

Scanning

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12

EUROPE

AIFMD - ESMA publishes updated Q&A on AIFMD

AML - European Parliament adopts AML4 at second reading

EMIR - ESMA publishes updated Q&A on EMIR

EMIR - ESMA consultation paper No. 4 on technical standard on central clearing of IRS under regulation (EU) NO 648/2012

ELTIFS - ELTIFs Regulation published in the OJEU

MiFID II - ESMA consultation paper on draft guidelines for the assessment of knowledge and competence under MiFID II

MiFID I - ESMA releases final guidelines clarifying the definition of commodity derivatives under MiFID I

Money Market Funds - Parliament adopts ECON amendments on MMF Regulation

LUXEMBOURG

AIFMD - CSSF publishes Circular 15/612 on the information to be provided on non-regulated and regulated third-country AIFs

Bearer shares - CSSF updates FAQ on the immobilisation of bearer shares

CSSF 2014 Annual report - Highlights

S.a.r.l - S - Bill No. 6777 of the Luxembourg Chamber of Deputies establishing a simplified version of the Limited liability Company, "S.a.r.l -S".

FATCA - Luxembourg Draft Law adopting FATCA published on 30 March 2015

FRANCE

Solvency II - Publication of Decree 2015-513 in the Official Journal of the French Republic

Finalization of regulatory system regarding implementation of EU standards relating to securities transactions

IRELAND

Companies Act 2014 to come into effect on 1 June 2015

caceis
INVESTOR SERVICES

Background

What's next



EUROPEAN UNION

AIFMD - ESMA publishes updated AIFMD Q&A

Background

The Alternative Investment Fund Managers Directive ("AIFMD") sets up a coherent framework for the regulation of alternative investment fund managers ("AIFMs") in Europe. Moreover, the AIFMD aims at ensuring that AIFMs are able to manage and market AIFs on a cross-border basis.

The European Securities and Market Authority ("ESMA") has issued and regularly updates a Q&A document aiming at promoting common supervisory approaches and practices in the application of the AIFMD and its implementing measures. It does this by providing responses to questions posed by the general public and competent authorities in relation to the practical application of the AIFMD.

The previous update was on 26 March 2015.

What's in there?

On 12 May 2015, ESMA published an updated version of its AIFMD Q&A.

In this version, 10 new questions and answers have been added. The below covers the main topics tackled by ESMA:

REPORTING TO NATIONAL COMPETENT AUTHORITIES (NCAS)

When AIFMs are sister companies owned by another AIFM, ESMA clarifies that each AIFM should report individually to the NCAs for the AIFs they manage and/or market in the Union.

When reporting on subscriptions, AIFMs should

consider actual capital drawdowns and not commitments (e.g. for AIFs pursuing private equity strategies).

The full AIFMD reporting rules apply to registered AIFMs opting for the authorised status.

Non-EU AIFMs which total value of assets under management does not exceed the thresholds of Article 3(2)(a) and (b) and which market their AIFs in the Union under a national private placement regime should at least report to the competent authorities where they market their AIFs the information listed in Article 3(3)(d) of the Directive. In this regard AIFMD does not make any distinction between EU AIFMs and non-EU AIFMs.

ESMA further states that the reporting frequency of an AIF is not affected by the legal structure of the AIF. It derives therefrom that Each AIF, being sub-funds of the same umbrella AIFs or not, has to be treated separately for the purpose of the reporting obligations (including for the reporting frequency).

CALCULATION OF LEVERAGE

AIFMs should take into account the absolute value of all the positions of their AIFs valued in accordance with Article 19 of the AIFMD and the criteria laid down in paragraphs 2 to 9 of Article 8 of the Implementing Regulation. For derivative instruments, as required under Article 8(2)(a), AIFMs should convert each position into an equivalent position in the underlying assets using the methodologies set out in Article 10 (which refers to Annex II of the AIFMD implementing regulation) and points (4) to (9) and (14) in Annex I of the AIFMD implementing regulation.

[ESMA'S UPDATED Q&A DOCUMENT IS AVAILABLE HERE.](#)

What's next?

The Q&A document is intended to be continuously edited and updated as and when new questions are received.

