

Financial Services  
Banking

# The Professionals of the Financial Sector in Luxembourg\*

2007 update – Includes the amendments  
of the Law of 13 July 2007



\*connectedthinking

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# PricewaterhouseCoopers Foreword

This guide is designed to provide a basic insight into the structure of the Professionals of the Financial Sector (“PFS”) industry in Luxembourg together with the legal, regulatory, accounting and tax framework. Also summarised are the requirements for setting up a new business operation and the various audit requirements.

This guide has been prepared by auditors, tax and business advisors, which are members of the banking group of PricewaterhouseCoopers in Luxembourg.

“As a member of the European Union, Luxembourg has successfully maintained its prominent role in the international world of finance and acquired a substantial market share. Today Luxembourg offers both institutional investors and a growing number of private customers a comprehensive range of financial services.”

Bank Sal Oppenheim Jr. & Cie. (Luxembourg) S.A., 2007

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# Introduction

Luxembourg is a recognised centre of excellence in both Investment Fund and Private Banking industry. Although less widely known, another key differentiation factor of the Luxembourg financial centre in Europe is its unique PFS architecture.

In 2006, the Luxembourg financial sector, the ninth most important in the world, strengthened its international position with another remarkable year of growth.

The Professionals of the Financial Sector took part in this growing trend and recorded a 31% growth in their balance sheet in 2006 compared to 2005 figures. The PFS support financial institutions and add flexibility to the Luxembourg financial market place to adapt to new market demands.

The PFS play an important role in the Luxembourg economy, employing over 10,000 professionals. The number of players, coming from over 20 different countries, is increasing at a fast rate reaching 216 entities as at end of July 2007.

Following the transposition of the Markets in Financial Instruments Directive (MiFID) into Luxembourg Law, the status of certain PFS has been reviewed and five new categories will be created as from 1 November 2007:

- financial intermediation companies,
- investment firms operating a Multilateral Trading Facility in Luxembourg,
- operators of regulated market authorised in Luxembourg,
- primary IT systems operators of the financial sector,
- secondary IT systems and communication networks operators of the financial sector.

Also, the minimum share capital requirements for certain types of PFS will be reduced from in order to attract to Luxembourg highly qualified financial specialists, by making the access to the profession easier.

Such a success is due to the high level of confidentiality that Luxembourg entities benefit from as well as a flexible legal and regulatory framework.

Within this brochure PricewaterhouseCoopers PFS specialists give a general insight of the business advantages of Luxembourg and of the PFS structure, as well as a wide overview of the legal, regulatory, accounting, tax and audit requirements for the setting up and running of a PFS entity.

The PFS Experts:

- Philippe Sergiel, Banking Industry Leader and Audit Services,
- Emmanuelle Henniaux, Regulatory Compliance Advisory Services,
- Michel Guilluy, Tax Services,
- Gian-Marco Magrini, Advisory Services.

# 1. Luxembourg: a prime location for doing business

Luxembourg is among the top competitive countries in the world for doing business according to leading international competitiveness analyses.

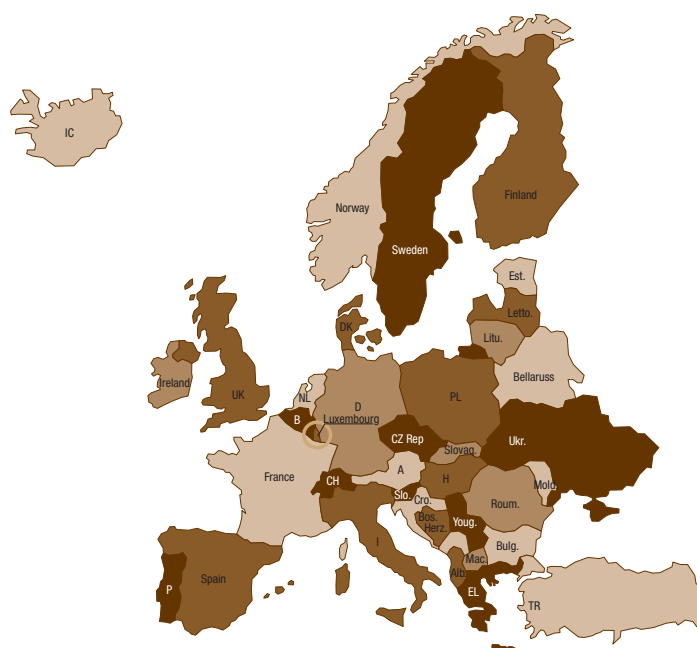
	Rank	Source
World Competitiveness Yearbook 2007	N°1 USA N°4 Luxembourg	IMD Lausanne
GDP per capita, Human Development Report 2006	N°1 Luxembourg	United Nations
Economic Globalisation, Index of Globalisation 2007	N°1 Luxembourg	KOF Swiss Economic Institute
Index of Economic Freedom 2007	N°1 Hong Kong N°8 Luxembourg	WSJ & Heritage foundation
Quality of Living Survey 2006	N°1 Genève N°2 Luxembourg	ECA International
Democracy Index 2006	N°1 Sweden N°7 Luxembourg	Economist Intelligence Unit

Luxembourg's well-known advantages include its geographical situation, its international and skilled labour force, low business costs, neutrality, easy access to government bodies and a very attractive and stable tax framework.

## 1.1 A neutral place with a highly strategic position

According to banks and multinational firms present in Luxembourg, the country's neutrality, which does not alter the corporate culture, is considered as a key intangible advantage for doing business in Europe. Elcoteq, a leading electronics manufacturing services company, recently announced the transfer of its headquarters to Luxembourg as part of the firm's globalisation strategy. PayPal, leader in online payment systems, a subsidiary of Ebay, recently decided to establish all its European activities in Luxembourg.

Luxembourg is located at the very heart of Europe, less than 2 hours away from Frankfurt and only 2h15 away from Paris by train. Luxembourg is halfway between London, Milan, Paris and Frankfurt, at the centre of the main European communication roads.

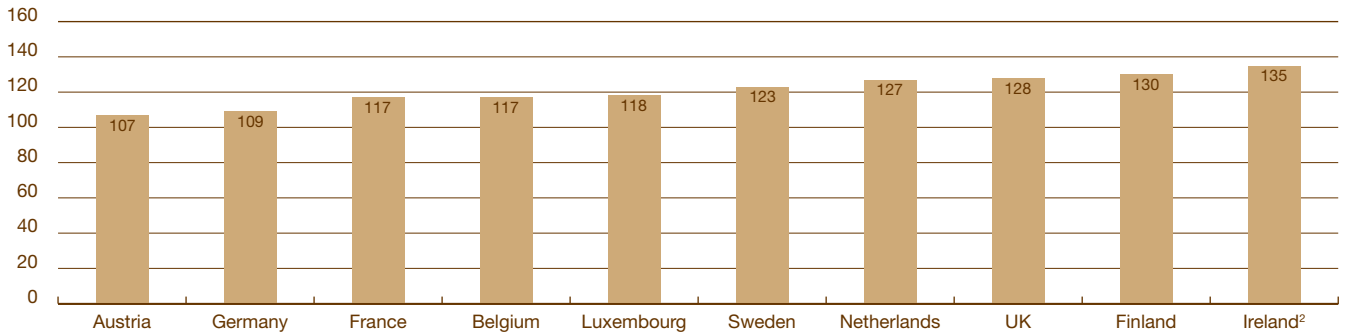


## 1.2 An optimal balance between low business costs and high purchasing power

### 1.2.1 Labour costs

Labour costs in Luxembourg are lower than in most European Union (EU) countries.

#### Labour cost index<sup>1</sup>

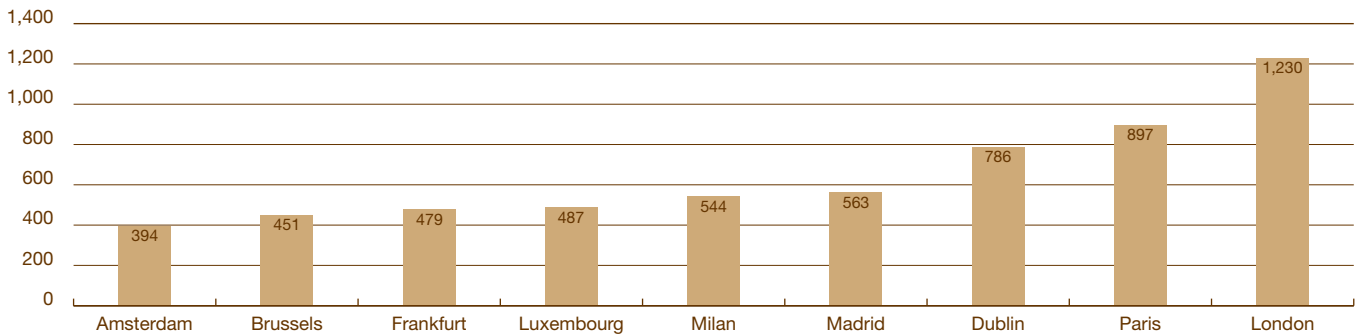


Source: Eurostat Q3, 2006, Labour cost index

### 1.2.2 Office rental costs

Luxembourg remains strongly competitive in terms of office rental costs compared to other major EU financial centres.

#### Rents – EUR/m<sup>2</sup>/year



Source: CB Richard Ellis, 2006

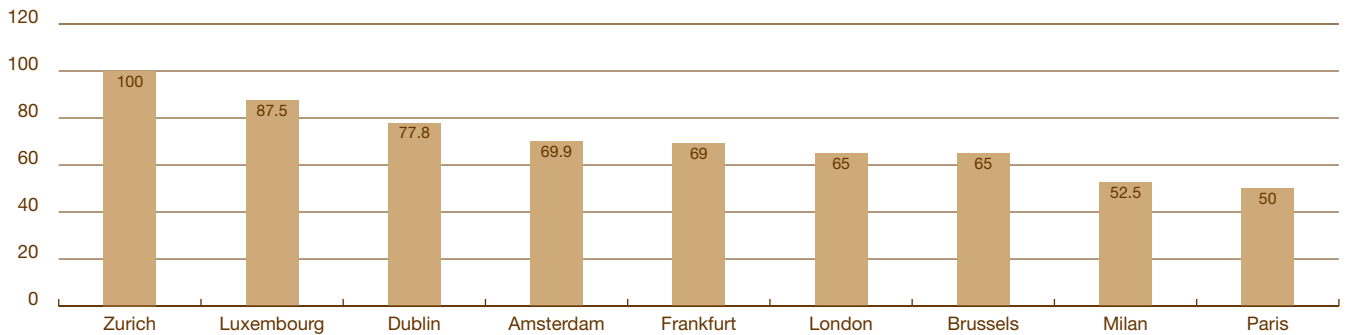
<sup>1</sup> Includes gross wages and salaries, social security contributions and taxes net of subsidies connected to employment.

<sup>2</sup> Data for Q2, 2006

### 1.2.3 Domestic purchasing power

Luxembourg benefits of a strong domestic purchasing power, thanks to its low taxes and social security contributions as well as a reasonable price level.

#### Domestic purchasing power

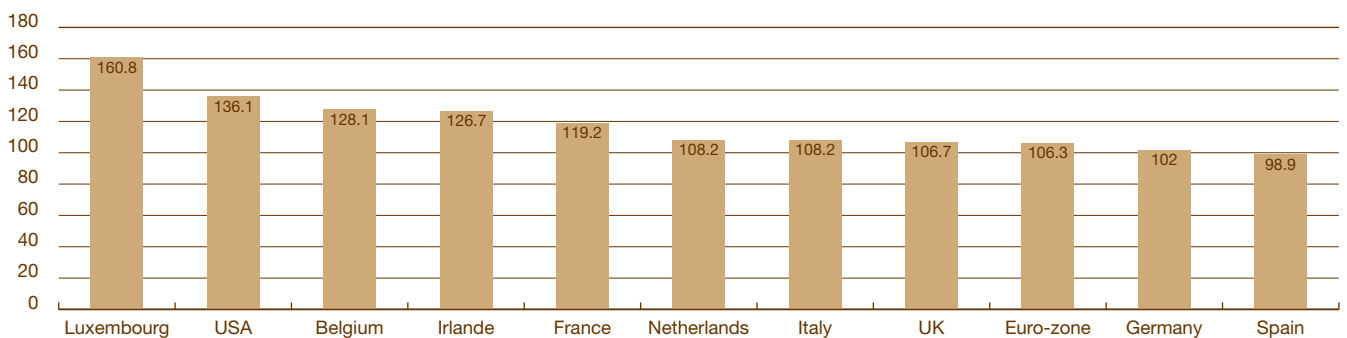


Source: UBS, 2006

### 1.2.4 Labour productivity

Luxembourg has by large one of the highest labour productivity in the EU.

#### Labour productivity per person employed



Source: Eurostat yearbook 2006-2007

## 1.3 A favourable tax location for doing business

### 1.3.1 Corporate tax rates

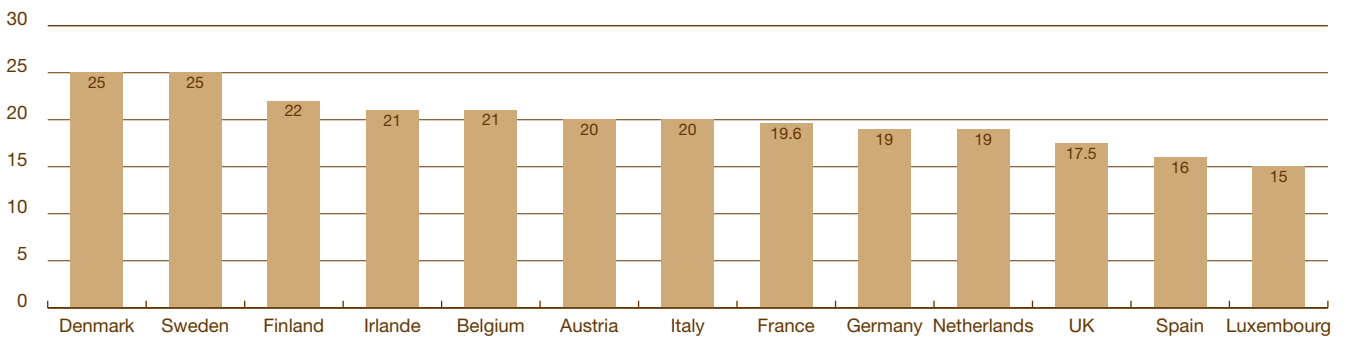
In 2006, the effective combined income tax rate for Luxembourg City (i.e. both Corporate Income Tax and Municipal Business Tax) was reduced to 29.63%. In 2002, this rate had been reduced from 37.45% to 30.38%.

### 1.3.2 VAT

Since VAT has been instituted in the EU, Luxembourg has always applied the lowest standard VAT rates in the EU and continues to do so. The different rates applicable in Luxembourg are: 3%, 6%, 12% and 15%.

Domestic supplies are therefore less taxed than in any other EU country. But this advantage may also benefit supplies to non-Luxembourg customers.

#### Standard rates (in %)

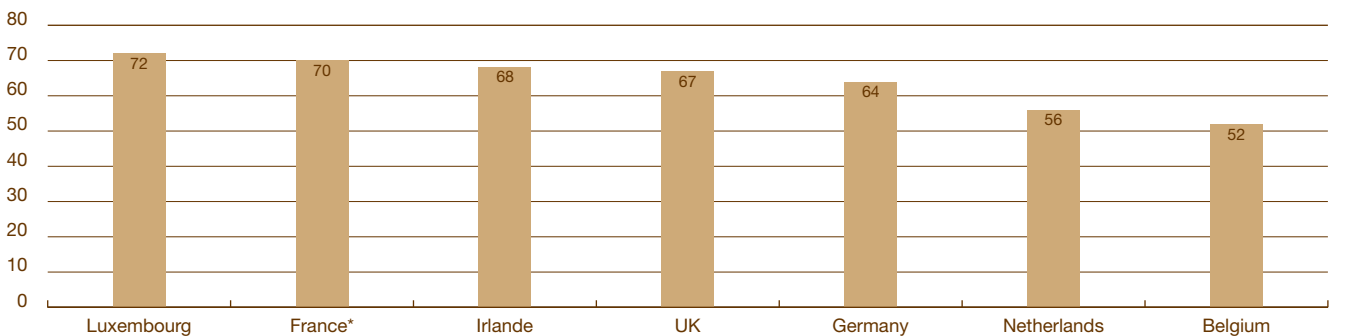


Source: European Commission, 2007

### 1.3.3 Tax rates on salaries

With rates varying from 0 to 38.95%, Luxembourg taxpayers benefit from the lowest individual income tax rates on salaries within the European Union.

#### Net salary after tax and social security contributions<sup>1</sup>



\* Data for year 2005  
Source: PwC, 2006

<sup>1</sup> For an annual gross salary of EUR 100,000 for a married person with 2 children (index: EUR 100,000= 100)

# 2. Structure and size of the Professionals of the Financial Sector industry

## 2.1 Introduction

The other Professionals of the Financial Sector (“PFS”) may be defined as regulated companies performing non-banking financial services. These services may be performed in the form of a single financial activity or by group of activities, as well as in the form of connected or/and complementary activity/ies.

The number of players continues to rapidly grow, reaching 216 as at July 2007 compared to 78 in 1995, 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 sector develop in two ways:

- leveraging on specialisation and expertise in different financial activities,
- adding flexibility and capacity to the Luxembourg financial market place to adapt to new market demands in the Luxembourg and EU financial sector.

PFS are subject to the authorisation and supervision of the “Commission de Surveillance du Secteur Financier” (“CSSF”).

