

Law of 12 November 2004 on the fight against money laundering and terrorist financing transposing Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering and amending:

- 1. the Penal Code;**
- 2. the Code of Criminal Procedure;**
- 3. the Law of 7 March 1980 on the organisation of the judicial system, as amended;**
- 4. the Law of 23 December 1998 establishing a financial sector supervisory commission (“Commission de surveillance du secteur financier”), as amended;**
- 5. the Law of 5 April 1993 on the financial sector, as amended;**
- 6. the Law of 6 December 1991 on the insurance sector, as amended;**
- 7. the Law of 9 December 1976 on the organisation of the profession of notary, as amended;**
- 8. the Law of 10 August 1991 on the legal profession, as amended;**
- 9. the Law of 28 June 1984 on the organisation of the profession of company auditor, as amended;**
- 10. the Law of 10 June 1999 on the organisation of the accounting profession;**
- 11. the Law of 20 April 1977 on gaming and betting on sporting events, as amended;**
- 12. the General Fiscal Code (“Abgabenordnung”)**

(Mém. A 2004, No 183)

as amended

- by the Law of 13 July 2007 on markets in financial instruments transposing:
 - Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Directive 93/22/EEC;
 - Article 52 of Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive;

and amending:

- the Law of 5 April 1993 on the financial sector, as amended;
- the Law of 20 December 2002 relating to undertakings for collective investment, as amended;
- the Law of 12 November 2004 on the fight against money laundering and terrorist financing;
- the Law of 31 May 1999 governing the domiciliation of companies, as amended;
- the Law of 23 December 1998 establishing a financial sector supervisory commission (“Commission de surveillance du secteur financier”), as amended;
- the Law of 6 December 1991 on the insurance sector, as amended;
- the Law of 3 September 1996 concerning the involuntary dispossession of bearer securities;
- the Law of 23 December 1998 concerning the monetary status and the Banque centrale du Luxembourg;

and repealing:

- the Law of 23 December 1998 relating to the supervision of securities markets, as amended;
- the Law of 21 June 1984 on financial futures, as amended

(Mém. A 2007, No 116)

- by the Law of 17 July 2008
 - transposing Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing;
 - transposing Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of politically exposed persons and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis;

and amending:

1. the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended;
2. the Law of 7 March 1980 on the organisation of the judicial system, as amended;
3. the Law of 5 April 1993 on the financial sector, as amended;
4. the Law of 6 December 1991 on the insurance sector, as amended;
5. the Law of 9 December 1976 on the organisation of the profession of notary, as amended;
6. the Law of 10 August 1991 on the legal profession, as amended;
7. the Law of 28 June 1984 on the organisation of the profession of company auditor, as amended;
8. the Law of 10 June 1999 on the organisation of the accounting profession

(Mém. A 2008, No 106)

- by the Law of 10 November 2009 on payment services, on the activity of electronic money institution and settlement finality in payment and securities settlement systems and
 - transposing Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC;
 - amending:
 - the Law of 5 April 1993 on the financial sector, as amended;
 - the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended;
 - the Law of 18 December 2006 on financial services provided at distance;
 - the Law of 15 December 2000 on postal services and financial postal services, as amended;
 - the Law of 13 July 2007 on markets in financial instruments;
 - the Law of 20 December 2002 relating to undertakings for collective investment, as amended;
 - the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended;
 - the Law of 23 December 1998 concerning the monetary status and the Banque centrale du Luxembourg, as amended;
 - the Law of 6 December 1991 on the insurance sector, as amended;
 - repealing Title VII of the Law of 14 August 2000 on electronic commerce, as amended.

(Mém. A 2009, No 215)

- by the Law of 18 December 2009 concerning the audit profession and:
 - transposing Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC,
 - organising the audit profession,
 - amending certain other legal provisions, and
 - repealing the Law of 28 June 1984 on the organisation of the profession of company auditor, as amended

(Mém. A 2010, No 22)

- by the Law of 27 October 2010
 - enhancing the anti-money laundering and counter terrorist financing legal framework;
 - organising the controls of physical transport of cash entering, transiting through or leaving the Grand Duchy of Luxembourg;
 - implementing United Nations Security Council resolutions as well as acts adopted by the European Union concerning prohibitions and restrictive measures in financial matters in respect of certain persons, entities and groups in the context of the combat against terrorist financing;

- amending:
 1. the Penal Code;
 2. the Code of Criminal Procedure;
 3. the Law of 7 March 1980 on the organisation of the judicial system, as amended;
 4. the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended;
 5. the Law of 19 February 1973 on the sale of medicinal substances and the fight against drug addiction, as amended;
 6. the Law of 11 April 1985 approving the Convention on the Physical Protection of Nuclear Material, opened for signature at Vienna and New York on 3 March 1980, as amended;
 7. the Law of 31 January 1948 on the regulation of air navigation, as amended;
 8. the Law of 20 June 2001 on extradition;
 9. the Law of 17 March 2004 on the European arrest warrant and surrender procedures between Member States of the European Union;
 10. the Law of 8 August 2000 concerning mutual legal assistance in criminal matters;
 11. the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended;
 12. the Law of 5 April 1993 on the financial sector, as amended;
 13. the Law of 6 December 1991 on the insurance sector, as amended;
 14. the Law of 9 December 1976 on the organisation of the profession of notary, as amended;
 15. the Law of 10 August 1991 on the legal profession, as amended;
 16. the Law of 10 June 1999 on the organisation of the accounting profession, as amended;
 17. the Law of 18 December 2009 concerning the audit profession;
 18. the Law of 20 April 1977 on gaming and betting on sporting events, as amended;
 19. the Law of 17 March 1992 approving the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances signed in Vienna on 20 December 1988, as amended;
 20. the Law of 14 June 2001 approving the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, signed in Strasbourg on 8 November 1990, as amended;

(Mém. A 2010, No 193)

- by the Law of 20 May 2011
 - transposing:
 - Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC;
 - Directive 2009/44/EC of the European Parliament and of the Council of 6 May 2009 amending Directive 98/26/EC on settlement finality in payment and securities settlement systems and Directive 2002/47/EC on the financial collateral arrangements as regards linked systems and credit claims;
 - amending:
 - the Law of 10 November 2009 on payment services, on the activity of electronic money institutions and settlement finality in payment and securities settlement systems;
 - the Law of 5 August 2005 on financial collateral arrangements;
 - the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended;
 - the Law of 5 April 1993 on the financial sector, as amended;
 - the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended

(Mém. A 2011, No 104)

- by the Law of 21 December 2012 on the activity of Family Office and amending:
 - the Law of 5 April 1993 on the financial sector, as amended;
 - the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended

(Mém. A 2012, No 274)

