credit institutions with effect as from 1 January 1999.

The BcL is responsible for determining the base and applying the relevant ratios in order to arrive at the reserve requirements, using the monthly statistical balances submitted by credit institutions. The transfers are made to a specific reserve account with the BcL, and bear an interest.

The reserve base is defined as follows: the aggregate of deposit liabilities and debt securities with an original maturity of up to two years irrespective of currency, customer category or country of residence. However, some deductions defined by the BcL may be obtained.

5.3.4 Company administration services

When a credit institution offers company administration services, it must comply with the Law of 31 May 1999 on company administration ("domiciliation") services and with the following circulars.

5.3.4.1 Circular CSSF 01/28 related to company domiciliation agents

Companies wishing to establish their registered office at the address of a third party located in Luxembourg must use the services of a company domiciliation agent duly authorised for this purpose and the terms of such services must be set down in writing in a formal company administration ("domiciliation") agreement.

Credit institutions are required to:

- enquire whether the company is domiciled with a company domiciliation agent in Luxembourg and, where this is the case, to enquire the identity of the company domiciliation agent;
- for foreign-incorporated companies, obtain precise particulars of the law under which the company was incorporated or structured and, where applicable, the address of its principal registered office abroad;
- review their relationship with corporate clients domiciled with a Luxembourg company domiciliation agent and report to the CSSF any instances of companies domiciled other than with the authorised entities.

5.3.4.2 Circular CSSF 01/29 related to minimum content of a company administration agreement

The purpose of this Circular is to specify the mandatory items to be included in a company administration agreement, which include:

- purpose of the services provided;
- rights and obligations of the service provider, specifically the various matters concerning professional obligations imposed by law (notably on identification of ultimate beneficial owners of the company);
- liability of service provider;
- rights and obligations of the client company;
- instructions and means of communication;
- charges;
- duration and termination;
- governing law and settlement of disputes.

5.3.4.3 Circular CSSF 01/47 related to professional obligations of company domiciliation agents and general recommendations

The purpose of the Circular is to identify the pre-contractual and continuing obligations incumbent upon professionals subject to the CSSF supervision entering into company administration agreements. It also sets out general recommendations to company domiciliation agents faced with conflict of interest.

a) Pre-contractual professional obligations

Company domiciliation agents shall, before entering into a company administration agreement, confirm compliance to the prospective client company with domicile-related provisions. Company domiciliation agents are obliged to ascertain the location of the company's principal establishment.

In addition, company domiciliation agents shall be required to ascertain the true identity of the members of the management bodies of a prospective client company.

b) Continuing professional obligations

Knowledge of the identity of the members of the management bodies, shareholders and/or beneficial owners of a client company remains a continuing obligation after the signature of the company administration agreement. Fulfilment of this obligation implies a duty incumbent upon the domiciliation agent to ensure that identity records are kept up to date at all times.

Company domiciliation agents shall also confirm whether the client company is in possession of the appropriate administrative authorisations.

Company domiciliation agents have filing and publication duties. Indeed, any termination - with or without notice - of a company administration agreement shall only be effective from the date it is filed by the domiciliation agent with the Commercial and Companies Register.

c) General recommendations

Domiciliation agents may, based on instructions received from shareholders and/or beneficial owners, or from duly authorised representatives, choose to accept appointment as Director, General Manager ("gérant") or Auditor of a client company. Such services may indeed form part of the core services provided by the domiciliation agent to client companies. Another type of service offered by the domiciliation agent may consist in providing one or more persons to act as shareholder(s) or founder(s) of the client company.

Domiciliation agents accepting to act as the director of the client company may be held personally liable in this capacity, quite separately from any professional liability as company administration service provider.

5.3.4.4 Circular CSSF 02/65 on company administration services: clarification of the term "siège" (headquarters) laid down by the Law of 31 May 1999

Circular CSSF 02/65 draws attention to the bank/PFS carrying out company domiciliation activities to the practical meaning of the term "siège" (headquarters) as laid down by the Law of 31 May 1999, governing the domiciliation of companies.

A company is deemed to have a "siège" pursuant to the law as soon as a third party provides with a Luxembourg address, which is to be used vis-à-vis other parties, even in the absence of any physical presence (offices, personnel, etc.) at this address.

In addition, the Circular clarifies the situation with respect to certain rental practices, which do actually conceal a domiciliation activity. Renting one or several premises to firms is likely to be considered as a domiciliation activity if the number of tenant firms is disproportionate to the size of the rented premises. The newer practice of renting technically and administratively equipped offices does not as such fall under the Law of 31 May 1999, provided that it meets the renting criteria.

5.3.5 Supervision on a consolidated basis

5.3.5.1 Circular IML 96/125 relating to the supervision of banks on a consolidated basis

Credit institutions are subject to supervision on a consolidated basis just as they are subject to supervision on an individual basis. The Circular IML 96/125 explains the difference between supervision on a consolidated basis and preparation of consolidated accounts and points out that credit institutions which are exempt from the preparation of consolidated accounts for publication purposes are however required to prepare consolidated accounts for the purpose of prudential supervision if they are subject to the consolidated control of the CSSF. The circular distinguishes four cases:

a) The consolidated entity is a credit institution

A credit institution authorised in Luxembourg which has among its subsidiaries, in Luxembourg or abroad, at least one credit institution or financial institution, or which holds a participation in such institutions, is subject to supervision on a consolidated basis by the CSSF.

b) The consolidated entity is a Luxembourg financial holding company

Credit institutions authorised in Luxembourg which are subsidiaries of a financial holding company registered in Luxembourg are also subject to supervision on a consolidated basis by the CSSF. Other PFS and holding companies which exclusively or principally hold participations in credit institutions fall into this category of parent company. In such cases, the Luxembourg credit institution is subject to consolidated control on the basis of the consolidated financial position of the financial holding company, even though the financial holding company may not itself be subject to the CSSF supervision on a stand-alone basis.

The CSSF does not perform supervision on a consolidated basis if the financial holding company is owned by a credit institution whose registered office is in another EU member state.

c) The consolidated undertaking is a financial holding company of EU origin

If a financial holding company which is the parent undertaking of a Luxembourg law credit institution also has a banking subsidiary in the EU member state in which it is incorporated, the banking supervision authorities of that country are competent to exercise supervision on a consolidated basis, otherwise the CSSF has the responsibility.

If the financial holding company has no banking subsidiary in the EU member state in which it is incorporated, but has one or several banking subsidiaries in one or several other EU member states, the CSSF and the competent authorities responsible for supervision shall seek to reach agreement as to who among them will exercise supervision on a consolidated basis.

d) The consolidated undertaking is a financial holding company of non-EU origin

For banking groups whose ultimate parent undertaking is located outside the EU, the responsibility for supervision on a consolidated basis of the sub-group of undertakings falling within the competence of the supervisory authorities of an EU member state is determined at the highest level of the group which is located within the EU.

The powers of the CSSF with respect to the undertaking subject to its consolidated control are:

- *the right to obtain information;*
- *the right to control;*
- *the right to impose regulations.*

The supervision on a consolidated basis should include:

- the supervision of solvency (reporting to the CSSF of the consolidated capital adequacy ratio on a semi-annual basis);
- the control of large exposures (reporting to the CSSF on consolidated large exposures on a quarterly basis);
- other consolidated information (balance sheet, P&L) to provide to the CSF on a quarterly and on an annual basis;
- internal control procedures related to supervision on a consolidated basis to put in place in each entity within the scope;
- specific report to be issued by the external auditor on an annual basis (consolidated Long Form Report);
- management of the group of undertakings included in the consolidated and central administration organisation and accounting procedures;
- Luxembourg anti-money laundering activities applicable to all entities within the scope;
- prior approval from the CSSF on the acquisition of participations by subsidiaries.

The powers of the CSSF with respect to the undertaking subject to its consolidated control are:

- the right to obtain information;
- the right to control;
- the right to impose regulations.

5.3.5.2 Circular CSSF 06/268 related to the supplementary supervision of financial conglomerates

Circular CSSF 06/268 details the aim and the approach of the Law of 5 November 2006 relating to the supplementary supervision of financial conglomerates, the scope of the supplementary supervision, the identification of the financial conglomerates and the practical consequences of the law.

Moreover, in accordance with Articles 51-13 (capital adequacy), 51-14 (risk concentration) and 51-15 (intra-group transactions) of the amended Law of 5 April 1993 related to the financial sector, the CSSF shall determine the calculation and notification procedures regarding own funds, risk concentration and intra-group transactions that financial conglomerates, for which it assumes the role of coordinator, should respect. The appendix to the Circular provides the necessary details in order to comply with the legal requirements in this matter.

5.3.6 Reporting and disclosure requirements

5.3.6.1 Prudential reporting

5.3.6.1.1 Circular IML 93/92 related to prudential reporting

The CSSF has established periodic tables that require credit institutions to file in compliance with a fixed reporting calendar. Instructions regarding the completion of these tables are included in the Banking Regulations and specific Circulars. Circular IML 93/92 in particular contains guidelines regarding the preparation and transmission of data submitted to the CSSF for the purposes of periodic reporting.

A summary of the prudential reporting for Luxembourg banks is given below:

Report code	Description	Frequency	Deadline
B 1.1	Balance sheet	Monthly	15 days after month end
B.1.2	Currency positions	Quarterly	20 days after quarter end
B 1.4	Capital adequacy ratio	Quarterly	20 days after quarter end
B 1.5	Liquidity ratio	Monthly	20 days after month end
B 1.6	Complementary information to the balance sheet	Monthly	15 days after month end
B 2.1	Profit and loss account	Quarterly	15 days after quarter end
B 2.3	Large exposures	Quarterly	20 days after quarter end
B 2.4	Participations and subordinated loans	Quarterly	20 days after quarter end
B 2.5	Complementary information to the profit and loss account	Quarterly	15 days after quarter
B 4.4	List of head offices, agencies, branches and information offices	Yearly	20 January N+1
B 4.5	Shareholders	Yearly	20 January N+1
B 4.6	Persons responsible for certain functions	Yearly	20 January N+1

Additional reports are due when the Luxembourg bank has branches or is supervised on a consolidated basis by the CSSF.

The credit institutions' management must establish internal control procedures in order to ensure compliance with the CSSF reporting requirements.

A full CSSF reporting is required for all credit institutions incorporated under Luxembourg law and branches of non-EU head offices. Branches of EU head offices, which are not subject to the supervision of the Luxembourg authorities (except for some specific areas) only have to file a limited periodic reporting mainly for statistical purposes.

5.3.6.1.2 Circular CSSF 05/227 on the introduction of a new prudential financial reporting ("FINREP")

Following the adoption of the new prudential dispositions relating to the regulatory capital adequacy ratio (CAD III) and the introduction of the European IFRS regulation and Directives, the CSSF has decided to revise its prudential reporting to shift as from 1 January 2008 (date of mandatory application of the CAD III) to a prudential reporting based on IFRS.

We also refer to Section 6.3 of this publication.

5.3.6.1.3 Circular CSSF 06/251 related to prudential reporting on capital adequacy (COREP)

Following the adoption of the Capital Adequacy Directive III (CAD III) and the introduction of the European regulation on international accounting standards IAS/IFRS, the CSSF decided to implement a new prudential reporting framework as from 1 January 2008, the date of the compulsory implementation of CAD III.

The purpose of Circular CSSF 06/251 is to provide in the annexe a detailed description of the prudential reporting scheme regarding capital adequacy (tables B 1.4 and B 6.4). These tables are based on the European COREP scheme (Common REPorting) of CEBS (Committee of European Banking Supervisors).

5.3.6.1.4 Circular CSSF 08/344 related to the remote transmission of prudential information and statistics

Since January 2008, the format for the remote transmission of information required for prudential supervision and for the collection of statistics has changed from LIBRAC (Luxembourg InterBank Reporting And Communication) to XBRL (eXtensible Business Reporting Language).

Channels authorised by the CSSF for the transmission of periodic information are currently E-file and SOFiE.

5.3.6.2 Transactions reporting

All transactions in financial instruments which have been admitted to trading on a regulated market need to be reported to the CSSF no later than the close of the following business day. This applies to all relevant transactions whether carried out on a regulated market, on a Multilateral Trading Facility, by a systematic internaliser or over-the-counter. The list of relevant instruments is set out in point 3 of Circular CSSF 07/302 and includes transferable securities, money market instruments, shares/units of UCIs, and derivative instruments. However, only credit institutions which are market facing and/or act for their own account need to report to the CSSF.

The details of the transactions reporting are published on the CSSF website.

Circular CSSF 07/302 has been complemented by Circulars CSSF 07/306, 08/334 and 08/365. Circular CSSF 08/334 notably refers to encryption requirements.

5.3.6.3 Circular CSSF 11/504 related to frauds and incidents due to external computer attacks

Circular CSSF 11/504 specifies reporting requirements for all entities supervised by the CSSF with regards to fraudulent activities and incidents related to external information systems attacks.