## 2.2 Categories of other Professionals of the Financial Sector

PFS fall into three main groups:

- **investment firms.** These PFS benefit from the European passport for the distribution of their products and services. They can establish branches and act through free provision of services in other EU Member States without further approval from the host countries’ authorities,
- **PFS other than investment firms.** These may exercise financial activities but do not benefit from a European passport,
- **PFS exercising a complementary or connected activity.** This category includes agents specialised in in-sourcing non-core business activities of third party financial institutions.

The Law of 13 July 2007, which will be effective as from 1 November 2007, created new categories of PFS.

As from 1 November 2007, each group of PFS will comprise the following categories:

The new PFS statuses – effective as of 1 November 2007					
<b>Investment firms</b>					
24 Investment advisors EUR 50,000	24-1 Brokers in financial instruments EUR 50,000	24-2 Commission agents EUR 125,000	24-3 Private portfolio managers EUR 125,000	24-4 Professionals acting for their own account EUR 730,000	
24-5 Market makers EUR 730,000	24-6 Underwriters of financial instruments • Placement with firm commitment EUR 730,000 • No placement with firm commitment EUR 125,000	24-7 Distributors of units/shares of UCIs • Accepting payments EUR 125,000 • No accepting payments EUR 50,000	24-8 Financial intermediation companies EUR 125,000	24-9 Investment firms operating a MTF in Luxembourg EUR 730,000	
<b>PFS other than investment firms</b>					
25 Registrar agents EUR 125,000	26 Professional custodians of financial instruments EUR 730,000	27 Operators of a regulated market authorised in Luxembourg EUR 730,000	28-1 Operators of payment and securities settlement systems EUR 125,000	28-2 Currency exchange dealers 50,000	
28-3 Debt recovery EUR 50,000	28-4 Professional performing credit offering EUR 730,000	28-5 Professional performing securities lending EUR 730,000	28-6 Professional offering money transfer services EUR 370,000	28-7 Administrators of collective saving funds EUR 125,000	28-8 Management companies of non-coordinated UCIs EUR 125,000
<b>PFS exercising a complementary or connected activity</b>					
29 Domiciliation agents of companies EUR 125,000	29-1 Client communication agents EUR 50,000	29-2 Administrative agents of the financial sector EUR 125,000	29-3 Primary IT systems operators of the financial sector EUR 370,000	29-4 Secondary IT systems and communication networks operators of the financial sector EUR 50,000	29-5 Professionals performing services of setting up and management of companies EUR 125,000

■ New categories of PFS as per the Law of 13 July 2007

■ Change of categories as per the Law of 13 July 2007

### 2.3 Market size and changes

In 2006, there was a considerable increase in the number of PFS. Between December 2005 and July 2007, 31 new entities were created, reaching a total of 216 entities as at July 2007.

The main categories of PFS are, as at July 2007:

	Number <sup>1</sup>
Domiciliation agents of companies	54
Private portfolio managers	51
IT systems and communication networks operators of the financial sector	40
Distributors of units/shares of investment funds	37
Administrative agents of the financial sector	19
Client communication agents	16

Amongst new categories, we note the establishment as of July 2007 of:

- 40 IT systems and communication networks operators,
- 19 administrative agents of the financial sector,
- 16 client communication agents,
- 11 registrar and transfer agents,
- 7 professionals performing credit offering,
- 8 professionals performing services of setting up and managing companies,
- 1 professional performing securities lending,
- 1 administrator of collective savings funds.

In the past two years, there was an important growth in the number of establishments in the category IT systems and communication networks operators, which passed from 7 entities in 2005 to 40 in July 2007.

<sup>1</sup> An institution may be included in several categories.

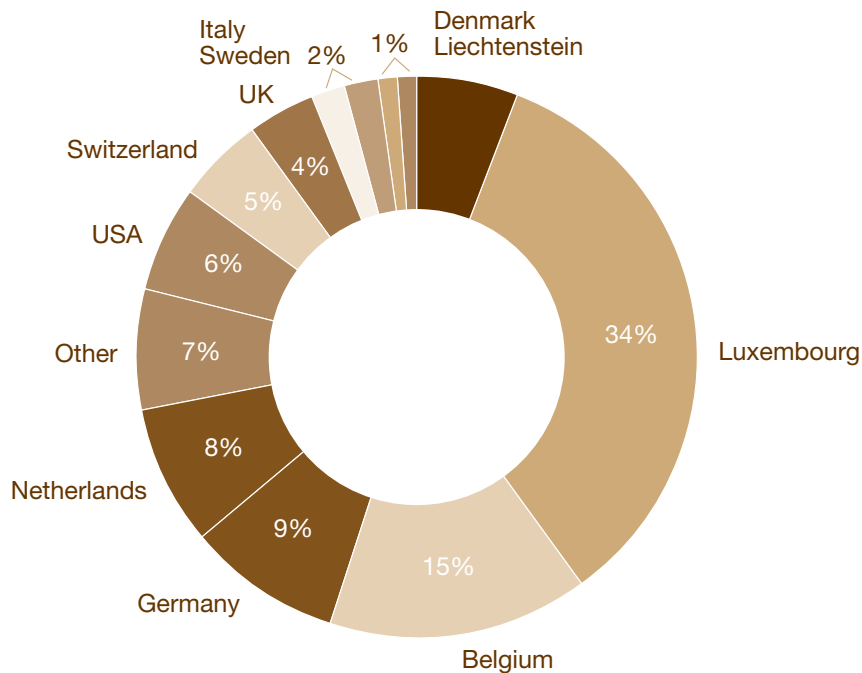
## 2.4 International diversity

A diversity of players from over 20 countries of origin is established in Luxembourg, with a dominant majority of Luxembourg entities, followed by Belgian and Dutch PFS.

Number of PFS per country of origin as of July 2007:

Luxembourg	72
Belgium	31
Germany	19
Netherlands	18
France	15
USA	13
Switzerland	11
UK	9
Italy	5
Sweden	4
Denmark	3
Liechtenstein	3
Other	13
<b>Total</b>	<b>216</b>

Percentage of PFS per country of origin:

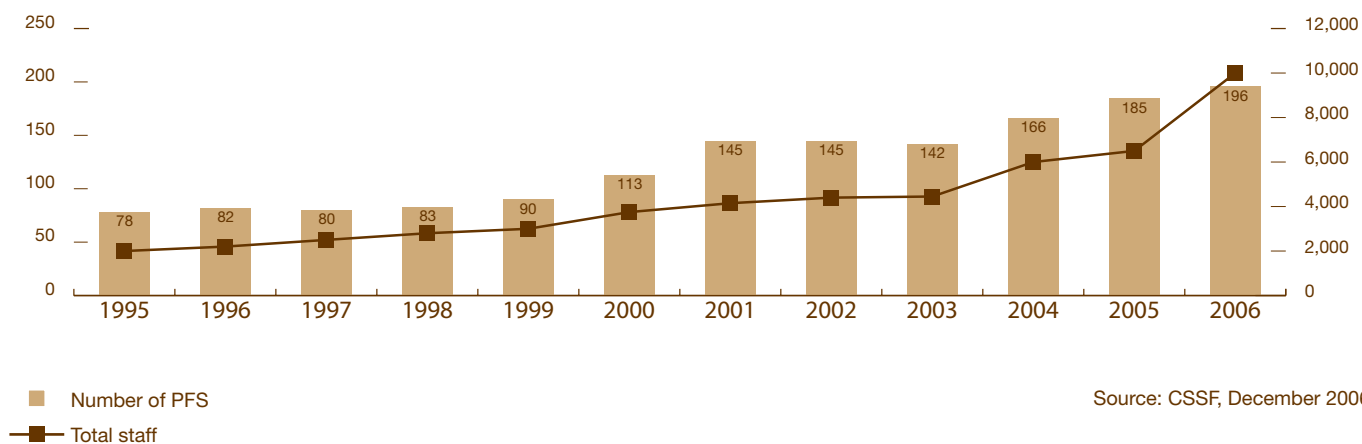


Source: CSSF, July 2007

## 2.5 Employment trends

The number of employees in PFS entities has more than quadrupled in 10 years, reaching 10,712 as at the end of June 2007 from 1,827 in 1995. The development in the number of personnel in the past years is tremendous as PFS employ in 2007 more than the double of employees than in 2003.

### Employment trends



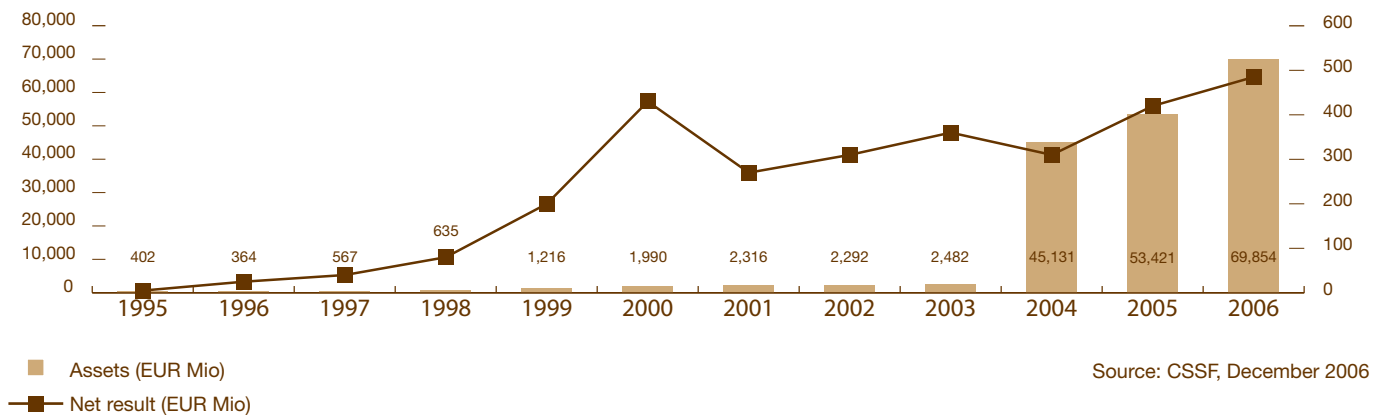
Source: CSSF, December 2006

## 2.6 Key figures: developments in total Balance Sheet assets and net results

As at 31 December 2006, the 192 PFS hold total Balance Sheet assets of EUR 69,854 million with net results of EUR 483.9 million.

Since 2004, the amount of assets and net results of PFS have been growing consistently.

### Key figures



In 2007, there is a wider spread of net results between categories, thanks to the PFS diversification process.

The main categories contributing to net results as at March 2007 are:

- distributors of units/shares of investment funds,
- IT systems and communication networks operators of the financial sector,
- administrative agents of the financial sector,
- domiciliation agents of companies,
- professionals acting for their own account,
- commission agents,
- private portfolio managers.

Source: CSSF, March 2007

# 3. Establishment of Professionals of the Financial Sector

## 3.1 General

Professionals of the Financial Sector are submitted to the supervision of the Luxembourg financial supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF). The CSSF has clarified that the exercise of an activity of the financial sector is subject to preliminary authorisation and supervision only when it is pursued professionally. In order to determine if an activity is carried out professionally, the CSSF takes into account indices like the repetitive character of the activity, the fact that the service provider can subsist from it, and the principal or secondary nature of the activity in question compared to another activity carried out by the same entity. A PFS is thus a specialist of the activity for which it obtained the license from the Ministry of Finance.

PFS encompass (i) investment firms, (ii) PFS other than investment firms and (iii) PFS exercising a complementary or connected activity to the financial sector. PFS shall be defined as investment firms if they perform a professional activity, which consists of providing an investment service to third parties. “Investment service” shall mean any service set out in section A of Appendix II of the amended Law of 5 April 1993 and relating to one of the instruments listed in section B of Appendix II of the amended Law of 5 April 1993, provided to third parties.

Details of Appendix II of the amended Law of 5 April 1993<sup>1</sup> are given hereafter.

### Section A – Investment services and activities

- reception and transmission of orders in relation to one or more financial instruments,
- execution of orders on behalf of clients,
- dealing on own account,
- portfolio management,
- investment advice,
- underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis,
- placing of financial instruments without a firm commitment basis,
- operation of Multilateral Trading Facilities.

<sup>1</sup> As amended by the Law of 13 July 2007 which will enter into force on 1 November 2007.

## Section B – Financial Instruments

- transferable securities,
- money-market instruments,
- units in collective investment undertakings,
- options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, or other derivatives instruments, financial indices or financial measures which may be settled physically or in cash,
- options, futures, swaps, forward rate agreements and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event),
- options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled provided that they are traded on a regulated market and/or an MTF,
- options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in C.6 and not being for commercial purposes, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are cleared and settled through recognised clearing houses or are subject to regular margin calls,
- derivative instruments for the transfer of credit risk,
- financial contracts for differences,
- options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates, emission allowances or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event), as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in this section, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia,

they are traded on a regulated market or an MTF, are cleared and settled through recognised clearing houses or are subject to regular margin calls.

Investment firms benefit from the free branching privilege (“European passport”). Once an investment undertaking has been authorised by the home country authorities to carry out business, it can establish branches and operate through the free provision of services in other EU Member States without further approval from the host country authorities.

### 3.1.1 Requirement for authorisation

No legal person established under Luxembourg Law may exercise a professional activity in the financial sector without being in possession of a written authorisation of the Ministry of Finance.

No person may be authorised to exercise a professional activity in the financial sector acting either through another person or as an intermediary to exercise this activity.

Given that the amended Law of 5 April 1993 regulates a certain number of activities in Luxembourg, a person performing one of the activities subject to a PFS status does not have the choice to opt for a status, but is obliged to request and obtain the status concerned.

### 3.1.2 The authorisation procedure

Entities that wish to incorporate a Luxembourg PFS 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.

Authorisation shall be granted on written request and after investigation by the CSSF that the conditions imposed by the amended Law of 5 April 1993 have been met. The Ministry of Finance will seek advice from the CSSF before granting the licence for an unlimited duration.

The normal procedure to apply for a PFS licence is to submit an application file first to the CSSF, and eventually to the Commissariat aux Assurances when services offered by or activities exercised by the PFS also encompass insurance products, and thereafter to the Ministry of Finance containing all necessary background information, based on article 15 of the amended Law of 5 April 1993:

- presentation of the group wishing to establish in Luxembourg together with financial statements for the last three years,
- rationale of establishing in Luxembourg together with a list of proposed activities indicating the nature and volume of intended operations,
- details on the shareholders (identity, standing),
- description of the administrative and accounting infrastructure of the Luxembourg undertaking,
- three years business plan for the Luxembourg undertaking (Balance Sheet and profit and loss account),
- 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,
- name of the undertaking's external auditor, who must qualify as a Luxembourg accountant ("Réviseur d'entreprises") and have adequate professional experience.

The CSSF will examine the application file and might address additional queries to the applicant.

The decision taken by the Ministry of Finance in respect of the application for a PFS 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 may be appealed within one month and may be

struck out if not so appealed within the time limit, to the "Administrative Court", which adjudicates as judge on the merits of the case.

A Ministerial authorisation is also required for a PFS 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 Markets in Financial Instruments Directive (MiFID).

### **3.1.3 The legal form of the undertaking**

Authorisation for an activity where the applicant will manage funds of third parties may only be granted to legal entities in the form of a company formed under public Law ("établissement de droit public") or a commercial company.

### **3.1.4 Central administration and infrastructure**

Authorisation shall be subject to proof of the existence in Luxembourg of the applicant's central administration and registered office. The requirements of central administration are detailed in the IML Circular 95/120, which essentially covers the concepts of central administration and centre of decision-making:

- the administration of the PFS must be located in Luxembourg and have the presence of (minimum) two senior officials, approved by the CSSF, responsible for the daily management, empowered to make decisions and of an appropriate executive infrastructure,
- the decision centre of the PFS also requires a sufficient and competent executive staff, accounting and data processing support, internal control function (IML Circular 98/143) as well as operating procedures and a functional infrastructure.

The applicant must also prove that it has a sound administrative and accounting organisation as well as suitable procedures of internal control.

The requirements, as far as the administrative and accounting organisation are concerned, include the definition of formal rules and procedures to be set out in a procedures manual. The PFS must also have at its disposal in Luxembourg autonomous support functions in accounting, data processing and an efficient control function.

The PFS must have its own internal audit function adapted to its size and activities. The internal auditor may be a group auditor or a third party expert, subject to CSSF prior approval.

Finally, Luxembourg investment firms including their branches and subsidiaries are requested to have their own independent and permanent Compliance function, identifying, assessing and controlling the compliance risk. The Compliance function has to identify applicable Laws and regulations, gather all information on compliance issues, assist and advise the Management on compliance matters. The Compliance function is responsible for communication with authorities on money laundering issues.

### **3.1.5 Shareholdings**

Authorisation is subject to the communication to the CSSF of the identity of shareholders or partners, whether direct or indirect, individuals or legal entities, who hold in the applicant undertaking a qualifying holding which permits them to exercise significant influence over the conduct of its affairs, and the total amount of these holdings. The suitability 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 PFS.

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 PFS 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. It must be possible to exercise this supervision without restriction and to assure supervision on a consolidated basis of the group to which the PFS forms part.

Prior to taking a direct or indirect holding in a Luxembourg PFS, a potential shareholder must notify the CSSF of his intention. 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 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 PFS, 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.

### **3.1.6 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.

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 to fulfil 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.

### **3.1.7 Equity base**

Authorisation of all professional activity in the financial sector, excluding applicants managing funds of third parties, shall be subject to proof of assets of at least EUR 125,000 (EUR 50,000 as from 1 November 2007).

