

# Changes to Luxembourg Reporting Requirements

On 22 December 2021, Luxembourg's financial regulator, the *Commission de Surveillance du Secteur Financier* ("CSSF") published three new circulars<sup>1</sup> whose aim is to improve the risk-based supervision of the CSSF, both for prudential and anti-money laundering / counter terrorist financing ("AML / CFT") purposes, concerning investment fund managers ("IFMs") and investment funds regulated by the CSSF.

The Circulars introduce a number of new filing requirements for IFMs, regulated investment funds and their approved statutory auditors (*réviseur d'entreprises agréé*) ("REA").

## **Circular CSSF 21/788 - Guidelines for the Collective Investment Sector on the CSSF AML/CFT External Report**

This Circular requires REAs to produce an annual report on the compliance by an IFM or an investment fund supervised by the CSSF with its AML / CFT obligations.

The Circular follows on from the amendment in August 2020 of CSSF Regulation 12-02 on the fight against money laundering and terrorist financing when a new Article 49 was inserted to provide for external reports on AML / CFT compliance.

The external report will include the REA's corroboration of the answers provided by the

fund or IFM in its responses to the CSSF's annual AML / CFT online survey, as well as details of sample testing or specific work of the fund's or IFM's AML / CFT compliance to be carried out by the REA.

Investment funds which have appointed an external IFM are exempt from the requirement to appoint a REA to produce the report, although the fund's REA must still perform the relevant AML / CFT checks on the fund and report to the CSSF in cases where significant deficiencies in the fund's AML / CFT compliance are detected.

The report must be submitted to the CSSF annually through the online e-Desk platform within six months of the financial year-end of the supervised entity. In the case of 31 December 2021 financial year ends, the filing deadline is extended by three extra months.

CSSF Circular 21/788 must be complied with for financial years ending on or after 31 December 2021.

## **Circular CSSF 21/789**

This Circular is aimed at IFMs (including self-managed investment funds) and their REAs. It introduces new prudential supervision tools for the CSSF based around three separate reports to be filed with the CSSF.

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<sup>1</sup> [Publication of Circulars CSSF 21/788, 21/789 and 21/790 concerning IFMs and UCIs](#)

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### *Self-Assessment Questionnaire*

A new self-assessment questionnaire ("SAQ") designed for IFMs to self-assess their conformity with applicable legal and regulatory requirements must be completed and filed with the CSSF via e-Desk on an annual basis. The management or governing body of the IFM must review and validate the SAQ prior to filing. The SAQ must be filed within four months of the financial year of the IFM, although for the first such filing, the CSSF has granted an extended filing period of six months from the date of the financial year end.

### *Management Letter*

A new regulatory regime is put in place around the management letter prepared by the REA and presented to the management of the IFM in respect of each financial audit period of an IFM.

The Circular sets out the minimum requirements which must be addressed by the management letter, which must be validated by the REA via e-Desk and which must be filed with the CSSF by the IFM's management.

### *Separate Report by the REA*

The REA must submit a report to the CSSF on an annual basis to verify the IFM's answers to certain sections of the SAQ and to answer specific questions set by the CSSF. The report must be filed with the CSSF through e-Desk within seven months of the financial year end. In the case of the first filing, an extended filing period of nine months applies.

### *Change in REA*

The CSSF notes that it will analyse all notifications of and the reasons for a change in REA, and expects IFMs, when choosing a REA, to carefully consider the skills and

resources of the REA in relation to the type and volume of activity of the IFM.

Circular CSSF 21/789 applies for financial years ending on or after 31 December 2021.

### **Circular CSSF 21/790**

This Circular is aimed at investment funds supervised by the CSSF. Similar to Circular CSSF 21/789, it covers: (i) a requirement for a SAQ; (ii) the introduction of a regulatory regime around the management letter prepared by REAs; and (iii) a long form report by the REA. It also requires notification to the CSSF in the case of a modified audit opinion.

The Circular is applicable to UCITS, investment funds authorised under part II of the Luxembourg law of 17 December 2010 ("Part II funds"), specialised investment funds ("SIFs") authorised under the Luxembourg law of 13 February 2007, and *sociétés d'investissement en capital à risque* ("SICARs") authorised under the Luxembourg law of 15 June 2004.

### **SAQ**

The SAQ requires funds to self-assess their compliance with applicable legal and regulatory requirements. The directors of a fund are responsible for putting procedures in place to enable the completion of the SAQ (including the obtaining of information from service providers to the fund) and the review and validation of the SAQ prior to filing with the CSSF. The SAQ must be filed with the CSSF within either three months (UCITS) or four months (Part II funds, SIFs and SICARs) of the financial year end.

### *Modified Audit Opinion*

When a REA issues a modified audit on a fund's annual report, the fund directors must file a letter with the CSSF explaining the

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reasons for the modified opinion, its impact on the fund and its investors, and the corrective action taken by the directors.

The letter must be filed with the CSSF in the month following the publication of the fund's annual report, together with any relevant supporting documents or information.

### *Management Letter*

A new regulatory regime is put in place around the management letter prepared by the REA and presented to the fund's board of directors in respect of each financial audit period of a fund.

The form of the management letter is available on e-Desk. The Circular sets out the minimum requirements which must be addressed by the management letter, including a questionnaire which the REA must complete to enable the CSSF to determine the level of risk posed by any weaknesses identified by the REA's audit.

The fund's directors are required to provide a detailed explanation and remediation plan around any such weaknesses. The management letter must be validated by the REA via e-Desk and must be filed with the CSSF by the fund's directors within either four months (UCITS) or six months (Part II funds, SIFs and SICARs) of the financial year end.

### *Separate Report by the REA*

The Circular modifies the requirements previously applicable to the long form report prepared by the REA of a UCITS or Part II fund and repeals Circular CSSF 02/81 as well chapter P of Circular CSSF 91/75. SIFs and SICARs are now subject to the requirement for their REA to produce a long form report. The report will cover the validation by the REA of certain sections of the SAQ prepared by its

investment fund client and the REA's response to several questions set by the CSSF.

The report must be filed with the CSSF by the fund directors on an annual basis through e-Desk within seven months of the financial year end. For the first such report, the CSSF has granted an extended filing period of nine months following the end of a fund's financial year.

CSSF Circular 21/790 applies to financial years beginning on or after 30 June 2022. However, for SIFs and SICARs, the provisions relating to the separate report by their REA outlined at section 3.4 above, apply only for financial years ending on or after 30 June 2023.

For further information, please reach out to your usual Maples Group contact or any of the contacts below.

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