The main objectives of these reporting requirements as stated by the CSSF are to:

- ensure a closer monitoring of these attacks;
- inform the supervised entities about the nature and frequency of these attacks;
- anticipate potential cycles or future attack patterns, as well as the consequences for the financial market place;
- contribute to an improved protection of the financial marketplace based on recommendations related to the reported incidents.

Incidents are considered as reportable in case the attack was successful in achieving its objective (e.g. corrupting information systems), even if this attack has not resulted in any effective fraudulent activity, i.e. misappropriation of funds. “Phishing” attacks are not considered as reportable incidents under this circular.

The circular lists information that the supervised institutions shall provide to the CSSF when they report a fraud and/or an incident due to an external IT attack.

5.3.6.4 Other reports to be sent by a Luxembourg bank to the CSSF

Audited annual accounts have to be submitted to the CSSF two weeks before the annual shareholders’ meeting approving the accounts (so-called “VISA” procedure). The following documents shall be provided in that context:

- audited annual accounts;
- final version of prudential financial reporting;
- audited reconciliation table between Luxembourg GAAP accounts and the prudential financial reporting (when necessary);
- management report on internal control status;
- executive summary report on internal audit assignments;
- compliance report;
- internal Capital Adequacy Assessment Process (ICAAP) report.

In addition, the following reports shall be provided by the bank to the CSSF:

- Long Form Report issued by the external auditor (due one month after the annual shareholders’ meeting);
- management Letter (if any) issued by the external auditor (due one month after the annual shareholders’ meeting);
- stress test report (half yearly report due 45 days after the end of the half-year).

Additional reports are due when the Luxembourg bank is supervised on a consolidated basis by the CSSF.

For further information, do not hesitate to contact:



Emmanuelle Caruel-Henniaux
Regulatory Compliance
+352 49 48 48 2549
emmanuelle.henniaux@lu.pwc.com



Thierry Lòpez
Risk Management Services
+352 49 48 48 4141
thierry.lopez@lu.pwc.com

6 *Accounting framework*



Generally accepted accounting principles applying to credit institutions are set down by the modified Law of 17 June 1992 relating to the preparation and publishing of the annual and consolidated accounts of Luxembourg credit institutions, as well as the publishing of the accounts of branches of foreign credit institutions. This law is based on the European Union Directives 86/635/EU and 89/117/EU.

6.1 Introduction

The Law of 1992 was significantly amended in March 2006, mainly by transposing the EU Fair Value and the Modernisation Directives into the Luxembourg banking accounting law.

The Law includes:

- presentation of the annual accounts: layout of the balance sheet, including the off-balance-sheet, and profit and loss account, contents of the notes to the accounts;
- valuation and accounting policies;
- contents of the Directors' report;
- publication rules;
- external audit requirements with regard to the annual accounts;
- conditions and methods for the preparation of consolidated accounts.

The Law of 16 March 2006, amending the Law of 17 June 1992, allows Luxembourg-established credit institutions to choose between three options for the preparation of their annual accounts:

- 1) retain the historical accounting rules based on the cost convention (Luxembourg GAAP);
- 2) use IFRS as adopted by the European Union;
- 3) use some IFRS options (the annual accounts will be established using a mix between Luxembourg GAAP accounting rules and IFRS).

Options 2) and 3) need prior approval from the CSSF. The main IFRS option relates to the possibility to fair value financial instruments according to IAS 39. Furthermore, credit institutions whose shares or bonds are listed on a regulated market have to prepare consolidated annual accounts in accordance with IFRS as adopted by the European Union.

As regards the prudential financial reporting to the CSSF, credit institutions are required to submit a periodical financial reporting based on IFRS as adopted by the CSSF (FinRep).

Section 6.2 details the accounting framework for current Lux GAAP accounting rules.

6.2 Annual accounts prepared under Lux GAAP

6.2.1 Generally accepted accounting principles for credit institutions

Based on Article 2 of the law, the annual accounts shall give a true and fair view of a credit institution's assets liabilities, financial position and profit and loss account.

In order to present a true and fair view, annual accounts must reflect the economic substance of transactions. In business practice, the economic reality of a transaction may not always be consistent with its legal form. In such cases, economic substance must take priority over the legal form for the purpose of preparing and publishing annual accounts. The modified law introduces the concept of "substance over form".

Compensation of assets and liabilities or of income and expenses is not allowed, except for the specific cases provided by the law (such as a result on financial trading operations).

Balances presented in the annual accounts must be valued in accordance with the following generally accepted accounting principles:

- A credit institution is presumed to be carrying on its business as a going concern.
- Valuation methods are applied consistently from one accounting period to another.
- Valuation must be made on a prudent basis, and in particular:
 - Only profits realised at the balance sheet date are recognised;
 - All liabilities arising during the accounting period or a previous one are taken into account, even if such liabilities only materialise between the balance sheet date and the date

when it is prepared (in addition, credit institutions may also include all foreseeable liabilities and potential losses arising during the accounting period or during a previous one);

- All value adjustments must be taken into account, irrespective of whether the result of the accounting period indicates a profit or a loss.
- All income and expenses relating to the period covered by the annual accounts are taken into account, irrespective of the receipt or payment date (accrual basis).
- The components of asset and liability items are valued separately.
- The opening balance sheet for each accounting period corresponds to the closing balance sheet of the preceding accounting period.

Departures from the above generally accepted accounting principles are permitted in exceptional cases, provided prior authorisation from the CSSF is obtained. Any such departures must be disclosed and explained in the notes to the published annual accounts together with an assessment of their effect on the assets, liabilities and profit and loss account.

6.2.2 Presentation of the annual accounts under Luxembourg GAAP

Annual accounts comprise the balance sheet, the profit and loss account and the notes to the annual accounts. They must be drawn up clearly and in accordance with the provisions of the Law of 17 June 1992 as amended.

A specific layout of the balance sheet and of the profit and loss account is defined in the Law. The presentation cannot be changed from one financial year to another. Departures from this principle are permitted in exceptional cases. Any such departure must be disclosed in the notes to the annual accounts together with an explanation of the reasons thereon.

Assets are disclosed in a decreasing order of liquidity whereas liabilities

are presented in a decreasing order of maturity. Value adjustments on assets are deducted from the related assets. Provisions are disclosed on the liability side of the balance sheet (e.g. pensions and similar obligations, taxes, litigations, provisions for losses arising on off-balance-sheet positions).

Annual accounts must disclose the following off-balance-sheet items: contingent liabilities, commitments and fiduciary operations, which comprise all fiduciary operations governed by the Law of 27 July 2003 regarding trust and fiduciary contracts.

The layout of the balance sheet and the profit and loss account as defined in the law may be replaced by another presentation, given that the information disclosed is at least equivalent.

Only those amounts which, at the reporting date, can at any time be withdrawn without prior notice or for which a maturity period of notice of 24 hours or one working day has been agreed, are regarded as “repayable on demand”. Amounts with a remaining maturity period exceeding one working day or having notice periods exceeding one working day are disclosed under the caption “with agreed maturity dates or periods of notice”.

Interbank transactions and client deposits are recorded on the balance sheet at the date amounts have been duly settled, that is, their date of effective transfer. The date at which amounts are settled depends on the market practice and does not necessarily correspond to the transaction date or the value date (date from which interest starts to accrue).

Gains/losses on trading operations are compensated and disclosed as net result on financial operations in the annual accounts. This compensation is an exception to the principle of non-offset referred to above.

Exceptional income and charges arising on transactions, which are not in the ordinary course of business of a credit institution and whose nature is not usual and whose occurrence is exceptional, are disclosed separately in the profit and loss account with the related tax charges on the extraordinary net profit.

The notes to the annual accounts must contribute to give a true and fair view of the balance sheet and profit and loss account. They must be drawn up consistently from one financial year to the other. The items which have to be disclosed in the notes to the annual accounts are mainly included in Articles 65, 67, 67 bis, 68 and 69 of the Law of 17 June 1992 as amended. Article 66 contains a list of items which may be disclosed either in the balance sheet or in the notes.

The annual accounts include a Directors’ report, which must include at least a true and fair view of the development of the business and of the financial position of the credit institution, as well as a description of the main risks and uncertainties the credit institution is facing. The Directors’ report must also include the following:

- any important events having occurred since the end of the financial year;
- the likely future developments of the credit institution;
- a description of activities undertaken in the field of research and development;
- details regarding the acquisition of own shares, as required by Article 49-5 (2) of the commercial companies Law of 10 August 1915 as amended;
- the existence of branches;
- the financial risk management objectives and policies in terms of use of financial instruments;
- the credit institution’s exposure to price risk, credit risk, liquidity risk and cash flow risk.

6.2.3 Specific Luxembourg banking GAAP accounting principles

6.2.3.1 Investments

For the purposes of this section, investments refer to fixed income securities, bills, shares and other variable-yield securities, participating interests and shares in affiliated undertakings.

Investments are stated at their cost of acquisition or purchase price including incidental expenses and are recorded in their original currency. Investments are to be valued at least on a monthly basis (daily for marked-to-market instruments).

Investments may be valued using one of the following valuation methods:

- acquisition cost;
- “lower of cost or market value”;
- “mark-to-market”.

For valuation purposes, credit institutions have to classify investments into one of the three following portfolios:

- investment portfolio;
- trading portfolio;
- structural portfolio.

Each portfolio has its specific valuation method, depending on the type of investment included in the portfolio.

The credit institution’s decision making bodies must adopt detailed written procedures setting out the criteria used to allocate securities to those three portfolios. Credit institutions have to account for each portfolio separately. Premiums and discounts on fixed income securities have to be amortised based on specific rules mainly following the prudence principle. The transfer of securities from one portfolio to another has to be done at the net book value or at the market price at the date of the transfer.

IFRS option: all investments may be valued according to IAS 39 - Financial instruments: recognition and

measurement (subject to prior CSSF authorisation).

6.2.3.1.1 Valuation of fixed income transferable securities

Investment portfolio

Fixed income transferable securities included in the investment portfolio are intended for use on a continuing basis. The period of time over which the securities should be held is not defined in the Law. However, since they are considered as financial fixed assets, this implies holding them in the long-term and, in principle, until maturity. When purchasing these securities, credit institutions must have the intention to hold them until maturity, which does not, however, formally prevent them from being sold before maturity as would be the case for held-to-maturity securities under IAS 39.

Fixed income securities included in the investment portfolio can be maintained at their acquisition cost under certain strict conditions or can be valued based on the “lower of cost or market value” principle. It is permitted to apply at the same time both valuation methods to securities held in the investment portfolio, but valuation methods must be consistent over a period of time.

In the case of a permanent depreciation of the carrying value of the fixed income securities maintained at the purchase price, a value adjustment is required.

Trading portfolio

Fixed income securities included in the trading portfolio are those purchased with the intention to sell them in the short-term. Credit institutions must define what they consider as a short-term period (best practice is a maximum six-month period). They must have the following characteristics:

- they are traded on a market whose liquidity can be considered as certain;
- the market price of those securities is always available to the public.

Fixed income securities included in the trading portfolio can be valued either by using the lower of cost or market value principle or the mark-to-market principle. It is not permitted to have a mix of both valuation methods in the fixed income securities trading portfolio. In addition, the valuation method must be consistent over time.

Fixed income securities purchased with the intention of resale in the short-term, but which do not have the above characteristics, should not be included in the trading portfolio. Instead, they must be included in the structural portfolio. Securities held in the trading portfolio for a term exceeding the defined short-term period are reclassified into the structural portfolio.

Structural portfolio

The structural portfolio consists of fixed income securities which are neither financial fixed asset nor included in the trading portfolio. In principle, this portfolio includes securities purchased for their investment return/yield or held to create a particular asset structure or a secondary source of liquidity.

Fixed income securities included in the structural portfolio can only be valued based on the lower of cost or market value principle. Exceptional value adjustments, as explained below, are permitted for this type of portfolio. In addition, value adjustments created pursuant to Article 62 of the Law can also be applied to fixed income securities included in the structural portfolio.

6.2.3.1.2 Valuation of shares and other variable yield transferable securities

The same three categories of portfolio as previously defined also apply to shares

and other variable yield transferable securities. Shares comprise participating interests and shares in affiliated undertakings.

Investment portfolio

Only participating interests and shares in affiliated undertakings held as financial fixed assets can be included in the investment portfolio. All other shares and other variable yield securities do not qualify for inclusion in this portfolio.

Participating interests and shares in affiliated undertakings held as financial fixed assets can be measured at the acquisition cost or on the basis of the lower of cost or market value principle (optional). In the case of a permanent impairment of financial fixed assets maintained at the acquisition cost, a value adjustment is required.

Trading portfolio

The trading portfolio may include all types of shares and variable yield securities (with the exception of participating interests and shares in affiliated undertakings held as financial fixed assets) meeting the trading portfolio requirements defined above. The trading portfolio may include shares in affiliated undertakings which are not held as financial fixed assets.