Authorisation of all professional activity in the financial sector where the applicant will manage funds of third parties shall be subject to proof that the applicant's paid-up share capital amounts to at least EUR 620,000 (EUR 125,000 as from 1 November 2007).

Detailed minimum capital requirements by category of PFS are provided in the table presented in section 3.2.

A PFS can hold several statuses simultaneously. An entity that holds several statuses foreseen by the amended Law of 5 April 1993 on the financial sector is subject to proof of the highest capital of the statuses concerned.

The minimum share capital shall be at the permanent disposal of the PFS and must be invested in its own interest.

### **3.1.8 Credit standing**

Authorisation shall be subject to proof of sufficient credit standing commensurate with the planned activities. It is not a specific quantitative measure but a qualitative concept, which culminated in the trust shown to the undertaking by the financial sector. This trust may be expressed in a quantitative manner by way of the level of credit lines granted to the undertaking.

This requirement is abrogated as from 1 November 2007.

### **3.1.9 External audit**

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

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

### **3.1.10 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 the last 6 months.

The decision of withdrawal of authorisation is final unless it is referred, within one month, to the Administrative Court, which sits as a tribunal of first instance.

### 3.2 Specific provisions

As from 1 November 2007, following the transposition of the Markets in Financial Instruments Directive into Luxembourg Law, the status of certain PFS will be reviewed and new categories will be created. Please refer to the following table for an overview of the various statuses and the minimum share capital requirements.

Old PFS	New PFS	Old article	New article	Old capital EUR	New capital EUR
<b>INVESTMENT FIRMS</b>					
Financial advisors	Investment advisors	25	24	125,000	50,000
Brokers	Brokers in financial instruments	26	24-1	370,000	50,000
Commission agents	Commission agents	24 A	24-2	620,000	125,000
Private portfolio managers	Private portfolio managers	24 B	24-3	620,000	125,000
Professionals acting for their own account	Professionals acting for their own account	24 C	24-4	1,500,000	730,000
Market makers	Market makers	27	24-5	2,500,000	730,000
Underwriters	Underwriters of financial instruments	24 E	24-6	2,500,000	with a firm commitment: 730,000 without a firm commitment: 125,000
Distributors of units/shares of UCIs	Distributors of units/shares of UCIs	24 D	24-7	Accepting payments	Accepting payments 125,000
				Not accepting payments	Not accepting payments 50,000
N/A	Financial intermediation companies ("Sociétés d'intermédiation financière")	N/A	24-8	N/A	125,000
N/A	Investment firms operating a MTF in Luxembourg	N/A	24-9	N/A	730,000

New status created in 2007
Change of categories proposed in 2007

Old PFS	New PFS	Old article	New article	Old capital EUR	New capital EUR
<b>PFS OTHER THAN INVESTMENT FIRMS</b>					
Registrar and transfer agents	Registrar agents	24 G	25	1,500,000	125,000
Professional custodians of securities or other financial instruments	Professional custodians of financial instruments	24 F	26	2,500,000	730,000
N/A	Operators of a regulated market authorised in Luxembourg	N/A	27	N/A	730,000
Operators of payment and securities settlement systems	Operators of payment and securities settlement systems	28-1	28-1	125,000	125,000
Currency exchange dealers	Currency exchange dealers	28-2	28-2	125,000	50,000
Debt recovery	Debt recovery	28-3	28-3	125,000	50,000
Professionals performing credit offering	Professionals performing credit offering	28-4	28-4	1,500,000	730,000
Professionals performing securities lending	Professionals performing securities lending	28-5	28-5	2,500,000	730,000
Administrators of collective savings funds	Administrators of collective savings funds	28-7	28-7	125,000	125,000
Management companies of non-coordinated UCIs	Management companies of non-coordinated UCIs	28-8	28-8	1,500,000	125,000
<b>PFS EXERCISING A COMPLEMENTARY OR CONNECTED ACTIVITY</b>					
Domiciliation agents of companies	Domiciliation agents of companies	29	29	370,000	125,000
Client communication agents	Client communication agents	29-1	29-1	370,000	50,000
Administrative agents of the financial sector	Administrative agents of the financial sector	29-2	29-2	1,500,000	125,000
IT systems and communication networks operators of the financial sector	Primary IT systems operators of the financial sector	29-3	29-3	1,500,000	370,000
	Secondary IT systems and communication networks operators of the financial sector		29-4		50,000
Professionals performing services of setting up and management of companies	Professionals performing services of setting up and management of companies	29-4	29-5	370,000	125,000

## **3.2.1 Investment firms<sup>1</sup>**

### **3.2.1.1 Investment advisors (article 24)**

Investment advisors shall mean professionals whose activity consists of providing personal recommendations to a client either at their own initiative or at the request of this client, regarding one or several transactions on financial instruments.

Financial advisors are not allowed to be involved directly or indirectly in the execution of the advice they provide.

### **3.2.1.2 Brokers in financial instruments (article 24-1)**

Brokers in financial instruments are professionals whose activity consists of the receipt and transmission, for the accounts of clients, orders on one or several financial instruments without holding funds or financial instruments of clients. This activity includes bringing contracting parties into relationship allowing them to conclude transactions.

### **3.2.1.3 Commission agents (article 24-2)**

Commission agents shall mean professionals whose activity consists of the execution, on behalf of clients, of orders relating to one or several financial instruments.

Commission agents shall be fully empowered to act also as a investment advisor and as a broker in financial instruments.

### **3.2.1.4 Private portfolio managers (article 24-3)**

Private portfolio managers shall mean professionals whose activity consists of managing, on a discretionary and individual basis, portfolios including one or several financial instruments in the framework of a mandate given by the client.

Authorisation to allow private portfolio managers to operate may only be granted to legal entities.

Private portfolio managers shall also be fully empowered to act as an investment advisor, as a broker in financial instruments and as a commission agent.

### **3.2.1.5 Professionals acting for their own account (article 24-4)**

Professionals acting for their own account shall mean those professionals whose activity consists of trading one or several financial instruments by investing their own funds in order to conclude transactions when they provide besides an investment service or exercise besides another investment activity or trade for their own account out of a regulated market or a MTF, frequently and systematically by providing an accessible system to third parties in order to conclude transactions with these third parties.

Authorisation to allow professionals acting for their own account to operate may only be granted to legal entities.

Professionals acting for their own account shall be fully empowered to act as an investment advisor, as a broker in financial instruments, as a commission agent, as well as in the capacity of a private portfolio manager.

### **3.2.1.6 Market makers (article 24-5)**

Market makers shall mean professionals whose activity consists of presenting themselves on financial markets on a continuous basis as to be ready to negotiate for own account by being the buyer or seller of financial instruments at prices they fix by investing their own funds.

Authorisation to allow market makers to operate may only be granted to legal entities.

### **3.2.1.7 Underwriters of financial instruments (article 24-6)**

Underwriters shall mean those professionals whose activities consist of underwriting of financial instruments and/or placing of financial instruments with or without firm commitment.

Authorisation to allow underwriters of financial instruments to operate may only be granted to legal entities.

<sup>1</sup> As amended by the Law of 13 July 2007 which will enter into force on 1 November 2007.

### **3.2.1.8 Distributors of unit/shares of UCIs (article 24-7)**

Distributors of investment funds units shall mean professionals whose activity consists of distributing actively units or shares of investment funds authorised for sale in Luxembourg, which implies that the professional is himself in charge of the placement of the units/shares.

Distributors of investment funds units that accept and make payments shall be authorised, by force of Law, to also perform the duties of a registrar agent.

### **3.2.1.9 Financial intermediation companies (article 24-8)**

Financial intermediation companies are professionals whose activity consists in offering to financial networks, active on a cross-border basis, the possibility to domicile their central administration in Luxembourg and perform from there the services of investment advice and receipt and transmission of orders of clients, not only relating to financial instruments covered by MiFID, but also to insurance products. The supervision of financial intermediation companies will be performed by both the CSSF and by the Commissariat aux Assurances.

### **3.2.1.10 Investment firms operating a Multilateral Trading Facility in Luxembourg (article 24-9)**

Investment firms operating a MTF in Luxembourg are professionals whose activity comprises the operation of a "Multilateral Trading Facility", one of the new types of execution venues defined by MiFID.

## **3.2.2 Certain PFS other than investment firms<sup>1</sup>**

Although submitted to CSSF prudential supervision, the following categories of PFS, which are not investment firms, do not benefit from the European passport.

### **3.2.2.1 Registrar agent (article 25)**

Registrar and transfer agents shall mean professionals whose activity consists in the register keeping of one or several financial instruments. The register keeping includes the receipt and execution of orders on financial instruments, which is an ancillary activity.

Authorisation for operating as a registrar agent may only be granted to legal entities.

The registrar agents shall also be empowered, by force of Law to act as an administrative agent of the financial sector (encompassing inter alia NAV calculation) and as a client communication agent for the investment fund for which they are keeping the register.

### **3.2.2.2 Professional custodians of financial instruments (article 26)**

Professional custodians of financial instruments shall mean those professionals whose activity consists of taking custody of financial instruments for safekeeping, administration, including connected services, and to facilitate the circulation of those financial instruments, exclusively for the benefit of professionals of the financial sector.

Authorisation to operate as a professional custodian of financial instruments may only be granted to legal entities.

### **3.2.2.3 Operators of regulated market authorised in Luxembourg (article 27)**

Operators of a regulated market authorised in Luxembourg are professionals managing or operating the activity of a regulated market authorised in Luxembourg, other than the regulated market itself.

### **3.2.2.4 Operators of payment and securities settlement systems (article 28-1)**

The operator of a payment system or of a securities settlement system approved in Luxembourg is the person responsible, alone or with others, for the smooth operation of the system.

Approval as operator of the system may only be granted to legal entities having the form of a public institution, a commercial company, a non-commercial partnership or an economic interest grouping.

### **3.2.2.5 Currency exchange dealers (article 28-2)**

Currency exchange dealers shall mean those professionals who buy and sell foreign currencies in specie.

<sup>1</sup> As amended by the Law of 13 July 2007 which will enter into force on 1 November 2007.

These dealers must display the rates applicable to the various currencies that they exchange and deliver to clients for each transaction a detailed account showing the name of the exchange office, the amounts in foreign currencies, the conversion rates applied and the date of the transaction.

### **3.2.2.6 Debt recovery (article 28-3)**

The activity of third party debt recovery, in so far as it is not reserved by the Law to bailiffs, may only be authorised in conformity with instruction from the Minister of Justice.

### **3.2.2.7 Professionals performing credit offering (article 28-4)**

Professionals specialised in credit offering shall mean professionals whose professional activity consists in granting, for their own account and without calling on public savings to refinance, loans to the public.

Credit activities within the group are excluded from the scope of the Law.

“Credit offering” within the meaning of this article shall include, in particular:

- financial leasing operations consisting in operations involving the lease of movable property of real estate specially acquired for the purpose of such lease by the professional who remains their owner and when the contract grants the lessee the possibility of acquiring ownership of all or of a part of the leased goods during or at the end of the lease period for a price specified in the contract,
- factoring operations with or without recourse consisting in operations as a result of which the professional acquires trade receivables and proceeds with their recovery for its own account.

Authorisation for operating as a professional specialised in credit offering may only be granted to legal entities.

This status concerns professionals who grant all kinds of loans without calling on public savings to refinance.

### **3.2.2.8 Professionals performing securities lending (article 28-5)**

Professionals specialised in securities lending shall mean professionals whose activity consists in lending or borrowing securities on their own behalf and for their own account.

Authorisation for operating as a professional specialised in securities lending may only be granted to legal entities.

Professional intermediaries active in the field of securities lending who act for the account of third parties must be authorised as commission agents if they act in their own name, or as brokers if their role consists in locating the required securities and bringing the parties together.

### **3.2.2.9 Professionals offering money transfer services (article 28-6)**

Professionals offering money transfer services shall mean professionals whose activity consists of:

- receiving funds from clients and transferring these funds to a corresponding third party designated by the client, by means of a book entry; the corresponding third party will keep these funds at the disposal of a beneficiary designated by the client, or
- maintaining the funds referred above at the disposal of a beneficiary designated by the client and/or delivering the funds to the designated beneficiary, or
- operating a system of transfer of funds in Luxembourg.

Authorisation for operating as a professional offering money transfer services may only be granted to legal entities.

### **3.2.2.10 Administrators of collective savings funds (article 28-7)**

Administrators of collective savings funds exclusively include physical persons or legal entities whose activity consists in the management of one or several collective saving funds.

The “collective savings funds” considered here are indivisible loads of deposits or other repayable funds managed on behalf of a minimum of 20 joint savers for the sole purpose of obtaining more favourable financial conditions.

Administrators of collective savings funds may not act for their own account. Furthermore, they are not allowed to receive and keep by themselves the assets of savers as deposits.

### **3.2.2.11 Management companies of non-coordinated UCIs (Undertakings for Collective Investments) (article 28-8)**

Management companies of non-coordinated UCIs shall mean professionals whose activity consists in managing Undertakings for Collective Investments other than ones with a registered office in Luxembourg and other than the ones governed by the Directive 85/611/EEC as subsequently amended by the Directive 2001/107/EC.

The management activity may include central administration services. However, these management companies are not allowed to provide central administration services for UCIs they are not managing.

Authorisation for operating as a management company of non-coordinated UCIs may only be granted to legal entities.

### **3.2.3 PFS exercising a complementary or connected activity to the financial sector<sup>1</sup>**

The Law of 2 August 2003 created new 3 categories of PFS comprised of entities which, strictly speaking, do not offer services to the financial sector, but provide connected or complementary services traditionally encompassing the handling of confidential information. The Law of 13 July 2007 provides with the following major changes:

- split the status of the previous IT PFS into two categories: (i) Primary IT systems operators and (ii) Secondary IT systems and communication networks operators,
- extends the scope of the activity of these IT PFS to non-financial sector companies,
- extends the scope of activity of these “support PFS” to insurance and reinsurance companies.

In this respect, the Law specifically provides that the professional secrecy, traditionally applicable to PFS, is not applicable to the transmission of data to these new PFS to the extent that this data is entrusted to them within the framework of a services agreement, and that the data is necessary for the proper exercise of the agents’ professional duties.

Where an entity of the financial sector delegated tasks corresponding to activities under a PFS status and where this PFS has been granted the appropriate authorisation, this entity only needs to notify the CSSF of the use of subcontractors. A prior authorisation of the CSSF to delegate these tasks to a duly approved service provider is not required.

### **3.2.3.1 Domiciliation agents of companies (article 29)**

Company domiciliation agents are individuals and legal entities which accept that one or several companies establish a registered office with them in order to carry on a business as part of their corporate object and which render all and any services connected with said business.

### **3.2.3.2 Client communication agents (article 29-1)**

Client communication agents shall mean professionals whose activity consists in rendering for the account of credit institutions, PFS, UCI or pension funds, insurance or reinsurance companies of Luxembourg or foreign Law services, such as the drafting, printing, sending and/or archiving or destruction of confidential documents destined for their clients.

Transaction confirmations, statement of accounts, tax returns, dividend declarations, shareholders’ meetings notifications are examples of such confidential documents.

Professionals in charge of sending documents (confidential or not) to clients as well as call centres and “aggregators”, which are responsible for communicating aggregated confidential information to clients, also fall into this category of PFS.

<sup>1</sup> As amended by the Law of 13 July 2007 which will enter into force on 1 November 2007.

Traditional printing services of the financial sector, i.e. the production and printing of non-confidential documents, are not subject to authorisation. Client communication agents may however provide these services on an ancillary basis.

Authorisation for operating as a client communication agent may only be granted to legal entities.

### **3.2.3.3 Administrative agents of the financial sector (article 29-2)**

Administrative agents of the financial sector shall mean professionals whose activity consists in rendering, for the account of credit institutions, PFS, UCI, pension funds or insurance and reinsurance companies of Luxembourg or foreign Law, in the framework of sub-contracting agreement, administration services inherent to the professional activity of the said entities.

Administration activities referred to here are purely administrative tasks (as opposed to activities of management) that one could also qualify as back office tasks. This status does not cover the concept of central administration of UCI in Luxembourg.

This provision allows professionals in the financial sector, which do not have the critical mass to set up and maintain an efficient back office at acceptable costs, to delegate part of these administrative tasks to specialists submitting to strict requirements (including, for example, professional secrecy) and to permanent CSSF supervision.

The scope of services which may be offered by an administrative agent of the financial sector includes, for example, the administration of clients' portfolios, the recording of transactions in clients' accounts, the valuation of clients' assets, the archiving of accounting documents, reconciliation, net asset value calculations for UCI, account opening...

Authorisation for operating as an administrative agent of the financial sector may only be granted to legal entities.

An administrative agent of the financial sector shall be authorised, by force of Law, to also perform the duties of a client communication agent.

### **3.2.3.4 Primary IT systems operators of the financial sector (article 29-3)**

Primary IT systems operators of the financial sector are professionals in charge of the operation of information processing systems allowing the establishment of financial statements of credit institutions, PFS, UCIs, pension funds, insurance and reinsurance companies of Luxembourg or foreign Law. They also are entitled to perform the installation and the maintenance of the information processing systems.

### **3.2.3.5 Secondary IT systems and communication networks operators of the financial sector (article 29-4)**

Secondary IT systems and communication networks operators of the financial sector are professionals in charge of the operation of information processing systems others than those allowing the establishment of financial statements of credit institutions, PFS, UCIs, pension funds, insurance and reinsurance companies of Luxembourg or foreign Law. The activity of these professionals includes the data-processing treatment or the transfer of the data stored in the data-processing device.