AML - European Parliament adopts AML4 at second reading

Background

On 5 February 2013, the European Commission issued a proposal for a Directive on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing ("[AML4](#)", [AVAILABLE HERE](#)) as well as a proposal for a Regulation on information accompanying transfers of funds ("[AML4](#)", [AVAILABLE HERE](#)). These proposals largely took into account the latest recommendations issued by the FATF (February 2012) and aimed at ensuring that the relevant EU law remains fully compliant with international AML standards (notably the FATF recommendations). The two texts have been treated by the EU institutions as an integral package.

On 6 February 2013, the Commission transmitted its proposal to the European Parliament and the Council.

On 11 March 2014, the European Parliament adopted its position at first reading on [AML4](#) ([AVAILABLE HERE](#)) and [AML4](#) ([AVAILABLE HERE](#)) in plenary session and transmitted its position to the Council and the Commission.

On 16 December 2014, a political agreement was reached between the European Parliament and the Council.

On 12 January 2015, the final Presidency compromise texts ([AML4: AVAILABLE HERE](#); [AML4: AVAILABLE HERE](#)) were communicated to the Council for debate and adoption. On 10 February 2015, the Council reached a political agreement on the revised texts of [AML4](#) and [AML4](#).

On 20 April 2015, the Council adopted its position at first reading by approving the [AML4 Directive](#) and Regulation.

On 27 April 2015, the Commission stated in a dedicated communication that the position of the Council was in line with the political agreement reached on 16 December 2014.

What's in there?

On 20 May 2015, the European Parliament adopted at second reading the Council's position on AML4 ([PRESS RELEASE AVAILABLE HERE](#)).

The texts adopted by the Parliament are not available at the date of publication of this edition of Scanning. However, major changes are not foreseen compared to the compromise version adopted by the Council at first reading.

What's next?

AML4 and AMLR4 should be adopted by the Council at second reading within the next weeks.

The AML4 framework is expected to be published in the OJEU this summer.

Once adopted, AML4 will repeal Directive 2005/60/EC and Commission Directive 2006/70/EC, while AMLR4 will repeal Regulation (EC) No 1781/2006.

EU Member states will have two years to transpose AML4 into national law, while AMLR4 will be directly applicable.

EMIR - ESMA publishes updated Q&A on EMIR

Background

ESMA publishes a regularly updated Q&A document to address questions relating to Regulation (EU) No 648/2012 ("EMIR").

The Q&A is designed to promote common supervisory approaches and practices in the application of EMIR. It also provides responses to questions posed by the general public, market participants and competent authorities in relation to the practical application of EMIR.

The previous version of ESMA's Q&A on EMIR was issued on 13 April 2015.

What's in there?

On 27 April 2015, the European Securities and Markets Authority ("ESMA") published its 13th update of its Q&A document on the implementation of EMIR. This update refers to the second level of the EMIR validation specifications which must be commonly applied by Trade Repositories ("TR") to make sure that reporting is performed according to the EMIR regime.

The validation specifications aim at ensuring

compliance with the format and content rules present in the technical standards on reporting. It is expected that upon implementation by the TRs, a failure to comply with the requirements will trigger a rejection of the report by the TR.

It must be noted that the validation controls are based on the original rules set out in the EMIR technical standards that were published in December 2012 and entered into force on 12 February 2014. No additional reporting requirements are introduced.

[THE UPDATED Q&A IS AVAILABLE HERE.](#)

What's next?

In order to allow for sufficient lead time to implement the second level validation, ESMA expects TRs to be able to implement the validation by end of October 2015.

ESMA's Q&A is intended to be continuously edited and updated as and when new questions are received.

EMIR - ESMA consultation paper No. 4 on technical standard on central clearing of IRS under regulation (EU) NO 648/2012

Background

With the overarching objective of lessening the systemic risk after the 2008 crisis, EMIR introduces the obligation to clear certain classes of OTC derivatives in central clearing houses (CCPs) provided that they have been duly licensed (European CCPs) or accepted (in case of third-country CCPs) under its framework.

ESMA has defined the Interest Rate Swap (IRS) and Credit Default Swaps (CDS) classes to be subject to central clearing obligation following the results of three consultation papers.