Shares and variable yield securities included in the trading portfolio must be valued as current assets on the basis of the “lower of cost or market” principle. It is not permitted to mark-to-market these securities included in the trading portfolio on the grounds of their higher volatility. Exceptional value adjustments and value adjustments created pursuant to Article 62 (see below) of the Law can also apply here.

Structural portfolio

The same criteria as for the fixed income securities apply (see above).

6.2.3.2 Value adjustments and provisions

Value adjustments are classified either as specific asset related value adjustments or non-specific asset related value adjustments.

Specific value adjustments comprise all adjustments intended to take into account reductions in the value of individual assets at the reporting date whether that reduction is permanent or not. Value adjustments are made for doubtful debts and impairment losses on securities. The Law requires that, in the annual accounts, value adjustments are deducted directly from the asset concerned (net value). Value adjustments must be maintained in the same currency as the related assets.

Provisions are intended to cover losses or debts the nature of which is clearly defined and which at the reporting date, are either likely or even certain to be incurred, but uncertain as to the amount or as to the date when they will arise. Typical examples are provisions for pensions and other similar obligations, provisions for taxes, litigation provisions and provisions relating to off-balance-sheet positions.

Value adjustments and provisions must follow the overriding true and fair view principle included in the Law on the annual accounts.

Credit institutions may in addition to the specific value adjustments described above record the following non-specific value adjustments:

Lump-sum provision

The lump-sum provision is a general provision for possible losses on risk weighted assets and off-balance-sheet items, recorded by applying a 1.25% rate to assets and off-balance-sheet items at risk, according to specific rules. The lump-sum provision is tax deductible. The part of the provision relating to assets is deducted from the related assets; the portion of the provision relating to off-balance-

sheet items is disclosed under the caption “provisions”.

Value adjustments created pursuant to Article 62

On the basis of Article 62 of the Law of 17 June 1992 as amended, credit institutions are permitted to record an additional 4% maximum value adjustment on certain classes of assets after the deduction of specific value adjustments. This 4% reserve is deducted from the value of the concerned assets and is therefore not disclosed separately in the annual accounts. This provision is made on the basis of appropriation of profit after tax (i.e. these value adjustments are not tax deductible).

This option is given by the European Directive 4bis in addition to the possibility of setting up an open reserve, which appears in the balance sheet to cover general banking risks (see below).

Fund for general banking risks (Article 63)

Credit institutions are also permitted to set up a fund for general banking risks. This open reserve disclosed in the annual accounts includes amounts which a credit institution decides to put aside to cover general banking risks, if justified for reasons of prudence where that is required by the particular risks associated with banking activities. This provision is available indefinitely and immediately to cover future losses not identified at the date of its recording. It is not intended to cover any shortfall of a specific asset. There is no quantitative restriction for the creation of this reserve, which is made on the basis of appropriation of profit after tax (i.e. amounts allocated to this fund are not tax deductible).

“Beibehaltungsprinzip”

A value adjustment recorded on the basis of the “lower of cost or market value” principle can be maintained even if this value adjustment is no longer required because of a subsequent appreciation of the asset.

This valuation principle, which derives from Luxembourg tax regulations, is permitted by the European Directive 4bis. Value adjustments which have not been reversed based on this principle have to be disclosed as such in the notes to the annual accounts.

6.2.3.3 Foreign exchange transactions

Assets and liabilities denominated in a foreign currency are translated into the credit institution's base currency at the spot exchange rate prevailing at the reporting date. Unrealised exchange gains arising from the bank's net open spot currency position can be taken to the profit and loss account, whereas unrealised exchange losses must be recorded.

It is permitted that participating interests, shares in affiliated undertakings held as financial fixed assets and tangible and intangible assets, not covered in the spot or forward foreign exchange markets, are translated at the exchange rate prevailing at the date of their acquisition. Value adjustments must be made, though, for those assets which are denominated in a foreign currency, if that currency is expected to depreciate in value on a continuing basis.

Forward foreign exchange transactions, which have not matured at the reporting date, are translated into the credit institution's base currency at the prevailing forward exchange rate for the remaining term ruling at the reporting date. Provisions for unrealised exchange losses on forward foreign exchange transactions are recognised in the profit and loss account. Unrealised exchange gains are not included and only recognised when ultimately realised, except when such transactions form an economic unit with offsetting forward foreign exchange transactions (the economic unit principle being only applicable under certain conditions set out in the banking regulation) or represent a hedged position contracted to eliminate the currency risk arising on a balance sheet or off-balance-sheet item.

Premiums and discounts on currency swap transactions linked to balance sheet items are accrued on a straight-line basis over the period of the swap contract and are disclosed as interest income and expenses in the profit and loss account. The periodic currency valuation of the spot and forward leg of such currency swap transaction must not have an impact on the foreign exchange result (neutralisation principle).

6.2.3.4 Derivative financial instruments

Derivative financial instruments may be contracted over-the-counter (OTC) or on an organised market. Different valuation rules apply in the case of OTC or organised market transactions and a difference has also to be made depending on whether the derivative is used for hedging or trading purposes.

A market for financial instruments (including currency instruments) may be considered as organised if the following conditions are met:

- a clearing house exists which ensures that the market remains liquid and that transactions are settled promptly;
- margin calls are settled on a daily basis;
- an initial margin deposit is required, which must be sufficient to cover any shortfall.

A market which fails to satisfy the above conditions is considered as an over-the-counter market.

It has to be noted that the banking regulation currently only includes valuation rules applicable to foreign exchange derivative financial instruments. The valuation rules explained hereafter regarding Interest Rate Swaps and forward/future rate agreements are based on generally accepted accounting principles in Luxembourg and on the rules set up for the foreign exchange derivatives.

IFRS option: all derivatives may be fair valued in accordance with IAS 39 - Financial instruments: recognition and measurement (subject to prior CSSF authorisation).

Interest Rate Swaps

Interest Rate Swaps (IRS) contracted to hedge an interest flow of a balance sheet position other than bond positions are not valued. Specific rules apply for IRS hedging bonds, depending on the type of portfolio and the valuation method used.

By applying the prudence principle, unrealised losses on trading Interest Rate Swaps are provided for, whereas unrealised gains are ignored. Market value is determined based on commonly accepted valuation models (e.g. net present value of future cash flows).

Interest receivable and payable are accrued separately in the balance sheet and may be recorded on a net basis in the profit and loss account.

Forward/future rate agreements

Forward rate agreements are negotiated OTC, whereas future rate agreements are standard contracts traded on organised markets. Forward rate agreements are valued by referring to an interest settlement rate. Future rate agreements are valued on the basis of a market quote.

For forward rate agreements held for trading purposes, unrealised losses are recorded in the profit and loss account, whereas unrealised gains are ignored. For trading future rate agreements, unrealised gains may be recorded, given that such contracts are negotiated on organised markets.

Specific rules apply if those instruments are held for hedging purposes.

Financial futures

Financial futures contracted by a credit institution are "marked-to-market" daily and margin calls take place daily. Gains and losses on trading positions are directly recorded in the profit and loss account. Gains and losses on hedging positions are amortised over the same period as the results from the hedged item.

Options

For the options traded over the counter and unallocated to determined assets or liabilities, the premiums received or paid appear on the balance sheet until the exercise or the expiration date of the options, if the option is not exercised before that date. Commitments on written options are recorded off-balance-sheet.

For options not used for hedging purposes, the estimated unrealised losses are booked in the profit and loss account whereas unrealised gains are ignored.

6.2.4 Filing of the annual accounts

The annual accounts and reports of a credit institution, including the Directors' report and the report of the approved statutory auditor ("Réviseur d'entreprises agréé") together with a number of other information, have to be submitted for review to the CSSF at least two weeks before the date set for the annual shareholders' meeting approving the annual accounts ("Visa procedure"). Credit institutions have the possibility to opt for International Financial Reporting Standards (IFRS) instead of Luxembourg GAAP standards but prior CSSF approval is required.

The duly approved annual accounts and related documents have to be filed with the Trade and Companies Register within the month of the shareholders' approval and not later than seven months after the closing of the accounts.

The annual accounts should also be filed in each member state of the European Union where the credit institution has established a branch.

Publication requirements for branches are different. Branches of an EU head office are not required to publish in Luxembourg annual accounts relating to their own activities. However, they must publish the annual and consolidated accounts of their head office, which are prepared in compliance with the Directive 4bis requirements.

Branches of a non-EU head office must publish the annual and consolidated accounts of their head office, which must be prepared in compliance with the Directive 4bis requirements or some equivalent form (the CSSF decides whether the equivalence is given). In the case of non-compliance, the annual accounts of the head office have to be restated to meet the Directive requirements or an equivalent form. The filing with the Trade and Companies Registrar has to be done in the month of approval of the annual accounts.

6.3 Prudential and financial reporting

Following the adoption of the prudential dispositions relating to the regulatory capital adequacy ratio (Basel II) and the introduction of the European IFRS regulation and Directives, the CSSF revised its financial and prudential reporting in 2008.

The financial reporting framework (FINREP) has been developed on the basis of IFRS as published by the International Accounting Standards Board and which has been endorsed by the European Union. FINREP represents a common standardised reporting framework with the objective to increase comparability of

financial information produced by credit institutions for their respective national supervisory authorities within the European Union.

FINREP is composed of a set of tables (principal ones are disclosed in Section 5.3.6.1.1 above) divided into two sections which contain quantitative financial information designated as "core" and "non-core" respectively. FINREP also includes financial information which under IFRS may be provided in the form of a disclosure note. The framework does not allow the possibility to provide certain supplemental information, as this would reduce standardisation and the comparability of the required information.

The periodic reporting as well as the reporting on the capital adequacy ratio has to be submitted in the format of data electronic transfer XBRL (eXtensive Business Reporting Language). They are based on the common European schedules elaborated by the Committee of European Supervisors (CEBS, now EBA - European Banking Authority) as regards Financial Reporting (FINREP) on the one hand, and as regards prudential reporting for the supervision of the capital adequacy ratio (Common Reporting, COREP) on the other. Detailed technical aspects of the reporting framework have been further described in Circular CSSF 06/251.

For further information, do not hesitate to contact:



Fabrice Goffin

Accounting, IFRS

+352 49 48 48 2529

fabrice.goffin@lu.pwc.com

7 *Audit requirements*



Internal audit function and external audit are two mandatory requirements applicable to Luxembourg banks.

Internal audit function is defined in Circular IML 98/143, as amended by Circular CSSF 04/155. The purpose of the internal audit function is to ensure that the system of internal control is operating effectively. It represents an internal function within the credit institution for periodic, independent assessments of operations in order to assist the bank's management and departmental heads.

The external auditor issues an audit opinion on the annual accounts and ensures that internal processes are conform to regulatory provisions. Such provisions include the circulars that the CSSF promulgates on a regular basis.

7.1 Internal audit

The management of a credit institution must take the necessary action to ensure that an internal audit function is in place on a permanent basis within the organisation. The institution must communicate to the CSSF the name of the head of internal audit. In some cases, due to the small size and the low risk activities of the credit institution, the internal audit function can be delegated to a third party. This third party may be part of the group internal audit function. When this third party is not the group internal auditor, it must be completely independent of the institution's external auditor. Institutions wishing to use the services of a third party expert in internal audit must submit a written application to the CSSF.

The internal audit function should have the following characteristics:

- Independence: the internal audit department must be independent of the activities and functions audited by it and should be attached to the management.
- An internal audit charter: the internal audit should prepare an internal audit charter setting out the objectives, powers and duties of the internal audit department. The internal audit charter must be approved by the management and confirmed by the Board of Directors.

- Objectivity: internal auditors must perform their work objectively in order to avoid conflicts of interest and to fulfill independence of mind and professional judgement.
- Professional competence: each internal auditor must possess the prerequisite competence, particularly in terms of expertise and experience.
- Scope of internal audit work: the scope of the internal audit department extends to all activities and functions of the credit institution, there shall be no limitations as to the scope whatsoever. It shall also extend to the foreign branches and to subsidiaries both in Luxembourg and abroad.
- Conduct of internal audit work: the overall audit plan shall cover the performance of the internal audit assignments. Generally, a three-year audit plan should be established.
- Reporting: after each assignment, a report should be prepared by the internal auditor. Once a year, an Executive Summary covering all audit work performed during the financial year has to be prepared and sent to the CSSF.

The internal audit should cover all the activities of the bank, in principle over a three-year period. Typical areas of work for internal audit are: AML/KYC processes and procedures, ICAAP, MiFID and remuneration policy implementation.

7.2 External audit

Authorisation of credit institutions is subject to the condition that the company has its annual accounts audited by one or more approved statutory external auditors ("Réviseurs d'entreprises agréés") having the appropriate professional experience. The nomination of the(se) auditor(s) is made by the Board of Directors of the credit institution. Any change in external auditors must receive prior approval from the CSSF.

The Long Form Report is to be used as a basis of information, not only for the Board of Directors or management of the credit institution, but also for the CSSF.