- by the Law of 12 July 2013 on alternative investment fund managers and

- transposing Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010;
- amending:
 - the Law of 17 December 2010 relating to undertakings for collective investment, as amended;
 - the Law of 13 February 2007 relating to specialised investment funds, as amended;
 - the Law of 15 June 2004 relating to the investment company in risk capital (SICAR), as amended;
 - the Law of 13 July 2005 on institutions for occupational retirement provision in the form of pension savings companies with variable capital (SEPCAV) and pension savings associations (ASSEP), as amended;
 - the Law of 13 July 2005 on the activities and supervision of institutions for occupational retirement provision;
 - the Law of 5 April 1993 on the financial sector, as amended;
 - the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended;
 - the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended;
 - the Law of 10 August 1915 on commercial companies, as amended;
 - the Law of 19 December 2002 on the trade and companies register and the accounting practices and annual accounts of undertakings, as amended;
 - the Commercial Code;
 - the Law of 4 December 1967 on income tax, as amended;
 - the Law of 1 December 1936 on business tax, as amended;
 - the law on tax adaptation of 16 October 1934, as amended;
 - the Law of 16 October 1934 on the valuation of assets and values, as amended;
 - the Law of 12 February 1979 on value added tax, as amended

(Mém. A 2013, No 119)

- by the Law of 12 July 2013* amending
 - the Law of 6 December 1991 on the insurance sector, as amended;
 - the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended

(Mém. A 2013, No 129)

- by the Law of 24 July 2015 amending:
 - the Law of 12 February 1979 on value added tax, as amended;
 - the Law of 17 December 2010 laying down the excise duties and similar taxes on energy products, electricity, manufactured tobacco, alcohol and alcoholic drinks, as amended;
 - the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended

(Mém. A 2015, No 145)

- by the Law of 13 February 2018
 1. transposing the provisions on the professional obligations and the powers of the supervisory authorities as regards the fight against money laundering and terrorist financing of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC;
 2. implementing Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006;
 3. amending:
 - (a) the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended;
 - (b) the Law of 10 November 2009 on payment services, as amended;
 - (c) the Law of 9 December 1976 on the organisation of the profession of notary, as amended;
 - (d) the Law of 4 December 1990 on the organisation of bailiffs, as amended;

* hereafter Law of 12 July 2013 on professionals of the insurance sector

- (e) the Law of 10 August 1991 on the legal profession, as amended;
- (f) the Law of 5 April 1993 on the financial sector, as amended;
- (g) the Law of 10 June 1999 on the organisation of the accounting profession, as amended;
- (h) the Law of 21 December 2012 relating to the Family Office activity;
- (i) the Law of 7 December 2015 on the insurance sector, as amended;
- (j) the Law of 23 July 2016 concerning the audit profession.

(Mém. A 2018, No 131)

- by the Law of 17 April 2018 implementing Regulation (EU) of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 and amending:
 - 1. the Consumer Code;
 - 2. the Law of 23 December 1998 establishing a financial sector supervisory commission (“Commission de surveillance du secteur financier”), as amended;
 - 3. the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended; and
 - 4. the Law of 7 December 2015 on the insurance sector, as amended

(Mém. A 2018, No 257)

- by the Law of 10 August 2018 amending:
 - 1. the Code of Criminal Procedure;
 - 2. the Law of 7 March 1980 on the organisation of the judicial system, as amended;
 - 3. the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended;
 - 4. the Law of 25 March 2015 determining the salaries and the advancement conditions and rules for civil servants for the purpose of organising the Financial Intelligence Unit (FIU)

(Mém. A 2018, No 796)

TITLE I

Professional obligations concerning the fight against money laundering and terrorist financing “Chapter 1: Definitions, scope and designation of supervisory authorities and self-regulatory bodies”¹

Article 1. Definitions

“(1)”² “Money laundering” shall, in accordance with this law, mean any action as defined in Articles 506-1 of the Penal Code and 8-1 of the Law of 19 February 1973 on the sale of medicinal substances and the fight against drug addiction, as amended.

(Law of 10 August 2018)

“(1a) “Associated predicate offence” shall mean the offences referred to in Article 506-1, point 1) of the Penal Code and in Article 8(1)(a) and (b), of the Law of 19 February 1973 on the sale of medicinal substances and the fight against drug addiction, as amended.”

“(2)”³ “Terrorist financing” shall, in accordance with this law, mean any action as defined in Article 135-5 of the Penal Code.

(Law of 17 July 2008)

“(3) “Credit institution” shall, in accordance with this law, mean a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, including branches thereof, as defined in point (17) of Article 4(1) of that regulation, whether its head office is situated within the Union or in a third country.”⁴

(Law of 13 February 2018)

“(3a) “Financial institution” shall, in accordance with this law, mean:

- (a) any insurance undertaking as defined in point (1) of Article 13 of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance, insofar as it carries out life insurance activities covered by that directive;
- (b) any investment firm as defined in point (1) of Article 4(1) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC;
- (c) any undertaking for collective investment marketing its units or shares;
- (d) any insurance intermediary as defined in point (5) of Article 2 of Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation where it acts with respect to life insurance and other investment-related services;
- (e) any undertaking other than those referred to in points (a) to (d), and in paragraph 3, which carries out one or more of the activities listed in Annex I;
- (f) any branch, in Luxembourg, of financial institutions as referred to in points (a) to (e), whether their head office is situated in a Member State or in a third country.”

(Law of 13 February 2018)

“(3b) “Group” shall, in accordance with this law, mean any group of undertakings which consists of a parent undertaking, its subsidiaries, and the entities in which the parent undertaking or its subsidiaries hold a participation, as well as undertakings linked to each other by a relationship within the meaning of Article 22 of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the

¹ Law of 13 February 2018

² Law of 17 July 2008

³ Law of 17 July 2008

⁴ Law of 13 February 2018

European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC, hereinafter referred to as "Directive 2013/34/EU".

- (4) "Member State" shall, in accordance with this law, mean a Member State of the European Union. The States that are contracting parties to the European Economic Area Agreement other than the Member States of the European Union, within the limits set forth by this agreement and related acts are considered as equivalent to Member States of the European Union. "Another Member State" shall mean a Member State other than Luxembourg.
- (5) "Third Country" shall, in accordance with this law, mean a State other than a Member State.
- (6) "Property" shall, in accordance with this law, mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments in any form including electronic or digital, evidencing title to or an interest in such assets.
- "(7) "Beneficial owner" shall, in accordance with this law, mean any natural person(s) who ultimately owns or controls the customer or any natural person(s) on whose behalf a transaction or activity is being conducted. The concept of beneficial owner shall include at least:
- (a) in the case of corporate entities:
- (i) any natural person who ultimately owns or controls a legal entity through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in that entity, including through bearer shareholdings, or through control via other means, other than a company listed on a regulated market that is subject to disclosure requirements consistent with European Union law or subject to equivalent international standards which ensure adequate transparency of ownership information.
- A shareholding of 25% plus one share or an ownership interest of more than 25% in the customer held by a natural person shall be an indication of direct ownership. A shareholding of 25% plus one share or an ownership interest of more than 25% in the customer held by a corporate entity, which is under the control of a natural person(s), or by multiple corporate entities, which are under the control of the same natural person(s), shall be an indication of indirect ownership;
- (ii) if, after having exhausted all possible means and provided there are no grounds for suspicion, no person under point (i) is identified, or if there is any doubt that the person(s) identified are the beneficial owner(s), any natural person who holds the position of senior *dirigeant* (manager);
- (b) in the case of *fiducies* and trusts:
- (i) the settlor;
- (ii) any *fiduciaire* or trustee;
- (iii) the protector, if any;
- (iv) the beneficiaries, or where the individuals benefiting from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates;
- (v) any other natural person exercising ultimate control over the *fiducie* or trust by means of direct or indirect ownership or by other means;
- (c) in the case of legal entities such as foundations, and legal arrangements similar to trusts, any natural person holding equivalent or similar positions to those referred to in point (b)."⁵
- (8) "Trust and company service providers" shall, in accordance with this law, mean any natural or legal person which by way of business provides any of the following services to third parties:
- (a) forming companies or other legal persons;