### **3.2.3.6 Professionals performing services of setting up and management of companies (article 29-5)**

Professionals performing services of setting up and management of companies shall mean physical persons or legal entities whose activity consists in performing services connected with the setting up and management of one or several companies to third parties, notably at intermediaries who place Directors or Managers at the disposal of companies.

Moreover, all the professionals authorised to act as company domiciliation agents are, by force of Law, authorised to also perform services of setting up and management of companies.

# 4. Supervision and control of Professionals of the Financial Sector

Article 42 of the amended Law of 5 April 1993 outlines the principle of supervision of the PFS. PFS 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.

Up to 31 May 1998, the relevant supervisory authority was the Luxembourg Monetary Institute (IML). From 1 June 1998 to 31 December 1998, the Luxembourg Central Bank (BCL) was responsible for the supervision. As from 1 January 1999, the supervision has been entrusted to the “Commission de Surveillance du Secteur Financier” (“CSSF”), which is an establishment created under the Law of 23 December 1998 setting out the responsibilities of the CSSF to the exercise of supervision over the financial sector.

The CSSF is therefore the competent authority for the supervision of credit institutions, other Professionals of the Financial Sector, the investment funds, the stock exchange, the securities markets and the payment systems and securities settlement systems. 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 periodical reports sent to the CSSF by electronic means. Transactions in securities must be reported on a daily basis.

# 5. Laws and regulations

Commercial entities are subject to the amended Law of 10 August 1915 relating to commercial companies.

The Professionals of the Financial Sector are also 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.

## 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 20 March 2000 (00/12/EC), which addresses the setting up and pursuit of the activity of credit institutions and the Markets in Financial Instruments Directive of 21 April 2004 and 10 August 2006 (2004/39 and 2006/73).

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 obligation in cross-border credit transfers (Part IIbis),
- the supervision of the financial sector (Part III),
- the reorganisation and the liquidation of undertakings in the financial sector (Part IV),
- the deposit guarantee schemes operated by credit institutions (Part IVbis),
- the indemnification system for investors with credit institutions and investment firms (Part IVter),
- the penalties (Part V), and
- the amendment, repeal and transitional provisions (Part VI).

This guide gives hereafter 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 guide.

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

The Law establishes certain rules relating to anti-money laundering and professional secrecy (articles 39 to 41). The Law of 5 April 1993 has been amended by the Law of 12 November 2004. 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 Duty to know the client (article 39)

The PFS has to require the identification of its clients with conclusive documentation when it establishes business relationships.

The identification requirement applies equally to all transactions with clients other than those referred to in the above paragraph, where the total amount reaches or exceeds a value of EUR 15,000, whether it is done in one or more transactions between which a link seems to exist.

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

Even when the total amount of a transaction is below EUR 15,000, identification is required as soon as there is suspicion of money laundering or financing of terrorism.

When the client is a credit institution or a Professional of the Financial Sector and is subject to an equivalent identification requirement, the Luxembourg entity is free from its duty of identification.

Undertakings must keep various documents which could be used as evidence in the event of inquiries relating to money laundering or financing of terrorism. They must keep the documents regarding the identification of a client for 5 years after the end of the relationship with the client, and the supporting documents and records regarding the transactions for 5 years from the execution of the transaction.

The PFS have a duty to pay particular attention to transactions that they consider susceptible by their nature to being linked to money laundering or financing of terrorism.

#### **5.1.2.2 Duty to cooperate with the authorities (article 40) (i.e. Public Prosecutor of the Luxembourg District Court and the CSSF)**

The PFS, their Management and employees are required to fully cooperate with the Luxembourg authorities responsible for the fight against money laundering and financing of terrorism:

- in supplying to these authorities, on their request, all necessary information,
- in informing, on their own initiative, 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 by the PFS to this effect.

The PFS 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.

The PFS 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.

The PFS are also required:

- to implement adequate procedures of internal control and communication in order to prevent and hinder the execution of operations linked to money laundering or 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 the account number or a “unique identifier” of the originator of wire transfers done within the European Union and the name, address and account number of the originator of wire transfers done outside the European Union (CSSF Circular 06/274 and European regulation (EC) 1781/2006).

#### **5.1.2.3 Duty of professional secrecy (article 41)**

Directors, members of Management and supervisory bodies, managers, employees and other persons working for credit institutions, other Professionals of the Financial Sector, settlement bodies, central counterparties, clearing houses and foreign operators of systems approved in Luxembourg are bound to secrecy concerning the information entrusted to them in the exercise of their professional duties. Disclosure of any such information is punishable by imprisonment from 8 days to 6 months and a fine from EUR 500 to EUR 5,000.

The requirement for secrecy ceases when the revelation of information is authorised or imposed by or by virtue of a legal provision.

The duty of secrecy does not exist with regard to national or foreign authorities, charged with the supervisory responsibility of the financial sector, acting in the legal capacity of this supervision and when 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, with a view of supervision, must be done through the intermediary of the parent company or the shareholders or partners involved in the same supervision.

As per article 16 of the Law of 23 December 1998 on the supervision of the financial sector, all persons who work or who have worked for the competent authorities, as well as auditors and experts instructed by the competent authorities, shall be bound by the obligation of professional secrecy. Such secrecy implies that no confidential information which they may receive in the course of their duties may be divulged to any person or authority whatsoever, except in a summarised or aggregate form so as to prevent an identification of individuals, without prejudice to cases covered by criminal Law.

The duty of secrecy does not exist with regard to shareholders or partners having been authorised by the CSSF as part of the authorisation of the undertaking, 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 regard to a client other than a Professional of the Financial Sector.

The confidentiality requirement shall not be applicable to client communication agents, administrative agents of the financial sector, primary IT systems operators of the financial sector and secondary IT systems and communication network operators of the financial sector insofar as the extent to which the information transmitted to such professionals is transmitted under a service agreement pertaining to an activity regulated by the aforesaid legal provisions.

Moreover, the Luxembourg entity being part of a financial group, is allowed to give access to information to the internal control services of the

group for anti-money laundering and fight against terrorism purposes under certain circumstances. In the same context, the Luxembourg entity can communicate to the group regarding information provided to the Prosecutor's office only if this latter is informed and has agreed to it beforehand.

#### 5.1.2.4 Other duties

In addition to these duties the European Investment Services Directive (93/22/EU) was introduced in Luxembourg by the Law dated 12 March 1998, and foresees the duty for Professionals of the Financial Sector to observe a certain number of additional rules. This Directive has been replaced by the Markets In Financial Instruments Directive (MiFID), which has been transposed into the Law of 13 July 2007, which will be effective as of 1 November 2007.

##### 5.1.2.4.1 Organisational requirements (article 37-1)

The PFS which are investment firms must comply with the following organisational requirements:

- establish adequate policies and procedures to ensure their compliance with the legal and regulatory requirements applicable to them,
- maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest from adversely affecting interests of their clients,
- take reasonable steps to ensure continuity and regularity in the performance of investment services and activities,
- have sound administrative and accounting procedures, internal control mechanisms, effective procedures for risk assessment, and effective control and safeguard arrangements for information processing systems,
- when relying on a third party for the performance of critical operational functions, take reasonable steps to avoid undue additional operational risk,
- arrange for records to be kept of all services and transactions undertaken to ascertain that the investment firm has complied with all obligations with respect to clients or potential clients,

- when holding financial instruments belonging to clients, make adequate arrangements so as to safeguard clients' ownership rights and to prevent the use of a client's instruments on own account except with the client's express consent,
- when holding funds belonging to clients, make adequate arrangements to safeguard the clients' rights and prevent the use of client funds for their own account.

These requirements have been further detailed in the Grand Ducal Regulation dated 13 July 2007.

#### 5.1.2.4.2 Conflicts of interest (article 37-2)

An investment firm must take reasonable measures to identify, with reference to the specific investment services and activities and ancillary services carried out by or on behalf of the investment firm, the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interests of one or more clients.

Firms have to disclose the conflicts of interest to their clients when internal measures cannot prevent the risk of damage to their clients.

Measures on conflicts of interest (including the obligation to have a written conflicts of interest policy) have been detailed in the Grand Ducal Regulation of 13 July 2007.

#### 5.1.2.4.3 Rules of conduct for the provision of investment services (article 37-3)

An investment firm shall act honestly and fairly in conducting its business activities, in the best interest of its clients. The investment firm must:

- address fair, clear and not-misleading information to clients,
- communicate information in a way that is likely to be understood,
- when providing portfolio management or investment advice, obtain information from client to ensure that he has the necessary experience and knowledge to understand the risks involved in the transaction and that it meets his investment objectives (suitability and appropriateness tests),

- send to clients appropriate reports on the service provided to the clients.

#### 5.1.2.4.4 Best execution (article 37-5)

Investment firms must take, when executing client orders, all reasonable steps to deliver the best possible result to their clients, taking into account a variety of factors such as the price of the financial instrument, speed of execution of the order and cost.

Investment firms must establish and implement effective arrangements for complying with the requirement to deliver best execution. In particular they must establish a best execution policy to allow them to obtain, for their client orders, the best possible result.

Investment firms should on request prove to clients that orders have been executed in accordance with their execution policy.

Measures on best execution requirements have been detailed in the Grand Ducal Regulation of 13 July 2007.

#### 5.1.2.4.5 Client orders handling rules (article 37-6)

Investment firms must establish such procedures or arrangements that allows the execution of orders in accordance with the time of their receipt by the investment firm. This requirement can be waived under specific conditions (e.g. based on specific client instruction).

Measures on client orders handling rules have been detailed in the Grand Ducal Regulation of 13 July 2007.

### 5.1.3 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, watches over 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 by the duty of 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.

The CSSF shall cooperate with the Commissariat aux Assurances by exchanging information which is useful to their prudential supervision.

#### **5.1.3.2 The supervision of credit institutions, certain financial institutions and investment services companies exercising their activities in more than one Member State of the European Union (Chapter 2)**

The supervision of an investment firm 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 an investment firm, having a branch in Luxembourg, originates from another Member State the supervision falls on the authorities of that other Member State.

The supervisory methods are described in articles 46 and 47 of the amended Law of 5 April 1993.

#### **5.1.3.3 The prudential supervision of payment systems and securities settlement systems approved in Luxembourg (Chapter 2bis)**

Without prejudice to the tasks and powers conferred on the European System of Central Banks by the Treaty establishing the European Community and by the statutes of the European System of Central Banks and of the European Central Bank as well as those vested in the Central Bank of Luxembourg, the CSSF is the competent authority for the prudential supervision of the payment systems and securities settlement systems approved by the Ministry of Finance. The aim of such supervision, which concerns the operational and financial stability of each system as well as participants of the systems, is to secure the stability of the financial system as a whole. Accordingly, the CSSF

ensures the application of the operating rules and the implementation of the settlement procedures and risk management procedures with which the systems under its supervision are endowed.

#### **5.1.3.4 The supervision of investment firms on a consolidated basis (Chapter 3bis)**

The CSSF shall supervise, in principle, the following entities on a consolidated or partly consolidated basis:

- any investment firm licensed under the amended Law of 5 April 1993, at least one of whose subsidiaries is an investment firm or financial institution, or that has holdings in such institutions,
- any investment firm licensed under the amended Law of 5 April 1993, whose parent company is a financial holding company,
- any investment firm licensed under Luxembourg Law which has a banking organisation under foreign Law as a subsidiary or which has a holding in a foreign banking organisation,
- any investment firm licensed under Luxembourg Law whose parent company that has a banking organisation under foreign Law as a subsidiary or that has a holding in a foreign banking organisation,
- any investment firm licensed under Luxembourg Law having a banking organisation under Luxembourg Law as a subsidiary or having a holding in a banking organisation under Luxembourg Law,
- any investment firm licensed under Luxembourg Law whose parent company is a financial holding with a banking organisation under Luxembourg Law as a subsidiary or with a holding in a banking organisation under Luxembourg Law.

Investment firms, when they belong to a financial conglomerate, may also be included in the complementary supervision on a consolidated basis of this financial conglomerate (including banks, investment firms and insurance companies), in accordance with the provisions of Chapter 3ter of Part III of the amended Law of 5 April 1993.

### 5.1.3.5 The means for supervision (Chapter 4)

The CSSF has several means of supervision, the principal ones being:

- The authority (article 53)

The CSSF has the power to supervise and make enquiries necessary to exercise its functions. It has the right to request any information (including, for example, records of phone conversations) useful to conduct its supervision.

- The relationship with the external auditors (“Réviseurs d’entreprises”) (article 54)

Each PFS whose accounts are subject to an audit by a “Réviseur d’entreprises” is required to communicate immediately to the CSSF the reports, long form reports and written comments issued by the “Réviseur d’entreprises” in the course of his audit of the annual accounts. Details of these requirements for investment firms are included in CSSF Circular 03/113.

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

- Ratios (article 56)

The CSSF sets ratios which PFS 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.

- Authorisation of investments (article 57)

A PFS 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.

- 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 on an amicable basis these complaints. The treatment of customer complaints is subject to the IML Circular 95/118.

- The right of injunction and suspension by the CSSF (article 59)

When an undertaking subject to the supervision of the CSSF does not respect the legal, regulatory or statutory provisions relating to its business, or that its management or financial situation do 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, it has not remedied the noted situation, the CSSF can:

- suspend the members of the Board of Directors, the members of management or any other person who, by their action, their negligence or their imprudence, have incurred the situation or whose continuation in function might potentially be detrimental to the application of the rescue measures or re-organisation of the entity,
- suspend the exercise of the 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, the continuation of these activities.

### 5.1.4 Reorganisation and liquidation of undertakings in the financial sector (Part IV)

#### 5.1.4.1 Suspension of payments and controlled management (article 60)

The suspension of payments can arise in the following situations:

- where the credit standing of the concerned undertaking is weakened or where it finds itself in an illiquid situation, whether there is a default of payment or not,
- where the fulfilment of the commitments of the undertaking is in doubt,
- where authorisation of the undertaking has been withdrawn and this decision is not yet final.

The CSSF or the concerned undertaking can request the District Court to rule on the payment moratorium and the way it is to be done. The judgment granting the payment moratorium appoints one or more supervisory commissioners. Under penalty of nullity, the written authorisation of the supervisory commissioners is required for all actions and decisions of the undertaking.

#### 5.1.4.2 Liquidation (article 61)

The District Court, at the request of the Public Prosecutor or the CSSF, may decide the dissolution and liquidation of an undertaking in the financial sector where:

- it appears that the regime of the payment moratorium previously granted, does not give remedy to the situation which justified the moratorium,
- the financial situation of the undertaking is such that it will no longer be able to meet its commitments towards its creditors or shareholders,
- the authorisation of the undertaking has been withdrawn and this decision has become final.

The Court appoints a commissioner as well as one or more liquidators to carry out the liquidation.

#### 5.1.5 Indemnification system for investors with credit institutions and investment firms (Part IVter)

Concerning the coverage of investors with investment firms governed by Luxembourg Law and with Luxembourg branches of investment firms 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 an 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 investment firms subject to Luxembourg Law, with branches in another Member State of investment firms subject to Luxembourg Law, or with Luxembourg branches of investment firms whose registered office is outside the EU, within the limits, under the conditions and in accordance with the procedures laid down herein.

The Commission shall keep an official table of the investor indemnification systems instituted in Luxembourg and recognised by it. As of today, there is one investor indemnification system in Luxembourg, which is the Association pour la Garantie des Dépôts, Luxembourg (“AGDL”).

Investors, whether they be individuals or legal entities, with Luxembourg branches of investment firms 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 investment firm which controls the Luxembourg branch.

#### 5.1.6 Penalties (Part V)

##### 5.1.6.1 Fines (article 63)

Persons responsible for the administration or management of undertakings subject to the supervision of the CSSF, can be fined for an amount ranging from EUR 125 to EUR 12,500 when:

- they do not respect the legal, regulatory or statutory applicable measures,
- they refuse to supply to the CSSF information requested, or such information is supplied but it proves to be incomplete, inexact or false,
- they prevent or hinder inspections made by the CSSF,
- they do not meet the rules regarding the publication of annual accounts,
- they do not follow orders recurred from the CSSF,
- they might, by their behaviour, jeopardise the sound and prudent management of the undertaking.

### 5.1.6.2 Penal 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 Principal CSSF Circulars applicable to the Professionals of the Financial Sector

The following table summarises the principal Circulars which are applicable to PFS.

Circular #	Content	Applicable to	
		all PFS	investment firms only
99/7 <sup>1</sup> , 05/187, 05/197	Periodic reporting to the CSSF	•	
93/102	Organisation and internal control of “courtier” and “commissionnaire”		•
95/118	Client complaints	•	
95/120	Central administration	•	
96/126, 05/178, 06/240	Administrative and accounting organisation, IT outsourcing	•	
98/143	Internal control	•	
98/148	Branches of investment firms in the EU		•
00/12, 07/290	Capital adequacy and large exposures ratios		• <sup>2</sup>
00/15 <sup>1</sup>	Rules of conduct	•	
00/22	Supervision on consolidated basis by the CSSF	•	
01/28, 01/29, 01/47, 02/65	Company administration services (“Domiciliation”)	• <sup>3</sup>	
03/113	Long Form Report of investment firms		•
04/155	Compliance Function		•
05/211	Measures to combat money laundering and financing of terrorism	•	

### 5.2.1 Organisation and control environment

#### 5.2.1.1 Circular IML 95/120 relating to central administration

The Circular IML 95/120 reinforces the requirements with respect to the local presence of the persons responsible for the day-to-day Management and the adequacy of technical, human and other resources in Luxembourg.