Article 11 of the law of 18 December 2009 concerning the audit profession (the “Audit Law”), states that the CSSF is the competent authority for the public oversight of approved statutory auditors. In this respect, it administrates a public register in which all approved statutory auditors and audit firms are entered. This includes third-country auditors and audit entities registered pursuant to Article 79 of this law.

As detailed in circular CSSF 01/27, credit institutions are required to give the external auditors a written, detailed mandate which must include the following minimum requirements:

- The engagement will be carried out in accordance with International Standards on Auditing (ISA), as published by the International Federation of Accountants (IFAC), as adapted by the “Institut des Réviseurs d’Entreprises” (IRE), and in accordance with the professional guidelines issued by the IRE.
- The scope of the audit shall cover all areas of the bank activity and more specifically shall be based on IFAC’s International Auditing Practice Statements’ Directive (IAPS) 1006 - The Audit of International Commercial Banks.
- The scope of the audit will include all the bank’s activities, whether reported on or off-balance-sheet. In addition, it will cover all banking risks, as well as all financial, organisational and internal control considerations relating to the bank, as specified in Circular CSSF 01/27, as amended by Circulares CSSF 08/340, 10/484 and 11/521.
- The auditor shall verify the compliance with the regulatory framework set up by the CSSF. The audit work and the additional procedures shall focus on all areas mentioned by Circular CSSF 01/27 as amended and shall give emphasis to compliance with:
 - The Articles included in Chapter 5 of Part II of the Law dated 5 April 1993 on the financial sector as

amended, the Law of 12 November 2004 on the fight against money laundering and terrorist financing, Grand-Ducal regulation of 1 February 2010 providing details on certain provisions of the amended law of 12 November 2004 on the fight against money laundering and terrorist financing, Regulation (EC) 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds, international acts relating to the fight against terrorist financing brought to the attention of the institutions through CSSF circulars, CSSF regulations as regards the fight against money laundering and terrorist financing, CSSF circular in these matters, as well as the proper application of internal procedures regarding the prevention of money laundering and terrorist financing.

- Article 37 of the Law dated 5 April 1993 on the financial sector as amended, the proper application of principles included in Circular CSSF 07/307 (MiFID) on the rules of conduct in the financial sector, and the proper application of relevant internal procedures.
- The Articles included in Titles III and IV of the amended Law of 10 November 2009 related to payment services.
- All other Circulars issued by CSSF either referred to in Circular CSSF 01/27 as amended or additional related Circulars as appropriate.
- Assess the institution’s analysis of money laundering or terrorist financing risk it faces and verify if the procedures, infrastructures and controls with respect to the fight against money laundering and terrorist financing set up by the institution, as well as the extent of the measures taken by the credit institution, are appropriate considering the money laundering and terrorist financing risk to

which the institution is or might be exposed notably through its activities, the nature of its customers and the products and services offered.

- The terms of the statutory audit engagement shall embrace all foreign branches of the bank. In regard to compliance with the Luxembourg prevention of money laundering and terrorist financing and rules of conduct, the audit shall further embrace all foreign subsidiaries of the bank.
- The statutory audit of the annual accounts as defined above shall give rise firstly to an audit opinion and secondly to a Long Form audit Report.

The Long Form Report is to be used as a basis of information, not only for the Board of Directors or management of the credit institution, but also for the CSSF.

It must therefore cover several topics in order to allow the CSSF to assess among others the credit institution's organisation, internal control, the financial position and its evolution, the business risks, the management information systems and the IT environment.

The standard content of the Long Form Report is described below. This format applies to Luxembourg credit institutions and to branches of non-EU credit institutions:

1. Terms of engagement
2. Significant events
3. Organisation and administration
 - i) General organisation
 - ii) Administrative organisation
 - iii) Accounting system
 - iv) Computer system
4. Internal control
 - i) Internal procedures
 - ii) Internal information and management control procedures
 - iii) Risk management
 - iv) Audit committee
 - v) Internal audit
 - vi) Compliance

5. Operations
 - i) Lending
 - ii) Deposit-taking
 - iii) Dealing
 - iv) Securities dealing for own account
 - v) Securities dealing for customer account
 - vi) Asset management
 - vii) Investment fund-related activities
 - viii) Corporate finance
 - ix) Direct banking
 - x) Payment and securities settlement systems
 - xi) Other banking business
6. Periodic reporting to the CSSF
7. Prudential ratios
 - i) Solvency ratio
 - ii) Liquidity ratio
8. Review of the annual accounts
9. Banking risks
 - i) Business policy and risk management strategy
 - ii) Quantitative and qualitative analysis of banking risks
10. Professional obligations relating to prevention of money laundering and terrorist financing
11. Professional obligations regarding rules of conduct and provisions of Titles III and IV of the amended Law of 10 November 2009 related to payment services
12. Affiliated companies
13. Foreign branches
14. Follow-up of issues raised in previous reports
15. Overall conclusion

In case the entity is supervised on a consolidated basis by the CSSF (e.g. when it holds participations in other banks for example), a consolidated Long Form Report also needs to be provided to the CSSF. The consolidated Long Form Report must include a stand-alone Long Form Report for each of the participations included in the supervision on a consolidated basis of the CSSF.

The deadline for providing the statutory Long Form Report to the CSSF is one month after the annual general meeting of the shareholders. The deadline for providing the consolidated Long Form Report to the CSSF is three months after the annual general meeting of the shareholders. In addition to the report on the annual accounts and the Long Form Report, credit institutions have to give to the CSSF, without having been expressly invited to do so, any other documents drawn up by the external auditors within the framework of the audit of the annual accounts. This includes management letters with recommendations to strengthen the internal control systems, and interim reports on specific areas.

The amended Law of 5 April 1993 gives the CSSF the right to request an external auditor to review one or several aspects of the activity and operations of a credit institution.

External auditors are subject to the rules regarding professional secrecy. However, this duty does not apply to the CSSF.

It has to be noted that the above-mentioned external audit requirements do not apply to Luxembourg branches of an EU head office, which are subject to audit requirements imposed by the head office authorities. This does not, however, prevent the CSSF from giving a special mandate to the external auditor in areas for which the CSSF maintains competence (e.g. prevention of money laundering and terrorist financing).

For further information, do not hesitate to contact:



Philippe Sergiel
Banking Audit Leader
+352 49 48 48 2596
philippe.sergiel@lu.pwc.com



Pierre-François Wery
Internal Audit Services
+352 49 48 48 6412
pierre-francois.wery@lu.pwc.com

8 *Taxation*



In principle, the banking legislation does not contain specific tax provisions. As a result, banks are subject to all tax laws applicable in Luxembourg. Only a few tax provisions are specific to banks.

8.1 Corporate income tax (“*Impôt sur le Revenu des Collectivités*”, IRC)

As the statutory accounts are the starting basis for the preparation of the tax return, and the comments below are based on the assumption that the bank expresses its accounts under Luxembourg GAAP. An amendment of the tax law is anticipated to take into account the fact that Luxembourg banks may express their statutory accounts under IFRS.

Article 40 of the Income Tax law (LIR) and paragraph 7 of Tax Administration Circular n° 101 of 5 November 1985 stipulate that the tax balance sheet must follow the statutory accounts, unless the tax valuation rules explicitly impose a deviation. Tax valuation rules are contained in Article 23 LIR. This article provides that the tax valuation rules for taxpayers are based on the accounting rules and specific tax rules. Valuation tax rules deviating from the accounting valuation rules will prevail over the accounting rules. Therefore, unless tax rules require otherwise, taxable income will be based on the statutory accounts.

8.1.1 Basic tax rules

The tax valuation rules are as follows:

- Taxable profit is determined under a balance sheet approach, i.e. by comparing the net asset values of the bank between the end and the beginning of the financial year (Article 18(1) LIR).
- The net asset value at the beginning of the financial year must be equal to the net asset value at the end of the preceding financial year (Article 18(2) LIR).
- Any asset (other than the case of similar assets) must be valued individually (Article 22(3) LIR).
- Depreciable fixed assets must be valued at acquisition cost (net of depreciation or value adjustment). If the going concern value is lower, this lower value may be taken into account (Article 23(2) LIR).
- Other assets (lands, investments, current assets) must be valued at

acquisition cost. If the going concern value is lower, this lower value may be taken into account.

- Liabilities must be valued in accordance with an appropriate application of the provisions mentioned above (Article 23(4) LIR).
- If the operating value of a participation is higher than the value accounted for at the end of the preceding financial year, the participation must be accounted for at this higher value subject to the limit of the acquisition price of the participation (Article 23(5) LIR).

8.1.2 Tax valuation rules specific to banks

The tax valuation rules generally follow the banking accounting rules. Exceptions may nevertheless occur. For example, for fixed income securities which are not financial assets (trading portfolio), accounting rules (Article 58(3) of the Law of 17 June 1992 relating to the annual accounts of credit institutions) allow for valuation of these investments at market value, which is not permitted under tax rules to the extent that the market value exceeds the acquisition price of the asset. If this is the case, the bank should normally draw up a separate tax balance sheet. In addition, branches of EU banks are not obliged to follow the accounting rules applicable in Luxembourg. Therefore, their balance sheet may not be in accordance with the tax rules. If a difference arises a tax balance sheet must be prepared.

8.1.2.1 Value adjustments and banking provisions

The amended Law of 17 June 1992 relating to the accounts of credit institutions makes a distinction between value adjustments and provisions.

Value adjustments

Value adjustments, as specified in Articles 56 and 58 of the amended Law of 17 June 1992, will include reductions in value of the assets owned by the bank. These reductions in value must be made in the same currency as the underlying assets. The assets are presented at their adjusted value in the annual accounts. These adjustments are deductible for tax purposes. In addition, under Article 62 of the amended Law of 17 June 1992, adjustments resulting in a value lower than that resulting from the application of Article 58 of the same law can apply to the following assets when, for purposes of prudence, this is necessary as a result of risks inherent to banking transactions:

- receivables from credit institutions and clients;
- leasing transactions;
- bonds, shares and other transferable securities with variable income, which are not financial assets and which are not included in the trading portfolio.

The difference between the value of these assets as computed under Article 58 and their value computed under Article 62 of the amended Law of 17 June 1992 may not exceed 4% of their total value as calculated in accordance with Article 58 of the same law. The adjustments made under Article 62 are not deductible from a tax point of view.

Banking provisions

The aim of the provisions for risks and charges is to cover losses which, although clearly identified, are, at the closing date of the balance sheet, probable or certain but which have yet to be determined as to their amount or their date of occurrence (Article 31 of the amended Law of 17 June 1992).

Lump-sum provision

In accordance with the Tax Director, the lump-sum provision for risk weighted assets is tax deductible to the extent that it does not exceed 1.25% of the qualifying risk weighted assets as at the financial year-end (or on the annual average based on each month-end of such assets, if this average is substantially lower than the amount as of financial year-end).

The AGDL provision

The AGDL (“Association pour la Garantie des Dépôts Luxembourg”) provision is tax-deductible to a certain extent.

The country risk provision

The country risk provision reflects the temporary risk of non-recovery of receivables linked to the political and/or economic situation of the country of the debtor. This provision is tax deductible.

8.1.2.2 Neutralisation of currency exchange gains

Regardless of the currency of the capital of the bank and/or the accounting currency, the taxable profit must in principle be calculated in Euro (EUR). The taxable profit corresponds to the difference between the net asset value of the bank expressed in EUR at the beginning of the financial year and the value at the end of the financial year. The evolution of exchange rates has, therefore, an impact on the tax profit. To mitigate this effect, Article 54bis of the law foresees the possibility to immunise the exchange gains resulting from the conversion of the net equity into EUR through a special reserve to book in a tax balance sheet.

8.1.2.3 Loss carry forward

Losses incurred in the years closing after 31 December 1990 may be carried forward indefinitely. Losses may not be carried back.

8.1.2.4 Transactions with affiliated companies

Transactions with affiliated companies must be carried out at an arm's length, in order to avoid assumed hidden dividend distributions, the reintegration of profits transferred to non-resident taxpayers in the taxable basis of the company, or hidden contributions depending on the transaction.

8.1.2.5 Exemption of dividends and capital gains on participations

a) Exemption of dividends received

A Luxembourg bank, like any other fully taxable resident joint-stock company ("société de capitaux") in Luxembourg, is eligible for the domestic dividend participation exemption on dividends received as long as the following conditions are satisfied:

- 1) the distributing company is:
 - a collective entity falling under article 2 of the amended version of the Parent/Subsidiary Directive; or
 - a Luxembourg resident joint-stock company, which is fully taxable and does not take one of the forms listed in the appendix to paragraph 10 of article 166 LIR; or
 - a non-resident joint-stock company that is fully liable (in its state of residence) to a tax corresponding to the Luxembourg corporate income tax; and
- 2) the beneficiary company is:
 - a Luxembourg resident collective entity, which is fully taxable and takes one of the forms listed in the appendix to paragraph 10 of article 166 LIR; or
 - a Luxembourg resident joint-stock company, which is fully taxable and does not take one of the forms listed in the mentioned above appendix; or
 - a domestic permanent establishment of a collective entity falling under article 2 of the amended version of the Parent/Subsidiary Directive; or

- a domestic permanent establishment of a joint-stock company that is resident in a State with which Luxembourg has concluded a double tax treaty; or
- a domestic permanent establishment of a joint-stock company or of a cooperative society which is a resident of an EEA Member State (other than an EU member state); and

- 3) at the date on which the income is made available, the beneficiary has been holding or undertakes to hold, directly, for an uninterrupted period of at least 12 months a participation in the share capital of the subsidiary of at least 10% or with an acquisition price of at least EUR 1.2 million.