⁵ Law of 13 February 2018

- (b) acting as or arranging for another person to act as a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
- (c) providing a registered office, business address, correspondence or administrative address “or business premises”⁶ and other related services for a company, a partnership or any other legal person or arrangement;
- (d) “acting as, or arranging for another person to act as, a *fiduciaire* in a *fiducie*, a trustee of an express trust or an equivalent function in a similar legal arrangement;”⁷
- “(e) “acting as, or arranging for another person to act as, a nominee shareholder for another person other than a company listed on a regulated market that is subject to disclosure requirements in accordance with European Union law or subject to equivalent international standards.”⁸”⁹

- (9) “Politically exposed persons” (PEPs) shall, in accordance with this law, mean natural persons who are or have been entrusted with prominent public functions and (...) ¹⁰ family members or persons known to be close associates, of such persons.

Without prejudice to the application, on a risk-sensitive basis, of enhanced customer due diligence measures, where a person has ceased to be entrusted with a prominent public function for over one year, the institutions and persons referred to in Article 2 below shall not be obliged to consider such a person as politically exposed.

- (10) “Natural persons who are or have been entrusted with prominent public functions” shall, in accordance with paragraph 9 above, mean all natural persons, including:

- (a) heads of State, heads of government, ministers and deputy or assistant ministers;
- (b) members of parliament “or of similar legislative bodies”¹¹;
- (c) members of supreme courts, of constitutional courts or of other high-level judicial bodies, the decisions of which are not subject to further appeal, except in exceptional circumstances;
- (d) members of courts of auditors or of the boards “or directorates”¹² of central banks;
- (e) ambassadors, *chargés d'affaires* and high-ranking officers in the armed forces;
- (f) members of the administrative, management or supervisory bodies of State-owned enterprises;
- “(g) important officials “and members of the governing bodies”¹³ of political parties;”¹⁴

(Law of 13 February 2018)

- “(h) directors, deputy directors and members of the board or equivalent function of an international organisation.”

None of the categories set out in “(a) to (h)”¹⁵ above shall be understood as covering middle ranking or more junior officials.

(...) ¹⁶

⁶ Law of 13 February 2018

⁷ Law of 13 February 2018

⁸ Law of 13 February 2018

⁹ Law of 27 October 2010

¹⁰ Law of 13 February 2018

¹¹ Law of 13 February 2018

¹² Law of 13 February 2018

¹³ Law of 13 February 2018

¹⁴ Law of 27 October 2010

¹⁵ Law of 13 February 2018

¹⁶ Law of 13 February 2018

(11) “As used in paragraph 9, “(...)”¹⁷ family members” refers to all physical persons, including in particular:”¹⁸

- (a) the spouse;
- (b) any partner considered by national law as equivalent to the spouse;
- (c) the children and their spouses or partners;
- (d) the parents;

(Law of 13 February 2018)

“(e) the brothers and sisters.”

(12) “Persons known to be close associates” shall, in accordance with paragraph 9 above, mean all natural persons, including:

- (a) any natural person who is known to have joint beneficial ownership of legal entities or legal arrangements, or any other close business relations, with a person referred to in paragraph 10;
- (b) any natural person who has sole beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the benefit de facto of the person referred to in paragraph 10.

(13) “Business relationship” shall, in accordance with this law, mean a business, professional or commercial relationship which is connected with the professional activities of the institutions and persons covered by this law and which is expected, at the time when the contact is established, to have an element of duration.

(14) “Shell bank” shall, in accordance with this law, mean a credit institution “or a financial institution”¹⁹ or an institution engaged in equivalent activities, incorporated in a jurisdiction in which it has no physical presence, involving meaningful mind and management and which is unaffiliated with a regulated financial group.

(15) “Persons engaging in a financial activity on an occasional or very limited basis” shall mean natural or legal persons who engage in a financial activity which fulfils the following criteria:

- (a) the financial activity is limited in absolute terms and does not exceed a sufficiently low threshold fixed by grand-ducal regulation depending on the type of financial activity;
- (b) the financial activity is limited as regards transactions and does not exceed a maximum threshold per customer and per transaction, whether the transaction is carried out in a single operation or in several operations which appear to be linked, this threshold being fixed by grand-ducal regulation according to the type of financial activity at a sufficiently low level in order to ensure that the types of transactions in question are an impractical and inefficient method for laundering money or for terrorist financing, and shall not exceed EUR 1,000;
- (c) the financial activity is not the main activity, the turnover of the financial activity in question does not exceed 5% of the total turnover of the natural person or legal person concerned;
- (d) the financial activity is ancillary and directly related to the main activity;
- (e) the main activity is not an activity exercised by the professionals listed in Article 2(1), with the exception of activities of such persons referred to in Article 2(1)(15);
- (f) the financial activity is provided only to the customers of the main activity and is not generally offered to the public.”

¹⁷ Law of 13 February 2018

¹⁸ Law of 27 October 2010

¹⁹ Law of 13 February 2018

(Law of 13 February 2018)

“(16) “Supervisory authority” shall, in accordance with this law, mean any authority referred to in Article 2-1(1), (2) and (8).”

(Law of 13 February 2018)

“(17) “European Supervisory Authorities” shall, in accordance with this law, mean the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority.”

(Law of 13 February 2018)

“(18) “Payable-through account” shall, in accordance with this law, mean any correspondent account, used directly by third parties to transact business on their own behalf.”

(Law of 13 February 2018)

“(19) “Senior management” shall, in accordance with this law, mean any *dirigeant* or employee with sufficient knowledge of the professional's money laundering and terrorist financing risk exposure and sufficient seniority to take decisions affecting its risk exposure, and need not, in all cases, be a member of the board of directors.”

(Law of 13 February 2018)

“(20) “Electronic money” shall, in accordance with this law, mean electronic money as defined in point (29) of Article 1 of the Law of 10 November 2009 on payment services.”

(Law of 13 February 2018)

“(21) “Self-regulatory body” shall, in accordance with this law, mean a body that represents members of a profession and has a role in regulating them, in performing certain supervisory or monitoring type functions and in ensuring the enforcement of the rules relating to them. It means thus each body referred to in Article 2-1(3) to (7).”

(Law of 13 February 2018)

“(22) “Correspondent relationship” shall, in accordance with this law, mean:

- (a) the provision of banking services by one bank as the correspondent to another bank as the respondent, including providing a current or other liability account and related services, such as cash management, international funds transfers, cheque clearing, payable-through accounts and foreign exchange services;
- (b) any relationship between and among credit institutions and financial institutions including where similar services are provided by a correspondent institution to a respondent customer, and including any relationship established for securities transactions or funds transfers.”

(Law of 13 February 2018)

“(23) “Gambling services” shall, in accordance with this law, mean the services which involve wagering a stake with monetary value in games of chance, including those with an element of skill such as lotteries, casino games, poker games and betting transactions that are provided at a physical location, or by any means at a distance, by electronic means or any other technology for facilitating communication, and at the individual request of a recipient of services, except for games which give the player no chance for enrichment or material gain other than the right to continue playing.”

