

CSSF introduces new reporting requirements

Insights - 13/01/2022

On 22 December 2021, the Luxembourg Financial Sector Supervisory Authority (CSSF) published three circular letters, clarifying existing reporting obligations and introducing new ones for Luxembourg investment fund managers, supervised undertakings for collective investment and their approved statutory auditors (réviseurs d'entreprises agréés - REAs).

CSSF Circular 21/788

This circular is applicable to all Luxembourg investment fund managers, [1] including registered investment fund managers and all Luxembourg investment funds supervised by the CSSF for AML or CFT purposes. It provides clarifications on the new CSSF AML/CFT external report (**AML/CFT External Report**) that must be drawn up by an "external AML/CFT expert" in accordance with the CSSF Regulation No 12-02. [2] It is important to note that the AML/CFT External Report is not required from Luxembourg investment funds which have appointed an investment fund manager (established in Luxembourg or abroad).

All entities in scope which have the obligation to appoint a REA for annual accounting purposes will have to appoint the same REA to perform this task; others will have to mandate a REA for the specific purpose of preparing the AML/CFT External Report.

The AML/CFT External Report is divided into two sections:

- a section on the corroboration of answers given by the supervised entity in scope in the context of the CSSF annual AML/CFT online survey; and
- a section dedicated to sample testing or specific work to be performed by the REA, who must answer the questions determined by the CSSF using a risk-based approach.

Submission of the AML/CFT External Report must be exclusively made, under the responsibility of the board of directors or managers of the entity in scope, by the RC, [3] RR [4] or a member of the board of directors or managers, via the eDesk platform, on an annual basis within six

months after the closing of the financial year of the entities in scope ending on or after 31 December 2021 (as an exception, this can be extended by three months for the financial year ending 31 December 2021).

CSSF Circulars 21/789 and 21/790

In scope entities

Circular 21/789 (together, the IFMs)

- authorised investment fund managers,
- internally managed alternative investment funds (**FIAAGs**),
- investment companies which did not designate a management company (**SIAGs**), and
- branches and representative offices which an investment fund manager has established in Luxembourg and/or abroad (together, the **IFMs**).

Circular 21/790 (together, the UCIs)

- undertakings for collective investment in transferable securities (**UCITS**),
- undertakings for collective investment governed by Part II of the 2010 law (**Part II UCIs**),
- specialised investment funds (**SIFs**), and
- investment companies in risk capital (**SICARs**)

Obligations

1) Self-assessment questionnaire

A new self-assessment questionnaire (**SAQ**) on the compliance with legal and regulatory requirements must be completed via the CSSF's eDesk portal for each financial year which has been subject to a statutory audit. Responsibility for reviewing and validating the content of the SAQ falls on the management or governing bodies of the IFMs, or the directors or managers of the UCIs.

Deadlines for submissions of the SAQ are the following:

- IFMs - four months after the end of the financial year (exceptionally, six months for the first period of application)
- UCITS - three months after the end of the financial year
- Part II UCIs, SIFs, SICARs - four months after the end of the financial year

First reporting periods concern financial years ending on or after 31 December 2021 for IFMs, and 30 June 2022 for UCIs.

In case of withdrawal or deletion of the IFM or UCI from the official list, submission of the SAQ covering the period starting from the end of the last financial year until the date of withdrawal or deletion of the IFM or UCI is, in principle, required within the same deadlines.

2) Separate REA report on the review of the SAQ

The REAs will be obliged to, on an annual basis and in parallel to the submission of the SAQ, file a separate report (**REA Report**) through the eDesk platform, covering predefined questions aimed at making the SAQ more reliable. This report will not constitute an audit opinion.

Deadlines for submission of the REA Report to the CSSF:

- IFMs - seven months after the end of the financial year (exceptionally, nine months for the first period of application)
- UCITS - five months after the end of the financial year
- Part II UCIs, SIFs, SICARs - six months after the end of the financial year

First reporting periods concern financial years ending on or after 31 December 2021 for IFMs, and 30 June 2022 for UCITS and Part II UCIs. In relation to SIFs and SICARs, these are to be observed for financial years ending on or after 30 June 2023.

In case of withdrawal or deletion of the IFM or UCI from the official list, submission of the REA Report covering the period starting from the end of the last financial year until the date of withdrawal or deletion of the IFM or UCI is, in principle, required within the same deadlines.

3) REA management letters

In connection with the SAQ and the annual statutory audit, REAs will be required to prepare annual management letters (lettre de recommandation), using the form provided on the eDesk portal. These will have to be submitted to the CSSF by the management or governing bodies of the IFM or directors or managers of the UCI.

REAs will not be required to carry out procedures other than those already required in the course of a statutory audit. However, they will be obliged to:

- i. determine whether significant weaknesses or areas of improvement, brought to the attention of the management, are of such importance to be reported in the management letter; and
- ii. follow up on weaknesses or areas of improvement raised in previous management letters,

which are not considered as closed (ie in the absence of necessary corrective actions or measures in place preventing future recurrence).

Each point raised will need to either be accompanied by comments of the management of the IFM or the UCI, or contain a remark that no response has been received by the REA in a timely manner.

In situations where the REA considers that no weaknesses or areas of improvement is to be reported, then, the management letter will, before submission by the management bodies, be validated by the REA via the eDesk platform by specifying that it had no comment on the management letter.

Deadlines for submission of the management letters to the CSSF:

- IFMs - seven months after the end of the financial year
- UCITS - four months after the end of the financial year
- Part II UCIs, SIFs, SICARs - six months after the end of the financial year

First reporting periods concern financial years ending on or after 31 December 2021 for IFMs, and 30 June 2022 for UCIs.

4) Modified audit opinions (applicable to UCIs only)

Whenever a REA issues a modified audit opinion (ie a qualified opinion, adverse opinion or refuses to issue an opinion) at the level of one or more compartments or the UCI as a whole, the management of a UCI will have to send on its own initiative a letter to the CSSF, explaining the rationale behind the modified opinion and its impact on the UCI and its investors, and spelling out any corrective measures to be taken and their implementation calendar. The deadline for submission of this letter is one month after the publication of the annual report.

5) Repealing provisions (applicable to UCIs only)

Circular 21/790 repeals Circular 02/81 on guidelines concerning the task of auditors of undertakings for collective investment and chapter P of Circular 91/75 concerning the obligation of UCIs to inform the CSSF on the audits carried out by the REA.

For financial years ending on or after 30 June 2022, management letters for UCIs will no longer have to be provided in accordance with CSSF Circular 19/708 on the electronic submission of documents.

[1] As defined in Circular CSSF 18/698

[2] CSSF Regulation No 12-02 of 12 December 2012 on the fight against money laundering and terrorist financing, as amended

[3] Responsable du Contrôle du respect des obligations professionnelles en matière de lutte contre le blanchiment et contre le financement du terrorisme

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