<sup>1</sup> To be revised shortly

<sup>2</sup> Except for distributors of UCIs shares which do not hold money for clients and commission agents

<sup>3</sup> Only for PFSs which perform domiciliation activities

### 5.2.1.2 Circular IML 96/126 and CSSF 05/178 relating to the administration and accounting organisation and outsourcing of IT services

The persons responsible for the day-to-day Management have to implement a proper administrative organisation in respect of the following aspects:

- the PFS 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 him, 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 management,
- the PFS needs written procedures for the execution of operations and the necessary controls have to be implemented,
- the PFS 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 PFS of an accounting department whose objective is to manage the undertaking'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 its communication to the CSSF,
- preservation of all accounting vouchers in accordance with applicable legal requirements,
- in relation with account opening process for counterparts, each PFS 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.

As per Circular CSSF 05/178, the Luxembourg PFS which are willing to outsource (part of) their IT function 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 reputation risks incurred by the outsourcing,
- any outsourcing must be formalised into a Service Level Agreement describing both parties' responsibilities, more specifically the acceptable conditions under which the IT service provider intends to outsource again to another party,
- the PFS must ensure if it needs to inform, or not, its third parties and more importantly its customers, with regards to contractual clauses, or legal provisions such as data privacy,
- for each delegated activity, the PFS shall designate an employee responsible for the relationship with the IT service provider,
- the PFS shall be able to operate in case of exceptional events such as the break of the communication line with the IT service provider,
- the PFS 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 PFS must notify the CSSF and confirm that the various conditions listed in the Circular are respected. The IT PFS, as they are entitled to the Luxembourg professional secrecy, are authorised to have access to customers' confidential data, if those data are necessary for the execution of the service agreement,

- Luxembourg PFS 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, again, 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 PFS customers' confidential data.

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

### 5.2.1.3 Circular IML 98/143 related to internal control

The Circular IML 98/143 is based on the article 17(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 PFS 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 PFS 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 various 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 CSSF recommends that major undertakings have an audit committee in order to render more effective the control exercised by the Board of Directors over the institution's business.

The PFS have to send to the CSSF the two following reports on an annual basis:

- report of the Management on their assessment of the internal control status,
- executive Summary covering all reviews conducted during the financial year by internal audit.

### 5.2.1.4 Circular CSSF 2000/15 related to rules of conduct

Circular CSSF 2000/15 includes rules of good conduct in respect of the principles laid down in article 37 of the amended Law of 5 April 1993.

The Circular contains guidance on the rules to be respected in maintaining business relationships with customers particularly in the area of asset management services. It aims at giving protection to customers in particular by establishing the following principles:

- the PFS shall act honestly and fairly in conducting his business activities in the best interest of his clients and the integrity of the market,
- the PFS shall act with due skill, care and diligence, in the best interest of his clients and the integrity of the market,
- the PFS shall have and shall employ effectively the resources and the procedures that are necessary for the proper performance of his business activities,
- the PFS shall seek from his clients information regarding their financial situation, investment experience and objectives as regards the services requested,
- the PFS shall make adequate disclosure of relevant material information in his dealings with his clients,

- the PFS shall try to avoid conflicts of interest and, when they cannot be avoided, shall ensure that his clients are fairly treated,
- the PFS shall comply with all regulatory requirements applicable to the conduct of his business activities so as to promote the best interests of his clients and the integrity of the market.

As from 1 November 2007, investment firms will have to respect the MiFID rules of conduct detailed in an upcoming CSSF Circular.

#### 5.2.1.5 Circular CSSF 07/280 on insider dealing and market manipulation (market abuse)

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

The Law and the Circular aim at fighting insider dealing and market manipulation (“market abuse”) in order to ensure the integrity of financial markets, to enhance investor confidence in those markets and thereby to ensure a level playing field for all market participants.

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.

#### 5.2.1.6 Circular IML 93/102 relating to the organisation and internal control of brokers and commission agents

The aim of this Circular is to define a set of rules for the organisation and internal control of the dealing activities of brokers and commission agents.

It sets out rules governing the conclusion of dealing transactions between the above-mentioned PFS and intermediaries, as well as 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 first part of the Circular applies to bank brokers whereas the second part applies to professionals carrying in diverse financial activities, including brokers and commission agents.

The Circular requires that the Management of brokers and commission agents assume responsibility for policies in respect of dealing activities and for the quality of the institution’s organisation in this area.

Management is required:

- to set out in writing the objectives of the undertaking’s dealing activities, the nature of the transactions that it intends to undertake and a set of rules in respect of the organisation and internal control,
- to set its brokerage fees and determine a method of payment for clients commissions,
- to determine the human and technical resources necessary in order to ensure the correct conduct of its activities and according the total planned volume of transactions in respect of which it intends to act as a broker,
- to establish a procedures manual and a code of good conduct,
- to nominate 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 Management,
- the appointment of dealers and their powers,
- the quantified internal limits,
- the segregation of duties (operational, administrative, accounting and control functions),
- the procedures manual,

- 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.

## 5.2.2 Compliance with limits and ratios

### 5.2.2.1 Capital adequacy ratio

The capital adequacy ratio applies to investment firms incorporated in Luxembourg, with the exception of the entities referred to in article 13(2) of the amended Law of 5 April 1993 and undertakings whose business is limited to receiving and transmitting orders from investors without holding funds or securities belonging to their clients.

Luxembourg branches of investment firms whose head office is not in the EU may obtain exemption for the respect of the ratio, provided that they are subject to supervision by a foreign authority and that the prudential rules are at least as stringent as those laid down in the Circular CSSF 2000/12.

As from 1 January 2008, the Circular CSSF 2000/12 will be replaced by the Circular CSSF 07/290, transposing the Basel II/Capital Requirements Directive into Luxembourg legislation.

The capital adequacy ratio is calculated as follows:

$$\frac{\text{Eligible own funds}}{\text{Overall capital requirement to cover risks}}$$

Investment firms have to permanently maintain the ratio on a non-consolidated basis at a minimum level of at least 8%. The CSSF reserves the right to set 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 CSSF may also allow a temporary delay for compliance to PFS, which cannot immediately meet the standards.

The Circular CSSF 2000/12 follows the objectives to measure and monitor credit and market risks, assess

the capital adequacy by examination of the incurred risks and defines:

- the own funds of investment firms,
- capital requirements to cover credit risk associated with all activities of investment firms,
- capital requirements to cover foreign exchange risk associated with all of the activities of investment firms,
- capital requirements to cover market risks associated with trading book activities,
- capital requirements for commodity risk associated with overall investment business,
- capital requirements to cover operational risks (as per Circular CSSF 07/290),
- an integrated ratio comparing own funds with the weighted amount of risks incurred,
- procedures for the monitoring and control of large exposures of investment firms.

The eligible own funds are calculated as follows:

- 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 five 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 own funds.

The principal features of this Circular are as follows:

- the Circular introduces particular requirements to cover risks associated with investment firms' dealing activities. It distinguishes between trading and non-trading activities. The trading book as defined in this Circular includes not only securities (money market instruments, fixed and variable rate bonds, UCI shares, commodities) but also other elements such as correlated underwriting commitments and derivative instruments, if they have been purchased or sold with a view to closing the related positions in the

short term and/or to benefit in the short term from differences between buying and selling prices, the determining criterion for the inclusion of a security or derivative instrument in the trading book is the reason for holding or making use of the item concerned. Investment firms must adopt internal procedures, which allow the identification of operations for inclusion in the trading book. The allocation of positions between trading book positions and non-trading book positions for the purposes of the Circular must be made in conformity with the organisation and internal control of business activities,

other Balance Sheet or off Balance Sheet items which do not fall within one of the categories may be included in the trading book as defined in this Circular provided that they have been bought or sold with the intention of covering trading book positions,

securities included in the investment portfolios should not be included in the trading book. The same applies to securities and derivative instruments positions arising out of global treasury management operations and/or operations associated with the global management of positions and risks (“assets and liabilities management”),

- for trading book activities, capital requirements are intended to cover interest rate risk and position risk on equities, together with settlement/delivery risk, counterparty risk and concentration risk associated with trading book activities,
- an additional requirement has been set to cover foreign exchange risk associated with all activities of investment firms,
- investment firms for which dealing activities represent only a small proportion of all their activities (defined in terms of Balance Sheet and off Balance Sheet items) are exempt from the requirement to calculate the ratios in respect of risks associated with trading-book activities. If they avail themselves of this exemption, investment firms are required to apply the solvency requirements to all their activities. They must also calculate an additional capital requirement to cover foreign exchange risk,
- the denominator of the solvency ratio is the maximum amount of two items: first being the overall capital requirement to cover credit

risk, foreign exchange risk, market risks and operational risk (as from 1 January 2008) (assets and off Balance Sheet items are “risk-adjusted” by the application of percentage weightings expressing the degree of credit risk that they present), second being 25% of the general administrative expenses of the prior year,

- investment firms, which are under the CSSF’s supervision on a consolidated basis in conformity with the Law relating to the financial sector, must also permanently comply with the capital adequacy ratio on a consolidated basis,
- investment firms are required to provide the CSSF with details of the calculation of their non-consolidated capital requirements on a six-monthly basis and of their consolidated capital requirements on an annual basis. They are also required to provide the CSSF on a periodical basis with details of the calculation of their non-consolidated own funds and with a summary of the various items which make up their non-consolidated capital requirements: on a monthly basis for professionals acting for their own account and underwriters, on a quarterly basis for asset managers, distributors of UCI shares and registrar and transfer agents,
- investment firms 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 2000/12, are required to contact the CSSF in order to obtain its prior approval and to define the practical arrangements for implementing an approach based on such a mode.

#### 5.2.2.2 Large exposures

The requirements to respect large exposures shall apply to all Luxembourg Law investment firms, with the exception of the entities referred to in article 13(2) of the amended Law of 5 April 1993 and undertakings whose business is limited to receiving and transmitting orders from investors without holding funds or securities belonging to their clients.

The Circular CSSF 2000/12 defines the system of notification and limitation in respect of large risks taken by investment firms. The aim of this Circular is to fix the requirements of a system of control over large risks, as adapted to the principles stated

by the European Directive (92/121/EU dated 21 December 1992). This Circular will be replaced by Circular CSSF 07/290 as from 1 January 2008.

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

The concept of risk includes not only the assets and items of the off Balance Sheet, such as commitments and potential liabilities, but also exchange and interest rate contracts which are respectively evaluated at their replacement cost and at equivalent credit risk amount. The Circular gives a list of commitments which are to be included in the limitation of large risks and their respective weights.

A risk is defined as large when exceeding 10% of its own funds (as used for purposes of calculating the solvency ratio).

The limits that are to be respected are as follows:

- an investment firm must not assume from one debtor or from a group of inter-related debtors risks totalling more than 25% of its own funds,
- the cumulative value of individual risks equal to or greater than 10% of the own funds of an investment firm may not exceed 800% of its own funds,
- the risks assumed from undertakings related to the investment firm are limited to 20% of its own funds. The supervisory authority may decide not to require this limit if the investment firm is part of the consolidated supervision of a group established in a European Union Member State or in a country where equivalent supervisory norms prevail.

Investment firms are permitted to exceed the 25% and 800% limits provided that such excess arises exclusively from their dealing activities. They are required to cover any excesses that may arise out of own funds.

Every three months, the CSSF has to be notified regarding the large risks on an individual, and if applicable, on a consolidated basis. The notification threshold is currently EUR 6.25 million or 10% of the investment firm's own funds.

### 5.2.2.3 Other limits

- investments,

Article 57 of the amended Law of 5 April 1993 defines to what extent a PFS may hold investments. A PFS, subject to the supervision of the CSSF, that wishes to have a qualifying holding, must obtain the authorisation of the CSSF beforehand.

- legal reserve,

The PFS, 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.

### 5.2.3 Prevention of money laundering and financing of terrorism

#### 5.2.3.1 Circular CSSF 05/211 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 in respect of the PFS professional duties, as far as the combat of money laundering and financing of terrorism is concerned.

The provisions of this Circular apply to credit institutions and PFS 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 persons not related to the financial sector.

The amended Law of 5 April 1993, the 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 terrorism financing as well as implementing an adequate internal organisation.

The Circular CSSF 05/211 has therefore fixed and detailed a certain number of principles and rules which can be summarised as follows:

- obligation to know the clients,
- obligation to monitor carefully transactions,
- obligation to monitor continuously the client depending on the risk to be in relation with money laundering and terrorism financing,
- obligation to cooperate with the authorities,
- obligation to keep the documents,
- obligation to have an adequate internal organisation.

Some of the rules described in Circular CSSF 05/211 already include application provisions of the third anti-money Laundering Directive, i.e. risk based approach analysis of clients, beneficial owner identification, ...

#### **5.2.3.2 Identification and reporting of business relationships with terrorist groups**

Numerous CSSF Circulars, following European regulations, list names of such persons or organisations against those specific measures are directed.

Credit institutions, investment funds and PFS are, among others, required to communicate all information relevant to the application of said measures to the CSSF and the Public Prosecutor.

#### **5.2.4 Company administration services**

When the PFS offers company administration services, it shall comply with the Law of 31 May 1999 on company administration services and with the following CSSF Circulars.

##### **5.2.4.1 Circular CSSF 2001/28 related to company domiciliation agents**

Circular CSSF 2001/28 is pursuant to the Law of 31 May 1999 on company administration (“domiciliation”) services.

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 a formal company administration (“domiciliation”) agreement.

PFS 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.

##### **5.2.4.2 Circular CSSF 2001/29 related to minimum content of a company administration agreement**

Circular CSSF 2001/29 applies to all credit institutions and other PFS established in Luxembourg and subject to CSSF supervision. The purpose of the Circular is to specify those matters, which are the subject of mandatory stipulation in the company administration agreement.

The mandatory items to include in the agreement are as follows:

- purpose of the services provided,
- rights and obligations of the service provider, specifically the various matters concerning professional obligations imposed by Law and namely:
  - the obligation to identify the members of the company’s Management bodies, its shareholders and ultimate economic beneficiaries in accordance with the guidelines set forth in Circular CSSF 05/211,
  - the obligation to retain the documentation supporting the identification of the above parties for a period of not less than five years

after the end of their relationship with the company,

- the obligation to confirm compliance of the company’s decision-making bodies and authorised representatives with the legal provisions governing commercial companies and establishment. To enable this obligation to be met, the agreement must also specify a mandatory right of access by the service provider to all correspondence addressed to 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.

#### **5.2.4.3 Circular CSSF 2001/47 related to professional obligations of company domiciliation agents and general recommendations (amendment of Circular CSSF 2001/28)**

Circular CSSF 2001/47 applies to all credit institutions and other PFS established in Luxembourg and subject to CSSF supervision. The purpose of the Circular is to identify the pre-contractual and continuing obligations incumbent upon professionals subject to CSSF supervision entering into company administration agreements. It also sets out general recommendations to company domiciliation agents faced with conflict of interest.

- pre-contractual professional obligations,

Company domiciliation agents shall, prior to entering into a company administration agreement, confirm compliance by the prospective client company with domicile-related provisions. Hence, company domiciliation agents shall be obliged to ascertain the location of the company’s principal establishment.

Company domiciliation agents shall be required to ascertain the true identity of the members of the Management bodies of a prospective client company.

- 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 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.

It must be emphasised that under article 40(1) and (2) of the Law of 5 April 1993 on the financial sector, company domiciliation agents are among those required to offer as complete as possible a response and cooperation further to any legal request made by the Law enforcement authorities in the performance of their duties. By the same token, they are required to cooperate fully with the Luxembourg anti-money laundering authorities any matter that might constitute evidence of money laundering.

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.

- 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 (“commissaire aux comptes”) of a client company. Such offices 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 of providing one or more persons to act as shareholder(s) or founder(s) of the client company.

It should be noted that this form of multiple office-holding by company domiciliation agents is liable to give rise to conflicts of interest. It is important in this connection to remember that domiciliation agents accepting office as Director or acting as shareholder or founder of a client company may be held personally liable in this capacity,

quite separately from any professional liability as company administration service provider. As such Circumstances further involve a degree of reputation risk for domiciliation agents, they are advised to set down the detailed terms of any provision of persons to act as Director of a client company in a written agreement with the company's shareholders and/or beneficial owners.

#### **5.2.4.4 Circular CSSF 2002/65 on company administration services: clarification of the "seat" laid down by the Law of 31 May 1999**

The Circular CSSF 2002/65 draws the attention of the PFS carrying out company domiciliation activities to the practical meaning of the term "seat" (siège) as laid down by the Law of 31 May 1999, governing the domiciliation of companies.

A company is deemed to have a seat 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...) at this address.

Furthermore, 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 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.

The practice of time-sharing (part-time renting of the same offices to one or several firms) is considered as company domiciliation activity if it intends to bypass the Law of 31 May 1999.

#### **5.2.5 Supervision on a consolidated basis: Circular CSSF 2000/22**

Investment firms may be subject to supervision on a consolidated basis just as they are subject to supervision on an individual basis. The Circular CSSF 2000/22 explains the difference between supervision on a consolidated basis and preparation of consolidated accounts and points out that investment firms which are exempt from the preparation of consolidated accounts for publication purposes, are nevertheless required to prepare consolidated accounts for the purpose of prudential supervision if they are subject to the consolidated control of the CSSF.

The supervision on a consolidated basis should include:

- the supervision of solvency,
- the supervision of the adequacy of own funds to cover market risks,
- the control of large exposures,
- internal control procedures related to supervision on a consolidated basis,
- external control,
- management of the group of undertakings included in the consolidated and central administration organisation and accounting procedures,
- the prevention of money laundering activities,
- 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.

The Management of the undertaking subject to the consolidated control is obliged to cooperate with the CSSF. Otherwise the CSSF may apply penalties ranging from injunctions and suspension to the imposition of fines.