Article 2. Scope

(1) This title applies to the following natural or legal persons:

1. credit institutions and professionals of the financial sector (PFS) licensed or authorised to exercise their activities in Luxembourg in accordance with the Law of 5 April 1993 on the financial sector, as amended “and payment institutions “and electronic money

institutions”²⁰ licensed or authorised to exercise their activities in Luxembourg in accordance with the Law of 10 November 2009 on payment services;”²¹

(Law of 10 November 2009)

- “1a. The natural and legal persons benefiting from the waiver in accordance with Article 48 “or 48-1”²² of the Law of 10 November 2009 on payment services;”
- “2. insurance undertakings licensed or authorised to exercise their activities in Luxembourg in accordance with the “Law of 7 December 2015 on the insurance sector, as amended”²³, in connection with operations covered by “Annex II of the Law of 7 December 2015 on the insurance sector, as amended,”²⁴ and insurance intermediaries licensed or authorised to conduct business in Luxembourg in accordance with the “Law of 7 December 2015 on the insurance sector, as amended,”²⁵ when they act in respect of life insurance and other investment related services;”²⁶

(Law of 12 July 2013 on professionals of the insurance sector)

- “2a. The professionals of the insurance sector authorised to carry out their business in Luxembourg pursuant to the “Law of 7 December 2015 on the insurance sector, as amended”²⁷.”
3. “pension funds under the prudential supervision of the Commissariat aux assurances”;²⁸
- “4. undertakings for collective investment and investment companies in risk capital (SICAR), which market their “units, securities or partnership interests”²⁹ and to which the “Law of 17 December 2010 relating to undertakings for collective investment, as amended”³⁰, or the Law of 13 February 2007 relating to specialised investment funds or the Law of 15 June 2004 relating to the Investment company in risk capital (SICAR) applies;”³¹
5. management companies under the “Law of 17 December 2010 relating to undertakings for collective investment”³² which market “units, securities or partnership interests”³³ of undertakings for collective investment or perform additional or auxiliary activities within the meaning of the “Law of 17 December 2010 relating to undertakings for collective investment”³⁴ ;
6. pension funds under the prudential supervision of the Commission de surveillance du secteur financier;

(Law of 27 October 2010)

- “6a. managers and advisors of undertakings for collective investment, investment companies in risk capital (SICAR) and pension funds;
- 6b. securitisation undertakings, when they perform trust and company service provider activities;
- 6c. insurance and reinsurance undertakings and their intermediaries whenever they perform credit and surety operations;”

²⁰ Law of 20 May 2011

²¹ Law of 10 November 2009

²² Law of 20 May 2011

²³ Law of 13 February 2018

²⁴ Law of 13 February 2018

²⁵ Law of 13 February 2018

²⁶ Law of 17 July 2008

²⁷ Law of 13 February 2018

²⁸ Law of 12 July 2013 on professionals of the insurance sector

²⁹ Law of 12 July 2013

³⁰ Law of 12 July 2013

³¹ Law of 12 July 2013

³² Law of 12 July 2013

³³ Law of 12 July 2013

³⁴ Law of 12 July 2013

(Law of 12 July 2013)

“6d. alternative investment fund managers governed by the Law of 12 July 2013 on alternative investment fund managers and which market units, securities or partnership interests of alternative investment funds or which carry out additional or non-core activities within the meaning of Article 5(4) of the Law of 12 July 2013 on alternative investment fund managers;”

(Law of 13 February 2018)

“6e. any person carrying out the Family Office activity within the meaning of the Law of 21 December 2012 relating to the Family Office activity;”

7. “the other financial institutions carrying out their activities in Luxembourg;”³⁵

“8. *réviseurs d’entreprises* (statutory auditors), *réviseurs d’entreprises agréés* (approved statutory auditors), *cabinets de révision* (audit firms) and *cabinets de révision agréés* (approved audit firms) within the meaning of the Law of 18 December 2009 concerning the audit profession;”³⁶

9. accountants, within the meaning of the Law of 10 June 1999 on the organisation of the accounting profession “...”³⁷

(Law of 17 July 2008)

“9a. accounting professionals, within the meaning of Article 2(2)(d) of the Law of 10 June 1999 on the organisation of the accounting profession;”

10. real estate agents“, within the meaning of the Law of 2 September 2011 regulating the access to the professions of craftsman, salesman, industrial as well as to some liberal professions, as amended”³⁸, established or acting in Luxembourg;

11. notaries, within the meaning of the Law of 9 December 1976 on the organisation of the profession of notary, as amended;

(Law of 13 February 2018)

“11a. bailiffs within the meaning of the Law of 4 December 1990 on the organisation of bailiffs, as amended, where they carry out valuation and public sales of furniture, movables and harvests;”

12. lawyers, within the meaning of the Law of 10 August 1991 on the legal profession, as amended when:

(a) assisting in the planning or execution of transactions for their customer concerning the

(i) buying and selling of real property or business entities,

(ii) managing client money, securities or other assets,

(iii) opening or management of bank, savings or securities accounts,

(iv) organisation of contributions necessary for the creation, operation or management of companies,

(v) creation, domiciliation, operation or management of trusts, companies or other similar structures,

(b) or acting for and on behalf of their customer in any financial or real estate transaction;

“(c) or providing a service of a trust and company service provider;”³⁹

³⁵ Law of 13 February 2018

³⁶ Law of 18 December 2009

³⁷ Law of 17 July 2008

³⁸ Law of 13 February 2018

³⁹ Law of 17 July 2008

“(d) or carrying out the activity of Family Office.”⁴⁰

13. persons other than those listed above who exercise in Luxembourg on a professional basis an activity of tax or economic advice or one of the activities described in (12)(a) and (b);

(Law of 17 July 2008)

“13a. persons other than those listed above who exercise on a professional basis in Luxembourg a trust and company service provider activity;”

14. “providers of gambling services governed by the Law of 20 April 1977 on gaming and betting on sporting events, as amended, acting in the exercise of their professional activities;”⁴¹

(Law of 24 July 2015)

“14a. operators in a free zone authorised to carry out their activity pursuant to an authorisation by the Administration des douanes et accises (customs and excise) within the Community control type 1 free zone located in the municipality of Niederanven Section B Senningen called Parishaff L-2315 Senningerberg (Hoehenhof).”

(Law of 17 July 2008)

“15. other natural or legal persons trading in goods, only to the extent that payments are made “or received”⁴² in cash in an amount of EUR “10,000”⁴³ or more, whether the transaction is executed in a single operation or in several operations which appear to be linked.”

(2) *(Law of 17 July 2008)* “ (...)”⁴⁴

Credit institutions (...)”⁴⁵ and all other persons listed above are collectively referred to hereafter as “professionals”.

(...)”⁴⁶

“The scope of application of this title and hence the notion of professional also includes branches in Luxembourg of foreign professionals as well as professionals established under the laws of foreign countries who supply services in Luxembourg without establishing any branch in Luxembourg.”⁴⁷”

(Law of 13 February 2018)

“Article 2-1. Supervisory authorities and self-regulatory bodies

- (1) The Commission de Surveillance du Secteur Financier, hereinafter referred to as “CSSF”, is the supervisory authority in charge of ensuring compliance by the credit institutions with their professional obligations as regards the fight against money laundering and terrorist financing provided for in Articles 2-2 to 5 and their implementing measures.