On 11 July 2014 issued the first and the second consultation paper on IRS and CDS clearing obligation.

On 1 October 2014, ESMA issued the third consultation paper on the clearing obligation incorporating the feedback received to the first consultation on IRS.

What's in there?

On 11 May 2015, ESMA issued this 4th consultation paper to seek stakeholders' views to finalise the proposed regulatory technical standards (RTS) on the central clearing obligation of IRS. One main development is the analysis of the costs and benefits implied by the legal provisions.

This paper also provides explanations on the draft regulatory technical standards establishing a clearing obligation on supplementary classes of OTC interest rate derivatives that were not included in the first RTS on the clearing obligation for IRS namely fixed-to float interest rate swaps denominated in CZK, DKK, HUF, NOK, SEK and PLN and forward rate agreement denominated in NOK, SEK and PLN.

The proposal also:

- ★ gives an overview of the clearing obligation procedure;
- ★ provides clarifications on the structure of classes of OTC interest rates derivatives that are proposed for the clearing obligation;
- ★ includes a determination of the classes of OTC derivatives that should be subject to mandatory clearing obligation;
- ★ shows the approach for the criteria use to determine the categories of counterparties;
- ★ refers to the application date for the clearing obligation to apply per counterparties;
- ★ further explains the definition of the minimum remaining maturities for the application of front-loading.

[THE ESMA CONSULTATION PAPER CAN BE FOUND HERE.](#)

What's next?

The drafted technical standards will be submitted to the EU Commission for endorsement in a form of commission regulations. Additionally ESMA shall consult the ESRB and where necessary, the competent authorities of third-countries in the course of developing the technical standards on the clearing obligation.



ELTIFs - ELTIFs Regulation published in the OJEU

Background

On 29 April 2015, the European Parliament and the Council adopted Regulation (EU) 2015/760 on the European long-term investment funds ("ELTIFs"). The objective of this new regulation's is to make capital accessible to long-term investments in the EU Economy. ELTIFs will target specifically alternative investments falling within the scope of long-term classes of assets that requires from the investors a lasting commitment.

What's in there?

On 19 May 2015, the ELTIFs Regulation has been published in the Official Journal of the European Union.

[THE ELTIFs REGULATION IS AVAILABLE HERE](#)

What's next?

The Regulation will enter into force on 8 June 2015 and shall apply as from 9 December 2015.

MIFID II - ESMA consultation paper on draft guidelines for the assessment of knowledge and competence under MIFID II

Background

Directive 2014/65/EU on markets in financial instruments ("MiFID II") was approved by the European Parliament on 15 April 2014, by the Council of the EU on 13 May 2014 and has to be implemented by member states by 3rd January 2017 at the latest. Article 25(1) of MiFID II (Directive 2014/65/EU on markets in financial instruments, [AVAILABLE HERE](#)) specifies that Member States shall require investment firms to ensure and demonstrate to competent authorities on request that natural persons giving investment advice or information about financial instruments, invest-

ment services or ancillary services to clients on behalf of the investment firm possess the necessary knowledge and competence to fulfil their obligations under Articles 24 and 25 of MiFID II. Furthermore, Member States shall publish the criteria to be used for assessing such knowledge and competence.

Finally, Article 25(9) of MiFID II states that ESMA is required to develop Guidelines specifying criteria for the assessment of knowledge and competence required under the above mentioned Article.

What's in there?

On 23 April 2015, ESMA launched a consultation on draft guidelines specifying criteria for the assessment of knowledge and competence of natural persons in investment firms that provide investment advice or information about financial instruments, investment services or ancillary services to clients.

The aim of these guidelines is to improve the protection of investors by setting out knowledge and competence standards for investment firm staff providing investment advice or information to clients.

The consultation paper proposes that such criteria should be fulfilled by attaining an "appropriate qualification" and "appropriate experience". ESMA also establishes the areas of knowledge and competence which need to be asserted against, to provide investment advice or information to clients. These areas include an understanding of:

- 1) The main characteristics, complexity and total costs of the relevant products/services;
- 2) The functioning of the market, the market structure, the impact of economic data;
- 3) The way to use relevant data sources and valuation principles;
- 4) The relevant regulatory requirements, as well as the company's internal procedures designed to ensure compliance with MiFID II.