If the participation is held through a tax-transparent entity, this will be regarded as direct participation proportionally to the interest held by the Luxembourg holding company in the tax-transparent entity.

A further benefit of the system in comparison to the one applicable in other countries is the ability to deduct related expenses (e.g. interest charges incurred in financing the shares).

Nevertheless, according to the general principle which denies the deductibility of expenses connected to exempt income, any expenses incurred during the year in which a dividend is received and which are connected to the exempt participation may only be deducted insofar as they exceed the exempt dividend for the year in question.

Additionally, if a write-down in the value of the participation has been booked as a consequence of the distribution of dividends, this write-down will not be deductible up to the amount of the exempt dividend.

If the above mentioned exemption is not applicable, 50% of the dividend received from:

- fully taxable resident joint-stock companies;
- companies resident in an EU member state and referred to in Article 2 of the EC Parent-Subsidiary Directive;
- joint-stock companies residing in a tax treaty country that are fully subject to a tax comparable to the Luxembourg corporate income tax, is tax-exempt.

b) Exemption of capital gains arising from the disposal of shares

Capital gains realised by a bank (like any other fully taxable resident joint-stock company) on a shareholding held directly (a participation indirectly held through a tax transparent entity is considered as a direct participation proportionally to the part held in the assets of that organism) are also exempt from tax under the following conditions:

- 1) the subsidiary is:
 - a collective entity falling under article 2 of the amended version of the Parent/Subsidiary Directive; or
 - a Luxembourg resident joint-stock company, which is fully taxable and does not take one of the forms listed in the appendix to paragraph 10 of article 166 LIR; or
 - a non-resident joint-stock company that is fully liable (in its state of residence) to a tax corresponding to the Luxembourg corporate income tax;
- 2) the beneficiary company is:
 - a Luxembourg resident collective entity, which is fully taxable and takes one of the forms listed in the appendix to paragraph 10 of article 166 LIR; or
 - a Luxembourg resident joint-stock company, which is fully taxable and does not take one of the forms listed in the above-mentioned appendix; or

- a domestic permanent establishment of a collective entity falling under article 2 of the amended version of the Parent / Subsidiary Directive; or
 - a domestic permanent establishment of a joint-stock company that is resident in a State with which Luxembourg has concluded a double tax treaty; or
 - a domestic permanent establishment of a joint-stock company or of a cooperative society which is a resident of a EEA Member State (other than an EU member state); and
- 3) at the date on which the alienation takes place, the beneficiary has been holding or undertakes to hold the respective participation for an uninterrupted period of at least 12 months, and during this period the participation held does not fall below 10% or an acquisition price of less than EUR 6 million. If the shares are held through a tax-transparent entity, this requirement must be fulfilled not by the tax transparent entity itself, but by the beneficiary, proportional to the interest held by the latter in the tax-transparent entity.

A recapture system exists, under which the exempt amount of the gain is reduced by the sum of expenses connected with the participation (such as financing cost and write-downs in the value of the participation), to the extent that they have reduced the taxable base of that year or previous years. Basically, an effect of this rule is that the capital gain realised will become taxable up to the amount of the aggregate expenses and writedowns deducted during the respective and previous years in relation to the participation.

The purpose of the system is to avoid the taxation vacuum which could result if the deductibility of expenses and write-downs connected to the participation was to be allowed whereas the income arising from the participation was to be tax-exempt.

8.1.2.6 Roll-over relief

If in the course of its business, a bank voluntarily alienates a qualifying fixed asset, taxation of the capital gains may be deferred by reinvesting it into a replacement asset (roll-over relief) or by allocating it to a temporary tax-free reserve according to Article 54 LIR. In this case, the bank has two years after the year of the alienation to do the reinvestment. If no investment is made after this period, the capital gain becomes taxable (without penalties). Among other conditions, the capital gains must be realised on buildings or non-depreciable fixed assets. The alienated assets must have belonged to the company for at least five years at the date of alienation.

8.1.2.7 80% exemption for Intellectual Property (IP) income and gains

Since 1 January 2008, 80% of the net positive income received as consideration for the use of, or the right to use, any copyright on software, any patent, trade mark, domain name, design or model is exempt. The net income is determined by reducing the gross income on the IP by the expenses directly connected to such IP including write-down and yearly amortisation. This also applies to taxpayers that have created a patent and used it for their own business purposes. The 80% exemption also applies to the capital gains realised on the disposal of a qualifying IP. The qualifying IP also benefits from a (100%) net wealth tax exemption (as from 1 January 2009).

A recapture mechanism, similar to the one in force for the participation exemption regime, also applies. The eligibility to this 80% exemption regime is subject to the fulfillment of certain conditions. For instance, the IP must have been created or acquired after 31 December 2007 and such IP must not have been acquired from a directly related company.

8.1.2.8 Tax unity

It is possible for banks to enter into a tax consolidation.

Basically, the conditions to qualify for tax unity include that:

- each company is a fully taxable company that is resident in Luxembourg (the top entity may also be a Luxembourg PE of a non-resident joint-stock company fully subject to tax comparable to the Luxembourg one);
- at least 95% of each subsidiary's capital is directly or indirectly held by the parent company;
- each company's accounting year ends on the same date; and
- the tax unity is elected by the group.

The tax unity lasts for a five-year period (minimum). If the tax unity is stopped before the five-year period, it is retroactively cancelled.

8.1.2.9 Reorganisations

Reorganisations of companies can be realised tax free provided that specific conditions are respected. This is based on the EU Directive (90/434) on mergers, divisions, transfers of assets and exchange of shares dated 23 July 1990.

8.1.3 Withholding tax

8.1.3.1 Withholding tax on dividends

Since 1 January 2007, dividends distributed by banks are subject to a withholding tax whose rate is in principle 15%. A domestic withholding exemption is, however, available under conditions similar to those applicable with respect to the dividend participation exemption, described above.

Under domestic law, dividends paid to banks by a Luxembourg resident company can also be exempt from withholding tax under similar conditions. The withholding tax exemption is also available for dividends distributed to a Swiss resident joint-stock company subject to Swiss corporation tax which does not benefit from an exemption as well as for dividends distributed to a company resident in the countries member of the EEA. The withholding tax exemption also applies (under conditions as from 1 January 2009) to dividends paid to corporate shareholders located in countries which have signed a double tax treaty with Luxembourg. The exemption is granted only to foreign entities that are subject to a tax similar to Luxembourg corporate income tax in their country of residence.

Withholding tax exemption or reduction is also available under tax treaties concluded by Luxembourg under the conditions set forth in the treaty concerned.

8.1.3.2 Withholding tax on Directors' fees

Gross Directors' fees paid to members of the Board of Directors (other than income derived from the day-to-day management of the company) are subject to a withholding tax at a flat rate of 20% (or 25% if withheld from the net fee amount). This flat tax rate applies to Director's fees paid to Luxembourg resident and non-resident Directors.

Director's fees (including the 20% withholding tax) are not deductible for corporate tax purposes. The withholding tax must be declared on a form 510bis and paid over to the tax administration within eight days from the date the income is made available. Director's fees are in principle subject to Luxembourg social security contributions (minimum and maximum ceilings of contributions apply).

However, based on the provisions of a relevant social security treaty (if any), an exemption from Luxembourg social security may apply.

8.1.3.2.1 Resident Directors

Filing a Luxembourg income tax return is compulsory for resident Directors where the net amount of their Luxembourg source Director's fees exceeds EUR 1,500.

The personal circumstances of the Director are taken into consideration when final taxes are assessed through the filing of a tax return (e.g. single, married etc). In addition, certain deductions are applicable (e.g. social security contributions, a lump-sum allowance for special expenses of EUR 480). However, the dependency contribution of 1.4% is not deductible. Directors may also claim a deduction of operational expenses, either based on the actual expenses incurred or based on a lump-sum basis in accordance with the special formula introduced by tax authorities (maximum of EUR 3,400 applicable for the lump sum amount).

When the final tax liability is assessed, the final tax charged is computed in accordance with progressive income tax rates (ranging from 0% to 39%, with a 4% or 6% unemployment fund surcharge imposed on the income tax due).

8.1.3.2.2 Non-resident Directors

Luxembourg non-resident directors whose Luxembourg source of income consists of director's fees only and where these fees do not exceed the yearly limit of EUR 100,000 there is no obligation to file a Luxembourg income tax return. In such circumstances, the 20% withholding tax at source constitutes their final Luxembourg income tax liability.

It is possible for banks to enter into a tax consolidation.

The tax unity lasts for a five-year period (minimum). If that tax unity is stopped before the five-year period, it is retroactively cancelled.

Nevertheless, non-resident directors who are not obliged to file a Luxembourg income tax return may opt to file one where this is more beneficial for them. Where this option is taken, the director's fees will then be subject to either progressive income tax rates up to 39% or 15% whichever is most favourable. The progressive income tax rates would apply to the net taxable income less the first tax free threshold. When determining the Director's final income tax liability through the filing of a tax return, the 20% flat rate at source is used as an advance tax payment and is therefore deducted from the final tax liability.

The personal circumstances of the director are taken into consideration when final taxes are assessed through the filing of a tax return (e.g. single, married etc). In addition, certain deductions are applicable (e.g. social security contributions, a lump-sum allowance for special expenses of EUR 480 or operational expenses, either actual or on the lump-sum basis. However the dependency contribution of 1.4% is not deductible. Depending on the director's personal situation, the option to file an income tax return can therefore generate an income tax benefit (tax refund) and as such whether this option is beneficial or not must be assessed on a case-by-case basis.

8.1.3.3 Withholding tax on interest

Interest, except for those referred to in the following paragraph, are normally out of the scope of withholding tax in Luxembourg. However, a 15% withholding tax will be levied on the payment of interest arising from participating bonds or other similar securities if the following conditions are fulfilled:

- the loan is structured in the form of a bond or other similar security; and
- aside from the fixed interest, a supplementary interest varying according to the amount of distributed profits is paid, unless the supplementary interest is linked to a corresponding decrease in the fixed interest.

8.1.3.4 Withholding tax on interest payments made to Luxembourg resident individuals

Since 1 January 2006 a 10% withholding tax in full discharge of income tax applies to interest derived from certain transferable securities and paid to Luxembourg resident individuals through a paying agent located in Luxembourg.

The 10% withholding tax applies to the interest paid by a paying agent, such as for example, a Luxembourg bank, to a resident beneficial owner to the extent that the products which bear this interest are part of the beneficial owner's private assets. The beneficial owner does no longer need to declare these interest payments in his tax returns and these payments are no longer subject to a tax calculated by assessment. The tax withheld by the paying agent is paid to the tax authorities without disclosing the beneficial owner's identity.

For the purpose of this bill, a "paying agent" means any Luxembourg-based economic operator who pays interest to or secures the payment of interest for the immediate benefit of a resident beneficial owner. A "beneficial owner" means any individual who receives an interest payment or for whom an interest payment is secured and who is a resident of Luxembourg. This taxation system is built on the Law dated 23 December 2005 referring to the Law of 21 June 2005 which implemented the Council Directive 2003/48/EC of 3 June 2003 on taxation savings income in the form of interest payments into Luxembourg law. For more details on the Council Directive 2003/48/EC please refer to the following section.

Luxembourg resident individuals receiving cross-border interest income may opt for a 10% flat tax. This 10% flat rate is limited to interest derived from certain transferable securities paid through a paying agent located in:

- another EU Member State, or
- an EEA country, or
- a country that has entered into an international agreement relating directly to the EU savings Directive (2003/48/EC).

8.1.3.5 Withholding tax on interest payments made to individuals resident in other EU countries

The Council of the European Union has adopted Council Directive 2003/48/EC regarding the taxation of savings income in the form of interest payments. The Directive entered into force on 1 July 2005.

The Directive provides that certain interest payments and investment fund distributions/redemptions made by a paying agent situated within an European Union member state, within an associated or dependent territory or a third country, to an individual or certain entities (residual entities) resident in another EU member state or associated or dependant territory, will either have to be reported to the tax authorities of the country of establishment of the paying agent by the paying agent itself or will be subject to a withholding tax depending on the location of the paying agent (these two possibilities will be developed hereafter). The definition of the terms “paying agent”, “third country” and “residual entities” are provided by the Directive.