Without prejudice to paragraph 3, the CSSF, in addition to the credit institutions it supervises, is the supervisory authority in charge of ensuring compliance with the professional obligations as regards the fight against money laundering and terrorist financing provided for in Articles 2-2 to 5 and their implementing measures by the “supervised”⁴⁸ professionals authorised by or registered with it.

- (2) The Commissariat aux Assurances, hereinafter referred to as “CAA”, is the supervisory authority in charge of ensuring compliance by the natural and legal persons referred to in Article 2(1) subject to its supervision with their professional obligations as regards the fight against money

⁴⁰ Law of 21 December 2012

⁴¹ Law of 13 February 2018

⁴² Law of 13 February 2018

⁴³ Law of 13 February 2018

⁴⁴ Law of 13 February 2018

⁴⁵ Law of 13 February 2018

⁴⁶ Law of 13 February 2018

⁴⁷ Law of 27 October 2010

⁴⁸ Law of 17 April 2018

laundering and terrorist financing provided for in Articles 2-2 to 5 and their implementing measures.

- (3) The Institut des réviseurs d'entreprises, referred to in Part 1, Title II of the Law of 23 July 2016 concerning the audit profession, shall ensure compliance by its members who are natural and legal persons referred to in point (8) of Article 2(1), except for audit firms, with their professional obligations as regards the fight against money laundering and terrorist financing provided for in Articles 2-2 to 5 and their implementing measures.
- (4) The Ordre des experts-comptables, referred to in Title II of the Law of 10 June 1999 on the organisation of the accounting profession, as amended, shall ensure compliance by its members who are natural and legal persons referred to in point (9) of Article 2(1) with their professional obligations as regards the fight against money laundering and terrorist financing provided for in Articles 2-2 to 5 and their implementing measures.
- (5) The Chambre des Notaires, referred to in Section VII of the Law of 9 December 1976 on the organisation of the profession of notary, as amended, shall ensure compliance by the notaries referred to in point (11) of Article 2(1) with their professional obligations as regards the fight against money laundering and terrorist financing provided for in Articles 2-2 to 5 and their implementing measures.
- (6) The bar associations established by the Law of 10 August 1991 on the legal profession, as amended, shall ensure compliance by the lawyers referred to in point (12) of Article 2(1) who are members of the association with their professional obligations as regards the fight against money laundering and terrorist financing provided for in Articles 2-2 to 7 and their implementing measures.
- (7) The Chambre des huissiers, referred to in Chapter VIII of the Law of 4 December 1990 on the organisation of bailiffs, as amended, shall ensure compliance by the bailiffs referred to in point (11a) of Article 2(1) with their professional obligations as regards the fight against money laundering and terrorist financing provided for in Articles 2-2 to 5 and their implementing measures.
- (8) The Administration de l'enregistrement et des domaines, hereinafter referred to as "AED", is the supervisory authority in charge of ensuring compliance by the professionals not referred to in paragraphs 1 to 7 with their professional obligations as regards the fight against money laundering and terrorist financing provided for in Articles 2-2 to 5 and their implementing measures."

Chapter 2: Professional obligations

(Law of 13 February 2018)

"Article 2-2. Obligation to perform a risk assessment

- (1) The professionals shall take appropriate steps to identify and assess the risks of money laundering and terrorist financing that they face, taking into account risk factors including those relating to their customers, countries or geographic areas, products, services, transactions or delivery channels. Those steps shall be proportionate to the nature and size of the professionals.
- (2) The professionals shall document, keep up-to-date and make the risk assessments referred to in paragraph 1 available to the supervisory authorities and self-regulatory bodies. The supervisory authorities and self-regulatory bodies may decide that individual documented risk assessments are not required where the specific risks inherent in the sector are clear and understood.
- (3) The professionals shall identify and assess the risks of money laundering and terrorist financing which may result from the development of new products and business practices, including new distribution mechanisms, and the use of new or developing technologies related to new or pre-existing products.

The professionals shall:

- (a) assess the risks before the launch or use of these products, practices and technologies; and
- (b) take appropriate measures to manage and mitigate these risks.”

“Article 3. Customer due diligence

- (1) The professionals shall apply customer due diligence measures in the following cases:
 - (a) when establishing a business relationship;
 - “(b) when carrying out an occasional transaction that:
 - (i) amounts to EUR 15,000 or more, whether this transaction is carried out in a single operation or in several operations which appear to be linked; or
 - (ii) constitutes a transfer of funds, as defined in point (9) of Article 3 of Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006, exceeding EUR 1,000;”⁴⁹

(Law of 13 February 2018)

“(ba)in the case of persons trading in goods, when carrying out occasional transactions in cash amounting to EUR 10,000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;”

(Law of 13 February 2018)

“(bb)for providers of gambling services, upon the collection of winnings, the wagering of a stake, or both, when carrying out transactions amounting to EUR 2,000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;”

- (c) when there is a suspicion of money laundering or terrorist financing, regardless of any derogation, exemption or threshold;
- (d) when there are doubts about the veracity or adequacy of previously obtained customer identification data.

A grand-ducal regulation may modify the “thresholds”⁵⁰ laid down in this paragraph.

- (2) Customer due diligence measures shall comprise:
 - (a) identifying the customer and verifying the customer's identity on the basis of documents, data or information obtained from a reliable and independent source;
 - (b) identifying (...) ⁵¹ the beneficial owner and taking “reasonable measures”⁵² to verify his identity so that the professionals are satisfied that they know who the beneficial owner is, including, as regards legal persons, *fiducies*“, trusts, companies, foundations”⁵³ and similar legal arrangements, taking “reasonable measures”⁵⁴ to understand the ownership and control structure of the customer;
 - (c) “assessing and, as appropriate,”⁵⁵ obtaining information on the purpose and intended nature of the business relationship;
 - (d) conducting ongoing due diligence of the business relationship including scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the professionals’ knowledge of the customer, the business and risk profile, including, where necessary, the source of funds and ensuring that the documents, data or information held are kept up-to-date.

⁴⁹ Law of 13 February 2018

⁵⁰ Law of 13 February 2018

⁵¹ Law of 13 February 2018

⁵² Law of 27 October 2010

⁵³ Law of 13 February 2018

⁵⁴ Law of 27 October 2010

⁵⁵ Law of 13 February 2018

(Law of 13 February 2018)

“(2a) The professionals shall apply each of the customer due diligence requirements laid down in paragraph 2. The professionals may determine the extent of such measures using a risk-based approach (RBA).

The professionals shall take into account at least the variables set out in Annex II when assessing the risks of money laundering and terrorist financing.

The professionals shall be able to demonstrate to the supervisory authorities or self-regulatory bodies that the measures they apply, in accordance with this article, Articles 3-1, 3-2 and 3-3 and their implementing measures, are appropriate in view of the risks of money laundering and terrorist financing that have been identified.