Furthermore, ESMA suggests that national competent authorities or other appropriate bodies should establish a list of appropriate qualifications or criteria for the evaluation of qualifications.

[ESMA'S CONSULTATION PAPER IS AVAILABLE HERE.](#)

What's next?

The consultation will be open until 10 July 2015. ESMA will take into consideration the feedback received to the consultation in Q2/Q3 2015, in order to publish a final report in Q4 2015.

The guidelines will be applicable as from 3 January 2017.

MIFID I - ESMA releases final guidelines clarifying the definition of commodity derivatives under MiFID I

Background

On 21 April 2004, Directive 2004/39/EC on markets in financial instruments ("MiFID") was adopted by the European Parliament and Council. This directive was mainly aimed at improving the competitiveness of EU financial markets by creating a single market for investment services and activities, and ensuring a high degree of harmonised protection for investors in financial instruments, such as shares, bonds, derivatives and various structured products.

MiFID II was approved by the European Parliament on 15 April 2014, by the Council of the EU on 13 May 2014 and has to be implemented by member states by 3rd of January 2017 at the latest. MiFID II aims at bringing greater transparency and improve the overall functioning of the EU's financial markets, thus strengthening investor protection.

In the above mentioned context, ESMA realised that, for a significant time period (between today and the date of application of MiFID II), there will be no single, commonly adopted definition of derivatives in the EU under MiFID I, particularly regarding physically settled commodity forwards.

What's in there?

On 6 May 2015, ESMA published its guidelines (ESMA/2015/675) on "the application of the definitions in Sections C6 and C7 of Annex I of Directive 2004/39/EC (MiFID)". With these guidelines, ESMA attempts to fill the above mentioned gap, by addressing especially the following points:

★It provides an explanation of what is meant by "physically settled" commodity forwards, in the context of C6 and C7 of Annex 1 of the MiFID I Directive. According to the definition provided, physical settlement could incorporate various delivery methods, notably physical delivery, delivery of a document giving rights of an ownership nature to the relevant commodities or other methods of bringing about the transfer of rights

LUXEMBOURG

AIMFD - CSSF publishes Circular 15/612 on the information to be provided on non-regulated and regulated third-country AIFs

Background

On 8 June 2011, Directive 2011/61/EU (the “Alternative Investment Fund Managers Directive” or “AIFMD”) was adopted by the European Parliament and the Council. The aim of the AIFMD is to set up a coherent framework for the regulation of alternative investment fund managers in the EU, by enabling them to manage AIFs on a cross-border basis and by ensuring that AIFs can be marketed on a cross-border basis as well. The AIFMD was transposed into Luxembourg law with the law of 12 July 2013 on alternative investment fund managers (the “2013 Law”).

On 19 December 2012, the European Commission adopted Delegated Regulation (EU) No 231/2013 (the “Delegated Regulation”), which supplements the AIFMD, mainly with respect to exemptions, general operating conditions, depositaries, leverage, transparency and supervision.

According to the 2013 Law and the Delegated Regulation, each Luxembourg AIFM shall regularly provide the CSSF with information on the AIFs that it manages. This reporting allows the CSSF to comply with its own reporting obligations vis-à-vis the ESMA.

However, according to the CSSF, the information provided by the AIFMs does not always allow the CSSF to have a global and up-to-date view of the AIFs managed by Luxembourg AIFMs, especially as regards non-regulated AIFs and regulated third-country AIFs.

What’s in there?

In this context, the CSSF published on 5 May 2015 the CSSF Circular 15/612 regarding the information that AIFMs have to provide to the CSSF with respect to every additional non-regulated AIF or regulated third-country AIF that they manage. The

of an ownership nature in relation to the relevant quantity of commodities without physically delivering them.

It confirms that forwards traded on a regulated market or Multilateral Trading Facility (MTF) fall within the scope of MiFID I, Annex C6.

[THE ESMA GUIDELINES CAN BE FOUND HERE.](#)

What’s next?

These guidelines have very short duration. They will apply as from 7 August and will be superseded by the Commission’s delegated acts on MiFID II.

