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A new CSSF Circular for Luxembourg investment fund management companies

On 23 August 2018, the Commission du Secteur Financier (“**CSSF**”) released Circular 18/698 (the “**Circular**”) relating to the authorisation and organisation of Luxembourg investment fund managers and provisions on combating money laundering and terrorist financing applicable to investment fund managers and entities carrying out the function of transfer agent.

Scope of the Circular

The Circular has a very broad scope as it includes (together referred to as in the Circular as “**GFI**”):

- > Chapter 15 Management companies
- > Chapter 16 Management companies (with or without an AIFM authorisation)
- > Chapter 17 Management companies (EU or non-EU authorised management companies other than UCITS management companies establishing a branch in Luxembourg)
- > Self-managed UCITS (“**SIAGs**”)
- > Alternative investment fund managers authorised under chapter 2 of the 12 July 2013 Law
- > Internally managed alternative investment funds (“**FIAAGs**”)

The Circular does not apply to:

- > Chapter 18 management companies (i.e. multilateral development banks authorised to manage undertakings for collective investments)
- > AIFMs established in Luxembourg in so far as they manage one or more AIFs whose only investors are the AIFM or the parent undertakings or the subsidiaries of the AIFM or other subsidiaries of those parent undertakings, provided that none of those investors is itself an AIF (group vehicles)
- > Luxembourg AIFMs managing leveraged AIFs and asset under management of less than EUR 100m

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- > Luxembourg AIFMs managing unleveraged AIFs, with no redemption for 5 years and asset under management of less than EUR 500m

Content of the Circular

The purpose of the Circular is to replace CSSF Circular 12/546, which was only applicable to Chapter 15 Management Companies and SIAGs. The Circular takes into account the evolution of the legislation on alternative investment funds and the increasing number of alternative investment fund managers that have been established in Luxembourg in the recent years. It combines now in a single circular the conditions for obtaining and maintaining the agreement of GFIs (as defined above).

The Circular is divided into nine parts and mainly details, in its part II, the conditions for obtaining and maintaining authorisation for Luxembourg investment fund management companies whose activities are restricted to collective management.

These conditions are divided into 9 items: Basic principles (Chapter 1); Shareholders (Chapter 2); Own funds (Chapter 3); Bodies of the investment fund management company (Chapter 4); Central administration and internal governance set up (Chapter 5); Specific provisions regarding the organisation (Chapter 6); External audit (Chapter 7); Exchange of information between the investment fund management company and the depositary (Chapter 8).

The Circular also contains conditions for obtaining and maintaining authorisation for management companies which engage in activities of collective portfolio management and management of portfolios of investment on a client-by-client basis (Part III); information regarding the principle right of establishment and the freedom to provide services of investment fund management companies (Part IV); the principle of proportionality (Part V); provisions regarding Chapter 16 investment fund management companies subject to article 125-1 of the 2010 Law and Chapter 17 investment fund management companies (Part VI), provisions regarding self-managed UCITS companies ("SIAGs") and internally self-managed alternative investment funds ("FIAAGs") (Part VII), communication with the CSSF (Part VIII).

The Circular is also supplemented with three appendices:

1. A risk management policy template regarding AIFs to be communicated to the CSSF
2. Notifications to be made to the CSSF (non-exhaustive list)
 - o Notifications subject to the approval of the CSSF (non-exhaustive list)
 - o Simple notifications (non-exhaustive list)
 - o List of documents to be provided to the CSSF on an annual basis
3. Specific financial information to be provided by SIAGs and FIAAGs

Entry into force

The Circular enters into force with immediate effect, there is no transitional provisions.

Circular 12/546 is repealed.

CSSF Circulars 11/512 and 17/671 are respectively amended as follows:

- > the update of the risk management process of Chapter 15 management companies and SIAGs must be transmitted to the CSSF five months after the closing date of the investment fund management company's financial year (instead of one month)
- > the annual communication of the number of complaints recorded by an investment fund management company must be transmitted to the CSSF five months after the closing date of the investment fund management company's financial year (instead of 1st of March).

To read the original French text of the Circular click [here](#).

For more information on the subject, please liaise with your usual Linklaters contact.

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