The professionals shall not rely exclusively on the central registers referred to in Article 30(3) and Article 31(4) of Directive (EU) 2015/849 to fulfil their customer due diligence requirements in accordance with this article, Articles 3-1, 3-2 and 3-3 and their implementing measures. The professionals shall fulfil those requirements by using a risk-based approach.”

(Law of 13 February 2018)

“(2b) For life or other investment-related insurance business, in addition to the customer due diligence measures required for the customer and the beneficial owner, credit institutions and financial institutions shall conduct the following customer due diligence measures on the beneficiaries of life insurance and other investment-related insurance policies, as soon as the beneficiaries are identified or designated:

- (a) in the case of beneficiaries that are identified as specifically named persons or legal arrangements, taking the name of the person;
- (b) in the case of beneficiaries that are designated by characteristics or by class or by other means, obtaining sufficient information concerning those beneficiaries to satisfy the credit institution or financial institution that it will be able to establish the identity of the beneficiary at the time of the payout.

With regard to points (a) and (b) of the first subparagraph, the verification of the identity of the beneficiaries shall take place at the time of the payout. In the case of assignment, in whole or in part, of the life or other investment-related insurance to a third party, credit institutions and financial institutions aware of the assignment shall identify the beneficial owner at the time of the assignment to the natural or legal person or legal arrangement receiving for its own benefit the value of the policy assigned.

Where a credit institution or a financial institution establishes that the beneficiary of a life insurance policy which is a legal person or legal arrangement presents a higher risk, then the enhanced customer due diligence measures should include reasonable measures to identify and verify the identity of the beneficial owner of the beneficiary or the life insurance policy, at the time of payout.”

(Law of 13 February 2018)

“(2c) In the case of beneficiaries of *fiducies*, trusts or of similar legal arrangements that are designated by particular characteristics or class, the professionals shall obtain sufficient information concerning the beneficiary to satisfy them that they will be able to establish the identity of the beneficiary at the time of the payout or at the time of the exercise by the beneficiary of its vested rights.”

(3) The professionals shall apply each of the customer due diligence measures set out in paragraph 2, but may determine the extent of such measures on a risk-sensitive basis depending on the type of customer, business relationship, product or transaction. The professionals shall be able to demonstrate that the extent of the measures is appropriate in view of the risks of money laundering and terrorist financing.

(...)⁵⁶

- (4) The verification of the identity of the customer and of the beneficial owner shall take place before the establishment of a business relationship or the carrying-out of the transaction.

However, the verification of the identity of the customer and the beneficial owner may be completed during the establishment of a business relationship if this is necessary not to interrupt the normal conduct of business and where there is little risk of money laundering or terrorist financing occurring. In such situations these procedures shall be completed as soon as practicable after the initial contact.

(...)⁵⁷

By way of derogation from “the first subparagraph”⁵⁸ of this paragraph, the opening of “an account with a credit institution or financial institution, including accounts that permit transactions in transferable securities”⁵⁹ is allowed on an exceptional basis provided that there are adequate safeguards in place to ensure that transactions are not carried out by the customer or on its behalf until full compliance with “the customer due diligence requirements laid down in points (a) and (b) of paragraph 2”⁶⁰ is obtained. The keeping of anonymous accounts or anonymous passbooks “and accounts in obviously fictitious names”⁶¹ is prohibited.

The professionals who are unable to comply with paragraph 2(a) to (c) “and, where applicable, with paragraphs 2b and 2c”⁶² may not carry out a transaction through a bank account, establish a business relationship, carry out the transaction or shall terminate the business relationship and shall consider making a “suspicious transaction”⁶³ report “to the Financial Intelligence Unit created by Article 13a of the Law of 7 March 1980 on the organisation of the judicial system (hereinafter, the “Financial Intelligence Unit”)”⁶⁴ at the *Tribunal d’arrondissement* (District Court) of Luxembourg in accordance with Article 5.

(Law of 13 February 2018)

“The fourth subparagraph shall not apply to the professionals referred to in points (8), (9), (9a), (11), (11a), (12) and (13) of Article 2(1) only to the strict extent that those persons ascertain the legal position of their client, or perform the task of defending or representing that client in, or concerning, judicial proceedings, including providing advice on instituting or avoiding such proceedings.”

(Law of 13 February 2018)

“The professionals shall also adopt risk management procedures with respect to the conditions under which a customer will be able to benefit from the business relationship before the verification of the identity.”

- (5) The professionals are required to apply the customer due diligence procedures not only to all new customers but also at appropriate times to existing customers on a risk-sensitive basis“, by taking into account the existence of previous customer due diligence procedures and the moment when they are implemented, in particular, in case of relevant changes in the customer’s situation”⁶⁵.
- (6) “The professionals shall retain the following documents, data and information for the purposes of preventing, detecting and investigating, by the Luxembourg authorities responsible for the fight

⁵⁶ Law of 13 February 2018

⁵⁷ Law of 13 February 2018

⁵⁸ Law of 13 February 2018

⁵⁹ Law of 13 February 2018

⁶⁰ Law of 13 February 2018

⁶¹ Law of 13 February 2018

⁶² Law of 13 February 2018

⁶³ Law of 13 February 2018

⁶⁴ Law of 13 February 2018

⁶⁵ Law of 13 February 2018

against money laundering and terrorist financing, possible money laundering or terrorist financing:

- (a) in the case of customer due diligence, a copy of or references to the documents, data and information which are necessary to comply with the customer due diligence requirements laid down in Articles 3 to 3-3, for a period of five years after the end of the business relationship with their customer or after the date of an occasional transaction;
- (b) the supporting evidence and records of transactions which are necessary to identify or reconstruct transactions, for a period of five years after the end of a business relationship with their customer or after the date of an occasional transaction.

The professionals shall also retain the information concerning the measures taken in order to identify the beneficial owners within the meaning of sub-points (i) and (ii) of point (a) of Article 1(7).

Without prejudice to longer retention periods prescribed by other laws, the professionals shall delete the personal data at the end of the retention period referred to in the first subparagraph.

In specific cases when necessary for the purpose of carrying out their relevant prudential supervisory duties under this law, the supervisory authorities may require that the professionals retain the data for a further period which cannot exceed five years.

By way of derogation from the third subparagraph, the professionals may retain the personal data for a further period of five years where this retention is necessary to effectively implement internal measures for the prevention or detection of money laundering or terrorist financing.”⁶⁶

(Law of 13 February 2018)

- “(6a) The processing of personal data in accordance with this law is subject to the Law of 2 August 2002 on the protection of individuals with regard to the processing of personal data, as amended, hereinafter referred to as the “amended Law of 2 August 2002”.

Personal data shall be processed by the professionals on the basis of this law only for the purposes of the prevention of money laundering and terrorist financing and shall not be further processed in a way that is incompatible with those purposes. The processing of personal data on the basis of this law for any other purposes shall be prohibited.

The professionals shall provide new clients with the information required pursuant to Article 26(1) of the amended Law of 2 August 2002 before establishing a business relationship or carrying out an occasional transaction. That information shall, in particular, include a general notice concerning the legal obligations of the professionals under this law to process personal data for the purposes of the prevention of money laundering and terrorist financing.