Money Market Funds - Parliament adopts ECON amendments on MMF Regulation

Background

On 4 September 2013, the European Commission published a proposal for a regulation of the European Parliament and of the Council on Money Market Funds (“the MMF Regulation”).

The MMF Regulation was drafted on the basis of various reports and recommendations issued since 2011 by institutions such as the Financial Stability Board (“FSB”), the European Systemic Risk Board (“ESRB”), the International Organisation of Securities Commissions (“IOSCO”) and ESMA on money market funds (“MMFs”), specifically in the context of shadow banking. In November 2012, the European Parliament adopted a resolution inviting the Commission to submit a proposal on shadow banking, but with a particular focus on the issue of MMFs.

On 10 November 2014, the Presidency of the Council of the European Union published a compromise text on the draft MMF Regulation. In addition, a report of the European Parliament was published on 26 November 2014.

On 18 December 2014, the Presidency of the Council of the European Union published a second compromise text on the draft MMF Regulation, while the European Parliament issued its second report on the MMF Regulation on 12 January 2015.

On 26 February 2015, the ECON Committee of the European Parliament held a final vote on the MMF Regulation and adopted an amended version of the text.

What’s in there?

On 29 April 2015, a plenary vote of the European Parliament took place on this MMF Regulation, where the Parliament only adopted the amendments of the ECON Committee. It derives therefrom that the changes introduced by this version will not be analysed in more details. More information on the new regime applying to money market funds will be provided when EU institutions will move forward with the negotiation process.

The draft MMF Regulation has been passed on to the Council of the European Union.

[THE AMENDED TEXT OF THE PROPOSED MMF REGULATION IS AVAILABLE HERE.](#)

What’s next?

The proposed MMF Regulation will be subject to further negotiations in view of its final adoption.



Circular applies to both registered and authorised Luxembourg AIFMs.

In order to provide this information, the AIFMs concerned must complete the form attached to the Circular for each additional non-regulated or regulated third-country AIF that they intend to manage. This form can be downloaded from the CSSF website. This information must be submitted to the CSSF within 10 business days of the date of the signature or entry into force of the AIFM agreement.

In the event where a Luxembourg AIFM intends to stop managing a non-regulated or regulated third-country AIF, they will also have to inform the CSSF by completing the relevant form (annexed to the Circular) and to submit it to the CSSF by email. This information must be provided to the CSSF within 10 business days of the termination date of the AIFM's mandate.

[CSSF CIRCULAR 15/612 CAN BE FOUND HERE.](#)

What's next?

The Circular is applicable with immediate effect.

Bearer Shares - CSSF updates FAQ on the immobilisation of bearer shares

Background

On 30 December 2014, the CSSF published a first version ("Version 1") of its Frequently Asked Questions ("FAQ") document on the Law of 28 July 2014 regarding the immobilisation of bearer shares and units. The FAQ aims at clarifying and providing official guidance on several important points of the Law.



What's in there?

On 5 May 2015, the CSSF published an updated version ("Version 2") of this FAQ document.

In Version 2, the CSSF updated question 9 by deleting the obligation for investment funds having issued bearer shares or units to amend their prospectus in order to reflect the implications and deadlines of the Law as well as the identity of the appointed depository.

Furthermore, the CSSF made some minor wording changes in order to reflect the fact that the deadline of 18 February 2015 has already elapsed.

[THE CSSF'S UPDATED FAQ DOCUMENT IS AVAILABLE HERE.](#)

What's next?

The FAQ document might be subject to further updates by the CSSF.

CSSF 2014 annual report - Highlights

Background

The CSSF issues on an annual basis a consolidated report providing statistics on the Luxembourg financial industry and information on its supervisory practice.

What's in there?

The CSSF annual report 2014 was published on 7 May 2015.

Below is outlined the key messages delivered by the regulator in respect of its supervisory activities towards investment funds, management companies and alternative investment fund managers.

1. LUXEMBOURG UCITS PASSPORTING

In 2014, the CSSF received a total of 5.202 requests for notification, which is an increase of 13,9% compared to the previous year. However, a large number of the requests were rejected due to the non-respect of the technical requirements set forth in CSSF circulars 11/509 and 08/371. Therefore, the CSSF recommends professionals to carefully analyse the reasons for such rejection and to implement an adequate internal control process.