More specifically, for the purposes of this Directive, “paying agent” means any economic operator who pays interest to or secures the payment of interest for the immediate benefit of the beneficial owner, whether the operator is the debtor of the debt claim which produces the interest or the operator charged by the debtor or the beneficial owner with paying interest or securing the payment of interest. A Luxembourg bank making/securing the payment of interest should therefore be considered as a “paying agent”. As introduced previously, for most EU countries (and some dependant territories and third countries), the tax authorities of the country of residence of the paying agent will forward this information to the tax authorities of the country of residence of the individual or residual entity. For a transitional period, Luxembourg and Austria will be applying a withholding tax instead of a reporting procedure. Belgium has decided to discontinue applying the transitional withholding tax from 1 January 2010 and exchanging information as of that date. However, in this case, there are alternatives available to the withholding tax for the beneficial owner. These alternatives consist of either authorising expressly an exchange of information by the paying agent or providing a tax certificate issued by the fiscal authorities of his/her country of residence. The applicable withholding tax rate is currently 35% (as from 1 July 2011) and will apply until the end of the transitional period defined in the Directive.

As a result, in case of payments made with respect to certain debt claims on or after 1 July 2005 through a Luxembourg bank acting as paying agent, the Luxembourg bank will have to:

- either report interest payments to the Luxembourg tax authorities. This applies only if the beneficial owner opts for the exchange of information; or
- levy a withholding tax on interest payments.

8.1.3.6 Withholding tax on royalties

There is in principle no withholding tax on royalties in Luxembourg.

8.1.3.7 US withholding tax

On 18 March 2010, the US Foreign Account Tax Compliance Act (FATCA) was enacted in order to extend the obligations to report and withhold with respect to US persons that invest directly or indirectly in non-US entities. FATCA will significantly impact the legal framework in which Qualified Intermediaries (QIs) act.

FATCA will result in a 30% withholding tax on “withholdable payments” (i.e. US sourced dividends and interest, and proceeds from the sale of assets that may produce US interest or dividends) made either to a “foreign financial institution” (FFI) or a “non-financial foreign entity” (NFFE) if they fail to comply with the new reporting, disclosure and related requirements.

The definition of an FFI is expansive. It includes any foreign entity that:

- accepts deposits in the ordinary course of a banking or similar business;
- is engaged in the business of holding financial assets for the account of others; or
- is engaged (or holding itself out as being engaged) primarily in the business of investing, reinvesting or trading in securities, interest in partnerships, commodities or any interest (including futures or forward contracts or options) in such securities, partnership interest or commodities.

FATCA may therefore also include entities which did not enter in a QI agreement.

Based on FATCA, FFIs will be required (among others) to:

- enter into an agreement with the IRS (“Internal Revenue Service”);
- comply with verification and due diligence procedures;

- report annually certain information (including name of investor, investment volume, income paid etc.) to the IRS;
- levy 30% withholding tax on “withholdable payments” secured by the FFI under certain conditions.

FFIs that are currently acting as QIs will probably need to include in their QI agreements the requirement to become participating FFIs and to comply with the FATCA requirements. These FATCA withholding and reporting requirements apply in addition to, and not in replacement of, the current US withholding tax rules and reporting requirements imposed on QIs. Many of the implementation aspects will need to be further detailed once the final regulations have been published by the IRS.

8.2 Determination of the corporate income tax (“*Impôt sur le Revenu des Collectivités*”, IRC)

The profit subject to Luxembourg corporate income tax is calculated by taking the difference between the net assets invested at the end of the financial year and the net assets invested at the beginning of the financial year. As of 1 January 2011, the corporate income tax rate is 22.05% (basic rate 21% including the 5% surcharge for the unemployment fund). As of 1 January 2006, the Municipal Business Tax rate for the city of Luxembourg is 6.75% instead of 7.5%. As from 1 January 2011, the combined rate of corporate income tax and Municipal Business Tax is 28.80% for the city of Luxembourg.

Once the tax charge has been computed, the following, among others, can be offset against it:

- tax withheld on income from movable securities arising from Luxembourg and/or foreign investments;
- tax incentives for certain investments (refer to section on Investment incentives for further guidance).

8.2.1 Investment incentives

The Luxembourg tax legislation grants tax advantages to those who invest and to those who create or acquire a new business undertaking in Luxembourg.

Investment tax credits for “supplementary investment” and “global investment” are provided by Luxembourg tax law. Both credits are in practice available for resident companies and Luxembourg permanent establishments of foreign companies, provided that the qualifying investments are permanently located in Luxembourg and are physically used in Luxembourg.

8.2.1.1 Tax credit for supplementary investment

Broadly speaking, the credit for “supplementary investment” is equal to 13% of the qualifying investment, which is calculated as follows:

- the value attributable to the tangible depreciable assets at the end of the accounting year (accounting value), excluding buildings, minus:
- the average value attributable to those qualifying assets at the end of the 5 preceding accounting years (with a minimum of EUR 1,850), plus:
- the depreciation of the year applied to such qualifying assets acquired or constructed in the course of the current tax year.

The following assets are not regarded as qualifying assets:

- assets usually depreciable in a period of less than three years;
- assets acquired through the transfer of an enterprise or autonomous part or subdivision thereof;
- second-hand assets;
- assets acquired for free;
- cars for personal use which were acquired during the financial year.

Given the basis for the computation of this tax, credit is reduced by the average value of the qualifying assets of the five preceding accounting years, the credit has an economic impact on the increase of investment for a given year (compared with investments made during the five previous years).

8.2.1.2 Tax credit for global investment

The tax credit for “global investment” is granted for investments in tangible depreciable assets with the exclusion of buildings.

This tax credit amounts to 7% of the total acquisition price of the qualifying assets, in so far as the total acquisition price of the investment during the tax year does not exceed EUR 150,000 and 3% of the excess over EUR 150,000.

The credit is not granted for:

- assets usually depreciable in a period of less than three years;
- assets acquired through the transfer of an enterprise or autonomous part or subdivision thereof;
- second-hand assets;
- cars for personal use.

These two forms of credit (for supplementary and global investment) may be combined so that the two forms of fiscal incentives may be applied to one and the same project. Note that the above-mentioned credits may only be used against the corporate income tax of the year in which the investments were made. No refund of income tax is granted where the credit exceeds the income tax. There is, however, in such a case a carry-forward of the credits over the following ten tax year period.

8.2.1.3 Incentives for creation of new business undertakings

Acquisitions made through the purchase of an undertaking’s entire assets in addition to the purchase of second-hand assets cannot, in principle, benefit from the investment tax credit regime. This prohibition is lifted if the assets are to be used for the setting up of a new business.

8.2.2 Branches

The computation of the taxable basis of branches of foreign companies and the attribution of the profits to the branches of banks has to be made in the light of the different methods as developed by the OECD. In this respect, it has to be noted that the OECD report on the attribution of the profits to Permanent Establishments of banks was published in December 2006.

For the computation of the taxable basis of branches of foreign companies, two different methods are permitted:

- the computation of the profit on the basis of separate accounts in Luxembourg;
- the allocation to the branch of a share of the worldwide profits of the company (based on a reasonable proportional method).

Losses linked economically to the income of the branch may be carried forward without being subject to any time limit. Profits realised by a foreign bank through a branch are not subject to any withholding taxes in Luxembourg when repatriated to the headquarters. Luxembourg branches of foreign banks may basically benefit from double tax treaties signed with the state where the head office is located. For some provisions, Luxembourg branches of EU banks may benefit from Luxembourg double tax treaties.

Branches (i) of companies resident in an EU country and listed under Article 2 of the Parent-Subsidiary Directive or in an EEA country and (ii) of joint-stock companies located in a state with which Luxembourg has a tax treaty, may benefit from the domestic dividend, capital gain, and net wealth participation exemptions under the same conditions as those provided for with respect to resident companies. Furthermore, under domestic law, foreign taxes levied on dividends or interests are creditable, under certain conditions, against the corporate income tax liability of the branch.

8.2.3 Municipal Business Tax (“Impôt Commercial Communal”, ICC)

The Municipal Business Tax is levied by the tax administration in the name of the municipality concerned. It is levied on all commercial activities regardless of the legal form under which the business is carried out. Furthermore, resident commercial companies (e.g. “Société Anonyme”) are subject to this tax, regardless of their activity.

In brief, the taxable basis is the profit, as computed according to the corporate income tax law. A basic deduction of EUR 17,500 is available. The basic tax rate with respect to the portion of income exceeding the basis deduction of EUR 17,500 is 3%. This rate is then multiplied by a coefficient, which varies between 200% to 350% depending upon the municipality concerned. The tax rate for the city of Luxembourg is 6.75%.

8.2.4 Net Wealth Tax (“Impôt sur la Fortune”, IF)

The Net Wealth Tax (NWT) is levied at a rate of 0.5% of the taxable net wealth normally as of the closing date of the financial year preceding the assessment date of 1 January. The tax base is established for a three-year period. However, the tax is assessed on a revised basis if the latter increases or decreases by more than 20% or EUR 75,000 from one year to another.

The taxable basis consists of assets at market value subject to certain exceptions (e.g. unitary value for real estate, exemption of qualifying participations) net of liabilities. A non-resident company is taxed, on a limited basis, on the assets listed in section 77 of the Valuation law. These assets include among others, domestic real property (Grundvermögen) and domestic property for the use of a business operating in Luxembourg through a permanent establishment or a permanent representative located there.

The minimum taxable net wealth for resident banks is EUR 12,500 (EUR 62.5 of Net Wealth Tax). In the case of resident companies, the most important items exempt from the Net Wealth Tax are qualifying shareholdings and assets exempt in Luxembourg under a tax treaty (e.g. real estate). A shareholding qualifies for the net wealth tax exemption if the dividend participation exemption conditions are met. However, no minimum holding period is required for the net wealth tax exemption. As from 1 January 2002, direct participations (participation indirectly held through a tax transparent entity is considered as a direct participation proportionally to the part held in the assets of that organism) may benefit from the exemption. As mentioned before, qualifying IP benefits from net wealth tax exemption (as from 1 January 2009).

A Luxembourg bank or a Luxembourg permanent establishment (with a separate accounting) of a non-resident company may reduce its Net Wealth Tax burden (paragraph 8a NWT law). Taxpayers are required to book a special reserve on their balance sheet during the five tax years following the year in which it was allocated. They may then reduce their Net Wealth Tax by one fifth of the amount, without exceeding the Corporate Income Tax (before tax credits) owed for the year in question.

8.3 Value Added Tax

8.3.1 Basic VAT rules

As a Member of the European Union, Luxembourg has implemented the provisions of the Community VAT rules, and in particular those of the Directive of the Council of 17 May 1977 (77/388/EC), usually referred to as the 6th EC Directive, recast by the Directive of the Council of 28 November 2006 (2006/112/EC) as further amended.

This Directive (and thus the Luxembourg VAT law) does not contain provisions which may be viewed as specific to financial institutions. However, the EU rules exempt from VAT a broad range of transactions usually carried out by banks. As these exemptions give rise to the non-deduction of the related input VAT, it could be concluded that financial institutions are undertakings which are faced with particular VAT questions. For the sake of clarity and simplification, we use the wording “banks” as a generic one to include banks but also other financial institutions facing similar questions. For such undertakings, input VAT will generally be regarded as a final cost, since it is not, or only partially, recoverable.

A short description of the VAT rules that must be applied to banks is shown below.

8.3.2 VAT status of banks

As they supply services falling within the scope of the VAT, banks located in Luxembourg are regarded as taxable persons. A bank must register as a VAT payer with the tax authorities.

This obligation exists also when the bank carries out transactions whose place of taxation is deemed to be in another country or when the bank's services are VAT-exempt but open the right to an input VAT deduction. In all the cases mentioned above, a bank must register as VAT payer and file periodic VAT returns.

In addition, a bank which only renders exempt services with no input VAT credit must also register as a VAT payer when (i) it purchases goods dispatched from Luxembourg from other EU Member States, for an amount exceeding EUR 10,000 (excl. VAT) per year and/or (ii) it purchases services from suppliers located abroad on which it has to self-account for Luxembourg VAT. In both cases, the bank will have to file special VAT returns (simplified annual form) in order to declare these purchases of goods and/or services and pay the related VAT.

Luxembourg did not implement into its VAT law the provisions of the VAT Directive which permit some Member States (as this is the case for instance in Belgium, Germany, the Netherlands, Spain and UK) to consider as a single VAT payer several legal entities which are closely bound to one another by financial, economic and organisational links (so called “VAT grouping”). However, Luxembourg has introduced very flexible and favourable implementation rules for the independent group of persons allowing exempting “support” services rendered to the members of the group. This regime could as a result, partly, be considered as an alternative to the VAT group and is explained in more details in point 8.5.4. Hereafter is shown the various VAT treatments which can apply to transactions carried out by banks (taxable, exempt or out of the scope of VAT), the VAT rates, the input VAT deduction and the mechanism of the reverse-charge. Depending on the activities performed by the banks, the VAT treatment should as a result be analysed on a case-by-case basis.