#### **5.2.6 Free establishment and free provision of services: Circular IML 98/148**

This Circular is intended to provide supplementary details in respect of the transposition into Luxembourg Law of the principles of free establishment and free provision of services, as defined by the Investment Services Directive.

The Circular is addressed to Luxembourg Law investment firms and is intended to provide those undertakings that wish to extend their services to other EU Member States by the establishment of branches or by the free provision of services with detailed information on the procedures for establishment and on the means by which prudential supervision will be exercised under the new legal regime.

Information required to be notified to the home and host Member States, as well as means of notification are explained in both cases of establishment of a branch in another EU Member State or in case of exercise of free provision of services.

Supervision of the activities carried out by a Luxembourg investment firm in another EU Member State remain by the CSSF as home Member State competent authority. The host country shall retain its power to collect information for statistical purposes and for reasons of monetary policy; besides, by virtue of the principle of territoriality, the host country rules will apply in respect of measures designed to combat money laundering. In addition, the CSSF requires that regulations applicable in Luxembourg for the prevention of money laundering shall apply to branches of Luxembourg investment firms in addition to any host country regulations.

The Luxembourg investment firm shall submit periodically to the CSSF reporting figures including the head office and all its branches.

All branches have to be formally included in the head office's internal audit programme and by the external auditor ("Réviseur d'entreprises") in the audit of the annual accounts of the investment firm.

Transactions, which branches enter into, must be reflected directly in the accounting records and financial situation of the Luxembourg investment firm. The inclusion of the details of each of the branch's transactions in the head office accounting and computer system on at least daily basis is indispensable in order for the head office's accounting records to be complete and in order to permit the continuous management of resources and risks by the investment firm on a global basis.

The head office of the investment firm shall ensure that its branches properly apply and observe the Management policies fixed by decision-making bodies of the investment firm governing the business policies to be pursued by the branch. To this end, a member of the executive Management is designated as responsible for branch operations.

This Circular should be amended by the end of 2007 in order to take into account the recommendations from the Committee of European Securities Regulators (CESR) on that matter.

#### **5.2.7 Reporting and disclosure requirements**

##### **5.2.7.1 Circular CSSF 05/187 related to regulatory reporting**

The CSSF has established periodic tables that PFS have to file to the CSSF in accordance with a fixed reporting calendar. Circular CSSF 05/187 in particular contains guidelines regarding the preparation and transmission of data submitted to the CSSF for the purposes of periodic reporting.

A summary is given hereafter.

Table code	Table description	Frequency	Deadline
I	Statement of Financial position	Monthly	20 of the following month
II.1.	Investment advisors	Monthly	20 of the following month
II.2.A.	Brokers in financial instruments	Monthly	20 of the following month
II.2.B.	Commission agents	Monthly	20 of the following month
II.3.	Private portfolio managers	Monthly	20 of the following month
II.4.	Professionals acting for their own account	Monthly	20 of the following month
II.5.	Professional custodians of financial instruments	Monthly	20 of the following month
II.6.	Distributors of units/shares of UCIs	Monthly	20 of the following month
II.7.	Underwriters of financial instruments	Monthly	20 of the following month
II.8.	Registrar agents	Monthly	20 of the following month
II.9.	Market makers	Monthly	20 of the following month
II.10.	Currency exchange dealers	Monthly	20 of the following month
II.11.	Debt recovery	Monthly	20 of the following month
II.12.	Professionals performing credit offering	Monthly	20 of the following month
II.13.	Professionals performing securities lending	Monthly	20 of the following month
II.14.	Professionals offering money transfer services	Monthly	20 of the following month
II.15.	Administrators of collective savings funds	Monthly	20 of the following month
II.16.	Management companies of non-coordinated UCIs	Monthly	20 of the following month
II.17.	Client communication agent	Monthly	20 of the following month
II.18.	Administrative agents of the financial sector	Monthly	20 of the following month
II.19.	IT systems and communication networks operators of the financial sector	Monthly	20 of the following month
II.20.	Professionals performing services of setting up and management of companies	Monthly	20 of the following month
II.21.	Domiciliation agents of companies	Monthly	20 of the following month
III.1.	Off Balance Sheet statement	Quarterly	20 of the following end of quarter
III.2.	Profit and loss account	Quarterly	20 of the following end of quarter

“Statement of financial position” (table I) constitutes a standard format for reporting the Balance Sheet of all PFS categories to which it applies irrespective of the type of business conducted by the reporting undertaking.

“Supplementary statistical information” (tables II.1. to II.21.) deals with reporting requirements specific to one of the various types of business conducted by the undertaking. Where a PFS conducts more than one type of business covered by the schedules, it shall complete and forward supplementary statistical information reports for each of these activities.

“Off Balance Sheet statement” (table III.1.) is a table designed to document contingencies to which the undertaking is exposed.

This table only applies to the following categories of PFS: professionals acting for their own account,

distributors of shares/units of UCI accepting payments, underwriters.

Finally, a “profit and loss account” (table III.2.) has to be sent quarterly and apply to all categories of PFS irrespective of the type of business conducted.

The undertakings’ management must establish internal control procedures in order to ensure compliance with the CSSF reporting requirements.

This information must be transmitted to the CSSF by electronic means, in accordance with the requirements of Circular CSSF 05/197.

#### **5.2.7.2 Circular IML 96/124 related to transmission of periodic information regarding the staff number of PFS**

All PFS shall report their staff number to the CSSF in reporting table S 2.9. on a quarterly basis.

# 6. Accounting framework

## 6.1 Introduction

Generally accepted accounting principles applying for the PFS are set forth by the Law of 19 December 2002 (title III, chapters II and IV), for the annual accounts and the amended Law of 10 August 1915 (section XVI) on commercial companies, for the consolidated accounts.

The annual accounts shall give a true and fair view of the undertaking's assets, liabilities, financial position and result. The layout of the Balance Sheet and of the profit and loss account, particularly as regards the form adopted for their presentation, may not be changed from one year to the next.

The annual accounts comprise the Balance Sheet, the profit and loss account and the notes to the accounts. In addition, a management report must be provided for the companies which are not considered as "small" as per article 35 of the Law of 19 December 2002.

## 6.2 Balance Sheet

In the Balance Sheet, the items prescribed must be shown separately in the order indicated. In respect of each Balance Sheet item, the figure relating to the corresponding item for the preceding financial year must be shown. Where figures from one year are not comparable to figures of the next year and where the figures of the preceding year have been adjusted, this must be disclosed in the notes to the accounts, with relevant comments.

## 6.2.1 Layout of the Balance Sheet

For the presentation of the Balance Sheet, undertakings must use the layout provided for in article 34 of the Law dated 19 December 2002, as presented below. Captions for which there are “nil” balances for the year and for the comparative figures are not disclosed in the annual accounts.

ASSETS	LIABILITIES
A. Subscribed capital unpaid	A. Capital and reserves
I. Subscribed capital not called	I. Subscribed capital
II. Subscribed capital called but unpaid	II. Share premium account
B. Formation expenses	III. Revaluation reserve
C. Fixed assets	IV. Reserves
I. Intangible assets	• Legal reserve
• Costs of research and development (optional entry)	• Reserve for own shares or own corporate units
• Concessions, patents, licences, trademarks and similar rights and assets, if they were:	• Reserves provided for by the articles
a) acquired for valuable consideration and need not be shown under C I-3,	• Other reserves
b) created by the undertaking itself (optional entry)	V. Profit or loss brought forward
• Goodwill, to the extent that it was acquired for valuable consideration	VI. Profit or loss for the financial year
• Payments on account	VII. Capital investments subsidies
II. Tangible assets	VIII. Gains which are temporarily not taxable
• Land and buildings	A.bis Subordinated debt
• Plant and machinery	B. Provisions for liabilities and charges
• Other fixtures and fittings, tools and equipment	• Provisions for pensions and similar obligations
• Payments on account and tangible assets in course of construction	• Provisions for taxation
III. Financial assets	• Other provisions
• Shares in affiliated undertakings	C. Creditors
• Loans to affiliated undertakings	• Bonds
• Participating interests	a) Convertible bonds
• Loans to undertakings with which the company is linked by virtue of participating interests	b) Non-convertible bonds
• Securities held as fixed assets	• Amounts owed to credit institutions
• Other loans	• Payments received on account of orders in so far as they are not shown separately as deductions from stocks
• Own shares or own corporate units, with an indication of their nominal value or, in the absence thereof, their accounting par value	• Debts on purchases and provisions of services/trade creditors
D. Current assets	• Bills of exchange payable
I. Stocks	• Amounts owed to affiliated undertakings
• Raw materials and consumables	• Amounts owed to undertakings with which the company is linked by virtue of participating interests
• Work in progress	• Tax and social security debts
• Finished goods and goods for resale	a) Tax debts
• Payments on account	b) Social security debts
II. Debtors <sup>1</sup>	• Other creditors
• Claims resulting from sales and the provision of services/trade debtors	
• Amounts owed by affiliated undertakings	
• Amounts owed by undertakings with which the company is linked by virtue of participating interests	
• Other debtors	
III. Transferable securities	
• Shares in affiliated undertakings	
• Own shares or own corporate units, with an indication of their nominal value or, in the absence thereof, their accounting par value	
• Other transferable securities	
IV. Cash at bank, cash in postal cheque accounts, cheques and cash in hand	
E. Prepayments and accrued income	D. Accruals and deferred income

<sup>1</sup> For each sub-captions of the debtors and of the creditors, the amount must be split between the amounts:

- a) becoming due and payable within one year      b) becoming due and payable after more than one year

Undertakings which, on their Balance Sheet date, do not exceed the limits of two of the following three criteria:

- balance Sheet total: EUR 3,125,000,
- net turnover: EUR 6,250,000,
- average number of full-time employed staff during the financial year: 50.

may draw up an abridged Balance Sheet showing only those items preceded by letters and roman numerals disclosing separately the amount receivable or payable after more than one year for all of the captions included in D.II under “Assets” and C. under “Liabilities”.

### **6.2.2 Special provisions relating to certain Balance Sheet items**

“Participating interests” shall mean rights in the capital of other undertakings, whether or not represented by certificates, which, by creating a durable link with those undertakings, are intended to contribute to the PFS’s activities. The holding of part of the capital of another company shall be presumed to constitute a participating interest where it exceeds 20% of the shares with voting rights.

Expenditure incurred during the financial year but relating to a subsequent financial year must be shown under the asset item “Prepayments and accrued income”.

Income received before the Balance Sheet date, but relating to a subsequent financial year, must be shown under the liabilities item “Accruals and deferred income”.

Value adjustments shall comprise all adjustments intended to take account of reductions in the values of individual assets established at the Balance Sheet date, whether that reduction is final or not.

### **6.3 Profit and loss account**

In the profit and loss account, the items prescribed must be shown separately in the order indicated. In respect of each profit and loss account item, the figure relating to the corresponding item for the preceding financial year must be shown. Where figures from one year are not comparable to figures of the next year and where the figures of the preceding year have been adjusted, this must be disclosed in the notes to the accounts, with relevant comments.

### 6.3.1 Layout of the profit and loss account

For the presentation of the profit and loss account, undertakings must use the layout provided for in article 46 of the Law of 19 December 2002, as detailed below:

CHARGES	INCOME
I. Reduction in stocks of finished goods and in work in progress	I. Net turnover
II. • Consumption of goods for resale, raw materials and consumables • Other external charges	II. Increase in stocks of finished goods and in work in progress
III. Staff costs • Wages and salaries • Social security costs accruing by reference to wages and salaries • Supplementary pensions • Other social security costs	III. Work performed by the undertaking for its own purposes and capitalised
IV. • Value adjustments in respect of formation expenses and tangible and intangible fixed assets • Value adjustments in respect of current assets	IV. Other operating income
V. Other operating charges	V. Income from participating interests • Derived from affiliated undertakings • Other participating interests
VI. Value adjustments in respect of financial assets and of transferable securities held as current assets	VI. Income from other transferable securities and from loans forming part of the fixed assets • Derived from affiliated undertakings • Other income
VII. Interest payable and similar charges • Concerning affiliated undertakings • Other interest payable and charges	VII. Other interest receivable and similar income • Derived from affiliated undertakings • Other interest receivable and similar income
VIII.*	VIII.*
IX. *	IX. Extraordinary income
X. Extraordinary charges	X. Loss for the financial year/period
XI. Income tax	
XII. Other taxes not shown under the above items	
XIII. Profit for the financial year/period	

\* These items may be used depending on the characteristics of the company

Undertakings which on their Balance Sheet dates do not exceed the limits of two of the following three criteria:

- balance Sheet total: EUR 12,500,000,
- net turnover: EUR 25,000,000,
- average number of full-time employed staff during the financial year: 250.

may derogate from the layouts prescribed in the above article 46 within the following limit: items A.1, A.2 and B.1 to B.4 inclusive may be combined under one item called “Gross profit” or “Gross loss”, as the case may be.

### 6.3.2 Special provisions relating to certain items in the profit and loss account

The net turnover only comprises the amounts derived from the sale of products and the provision of services falling within the undertaking’s ordinary activities.

Income and charges that arise otherwise than in the course of the undertaking’s ordinary activities must be shown under “Extraordinary Income” or “Extraordinary Charges”. Unless the income and charges referred above are immaterial for the assessment of the results, explanations of their amount and nature must be given in the notes to the accounts. The same shall apply to income and charges attributable to another financial year.

## 6.4 Content of the notes to the accounts

In addition to the information required under the provisions described above, the notes to the accounts must set out information in respect of the following matters, among others:

- valuation methods applied to the various items in the annual accounts,
- name and registered office of each of the undertakings in which the company holds at least 20% of the capital, showing the proportion of the capital held, as well as the amount of equity and of the profit or loss for the latest approved annual accounts,
- amounts owed by the undertaking becoming due and payable after more than five years,
- average number of staff employed during the financial year,
- advances and loans granted to members of the administrative and supervisory bodies (including former members of the bodies, for pensions' commitments),
- wages, pensions,
- name and registered office of the undertaking which draws up the consolidated accounts of the largest body of undertakings of which the company forms a part as a subsidiary company...

The minimum content of the notes to the accounts is disclosed in sub-section 8 of the amended Law of 19 December 2002.

## 6.5 Publication

Annual accounts duly approved and the annual report (if applicable), together with the audit opinion, must be filed with the "Registre de Commerce et des Sociétés" within one month of their approval (the approval must take place at the date foreseen by the articles of incorporation and no later than 6 months after the closing date).

The following information must be published together with the annual accounts: the proposed appropriation of the profit or treatment of the loss and the appropriation of the profit or treatment of the loss in case these items do not appear in the annual accounts.

# 7. Audit requirements

## 7.1 Internal audit

Circular IML 98/143 relating to internal control sets out the principles of what constitutes an effective system of internal control and describes in detail what is expected from a PFS in terms of its internal audit function.

The purpose of internal audit is to ensure that the system of internal control is operating effectively. It represents an internal function within the PFS for periodic, independent assessments of operations in order to assist the institution's Management and departmental heads.

Management of a PFS 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. Any change in the internal audit responsible shall also be reported to the CSSF, including details of the reasons for the change.

In some cases, due to the small size and the low risk activities of the PFS, it may use the services of external specialists in internal audit. These specialists may be part of the group internal audit function. When the external specialists are non group internal auditors, they must be wholly independent of the institution's external auditor and of any firm or grouping to which the external auditor belongs. Institutions wishing to use the services of an external specialist 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,

- **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 fulfil 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 remit of internal audit department extends to all activities and functions of the PFS, there shall be no limitations as to the scope whatsoever. It shall 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.

## 7.2 External audit

Authorisation of the PFS is subject to the condition that the undertaking has its annual accounts audited

by one or more external auditors (“Réviseurs d’entreprises”) having adequate professional experience. The nomination of the(se) authorised auditor(s) is made by the Board of Directors of the institution. Any change in external auditors must receive prior approval from the CSSF.

Undertakings are required to give the external auditors a written, detailed mandate which must include the following minimum requirements:

- the statutory audit of the annual accounts shall be conducted in accordance with the practice guidelines issued by the Institut des Réviseurs d’Entreprises of Luxembourg (IRE). In that respect, the IRE recommends application of International Standards on Auditing (ISAs) issued by the International Federation of Accountants (IFAC), adapted for or supplemented by national legislation or practice as appropriate,
- the scope of the audit shall extend to all those areas stipulated below, by application, where appropriate, of the principles set forth in IFAC’s International Standard of Assurance Engagements (ISAE),
- the scope of the audit shall extend to all areas of the undertaking’s activities, whether reported on or off Balance Sheet. The terms of the audit engagement may not exclude from its scope any type of activity, type of transaction or specific transaction. The audit shall, moreover, cover all risks together with all financial, organisational and internal control considerations as they relate to the PFS. The audit shall produce or cause to be produced all such information as is required by the long form audit report as defined in the Circular CSSF 2003/113,
- the terms of the statutory audit engagement shall expressly require the auditor to:
  - confirm compliance with Part II of the Law of 5 April 1993 and with the principles enshrined in Circular CSSF 05/211 on the prevention of money laundering and financing of terrorism,
  - confirm compliance with articles 36 and 36-1 of the Law of 5 April 1993 and, in particular, with the principles enshrined in Circular IML 91/78 on the segregation of assets, together with the proper application of relevant internal procedures,

- confirm compliance with article 37 of the Law of 5 April 1993 and with the principles enshrined in Circular CSSF 2000/15 on the rules of conduct in the financial sector, together with the proper application of relevant internal enforcement procedures (this Circular will be abrogated by an upcoming Circular),
- confirm compliance with all other CSSF Circulars referred to in the Circular CSSF 2003/113.