Pursuant to letter (d) of Article 29(1) of the amended Law of 2 August 2002, the person who is responsible for the processing shall restrict or defer the right of access of the person concerned to his personal data where such measure is necessary in order to:

- (a) enable the professionals, the Financial Intelligence Unit, a supervisory authority or a self-regulatory body to fulfil their tasks properly for the purposes of this law or its implementing measures; or
- (b) avoid obstructing official or legal inquiries, analyses, investigations or procedures for the purposes of this law, its implementing measures or Directive (EU) 2015/849 and to ensure that the prevention, investigation and detection of money laundering and terrorist financing is not jeopardised.

The processing of personal data on the basis of this law shall be considered to be a matter of public interest under the amended Law of 2 August 2002.”

- (7) The professionals shall pay special attention to any activity which they regard as particularly likely, by its nature, to be related to money laundering or terrorist financing and in particular

⁶⁶ Law of 13 February 2018

complex or unusually large transactions and all unusual patterns of transactions which have no apparent economic or visible lawful purpose.”⁶⁷

(Law of 17 July 2008)

“Article 3-1. Simplified customer due diligence

- “(1) Where the professionals identify a lower risk of money laundering and terrorist financing, they may apply simplified customer due diligence measures.
- (2) Before applying simplified customer due diligence measures, the professionals shall ascertain that the business relationship or the transaction presents a lower degree of risk.

When assessing the risks of money laundering and terrorist financing relating to types of customers, geographic areas, and particular products, services, transactions or delivery channels, the professionals shall take into account at least the factors of potentially lower risk situations set out in Annex III.

The professionals shall carry out sufficient monitoring of the transactions and business relationship to enable the detection of unusual or suspicious transactions.”⁶⁸

- (3) “(...)”⁶⁹ The professionals are required to gather sufficient information in every circumstance to determine whether the customer satisfies all of the conditions required to apply the simplified customer due diligence measures, which means that the professionals must have access to a reasonable amount of information relating to the requirements set forth in Article 3(2) and must monitor the business relationship at all times so as to ensure that the conditions for the application of Article 3-1 continue to be met. (...)”⁷⁰⁷¹

- “(4) By way of derogation from points (a), (b) and (c) of Article 3(2) and Article 3(4) but without prejudice to paragraph 1 of this article, and based on an appropriate risk assessment which demonstrates a low risk, the professionals are allowed not to apply certain customer due diligence measures with respect to electronic money, where all of the following risk-mitigating conditions are met:

- (a) it is not possible to reload the payment instrument or the instrument has a maximum monthly limit of EUR 250 which can be used only in Luxembourg;
- (b) the maximum amount stored electronically does not exceed EUR 250. As regards the payment instruments which can be used only in Luxembourg, the limit of EUR 250 is increased to EUR 500;
- (c) the payment instrument is used exclusively to purchase goods or services;
- (d) the payment instrument cannot be funded with anonymous electronic money;
- (e) the issuer carries out sufficient monitoring of the transactions or business relationship to enable the detection of unusual or suspicious transactions.

The derogation provided for in the first subparagraph is not applicable in the case of redemption in cash or cash withdrawal of the monetary value of the electronic money where the amount redeemed exceeds EUR 100.”⁷²

- (5) “If there is information available which suggests that the degree of risk is not lower, when there is a suspicion of money laundering or terrorist financing or when there is a doubt about the veracity or adequacy of previously obtained data, the application of this regime for simplified customer due diligence is not possible for these customers, products and transactions.”⁷³

⁶⁷ Law of 17 July 2008

⁶⁸ Law of 13 February 2018

⁶⁹ Law of 13 February 2018

⁷⁰ Law of 13 February 2018

⁷¹ Law of 27 October 2010

⁷² Law of 13 February 2018

⁷³ Law of 13 February 2018

- (6) The scope and modalities of application of this regime for simplified customer due diligence can be modified or extended to other customers, products or transactions not listed in this article by way of grand-ducal regulation.

A grand-ducal regulation can also restrict or entirely prohibit the application of this regime for simplified customer due diligence relating the customers, products or transactions listed in this article, if this regime is not justified given the risk of money laundering or terrorist financing.

Article 3-2. Enhanced customer due diligence

- (1) The professionals are required to apply, on a risk-sensitive basis, enhanced customer due diligence measures, in addition to the measures referred to in Article 3, in situations which by their nature can present a higher risk of money laundering or terrorist financing, and at least in the cases described in paragraphs 2, 3 and 4⁷⁴, to manage and mitigate those risks appropriately.

When assessing the risks of money laundering and terrorist financing, the professionals shall take into account at least the factors of potentially higher-risk situations set out in Annex IV.

The professionals shall examine, as far as reasonably possible, the background and purpose of all complex and unusually large transactions, and all unusual patterns of transactions, which have no apparent economic or lawful purpose. In particular, the professionals shall increase the degree and nature of monitoring of the business relationship, in order to determine whether those transactions or activities appear suspicious.”⁷⁴

- “(2) When dealing with natural persons or legal entities established in third countries which do not or insufficiently apply anti-money laundering and counter terrorist financing measures, the professionals shall apply enhanced customer due diligence measures to manage and mitigate those risks appropriately.

Enhanced customer due diligence measures need not be invoked automatically with respect to branches or majority-owned subsidiaries of the professionals established in the European Union which are located in the third countries referred to in the first subparagraph, where those branches or majority-owned subsidiaries fully comply with the group-wide policies and procedures in accordance with Article 4-1 or Article 45 of Directive (EU) 2015/849. The professionals shall handle those cases by using a risk-based approach.”⁷⁵

- (3) “In the event of cross-border correspondent (...)”⁷⁶ and other similar relationships with respondent institutions in third countries and, contingent upon the assessment of a higher risk, with respondent institutions in Member States, credit institutions and other institutions involved in such relationships must:”⁷⁷

- (a) gather sufficient information about a respondent institution to understand fully the nature of the respondent's business and to determine from publicly available information the reputation of the institution and the quality of supervision;
- (b) assess the respondent institution's anti-money laundering and anti-terrorist financing controls;
- (c) obtain approval from senior management before establishing new correspondent banking relationships;
- (d) document the respective responsibilities of each institution;
- (e) with respect to payable-through accounts, be satisfied that the respondent (...)”⁷⁸ institution has verified the identity of and performed ongoing due diligence on the customers having direct access to accounts of the correspondent and that it is able to provide relevant customer due diligence data to the correspondent institution, upon request.

⁷⁴ Law of 13 February 2018

⁷⁵ Law of 13 February 2018

⁷⁶ Law of 13 February 2018

⁷⁷ Law of 27 October 2010

⁷⁸ Law of 13 February 2018

- (4) “With regard to transactions or business relationships with politically exposed persons (...)”⁷⁹, the professionals are required to:”⁸⁰
- (a) have “appropriate risk management systems, including risk-based procedures,”⁸¹ to determine “if the customer or beneficial owner is a politically exposed person”⁸²;
 - (b) obtain senior management approval for establishing “or continuing”⁸³ business relationships with such customers;
 - (c) take reasonable measures to establish the source of wealth and source of funds that are involved in the business relationship or transaction;
 - (d) conduct enhanced ongoing monitoring of the business relationship.

(Law of 27 October 2010)

“The provisions of this paragraph also apply where a customer has already been accepted and the customer or the beneficial owner is subsequently found to be, or subsequently becomes, a politically exposed person.”