8.3.3 Taxable transactions

The supplies of goods and of services, whose place of supply is deemed to be in Luxembourg and which do not enjoy a VAT exemption are subject to Luxembourg VAT. Transactions which are (i) deemed to take place abroad, (ii) VAT-exempt or (iii) outside of the scope of VAT transactions are not subject to Luxembourg VAT.

The following transactions are examples of services that will effectively be subject to Luxembourg VAT, because they are deemed to take place in Luxembourg and they do not fall within the scope of an exemption:

- renting of safes;
- asset management services, advisory services or safekeeping of shares supplied to Luxembourg clients (other than regulated investment funds, pension funds or securitisation vehicles) and to non-VAT registered EU clients. This list is not exhaustive.

As a general rule, banking and financial services, other than the renting of safes, supplied to any person located outside the European Union are not subject to Luxembourg VAT since their place of supply is deemed to be where the recipient of the service is established. In the course of their activities, some banks may also carry out transactions, which are not merely of banking or financial nature. For these services, the place of supply, and therefore the VAT liability must be determined on a case-by-case basis. For instance, sub-renting of office space is a service which is deemed to be taxable where the building is located.

It is worth noting that services supplied by a bank to its branch or vice versa do not fall within the scope of VAT, as they are considered as the same entity from a Luxembourg VAT point of view. The same rule applies to services supplied by the Luxembourg branch of a foreign bank to another branch of the same bank.

8.3.4 Exempt transactions

Although the VAT Directive provides that member states may grant to their undertakings an option to waive the VAT exemption on some transactions falling within the scope of the exemption granted by article 135 of the Directive, Luxembourg did not implement such an option into its VAT law. Therefore, most of the transactions usually carried on by a bank are VAT-exempt. The exemption provided by Article 44, paragraph 1, c) of the VAT law applies to the transactions shown below:

- the granting and the negotiation of credit and the management of such credit by the person granting it;
- the negotiation of any dealings with credit guarantees or any other security for money and the management of credit guarantees by the person who is granting the credit;
- transactions, including negotiation, concerning deposit and current accounts, payment, transfers, debts, cheques and other negotiable instruments, but excluding debt collection;
- transactions, including negotiation, concerning currency, bank notes and coins used as legal tender, with the exception of collectors items (i.e. gold, silver or other metal coins or bank notes which are not normally used as legal tender or coins of numismatic interest);
- transactions, including negotiation, excluding management and safekeeping in shares, interests in companies or associations, debentures or other securities, excluding documents establishing title to goods;
- services linked to issuing transactions.

A specific exemption applies to the supply of investment gold with the possibility to opt for VAT.

In addition, article 44, paragraph 1, d), of the VAT law also exempts from VAT the management of Luxembourg pension funds and undertakings for collective investment subject to the supervision of the CSSF and of the “Commissariat aux Assurances”. The management of regulated funds established in another EU country would also qualify for that exemption. The management services of securitisation vehicles covered by the Luxembourg securitisation law and SICAR are also VAT-exempt.

Although there is no definition of the concept of management, it is usually accepted that the services falling within the scope of this exemption are those mainly dealing with the day-to-day management of special investment funds.

The Luxembourg VAT authorities have interpreted broadly the scope of the exemption. It derives from the judgement of the European Court of Justice (Abbey National case dated C-169/04, 4 May 2006). Administrative services supplied to investment funds can benefit from the VAT exemption if the services, viewed broadly, form a distinct whole, and are specific to, and essential for, the management of those funds. According to this judgement, the administrative services listed in the Appendix II of the Directive 85/611/EWG amended on 20 December 2002 would in principle qualify for the exemption:

- legal and fund management accounting services;
- customer inquiries;
- valuation and pricing (including tax returns);
- regulatory compliance monitoring;
- maintenance of unitholder register;
- distribution of income;
- unit issues and redemptions;
- contract settlements (including certificate dispatch);
- record keeping.

Investment management and investment advisory services would also be viewed as VAT-exempt.

On the other hand, the control and supervision services performed by the depositary bank are, as from 1 April 2007, liable to VAT at the rate of 12%. This results from the above-mentioned Abbey National case. Other services performed by depositary banks remain VAT-exempt in Luxembourg.

It must be noted that these exemptions apply irrespective of the capacity of the supplier. In other words, the supplier need not necessarily have the status of a bank to have its services exempt from VAT. In addition, the Grand-Ducal decree of 21 January 2004 has provided rules regarding the VAT exemption of the supplies of services carried out by independent groups of persons to their members (Article 44.1.y of the Luxembourg VAT law implementing article 132.A.1.f of the VAT Directive).

The Grand-Ducal decree lays down the rules in order to apply this VAT exemption, which are summarised below:

- The independent group of persons is not required to have a legal personality.
- The group as well as its members must be established or domiciled in the European Union.
- The group must limit its activities to provide its members with services. These services must be absolutely necessary to its members' business. In addition, the group is only allowed to ask its members for a reimbursement of expenses without applying any profit margin.
- Forming a group is only possible between persons who either exercise the same type of activities or who belong to a same financial, economic, professional or social group.
- members must qualify as non-taxable persons or exercise taxable, albeit VAT-exempt activities. Members may also exercise non-exempt activities so long as these activities do not exceed 30% of their turnover. However, the latter percentage may be exceeded by up to 50% during the two years that precede the regime's implementation.

8.3.5 Transactions out of the VAT scope

Some transactions performed by banks are considered as being out of the scope of the VAT law. This means that they are not considered as economic transactions for VAT purposes. As a result, they cannot be VAT-exempt and in addition they cannot be taken into account for the purpose of computing the prorata of deduction.

Within the banking industry, the two main types of transactions that are out of the VAT scope are:

- the perception of dividends;
- the supply of services to entities, which do not constitute a separate legal body (e.g. the branch of a bank). The European Court of Justice ruled in the FCE Bank plc case on C-210/04, 23 March 2006 that no VAT is to be charged on the services supplied by the head office to its branch. The Court decided that a branch being “a fixed establishment, which is not a legal entity distinct from the company of which it forms part, established in another member state and to which the company supplies services, should not be treated as a taxable person by reason of the costs imputed to it in respect of those supplies”.

The above explanations only provide for a summary of the main exemptions applicable in the banking sector. Other transactions may either be exempt by another provision of the VAT law, or could fall outside the scope of VAT (e.g. transfer of a going concern). Every transaction should therefore be analysed on its own merits considering the precise factual background.

8.3.6 VAT rates

To date, with a rate of 15%, Luxembourg has the lowest normal VAT rate of all member states of the European Union. The other rates applicable in Luxembourg are the reduced rates of 3%, 6% and 12%. The normal VAT rate of 15% applies to the renting of safes. Securities management and safekeeping services benefit from the reduced VAT rate of 12% when they are taxable in Luxembourg. This rate is also applicable to the taxable part of the custodian services (see above), i.e. the control and supervision services. It is also applicable to the management of credit by a person other than the one who granted the credit.

8.3.7 Input VAT deduction

8.3.7.1 Basic principles

In principle, any VAT payer is allowed to deduct from the VAT he/she must pay on his turnover (i.e. input VAT) the VAT he/she has paid on purchases of goods and/or services (i.e. output VAT). This deduction of the input VAT is however only granted provided that the goods and/or services bought are intended to be used for carrying on transactions liable to Luxembourg VAT or transactions which are deemed to take place abroad and which would have been taxed if taking place in Luxembourg.

8.3.7.2 Exempt services and related expenses

Transactions exempt under Article 44 of the VAT law do not entitle the deduction of the input VAT paid on the expenses incurred for carrying on these transactions. For instance, if a bank purchases a computer which is to be used for the need of its credit activities, the VAT paid on the purchase of this computer is normally not deductible.

There is however, an important exception to this principle. When a bank supplies banking and financial services falling within the scope of Article 44, paragraph 1, c), (see above), and/or insurance services falling within the scope of Article 44, paragraph 1, i), of the VAT law to customers established outside the European Union, the bank is allowed to deduct the input VAT relating to expenses made in connection with these transactions. The same rule applies to expenses relating to the services shown above when these services are directly linked to goods, which are destined to be exported outside the European Union.

The independent group of persons described above exercises exempt activities and has no right to input VAT deduction. However, the Grand-Ducal regulation provides that members will be able to keep on exercising their right to deduction on VAT incurred by the group on the acquisition of goods and services in proportion to the amounts they pay back to the group.

8.3.7.3 Proportion of deductible VAT

Where goods and services are used for both activities allowing or not allowing VAT recovery, the input VAT must be deducted according to particular rules. The deductible proportion is made up of a fraction having:

- as numerator, the total amount, exclusive of VAT, of turnover per year attributable to transactions with respect to which VAT is deductible;
- as denominator, the total amount, exclusive of VAT, of turnover per year attributable to transactions included in the numerator and to transactions with respect to which VAT is not deductible.

8.3.7.4 Actual use (direct attribution of goods and services)

Banks may nevertheless request permission from the VAT administration to deduct their input VAT on the basis of actual use by attributing goods and services to output transactions subject

To date, with a rate of 15%, Luxembourg has the lowest normal VAT rate of all member states of the European Union.

to VAT. In such a case, VAT that could not be allocated on the basis of actual use may be deducted on the basis of the general prorate or special prorate.

8.3.7.5 Special apportionment method

Under certain conditions, the VAT administration may authorise or request the banks to determine a special apportionment method based on certain sectors of their activity. The allocation of goods and services to taxable activities or to a sector giving the right to an input VAT deduction must be supported by a sufficiently detailed accounting system.

8.3.7.6 Deduction adjustments

Input VAT deductions must be made at the time of purchase for the full amount of VAT paid and deductible. Contrary to what happens for corporate income tax, there is no depreciation spread over several years. VAT paid and deducted on purchases of capital goods may, however, be adjusted if certain events changing the right to deduction occur during a five-year period (ten years for real estate) starting on 1 January of the year of purchase of the goods.

8.3.7.7 Reverse charge

As stated under above, for services received from suppliers established abroad (EU and non-EU), banks must self-account the VAT due (reverse charge mechanism) by reporting their transactions into Luxembourg VAT returns where no specific VAT exemption applies. The reverse charge mechanism applies therefore for cross-border business-to-business services. Nevertheless, there are still some kinds of services, which do not fall within the scope of the reverse charge mechanism and are listed below:

- services connected with immovable property;
- passenger transport services;
- admission to cultural, educational (including training and workshops), sport events;
- restaurant and catering services;
- short-term hiring of a means of

transport.

The same obligation of VAT self-assessment applies to the purchase of goods from a supplier located in another member state, when these goods are dispatched to Luxembourg (intra-community acquisitions of goods).

8.3.7.8 Developments to be monitored

The European Commission has introduced proposals to reform the application of the VAT system to the financial services and insurance sectors. The proposed Directive would amend the Principal VAT Directive 2006/112 to implement three main changes:

- a) To set clear definitions of exempt services VAT exemptions, modernising their wording and scope of the existing VAT exemptions and clarifying their application; this will ensure a uniform application of the exemptions, by specifying what shall and what shall not fall within their scope. As a consequence, some services will no longer be exempt, and others will be targeted by the redefinition of the scope of exempt services.
- b) To introduce a cross-border option to tax (OTT) the services the banking and insurance companies supply in order to enable them to manage the costs resulting from non deductible VAT. However, having seen the latest version of the draft proposal (already the seventeenth) it seems that the option for taxation will not be amended significantly, (i.e. insurance and reinsurance services are still excluded from the option for taxation). Currently the Luxembourg VAT legislation does not foresee the OTT whereas other member states do.
- c) To create a new regime for exempting the supplies of cost-sharing vehicles operating in the financial services sector; this proposal could represent a step-back for the Luxembourg financial sector with regard to the possibility of

exempt outsourced or pooled services. This is particularly true in the absence of any VAT grouping in Luxembourg. Implementing the cost-sharing exemption in other EU jurisdictions will enable the multinational banks to create a cross-border cost-sharing vehicle in the financial sector.

As we write, the latest versions of the draft directive focus on modernising and reshaping the VAT exemptions. The other two items of the proposal (see b) and c) above) were postponed given the lack of consensus. There is still some debate on some proposed amendments to the current rules, especially with regards to the scope of the exemption on outsourced services, derivatives, and investment fund management.

Finally, several interesting cases are pending with the European Court of Justice to clarify the treatment of some financial transactions (portfolio management services, management of pension funds, transfer of receivables, etc). Banking and financial services are the object of numerous decisions from the EU Court of Justice, which constitutes the source for the final interpretation of the Directive.

8.4 Capital contribution duty

Capital duty was abolished on 1 January 2009. Before that date capital duty was levied at a rate of 0.5% (1% until 31 December 2007) on contributions to companies having (i) their place of effective management in Luxembourg or (ii) their legal seat in Luxembourg, if their place of effective management is not located in another EU member state.

8.5 Foreign source of income

A Luxembourg resident company is liable to tax on its worldwide income. However, the double taxation of certain foreign income is relieved through the following regimes.

