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## Important clarifications for the Luxembourg fund industry on AML/CFT requirements

28 November 2019

Taking into account the results of the Luxembourg national risk assessment which classifies the fund industry as high ML/FT risk, the CSSF clarifies that Luxembourg regulated funds, like Luxembourg investment fund managers (**IFMs**), are required to appoint two persons in charge of AML/CFT. One is responsible for compliance with AML/CFT obligations at management level (**RR**) and the other one is responsible for controlling compliance with AML/CFT obligations at appropriate hierarchical level (**RC**). The role of RC may be delegated to third parties (e.g. IFMs) under certain conditions.

On 25 November 2019, the CSSF released a new [FAQ](#) on the persons involved in AML/CFT for Luxembourg regulated funds and IFMs. The FAQ applies to funds (i.e. UCITS, Part II UCIs, SICARs and SIFs) and IFMs (i.e. Chapter 15 and 16 management companies and AIFMs) supervised by the CSSF.

The CSSF reiterates that, pursuant to Article 4(1) of the [AML Law](#), professionals (and therefore funds and IFMs) must appoint **two persons to be in charge of AML/CFT**, as follows:

- one person at management level (i.e. the managing body of the relevant entity) responsible for compliance with AML/CFT obligations (referred to as an **RR**, from the French “*responsable du respect*”); and
- one person at the appropriate hierarchical level responsible for controlling compliance with AML/CFT obligations (referred to as an **RC**, from the French “*responsable du contrôle du respect*”).

Despite the fact that the AML Law provides that the RC must be appointed only “*if the size and nature of the activity so require*”, the CSSF indicates that the investment funds sector has been assessed in the Luxembourg national risk assessment (available to professionals upon request [here](#)) as presenting a high ML/FT risk, precluding funds and IFMs from applying this principle of proportionality.

The CSSF provides guidelines on (i) the persons who may be appointed an RR and RC and (ii) the criteria for appointment as an RR and RC.

### 1. Persons who may be appointed as an RR and RC

For investment funds:

- the RR may be the managing body collectively (i.e. board of directors/managers, general partner(s), the management company of FCP) or only one of its members;
- the RC must be an individual mandated *intuitu personae* and may be a member of the managing body or a third party delegate. In the case of delegation to a third party, the CSSF requires the fund to enter into a contract with (i) the RC or (ii) with the employer of the RC provided that the agreement names the RC, requires the fund’s approval for the RC’s replacement and is acknowledged by the RC in writing.

There is no residency requirement for the RR although the RR is expected to be contactable at any time by the competent Luxembourg AML/CFT authorities. By contrast, the RC must, in principle, be available in Luxembourg but the CSSF may agree to the RC being located outside of Luxembourg if the RC is employed by a foreign IFM.

For IFMs:

- the RR (referred to as “an AML/CFT officer at management level” in [CSSF Circular 18/698](#)) may also be the managing body of the IFM collectively or one of its members; and
- the RC (referred to as “an AML/CFT compliance officer” in [CSSF Circular 18/698](#)) must be the compliance officer at the appropriate hierarchical level in charge of the AML/CFT aspects.

## *2. The criteria for appointment as an RR and RC*

Both the RR and the RC must:

- have sufficient knowledge of the Luxembourg AML/CFT legal framework and be able to demonstrate this (e.g. by way of training);
- be knowledgeable about (i) the investments and distribution strategies of the fund or (ii) the services offered by the IFM, as the case may be; and
- be available without delay, upon request, to the competent Luxembourg AML/CFT authorities (or at least to one managing member if the RR is a collegial body).

The RC must in addition (i) have sufficient expertise with regard to the Luxembourg AML/CFT legal framework and be able to demonstrate this (e.g. through work experience) and (ii) have access to all internal documents and systems required necessary for the performance of its tasks. The latest condition is particularly relevant where the RC is not (permanently) located in Luxembourg. For further details on the skills and duties of the RC, please refer to Article 40 (3) to 43 of [CSSF Regulation N°12-02](#).

If you would like to discuss the issues raised in this article, please speak to your usual contact at Allen & Overy or one of the contacts listed at the end of the article.

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