- the terms of the statutory audit engagement shall embrace all foreign branches of the undertaking. As regards compliance with Luxembourg anti-money laundering rules and rules of conduct, the audit shall further embrace all foreign subsidiaries of the PFS,
- the statutory audit of the annual accounts as defined above shall give rise firstly to a short form audit report (the annual accounts) and secondly, for investment firms, to a long form audit report.

The practical rules concerning the audit by the external auditors of the annual accounts of investment firms is foreseen in the Circular CSSF 2003/113. The external auditors are requested to review and assess in the long form report the compliance with the regulatory provisions as prescribed by CSSF Circulars.

The long form report is to be used as a basis of information, not only for the Board of Directors or Management of the investment firm, but also for the CSSF. It must therefore cover several topics in order to allow the CSSF to assess among others the investment firm’s organisation, the internal control, the financial position and its evolution, the business risks, the management information systems if applicable and the EDP environment. Emphasis is specifically put on relationship with business contributors (“apporteurs d’affaires”), on any indication of churning and on omnibus accounts, which are usually used by private managers.

Circular CSSF 2003/113 requires a standard format for the long form report which can be summarised as follows:

1. terms of engagement,
2. significant events,

3. organisation and administration,
  - i) Description of shareholders
  - ii) Management structure
  - iii) Organisation chart
  - iv) Administrative and accounting organisation
  - v) Computer systems
  - vi) Internal control
4. operations and related risks,
5. periodic reporting to the CSSF,
6. prudential ratios,
7. review of the annual account,
8. professional obligations relating to money-laundering prevention,
9. professional obligations regarding rules of conduct,
10. foreign branches,
11. related parties,
12. follow-up of issues raised in previous reports,
13. overall conclusion.

In case of the entity is supervised on a consolidated basis by the CSSF (e.g. when it holds participations in other PFS 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.

Deadline for providing the statutory long form report to the CSSF is one month after the general annual meeting of shareholders. Deadline for providing the consolidated long form report to the CSSF is three months after the general annual meeting of shareholders.

Exemption to produce a long form report might be granted by the CSSF based on a written request from the entity, depending on the nature of its activities and the risks incurred.

In addition to the report on the annual accounts and the long form report, investment firms 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 including 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 ask an external auditor to review one or several aspects of the activity and operations of a PFS.

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

It has to be noted that the above 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, however, not prevent the CSSF from giving a special mandate to the external auditor in areas for which the CSSF maintains competence (e.g. fight against money laundering and financing of terrorism).

# 8. Taxation

## 8.1 Introduction

Professionals of the Financial Sector are subject to taxes applicable to all commercial companies with their registered offices in Luxembourg.

It must be noted that the PFS legislation does not contain specific tax provisions. As result, PFS are subject to all tax Laws applicable in Luxembourg.

## 8.2 Corporate Income Tax (“Impôt sur le Revenu des Collectivités, IRC”)

### 8.2.1 General features

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.

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 commercial Balance Sheet, unless the tax Law explicitly deviates from the commercial valuation rules, due to specific tax valuation rules (e.g. Article 23 LIR).

As from 1 January 2002, the Corporate Income Tax rate is 22.88% (basic rate 22% including the 4% surcharge for the unemployment fund). As of 1 January 2006, the Municipal Business Tax rate is 6.75% instead of 7.5%% (for the city of Luxembourg). The combined rate of Corporate Income Tax and Municipal Business Tax is 29.63% for the city of Luxembourg.

Taxable income (EUR)	Basic Rate
up to 10,000	20%
10,000 - 15,001	EUR 2,000 +26%

For companies whose taxable income does not exceed EUR 15,000, the following basic rates apply:

The 4% unemployment fund surcharge is also levied on the Corporate Income Tax computed according to these rates.

### 8.2.2 Basic tax rules

The tax valuation rules are as follows:

- taxable profit is determined by comparing the net asset values of the PFS between the end and the beginning of the financial year (art. 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 (art. 18(2) LIR),
- any asset (other than the case of similar assets) must be valued individually (art. 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 (art. 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 (art. 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 (art. 23(5) LIR).

### 8.2.3 Neutralisation of currency exchange gains

Regardless the currency of the capital of the PFS and/or the accounting currency, the taxable profit must be calculated in Euro (EUR). The taxable profit corresponds to the difference between the net asset values of the PFS expressed in EUR at the beginning of the financial year and at the end of the financial year. The evolution of exchange rates has, therefore, an impact on the tax profit. To eliminate this effect, the Law foresees the possibility to neutralise the exchange gains resulting from the conversion of the net equity into EUR.

### 8.2.4 Stipulation related to loss carry-forward

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

### 8.2.5 Transaction with affiliated companies

Transactions with affiliated companies must be carried out on an arm's length basis, in order to avoid deemed 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.

### 8.2.6 Dividends received from shareholdings and capital gains on participations

#### 8.2.6.1 Exemption of dividends received

A Luxembourg PFS, 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:

- the subsidiary is:
  - a fully taxable resident joint-stock company, or
  - a non-resident joint-stock company fully subject to a tax comparable to Luxembourg Corporate Income Tax (the Luxembourg tax authorities have set the rule that the foreign tax must be assessed at a minimum rate of 11% on a taxable basis determined similarly as the Luxembourg one), or

- an undertaking resident in an EU Member State and referred to in article 2 of the EC Parent-Subsidiary Directive.

- at the date the dividends are at its disposal, the PFS holds or undertakes to hold continuously a minimum participation of 10% or with an acquisition price of at least EUR 1,200,000 in the share capital of the subsidiary during an uninterrupted period of at least 12 months. Direct participations are taken into account as well as participations held through a Luxembourg tax transparent entity (e.g. SCS, SNC, Société Civile, EIG EEIG). If the recipient of the dividends does not respect its commitment to keep the minimum holding during the full 12-month period, the exemption is cancelled and a recapture of the tax originally due will take place.

A fully taxable resident undertaking referred to in article 166(10) LIR, a Luxembourg permanent establishment of an undertaking referred to in Article 2 of the EC Parent-Subsidiary Directive or permanent establishment of a joint-stock company resident in a double tax treaty country may also benefit from the above-mentioned dividend participation exemption.

Before January 2004, dividends received from a particular shareholding, which would normally qualify for the exemption, remained taxable up to the amount of expenses (or write-off) in direct relation with the said shareholding deducted in the same tax year. In order to be fully in compliance with the EU Parent-Subsidiary Directive, as from 1 January 2004, while the dividends are now completely exempt the deductible expense may only be deducted insofar as they exceed the exempt dividends for the year in question.

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.

### 8.2.6.2 Exemption of capital gains arising from the disposal of shares

Capital gains realised by a PFS (like any other fully taxable resident joint-stock company) on a shareholding held directly or held through a Luxembourg tax transparent entity (e.g. SCS, SNC, Société Civile, EIG, EEIG) are also exempt from tax under the following conditions:

- the subsidiary in which the shares are disposed must be:
  - a fully taxable resident joint-stock company, or
  - a non-resident joint-stock company fully subject to a tax comparable to Luxembourg Corporate Income Tax (the Luxembourg tax authorities have set the rule that the foreign tax must be assessed at a minimum rate of 11% on a taxable basis determined similarly as the Luxembourg one), or
  - an undertaking referred to in article 2 of the EC Parent-Subsidiary Directive.
- at the date of the disposal, the PFS holds, or undertakes to hold continuously, a minimum participation of 10% or with an acquisition price of at least EUR 6 million in the share capital of the subsidiary during an uninterrupted period of at least 12 months.

A fully taxable resident undertaking referred to in article 166(10) LIR, a Luxembourg permanent establishment of an undertaking referred to in Article 2 of the EC Parent-Subsidiary Directive or a Luxembourg permanent establishment of joint-stock company resident in a double tax treaty country may also benefit from the above-mentioned capital gain exemption.

Exempt capital gains arising from the sale of a qualifying shareholding are reduced by capital losses resulting from earlier related depreciation. They are also reduced by the sum of expenses in economic connection with the shareholding that have reduced the taxable basis in prior years or during the year of the sale.

### 8.2.7 Roll-over relief

If a PFS voluntarily alienates, in the course of its business, a qualifying fixed asset, taxation of the capital gain may be deferred by reinvesting it to a replacement asset (roll-over relief) or by allocating it to a temporary tax-free reserve (art. 54 LIR). Then, the PFS has two years after the year of the alienation to operate the reinvestment. If no reinvestment is made after the said period, the capital gain becomes taxable (without penalties) Among other conditions, the capital gain must be realised on buildings or non-depreciable fixed assets. The alienated assets must have belonged to the company for at least 5 years at the date of alienation.

### 8.2.8 Investment incentives

The Luxembourg tax legislation grants tax advantages to those who invest their profits 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 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.

#### 8.2.8.1 Tax credit for supplementary investment

Broadly speaking, the credit for “supplementary investment” is equal to 10% 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 3 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 5 preceding accounting years, the credit has an economic impact on the increase of investment for a given year (compared with investments made during the 5 prior years).

#### **8.2.8.2 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 is equal to 6% of the total acquisition price of the qualifying assets, insofar as the total acquisition price of the investment during the tax year does not exceed EUR 150,000 and 2% of the excess over EUR 150,000.

The credit is not granted for:

- assets usually depreciable in a period of less than 3 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 abovementioned 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 10 tax year period.

#### **8.2.8.3 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 setting up a new business.

#### **8.2.9 Withholding tax**

##### **8.2.9.1 Withholding tax on dividends**

Dividends distributed by PFS are subject to a withholding tax whose rate is in principle 15% since 1 January 2007. 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 PFS by a Luxembourg resident company can also be exempt from withholding tax under similar conditions. The withholding tax exemption or reduction is also available under tax treaties concluded by Luxembourg under the conditions set forth in the treaty concerned.

Withholding tax exemption is also available for dividend distributed to a Swiss resident joint-stock company subject to a Swiss corporation tax which do not benefit from an exemption as well as for dividend distributed to company resident in the countries member of the EFTA (Liechtenstein, Iceland and Norway).

##### **8.2.9.2 Withholding tax on Directors’ fees**

As from 1 January 2002, 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%. 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 the form 510bis and paid by the paying company within eight days of the date the income is made available.

Director's fees are in principle subject to Luxembourg social security contributions (subject to minimum and maximum ceilings of contributions). However, based on the provisions of a relevant social security treaty (if any), an exemption may apply.

#### *8.2.9.2.1 Resident Directors*

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

Within the scope of a final assessment, the family situation of the Director is taken into consideration. In addition, certain deductions are applicable (e.g. social security contributions except the 1.4% dependency contribution, lump-sum allowance for special expenses of EUR 480).

When a final tax liability is assessed, the final tax charged is computed pursuant to progressive income tax rates (ranging from 0% to 38.95%).

#### *8.2.9.2.2 Non-resident Directors*

Luxembourg non-resident individual Directors whose sole income subject to Luxembourg income taxes are Director's fees not exceeding the yearly limit of EUR 100,000 do not have to file a Luxembourg income tax return. In the latter situation, the 20% withholding tax at source constitutes their final Luxembourg income tax liability.

The Directors may however opt to be taxed based on a Luxembourg income tax return. Under the latter option, Director's fees will be subject to progressive income tax rates up to 38.95% with a minimum rate of 15.375%. However, when determining the Director's final income tax liability on the basis of a tax return, the 20% flat rate at source is used as an advance tax payment.

Within the scope of a final assessment, the family situation of the Director is taken into consideration. In addition, certain deductions are applicable (e.g. social security contributions except the 1.4% dependency contribution, lump-sum allowance for

special expenses of EUR 480. Depending on the Director's personal situation, the option to file an income tax return can thus generate an income tax opportunity (tax refund).

#### **8.2.9.3 Withholding tax on interest payment made to Luxembourg resident individuals**

Since 1 January 2006 a withholding tax in full discharge of income tax of 10% applies on 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 instance 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 of 21 June 2005, which transposed Council Directive 2003/48/EC of 3 June 2003 on taxation savings income in the form of interest payments into Luxembourg Law and on the Law of 23 December 2005, which introduces a withholding tax on interests, derived from certain transferable saving. For more details on the Council Directive 2003/48/EC please refer to the following paragraph.

#### **8.2.9.4 Withholding tax on interest payment made to individuals resident in other E.U. 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 has 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 a 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 terms “paying agent”, “third country” and “residual entities” are to be understood within the meaning of the definitions 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, Austria and Belgium will be applying a withholding tax instead of a reporting procedure. However, in this case, there are alternatives available to the withholding tax for the beneficial owner. These alternatives consist of either authorising an exchange of information or providing a tax certificate. The applicable withholding tax rate will be 15% for the first three years of application. This rate will be increased gradually to 35% in 2011 and will apply until the end of the transitional period defined in the Directive.

As a result, in case of payments made in respect of 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.

#### **8.2.9.5 Withholding tax on royalties**

There is no Luxembourg withholding tax on royalties paid to Luxembourg resident taxpayers.

However, according to the provisions of article 152, title 1(1) LITL, the income deriving from the following activities, carried out in Luxembourg, paid to non-resident taxpayers are subject to a withholding tax of 10%:

- independent literary or artistic activities,
- professional sport activities.

#### **8.2.10 Tax Unity**

It is possible for PFS 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).

#### **8.2.11 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.

## 8.3 Other taxes

### 8.3.1 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 [S.A.]) 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 rate for the city of Luxembourg is 6.75%.

### 8.3.2 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 generally 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 (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 a resident PFS is EUR 12,500. (EUR 62.5 of NWT).

In the case of fully taxable resident joint-stock 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 and also participations held through transparent Luxembourg entities may benefit from the exemption. The exemption of the participation from the Net Wealth Tax also applies to a participation held by a fully taxable resident undertaking referred to in paragraph 60(4) of the Valuation Law, by a Luxembourg permanent establishment of an undertaking referred to in article 2 of the Parent-Subsidiary Directive or a Luxembourg permanent establishment of joint-stock company resident in a double tax treaty country.

As from 1 January 2002, Luxembourg resident companies and Luxembourg permanent establishments (with a separate accounting) of non-resident companies may credit the Corporate Income Tax against their Net Wealth Tax liability (art. Para.8a NWT Law). To qualify for the Corporate Income Tax credit, a company must allocate profits equal to five times the Net Wealth Tax deducted to a reserve and maintain this reserve during 5 years following the year during which the deduction was applied. The use of the reserve (other than the incorporation of the reserve into the share capital) prior to the end of the 5-year period will result in an increase of the NWT of the year of the use equal to one fifth of the amount of the reserve used.

### 8.3.3 Value Added Tax

#### 8.3.3.1 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 6<sup>th</sup> EC Directive, recasted by the Directive of the Council of 28 November 2006 (2006/112/EC).

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 a PFS. As these exemptions give rise to the non-deduction of the related input VAT, one may conclude that PFS are undertakings which are faced with particular VAT questions. All financial institutions including banks are faced with the same issues. For such undertakings, input VAT will generally be regarded as a cost, since it is not, or only partially, recoverable.

A specific comment must be made about PFS exercising a complementary or connected activity. Indeed, in most cases, their activities should be liable. This means they do not face the same issues, e.g. they do not suffer from irrecoverable VAT on their costs.

A short description of the VAT rules that must be applied to PFS is shown below.

### 8.3.3.2 VAT status of PFS

As they supply services falling within the scope of the Luxembourg VAT Law, PFS located in Luxembourg are regarded as taxable persons. A PFS must register as VAT payer with the tax authorities when it carries on transactions liable to Luxembourg VAT. A similar obligation exists when the PFS carries on transactions which are not taxable in Luxembourg, because they are not deemed to take place in Luxembourg or because they are VAT exempt, but which open the right to an input VAT deduction.

In all the cases mentioned above, a PFS must register as VAT payer and file periodic VAT returns. Moreover, a PFS which does not carry on any of the above transactions<sup>1</sup>, must also register as a VAT payer when (i) it purchases goods in other EU Member States and dispatches the goods to Luxembourg and/or (ii) it purchases some kind of services (i.e. so-called “intangible” services) from suppliers located abroad. In both cases, the PFS will be liable to the payment of the VAT due and must thus file special VAT returns (simplified annual form) in order to declare these purchases of goods and/or services.

Luxembourg did not implement into its VAT Law the provisions of the 6<sup>th</sup> Directive which permit some Member States (as is the case for instance in Germany or the Netherlands) 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 to exempt “support” services rendered to the members of the group. This regime could thus, partly, be considered as an alternative to the VAT group and is explained in more details in point 8.3.3.2.2..

Hereafter is shown the various VAT treatments which can apply to transactions carried out by PFS (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 various PFS, the VAT treatment should thus be analysed on a case-by-case basis.

#### 8.3.3.2.1 Taxable transactions

Are taxable in Luxembourg, and thus liable to Luxembourg VAT, the supplies of goods and the supplies of services, which are deemed to take place within the country.

Transactions which are (i) deemed to take place abroad, (ii) VAT exempt or (iii) outside of the scope of VAT transactions are not liable to Luxembourg VAT. In principle, the following transactions will effectively be taxable in Luxembourg, 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 provided to non taxable persons established within the European Union or to any person (other than a Luxembourg UCI subject to the supervision of the CSSF or a Luxembourg pension fund or a Luxembourg SICAR or a securitisation vehicle aimed by the Luxembourg securitisation Law) established in Luxembourg,

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 liable to

<sup>1</sup> In practice, it is likely that all PFS carry on activities implying the registration as a VAT payer and the filing of periodical returns.