8.6 Double tax treaties

Luxembourg has double tax treaties in force with the following countries:

- 1 Armenia
- 2 Austria
- 3 Azerbaijan
- 4 Bahrein
- 5 Barbados*
- 6 Belgium
- 7 Brazil
- 8 Bulgaria
- 9 Canada
- 10 China
- 11 Czech Republic
- 12 Denmark
- 13 Estonia
- 14 Finland
- 15 France
- 16 Georgia
- 17 Germany
- 18 Greece
- 19 Hong-Kong
- 20 Hungary
- 21 Iceland
- 22 India
- 23 Indonesia
- 24 Ireland
- 25 Israel
- 26 Italy
- 27 Japan
- 28 Korea
- 29 Latvia
- 30 Liechtenstein
- 31 Lithuania
- 32 Malaysia
- 33 Malta
- 34 Mauritius
- 35 Mexico
- 36 Moldavia
- 37 Monaco
- 38 Mongolia
- 39 Morocco
- 40 Netherlands
- 41 Norway
- 42 Panama*
- 43 Poland
- 44 Portugal
- 45 Qatar
- 46 Romania
- 47 Russia
- 48 San Marino

- 49 Singapore
- 50 Slovak Republic
- 51 Slovenia
- 52 South Africa
- 53 Spain
- 54 Sweden
- 55 Switzerland
- 56 Thailand
- 57 Trinidad and Tobago
- 58 Tunisia
- 59 Turkey
- 60 United Arab Emirates
- 61 United Kingdom
- 62 United States
- 63 Uzbekistan
- 64 Vietnam

Tax treaties with the following countries are pending:

- 1 Albania
- 2 Argentina
- 3 Belgium (new treaty)
- 4 Cyprus
- 5 Former Yugoslav Republic of Macedonia
- 6 Kazakhstan
- 7 Kuwait
- 8 Kyrgyzstan
- 9 Lebanon
- 10 Mexico (new treaty)
- 11 Oman
- 12 Pakistan
- 13 Saudi Arabia
- 14 Serbia and Montenegro
- 15 Seychelles
- 16 Sri Lanka
- 17 Syria
- 18 Tajikistan
- 19 Ukraine
- 20 Uruguay
- 21 United Kingdom (new treaty)
- 22 United States (new treaty)

* In force as from 01.01.2012

You will find below the withholding tax rates applicable to dividends and interest paid to a company resident in the treaty partner states. The following chart gives only an overview.

Reference should be made to the actual treaty itself for further details.

Country	Dividends		Interest ¹⁵ (%)
	Individual (%)	Qualifying Companies ¹⁶ (%)	
Austria	15	5	0
Belgium	15	10	0
Brazil	25	15	0
Canada	15	10/5	0
Czech Republic	15	5	0
Denmark	15	5	0
Finland	15	5	0
France	15	5	0
Germany	15	10	0
Greece	7.5	7.5	0
Hungary	15	5	0
Ireland	15	5	0
Italy	15	15	0
Japan	15	5	0
the Netherlands	15	2.5	0
Poland	15	5	0
Spain	15	5	0
Sweden	15	0	0
Switzerland	15	0/5	0
United Kingdom	15	5	0
United States	15	0/5	0

¹⁵ There is no withholding tax on interest under Luxembourg tax law, except on the interest from profit-participating bonds. Interest on loans secured by mortgage on immovable property located in Luxembourg is taxable through assessment.

¹⁶ Generally companies holding at least 25% in the Luxembourg subsidiary qualify. Other rates may apply (e.g. see the tax treaty of 1996 with the United States) and often a minimum holding period is required. We note that dividends paid to EU resident companies listed under article 2 of the Parent-Subsidiary Directive can be exempt from withholding tax under the conditions provided in the Luxembourg domestic tax law (see above).

Tax treaties avoid or reduce double taxation of resident taxpayers by two different methods:

a) The foreign tax credit method

The credit method is used where the right to tax is not exclusively allocated to one of the contracting states. Under the credit method, double taxation is avoided by allowing the Luxembourg resident company to offset foreign withholding tax against its Corporate Income Tax liability. The amount of the foreign tax to be credited may not exceed the amount of Luxembourg tax attributable to the net income sourced in the Treaty partner State. Foreign taxes not creditable are basically deductible. The credit method generally applies to investment income (dividends, interest and royalties).

Tax treaties with Brazil, Greece, Ireland, the Republic of Korea, Malaysia, Malta, Morocco, Singapore, Spain, Trinidad and Tobago and Tunisia, provide for a tax-sparing clause. Under such a clause, credit is granted in Luxembourg on the

basis of a fictitious tax deemed to have been withheld in the foreign countries listed above.

b) The exemption method

Under the exemption method, the foreign source of income or wealth is exempt from Luxembourg Corporate Income Tax, Municipal Business Tax or Net Wealth Tax. The exempt income is, however, taken into account in order to compute the tax rate to be applied to the non-exempt income.

Branches versus subsidiaries:

It should be noted that there is a difference between subsidiaries and branches of foreign banks. Subsidiaries benefit from tax treaties signed by Luxembourg. Branches in principle do not benefit, however branches do benefit from treaties signed with the state where the head office is located.

However, further to a judgement of the Luxembourg Administrative Tribunal rendered on 29 April 2003, in order to

avoid any discrimination between the branch and subsidiary, Luxembourg branches of EU banks can benefit from Luxembourg tax benefits granted to subsidiaries under a tax treaty signed by Luxembourg, if the branch would have enjoyed the advantage if it was incorporated as a subsidiary.

8.7 Absence of tax treaties

A foreign tax credit is also granted under certain conditions to resident companies under internal Luxembourg tax law (art. 134bis LIR). The maximum amount of foreign tax creditable is limited to the Luxembourg Corporate Income Tax attributable to the foreign net income. This limitation is basically computed on a country-by-country basis. However, an overall method is also available upon option with respect to dividends and interest (irrespective of whether Luxembourg has signed a double tax treaty or not). The option is annual.

For further information, do not hesitate to contact:



Wim Piot
Tax Leader
+352 49 48 48 5773
wim.piot@lu.pwc.com



Laurent Grençon
Indirect Tax
+352 49 48 48 5769
laurent.grencon@lu.pwc.com

9 *Appendices*



Appendix 1

Glossary

AGDL Deposit Protection Association ("Association pour la Garantie des Dépôts", Luxembourg)	FCP Unit trusts or mutual funds ("Fonds Commun de Placement")	SICAF Incorporated investment companies with fixed share capital ("Société d'Investissement à Capital Fixe")
AML Anti-Money Laundering	ICC Municipal Business Tax ("Impôt Commercial Communal")	SICAR "Société d'Investissement à Capital Risque"
BCEE Banque et Caisse d'Epargne de l'Etat	IF Net Wealth Tax ("Impôt sur la Fortune")	SICAV Incorporated investment companies with variable share capital ("Société d'Investissement à Capital Variable")
BcL Central Bank of Luxembourg ("Banque centrale du Luxembourg")	IRC Corporate income tax ("Impôt sur le Revenu des Collectivités")	SNC "Société en Nom Collectif"
CEBS Committee of European Banking Supervisors	IRE External auditor's organisation ("Institut des Réviseurs d'Entreprises")	SNCI "Société Nationale de Crédit et d'Investissement"
CESR Committee of European Securities Regulators	LIR Luxembourg Income Tax law	UCI Undertakings for Collective Investment
CSSF Commission de Surveillance du Secteur Financier	LMI or IML Luxembourg Monetary Institute (replaced by the CSSF)	UCITS Undertakings for Collective Investment in Transferable Securities
EBA European Banking Authority	MTF Multilateral Trading Facility	UEM European Monetary Union ("Union Européenne Monétaire")
ECB European Central Bank	N/A Not Applicable	VAT Value Added Tax
EEIG European Economic Interest Group ("Groupement Européen d'Intérêt Economique")	NCCT Non Co-operative Countries and Territories	
EIG European Interest Group ("Groupement d'Intérêt Economique")	OTC Over The Counter	
ESMA European Securities and Markets Authority	PFS Professional of the Financial Sector	
EU European Union	SC "Société Coopérative"	
	SCS "Société en Commandite Simple"	

Appendix 2

Useful Luxembourg addresses

Administration des contributions directes

45, boulevard Roosevelt
L-2982 Luxembourg
Tel.: +352 40 800-1
www.impotsdirects.public.lu

Administration de l'enregistrement et des domaines

1-3, avenue Guillaume
L-1651 Luxembourg
Tel.: +352 44 905-1
www.aed.public.lu

Association des Banques et Banquiers, Luxembourg (ABBL)

12, rue Erasme
L-1468 Luxembourg
Tel.: +352 46 36 60-1
www.abbl.lu

Association Luxembourgeoise des Compliance Officers du Secteur Financier (ALCO)

12, Rue Erasme
L-1468 Luxembourg
www.alco.lu

Association Luxembourgeoise des Fonds d'Investissement (ALFI)

12, rue Erasme
L-1468 Luxembourg
Tel.: +352 22 30 26-1
www.alfi.lu

Association Luxembourgeoise des Gestionnaires de portefeuilles et Analystes Financiers (ALGAFI)

28 Boulevard Joseph II
L-1840 Luxemburg
Tel.: +352 26 44 76 31
www.algafi.lu

Association Luxembourgeoise des Professionnels du Patrimoine (ALPP)

3, rue Belle-Vue
L-1227 Luxembourg
Tel.: +352 621 186 928
www.alpp.lu

Association pour la Garantie des Dépôts, Luxembourg (AGDL)

12 rue Erasme
L-1468 Luxembourg
B.P. 241 - L-2012 Luxembourg
Tel.: +352 46 36 60-1
www.agdl.lu

Banque centrale du Luxembourg

2, Boulevard Royal
L-2983 Luxembourg
Tel.: +352 47 74-1
www.bcl.lu

Cellule de Renseignement Financier Cité Judiciaire

L-2080 Luxembourg
Tel.: +352 47 59 81 447

Chambre de Commerce du Grand-Duché de Luxembourg

7, rue Alcide de Gasperi
L-2981 Luxembourg
Tel.: +352 42 39 39-1
www.cc.lu

Haut Comité de la Place financière

3, rue de la Congrégation
L-1352 Luxembourg
Tel.: +352 247-82600

Commissariat aux Assurances (CAA)

7, boulevard Royal
L-2449 Luxembourg
Tel.: +352 22 69 11-1
www.commassu.lu

Commission de Surveillance du Secteur Financier (CSSF)

110, route d'Arlon
L-2991 Luxembourg
Tel.: +352 26 251-1
www.cssf.lu

Institut Luxembourgeois des Administrateurs

7, rue Alcide de Gasperi
L-2981 Luxembourg
Tel.: +352 26 00 21 487
www.ila.lu

Fédération des professionnels du secteur financier, Luxembourg (PROFIL)

12, rue Erasme
L-2010 Luxembourg
Tel.: +352 27 20 37-1
www.profil-luxembourg.lu

Institut de Formation Bancaire, Luxembourg (IFBL)

7, rue Alcide de Gasperi
L-1615 Luxembourg
Tel.: +352 46 50 16-1
www.ifbl.lu

Institut des Réviseurs d'Entreprises (IRE)

7, Alcide de Gasperi
L-1615 Luxembourg
Tel.: +352 29 11 39-1
www.ire.lu

Luxembourg For Finance (LFF)

12, rue Erasme
L-1468 Luxembourg
Tel.: +352 27 20 21 1
www.luxembourgforfinance.lu

Luxembourg School of Finance University of Luxembourg Faculty of Law, Economics and Finance

4, rue Albert Borschette
L-1246 Luxembourg
Tel.: 352 46 66 44 68 35
www.lsf.lu

Société de la Bourse de Luxembourg S.A.

11, avenue de la Porte Neuve
L-2227 Luxembourg
Tel.: +352 477 936-1
www.bourse.lu

Université de Luxembourg Campus Limpertsberg

162 A, avenue de la Faiëncerie
L-1511 Luxembourg
Tel.: +352 46 66 44 6000
www.uni.lu

Appendix 3

Luxembourg contacts

Over 30 banking partners help you create the value you are looking for. They are led by the following banking leadership team:

Rima Adas Banking Leader	rima.adas@lu.pwc.com	+352 49 48 48 2513
Emmanuelle Caruel-Henniaux Regulatory Compliance	emmanuelle.henniaux@lu.pwc.com	+352 49 48 48 2549
François Génaux Advisory Financial Services	francois.genaux@lu.pwc.com	+352 49 48 48 2509
Grégoire Huret Corporate Finance	gregoire.huret@lu.pwc.com	+352 49 48 48 2527
Holger von Keutz Audit, German Market	holger.von.keutz@lu.pwc.com	+352 49 48 48 2528
Cyril Lamorlette Audit	cyril.lamorlette@lu.pwc.com	+352 49 48 48 5851
Wim Piot Tax Leader	wim.piot@lu.pwc.com	+352 49 48 48 5773
Philippe Sergiel Banking Audit Leader	philippe.sergiel@lu.pwc.com	+352 49 48 48 2596

www.pwc.lu/banking