2. AIF PASSPORTING

Around 97% of the requests for notification had to be sent, at least once, back to the applicant for correction and/or completeness of the content.

The CSSF reminds that applicants shall follow the practical and technical procedures set forth by CSSF circular 11/509.

3. FEES AND COMMISSIONS

The CSSF has raised several cases where overpayments have been made by UCIs in comparison to the amounts/rates set forth in their prospectuses. In this context the CSSF reminds that the tolerance thresholds provided for in CSSF circular 02/77 cannot be invoked by the counterparty in order to decline the repayment to the UCI of any amount received in excess.

4. UCIT'S COUNTERPART RISK

According to article 43 (1) of the 2010 Law, UCITS may invest no more than 20% of their assets in transferable securities or money market instruments issued by the same body. The CSSF considers that the overrun of the said limit following the disinvestment leading to a cash outflow is to be considered as an active breach within the meaning of CSSF circular 02/77.

5. TRANSPARENCY REQUIREMENT IN UCITS PROSPECTUSES

The CSSF reminds that UCITS authorisation may only be granted where precise information on investment strategies, process of investment decisions, use of derivative financial instruments and risk profiles is provided. The basic idea is that investors should be able to anticipate and understand, on the basis of the UCITS' prospectus, the profile of positions which will be taken by the manager, their purpose and the related risks. The CSSF expectations in this regard are increased along with the UCITS' strategies sophistication.

6. BACKTESTING OF UCITS' VAR MODELS

According to CSSF circulars 10/04 and 11/512, UCITS management companies and UCITS self-managed SICAVs have to carry-out regular ex-post checks in order to assess the validity of risk measures including model-based estimations and projections. In accordance with "CESR's Guidelines on Risk Measurement and the Calculation of Global Exposure and Counterparty Risk for UCITS".

In this context, and according to "CESR's Guidelines on Risk Measurement and the Calculation of Global Exposure and Counterparty Risk for UCITS", the permanent risk management function must perform such ongoing validation task when Value-at-Risk is used to calculate global risk ratio.

7. ELIGIBILITY OF SIFS

CSSF states that SIFs do not qualify as "other UCIs" within the meaning of Article 41 (1) e of the



2010 Law. It derives therefrom that SIFs' shares/units are not eligible assets for investment by UCITS.

[THE 2014 CSSF REPORT IS AVAILABLE HERE \(ONLY IN FRENCH\).](#)

What's next?

English version of the annual report will be published around July 2015.

S.a.r.l - S - Bill No 6777 of the Luxembourg Chamber of Deputies establishing a simplified version of the Limited liability Company, "S.a.r.l-S"

Background

On 10 December 2013, the Government of Luxembourg initially announced in its 2013-2018 program its intention to foster entrepreneurs (natural persons) with limited means and also in a view to align with other European countries which have already adopted this type of simplified company.

On 2 February 2015, the Luxembourg government filed with the Chamber of Deputies bill 6777 establishing a new type of private limited liability

company the "société à responsabilité limitée simplifiée" or simplified private liability company ("S.a.r.l-S").

What's in there?

On 24 February 2015, the draft Bill of Law No 6777 ("the Draft Bill") modifying the law of 10 August 1915 on commercial companies and the Law of 19 December 2002 on the Trade and Companies Register as well as company accounts and annual financial statements was published.

The Draft Bill introduces the main following features:

- ★A simplified setting – up procedure which provides for the entrepreneurs:
 - the possibility to incorporate a S.a.r.l-S by notarial deed or a private deed which creates maximum rapidity in the setting up of the company.
 - a minimal initial share capital ranging from a minimum of one EUR to a maximum of 12.394.68 EUR.
 - full subscription and paid-up share capital obligation at the moment of the incorporation.
- ★A protection for the creditor of the entrepreneur who must withhold 5% of the annual net profit in order to constitute a reserve. The withholding shall remain until the reserve together with the share capital amount reaches 12.394.68 EUR (minimum required for a classic limited liability company (S.a.r.l). This obligation is additional to the usual obligation to constitute a legal reserve amounting at least 10% of the share capital, by withholding 5% of the annual net profit. Once the target amount of 12.394.68 EUR is reached, the shareholder will have the possibility to convert the S.a.r.l-S into a standard S.a.r.l subject to statutes modification and following a standard notarial deed conversion.
- ★Restrictions on the nature of activities: only activities for which a business licence is required can be exercised by S.a.r.l-S ("autorisation d'établissement". Hence the S.a.r.l-S will have to provide with a copy of this establishment authorisation at the time of the registration with the RCS.
- ★Restriction on the shareholdership: only natural persons can be shareholder and they can be shareholders only for one S.a.r.l-S.
- ★Low ancillary cost: the establishment costs will amount 191 EUR (private deed incorporation).

[THE DRAFTBILL CAN BE FOUND HERE.](#)

What's next?

The Draft Bill is debated in the Chamber of deputies and can still be amended before being voted.

FATCA - Luxembourg draft Law adopting FATCA published on 30 March 2015

Background

On 6 March 2015, the government issued the draft law adopting the Luxembourgish IGA ("the Draft Law"). On 30 March 2015, the Luxembourg Parliament published the Draft Law transferred for discussion on 27 March 2015 by the Minister of Finance

This long-awaited Draft Law aims at adopting the IGA signed last year (28 March 2014) and under which FATCA will apply in Luxembourg. In addition to the IGA itself, some new obligations and sanctions are developed in the Draft Law, with the obligations to inform beforehand the reported client being probably the most important.

What's in there?

Major elements of the Draft Law are:

REPORTING:

- ★According to the commentaries on the draft law, Reporting Luxembourg FIs are required to file a report with the Luxembourg tax authorities even though they have not identified any US Reportable Accounts (in practice they will have to file a nil report).
- ★Even though the draft law does not mention anything on this point, the Luxembourg tax authorities require, in their draft circular ECHA-n0 3, that Reporting Luxembourg FIs use for reporting purposes the secured transmission channels offered by :
 - CETREL S.A. (SOFiE product); or
 - FUNDSQUARE, branch of the Luxembourg Stock Exchange (E-File product).
- ★The deadline for first reporting to be done by Reporting Luxembourg Financial Institutions (FIs) to the Luxembourg tax authorities was confirmed by Draft Law to be initially due for June 30th 2015. However, as the Draft Law is not final yet, the Luxembourg tax authorities confirmed to local industry groups that deadline for 1st reporting has been extended to 31st July 2015. Such exceptional extension of the legal deadline for the submission of annual FATCA reporting is granted on the basis of § 83(1) of the General Tax Law (Abgabenordnung).

DUE DILIGENCE

Reinforcement of the due diligence rules in respect of the TIN (Taxpayer Identification Numbers) for the reporting of the 2017 data (should occur on 30 June 2018 at the latest) and of the subsequent years' data, the Reporting Luxembourg FIs should do everything possible to obtain and report the US TIN.

PENALTIES

In case a Reporting Luxembourg FIs does not apply the due diligence rules or does not put in place procedures in view of the reporting, it will expose itself to a penalty of maximum EUR 250,000.

PRIVACY RULES

Reporting Luxembourg FIs cannot invoke any professional secrecy to refuse to report.

Reporting Luxembourg FIs should inform each reported individual that information will be collected and reported.

The draft law explicitly refers to the Luxembourg law on data privacy and protection for the elements to be communicated to the client before the reporting. Data elements used in the context of FATCA cannot be stored longer than what is necessary under the IGA.

BEARER SHARES

According to the commentaries on the draft law, the depository of bearer shares must be a Reporting FI. The depository should perform all the obligations under the IGA on behalf and in the name of the FI that has issued the bearer shares.

[THE BILL CAN BE FOUND HERE.](#)

What's next?

The draft law might be subject to changes following discussions within the Parliament. Although the timing of final publication cannot be known in advance, it is expected to happen before the deadline for 1st reporting (i.e. 31st of July 2015).

Aside this Draft Law, final circulars to be issued by the Luxembourg tax authorities for applying this law are expected to be published before the deadline of July 31st 2015.