Luxembourg VAT as they are deemed to take place where the recipient of the service is established. In the course of their activities, some PFS may also carry on 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 take place where the building is located. However, such service may also be VAT exempt. Services supplied by a PFS 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 PFS to another branch of the same PFS.

#### 8.3.3.2.2 Exempt transactions

Although the 6<sup>th</sup> EC Directive provides that Member States may grant to their undertakings an option to submit themselves to VAT transactions falling within the scope of the exemption granted by article 13 B of the Directive, (article 135 of the recast Directive), Luxembourg did not implement such an option in a straight forward manner into its VAT Law. Therefore, most of the transactions usually carried on by PFS are VAT exempt. The exemption provided by article 44, § 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 or 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.

Moreover, article 44, § 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 services of securitisation vehicles aimed 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. Provided some conditions are met, this exemption may also apply to transactions supplied to special investment funds, which would not have been exempted if they were supplied to individuals or to other undertakings.

The Luxembourg VAT authorities have interpreted broadly the scope of the exemption. The European Court of Justice (Abbey National case on 4 May 2006) has ruled that administrative services can benefit from the VAT exemption as management services if the services, viewed broadly, form a distinct whole, and are specific to, and essential for, the management of those funds. The exemption could also apply when the services are outsourced provided that these conditions are met. The Court has however decided that custody services are not management services because the custodian’s role is not to manage the fund but to control and supervise it. The consequences of the judgment of the Court in the Luxembourg investment fund sector have been discussed at the level of the Luxembourg VAT authorities with professional associations. As a result, the Luxembourg VAT administration issued a Circular on 29 December 2006. Based on this Circular, the “control and supervision” services performed by depositary bank are, as from 1 April 2007, liable to VAT at the rate of 12%.

Other services performed by depositary banks such as transactions services are not impacted by this case.

It must be noted that these exemptions apply irrespective of the capacity of the supplier. In other words, the supplier must not necessarily have the status of a PFS to have its services exempt from VAT.

Rules regarding PFS exercising a complementary or connected activity are different. This category includes agents specialised in in-sourcing non-core business activities of third party financial institutions. In most cases, the transactions performed by these PFS will likely be liable to VAT. This should however be confirmed on a case-by-case basis.

Moreover, the Grand-Ducal decree of 21 January 2004 has provided rules regarding the VAT exemption of supplies of services carried out by independent group of persons to their members (article 44.1.y of the Luxembourg VAT Law implementing article 13.A.1.f of the 6<sup>th</sup> EC Directive/ article 132.A.1.f of the recast Directive).

The Grand-Ducal decree lays down a few ground rules in order to apply this VAT exemption:

- 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. The latter 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. These requirements do not need to be met simultaneously,
- 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.

#### 8.3.3.2.3 Transactions out of the VAT scope

Some transactions performed by PFS are considered as being out of the scope of the VAT Law. This means that they are not considered as economic transactions for VAT purpose. Thus, 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 PFS industry, the two main types of out of the VAT scope transactions are:

- the perception of dividends from shares owned for one's personal account,
- 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 23 March 2006 that no VAT has 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".

#### 8.3.3.2.4 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 could 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.

### 8.3.3.2.5 Input VAT deduction

#### (i) Basic principles

In principle, any VAT payer is allowed to deduct from the VAT he must pay on his turnover the VAT he has paid on purchases of goods and/or services. 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.

As mentioned above, rules regarding PFS exercising a complementary or connected activity (i.e. agents specialised in in-sourcing non-core business activities of third party financial institutions) are different. In most cases, the transactions performed by these PFS will likely be liable to VAT. Should it be the case, they will be entitled to recover fully the VAT on their expenses.

#### (ii) Exempt services and related expenses

Transactions exempt under article 44 of the VAT Law do not open the right to a deduction of the input VAT paid on the expenses incurred for carrying on these transactions. For instance, if a PFS 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 PFS supplies financial services falling within the scope of article 44, § 1, c), (see above), of the VAT Law to customers established outside the European Union, the PFS 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. On the contrary, services consisting of management of special investment funds and other vehicles listed under article 44, § 1, d) (see above), never open the right to an input VAT deduction.

The independent group of persons 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.

#### (iii) Proportion of deductible VAT

For goods and services which are necessary for transactions giving the right to an input VAT deduction and in addition for transactions not giving such right, 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 in respect of 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 in respect of which VAT is not deductible.

#### (iv) Actual use (direct attribution of goods and services)

Under certain conditions, the VAT administration may authorise or request from the PFS to deduct their input VAT on the basis of actual use by attributing goods and services to output transactions. 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.

#### (v) Special prorata

Under certain conditions, the administration may authorise or request from PFS to determine a special prorata for each or 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.

#### (vi) 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 (10 years for real estate) starting on 1 January of the year of purchase of the goods.

##### 8.3.3.2.6 Reverse charge

For some services received from suppliers established abroad, PFS must self-account the VAT due (reverse charge mechanism). This VAT will of course be deductible according to the rules shown above. The main services falling within the scope of these provisions are listed below:

- banking and financial services (except the renting of safe) which do not benefit from a VAT exemption (e.g. management and safekeeping of securities),
- transfers and assignments of copyrights, patents, licences, trade marks and similar rights,
- advertising services,
- services of consultants, engineers, consultancy offices, Lawyers, accountants and other similar services, as well as data processing and the supply of information,
- the leasing of movable tangible property with the exception of all means of transport,
- telecommunication services,
- supplying of information and data processing,
- electronically supplied services.

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).

#### 8.3.4 Capital contribution duty

Capital duty is levied at a rate of 1% 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. The following operations will be subject to capital duty: contributions upon incorporation of the company and latter increases, the creation of a branch in Luxembourg and transfer of the legal seat or the place of effective management from abroad to Luxembourg. However, the capital duty will not apply if the company transferring its seat is located in another EU Member State and has been subject to a similar duty there. In the same reasoning, the capital duty is not due upon creation of a branch if the company creating the branch has its statutory seat or place of effective management in an EU Member State.

Capital duty exemptions are available for certain operations under particular circumstances (mainly, the contribution by an EU company of all assets and liabilities or of a branch of activity, share for share contributions of EU resident companies). The capital duty is deductible as an expense from the Corporate Income Tax basis.

#### 8.4 Foreign source 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.

### 8.4.1 Double tax treaties

Luxembourg has signed double tax treaties with the following countries:

1. Austria	18. Israel	35. Russia
2. Belgium	19. Italy	36. Singapore
3. Brazil	20. Japan	37. San Marino
4. Bulgaria	21. Korea	38. Slovak Republic
5. Canada	22. Latvia	39. Slovenia
6. China	23. Lithuania	40. South Africa
7. Czech Republic	24. Malaysia	41. Spain
8. Denmark	25. Malta	42. Sweden
9. Estonia <sup>1</sup>	26. Mauritius	43. Switzerland
10. Finland	27. Mexico	44. Thailand
11. France	28. Mongolia	45. Tunisia
12. Germany	29. Morocco	46. Turkey
13. Greece	30. Netherlands	47. Trinidad and Tobago
14. Hungary	31. Norway	48. United Kingdom
15. Iceland	32. Poland	49. United States
16. Indonesia	33. Portugal	50. Uzbekistan
17. Ireland	34. Romania	51. Vietnam

Tax treaties with the following countries are pending:

- Argentina
- Azerbaijan
- Georgia
- India
- Kazakhstan
- Lebanon
- Moldavia
- Serbia and Montenegro
- Ukraine
- United Arab Emirates

<sup>1</sup> The treaty will come into force the 1 January 2008.

Hereafter, you will find the withholding tax rates applicable to dividends and interest paid to a company resident in certain of the treaty partner states. The following chart gives only an overview. Reference should be made to the actual treaty itself for further details.

Tax treaties avoid or reduce double taxation of resident taxpayers by two different methods:

(i) 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 sourcing 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, China, Greece, Malta, Morocco, Portugal, the Republic of Korea, Singapore, Spain, Thailand, Tunisia, Malaysia, and Trinidad and Tobago provide for a tax-sparing clause.

Under such a clause, credit is granted in Luxembourg on the basis of a fictitious tax deemed to

Country	Dividends		Interest <sup>1</sup>
	Individual (%)	Qualifying Companies <sup>2</sup> (%)	
Austria	15	5	0
Belgium	15	10	0
Brazil	25	15	0
Canada	15	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
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

have been withheld in the foreign countries listed.

(ii) The exemption method

Under the exemption method, the foreign source income or wealth is exempt from Luxembourg Corporate Income Tax, Municipal Business Tax or Net Wealth Tax.

The exempt income or worth is, however, taken into account in order to compute the tax rate to be applied to the non-exempt income. It should be noted that there is a difference between subsidiaries and branches of foreign PFS. Subsidiaries benefit from tax treaties signed by Luxembourg. Branches do in

<sup>1</sup> There is no withholding tax on interest under Luxembourg tax Law, except on interest from profit-participating bonds. Interest on loans secured by mortgage on immovable property located in Luxembourg is taxable through assessment.

<sup>2</sup> 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).

principle not. However, further to a judgement of the Luxembourg Administrative Tribunal rendered on 29 April 2003, in order to avoid any discrimination between branch and subsidiary, branches could 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.

#### **8.4.2 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.

# 9. Appendices

## Appendix 1: Glossary

- **AGDL:** Deposit protection association (“Association pour la Garantie des Dépôts”, Luxembourg)
- **BCL:** Central Bank of Luxembourg (“Banque centrale du Luxembourg”)
- **CSSF:** Commission de Surveillance du Secteur Financier
- **ECB:** European Central Bank
- **EU:** European Union
- **ICC:** Municipal Business Tax (“Impôt Commercial Communal”)
- **IF:** Net Wealth Tax (“Impôt sur la Fortune”)
- **IRC:** Corporate Income Tax (“Impôt sur le Revenu des Collectivités”)
- **IRE:** External auditors institute (“Institut des Réviseurs d’Entreprises”)
- **LMI or IML:** Luxembourg Monetary Institute (replaced by the CSSF)
- **MiFID:** Markets in Financial Instruments Directive
- **PFS:** Professional of the Financial Sector
- **SICAR:** “Société d’investissement à capital risque”
- **UCI:** Undertakings for Collective Investment
- **UCITS:** Undertakings for Collective Investment in Transferable Securities
- **VAT:** Value Added Tax

## Appendix 2: Useful addresses

**Administration des contributions directes**  
45, boulevard Roosevelt  
L-2982 Luxembourg  
Tel.: +352 40 800-1  
[www.impotsdirects.public.lu](http://www.impotsdirects.public.lu)

**Administration de l’enregistrement et des domaines**  
1-3, Avenue Guillaume  
L-2010 Luxembourg  
Tel.: +352 44 905-1  
[www.aed.public.lu](http://www.aed.public.lu)

**Association des banques et banquiers, Luxembourg (ABBL)**  
59, bd Royal  
L-2449 Luxembourg  
B.P. 13  
L-2010 Luxembourg  
Tel.: +352 46 36 60-1  
[www.abbl.lu](http://www.abbl.lu)

**Association Luxembourgeoise des Compliance Officers du Secteur Financier (ALCO)**  
B.P. 1104  
L-1011 Luxembourg  
[www.alco.lu](http://www.alco.lu)

**Association Luxembourgeoise des Fonds d’Investissement (ALFI)**  
59, bd Royal  
L-2449 Luxembourg  
B.P. 206  
L-2012 Luxembourg  
Tel.: +352 22 30 26-1  
[www.alfi.lu](http://www.alfi.lu)

**Association Luxembourgeoise des Gestionnaires de portefeuilles et Analystes Financiers (ALGAFI)**  
28, boulevard Joseph II  
L-1840 Luxembourg  
Tel.: +352 26 44 76 31  
[www.algafi.lu](http://www.algafi.lu)

**Association Luxembourgeoise  
des Juristes de Banque**

Boîte postale 245  
L-2012 Luxembourg  
Tel.: +352 42 42 25 88

**Association Luxembourgeoise des Professionnels  
du Patrimoine (ALPP)**

17, boulevard Royal  
L-2449 Luxembourg  
Tel.: +352 26 26 49-1  
www.alpp.lu

**Association pour la Garantie des Dépôts,  
Luxembourg (AGDL)**

59, bd Royal  
L-2449 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**

Parquet de Luxembourg  
B.P. 15  
L-2010 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

**Comité pour le développement de la place  
financière du Luxembourg**

110, route d'Arlon  
L-2991 Luxembourg  
Tel.: +352 26 25 12 34  
www.codeplafi.lu

**Commissariat aux Assurances**

7, boulevard Royal  
L-2449 Luxembourg  
Tel.: +352 22 69 11-1  
www.commassu.lu

**Commission de Surveillance du Secteur Financier**

110, route d'Arlon  
L-2991 Luxembourg  
Tel.: +352 26 251-1  
www.cssf.lu

**Fédération des professionnels du secteur financier,  
Luxembourg (PROFIL)**

20, rue de la Poste  
L-2346 Luxembourg  
B.P. 13  
L-2010 Luxembourg  
Tel.: +352 46 36 60-1

**Institut de Formation Bancaire, Luxembourg (IFBL)**

7, rue Alcide de Gasperi  
L-1615 Luxembourg  
Tel.: +352 46 50 16  
www.ifbl.lu

**Institut des Réviseurs d'Entreprises**

7, rue Alcide de Gasperi  
B.P. 2056  
L-1020 Luxembourg  
Tel.: +352 29 11 39-1  
www.ire.lu

**Luxembourg School of Finance**

209, route d'Esch  
L-1471 Luxembourg  
Tel.: +352 26 11 44-1  
www.lsf.lu

**Société de la Bourse de Luxembourg S.A.**

11, avenue de la Porte Neuve  
L-2227 Luxembourg  
B.P. 165  
L-2011 Luxembourg  
Tel.: +352 477 936-1  
www.bourse.lu

**Université de Luxembourg**

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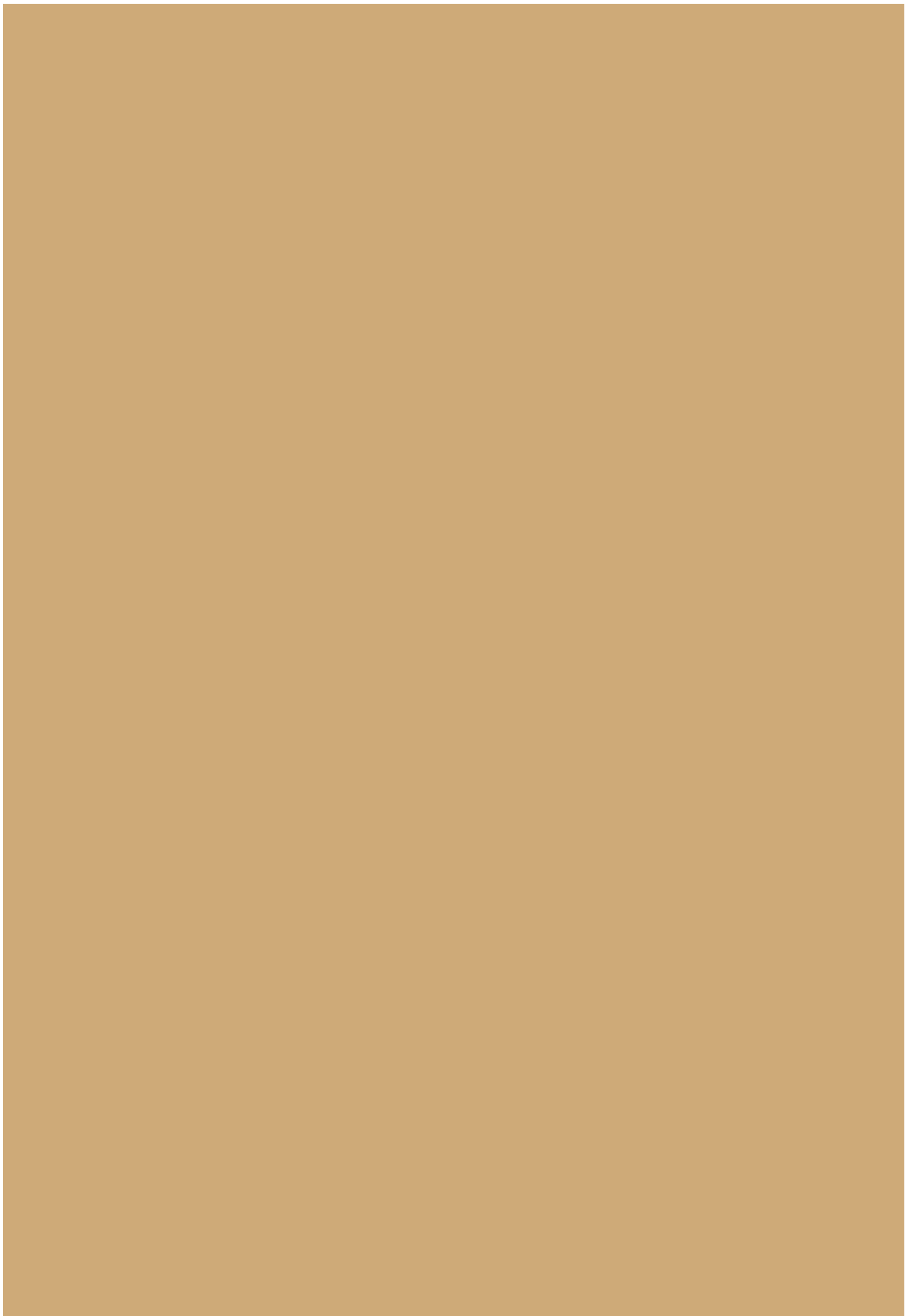
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