In parallel, consultations between group industries and the authorities on the implementation of the amended Directive on the Administrative Cooperation (DAC) discussion focuses on having the same Non-Reporting FIs and Excluded Accounts in DAC as in IGA, to the extent possible and reasonable.

FRANCE

Solvency II - Publication of Decree 2015-513 in the Official Journal of the French Republic

Background

Transposition of Directive 2009 /138 /EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance ("Solvency II Directive") is now complete with the publication on May 10th, 2015 in the Official Journal of the French Republic of Decree 2015-513 (the "Decree").

The Decree implements itself Ordinance 2015-378 dated April 2nd 2015.

What's in there?

The Decree precises the new rules codified in the French Insurance Code, in the French Mutual Code and in Book IX of the French Social Security Code.

Purpose of this Decree is to determine rules relating to the administrative, prudential and accounting system of insurance and reinsurance organisations, as well as to include the regulatory measures necessary to implement the Directive into French law.

Key points of the Decree are the following :

- ★It gives consistency between the accounting provisions and the legal provisions and gives to the Autorité des Normes Comptables ("the ANC") the task of defining the requirements applicable to the accounting of operations of insurance and reinsurance ;
- ★It suppresses the so-called mechanism of "capitalization reserve" for organizations having a non-life insurance activity and for reinsurers ;
- ★It creates the possibility, for mutual insurance companies which are governed by the French Insurance Code, to appoint a Deputy Chief Executive Officer ;
- ★It modernizes the governance of pension institutions and unions which are governed by Title III and Book IX of the Social Security Code, in coherence with measures introduced into the French Commercial Law by Law 2001 - 420 on

May 15th, 2001, relating to the new economic regulations (in particular the obligation to appoint a Deputy Chief Executive Officer).

What's next?

The new prudential regime is now complete and ready, from a legislative and statutory point of view, to be implemented as from January 1st, 2016.

[THE DECREE IS AVAILABLE HERE.](#)

Finalization of regulatory system regarding implementation of EU standards relating to securities transactions

Background

On May 20th 2015 was published in the Official Journal of the French Republic Decree n°2015-545 of May 18th 2015.

The Decree implements Ordinance n°2014-863 of July 31st 2014 relating to Company Law, which is taken in application of Article 3 of Law n°2014-1 of January 2nd 2014 entitling the French Government to simplify and secure life of companies.

What's in there?

The Decree finalizes the regulatory system allowing the implementation of the European standards which relate to securities transactions.

Those provisions will be applicable:

★As from June 1st, 2016, as regards:

- Cession of rights constituting odd lots, which will allow to implement the application of securities transactions by the central securities depository according to the "Top Down" mechanism. Purchase of securities might be insured by the centraliser and by the account-keeping institutions with the aim of indemnifying their customers, and not only the issuer.
- Modification of Article 6 of Decree of October 30th 1948 aiming at reducing the duration of regrouping operations from two years to one year for companies admitted to negotiate on a regulated market or on a multilateral system of negotiations.

★As from October 1st, 2016, as regards:

The preferential subscription rights for which trading period will begin two days before the subscription period starts and which will finish two days before the end of that same period.

[THE DECREE IS AVAILABLE HERE.](#)

IRELAND

Companies Act 2014 to come into effect on 1 June 2015

Background

The Companies Act 2014 was signed into law on 23 December 2014 and will come into effect on 1 June 2015.

What's in there?

The Act will consolidate the existing 17 Companies Acts, which date from 1963 to 2013, into one Act and it also introduces a number of reforms designed to make it easier to operate a company in Ireland, to simplify company law generally and introduce a number of new provisions. The Act does not alter the essential nature of an Irish company which has separate legal personality and a board of directors responsible for the management of a company.

What's next?

The Act affects all Irish companies and in the spirit of good corporate governance, the constitution of all companies should be reviewed and updated in accordance with the Act.

Investment companies and managers of both UCITS and AIFs need to consider how the Act impacts them, what changes need to be made to their existing corporate structures and when any change needs to be made.

The Central Bank is due to issue guidance in this respect as it is unclear at the moment whether the Central Bank will require that these management companies convert to a designated activity company.

Scanning

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