(Law of 13 February 2018)

“The professionals shall take reasonable measures to determine whether the beneficiaries of a life or other investment-related insurance policy or, where required, the beneficial owner of the beneficiary are politically exposed persons. Those measures shall be taken no later than at the time of the payout or at the time of the assignment, in whole or in part, of the policy. Where there are higher risks identified, in addition to applying the customer due diligence measures laid down in Article 3, the professionals shall:

- (a) inform senior management before the payout of policy proceeds;
- (b) conduct enhanced scrutiny of the entire business relationship with the policyholder.”

(Law of 13 February 2018)

“Where a natural person who is or has been entrusted with prominent public functions is no longer entrusted with a prominent public function by a Member State or a third country, or with a prominent public function by an international organisation, the professionals shall, for at least 12 months, take into account the continuing risk posed by that person and apply appropriate and risk-sensitive measures until such time as that person is deemed to pose no further risk specific to persons who are or have been entrusted with prominent public functions.”

- (5) It is prohibited for “the professionals”⁸⁴ to enter into or continue a correspondent (...)”⁸⁵ relationship with a shell bank or with a bank that is known to permit its accounts to be used by a shell bank.
- (6) The professionals shall pay special attention to any money laundering or terrorist financing threat that may arise from products or transactions that might favour anonymity, and take measures, if needed, to prevent their use for money laundering or terrorist financing purposes.
- (7) The mandatory application and the modalities of application of enhanced customer due diligence can be modified, completed or extended to other situations representing a high risk of money laundering or terrorist financing by a grand-ducal regulation.

Article 3-3. Performance of customer due diligence by third parties

- “(1) For the purposes of this article, “third parties” shall mean the professionals listed in Article 2, the member organisations or federations of those professionals, or other institutions or persons situated in a Member State or third country that:

⁷⁹ Law of 13 February 2018

⁸⁰ Law of 27 October 2010

⁸¹ Law of 13 February 2018

⁸² Law of 27 October 2010

⁸³ Law of 13 February 2018

⁸⁴ Law of 27 October 2010

⁸⁵ Law of 13 February 2018

- (a) apply customer due diligence requirements and record-keeping requirements that are consistent with those laid down in this law and in Directive (EU) 2015/849; and
- (b) have their compliance with the requirements of this law, Directive (EU) 2015/849 or equivalent rules applicable to them, supervised in a manner consistent with Chapter VI, Section 2 of Directive (EU) 2015/849.

It is prohibited for the professionals to rely on third parties established in countries referred to in Article 3-2(2). Third parties that are branches and majority-owned subsidiaries of the professionals established in the European Union are exempt from that prohibition, where those branches and majority-owned subsidiaries fully comply with the group-wide policies and procedures in accordance with Article 4-1 or Article 45 of Directive (EU) 2015/849."⁸⁶

- (2) The professionals may rely on third parties to meet the requirements laid down in Article 3(2)(a) to (c), provided that obtaining the information and documents referred to in (3) is assured. However, the ultimate responsibility for meeting those requirements shall remain with the professionals which rely on the third party.
- (3) Where a third party acts in accordance with paragraph 2 above, it shall in accordance with the requirements laid down in Article 3(2)(a) to (c) make the information requested immediately available to the professionals to whom the customer is being referred, notwithstanding any applicable rules on confidentiality or professional secrecy.

In this case, relevant copies of identification and verification data and other relevant documentation on the identity of the customer or the beneficial owner shall immediately be forwarded, on request, by the third party to the professionals whom the customer contacted.

- “(4) The requirements set out in paragraphs 1 and 3 shall be considered as complied with by the professionals through their group programme, where all of the following conditions are met:
 - (a) the professionals rely on information provided by a third party that is part of the same financial group;
 - (b) that group applies customer due diligence measures, rules on record-keeping and programmes against money laundering and terrorist financing in accordance with Article 4-1, Directive (EU) 2015/849 or equivalent rules;
 - (c) the effective implementation of the requirements referred to in point (b) is supervised at group level by a supervisory authority, a self-regulatory body or one of their foreign counterparts.”⁸⁷
- (5) This article shall not apply to outsourcing or agency relationships where, on the basis of a contractual arrangement, the outsourcing service provider or agent is to be regarded as part of the professionals covered by this law.
- (6) A grand-ducal regulation can restrict or entirely prohibit the option of relying on third parties or certain third parties, if this option is not justified given the risk of money laundering or terrorist financing.”

“Article 4. Adequate internal management requirements

- “(1) The professionals shall put in place policies, controls and procedures to mitigate and manage effectively the risks of money laundering and terrorist financing identified at international, European, national, sectoral level and at the level of the professionals themselves. Those policies, controls and procedures shall be proportionate to the nature, specificities and size of the professionals.

The policies, controls and procedures referred to in the first subparagraph shall include:

- (a) the development of internal policies, controls and procedures, including model risk management practices, customer due diligence, cooperation, record-keeping, internal control, compliance management including, where appropriate with regard to the size and

⁸⁶ Law of 13 February 2018

⁸⁷ Law of 13 February 2018

nature of the business, the appointment of a compliance officer at appropriate hierarchical level, and employee screening;

- (b) where appropriate with regard to the size and nature of the business, an independent audit function to test the internal policies, controls and procedures referred to in point (a).

The professionals shall obtain approval from their senior management for the policies, controls and procedures that they put in place and monitor and enhance the measures taken, where appropriate.

The professionals shall appoint, where appropriate, among the members of their management body or effective direction, the person responsible for compliance with the professional obligations as regards the fight against money laundering and terrorist financing.”⁸⁸

- “(2) The professionals shall take measures proportionate to their risks, nature and size so that their employees are aware of the professional obligations as regards the fight against money laundering and terrorist financing, as well as the relevant data protection requirements. Those measures shall include participation of their employees in special ongoing training programmes to help them recognise operations which may be related to money laundering or terrorist financing and to instruct them as to how to proceed in such cases.

Where a natural person falling within any of the categories listed in Article 2(1) performs professional activities as an employee of a legal person, the obligations in this section shall apply to that legal person rather than to the natural person.”⁸⁹

(Law of 13 February 2018)

- “(2a) The supervisory authorities, self-regulatory bodies and the Financial Intelligence Unit shall ensure that the professionals have access to up-to-date information on the practices of criminals committing money-laundering or terrorist-financing offences and on indicators leading to the recognition of suspicious transactions.”

- (3) “The professionals”⁹⁰ shall have systems in place that enable them to respond fully and rapidly to enquiries from the Luxembourg authorities responsible for combating money laundering and terrorist financing as to whether they maintain or have maintained during the previous five years a business relationship with specified natural or legal persons and on the nature of that relationship“, through secure channels and in a manner that ensures full confidentiality of the enquiries”⁹¹.⁹²

(Law of 13 February 2018)

- “(4) The professionals shall have in place appropriate procedures, proportionate to their nature and size, for their employees, or persons in a comparable position, to report internally, through a specific, independent and anonymous channel, breaches of professional obligations as regards the fight against money laundering and terrorist financing.”

(Law of 13 February 2018)

“Article 4-1. Group-wide policies and procedures

- (1) The professionals that are part of a group shall implement group-wide policies and procedures, including data protection policies and policies and procedures for sharing information within the group for anti-money laundering and counter terrorist financing purposes. Those policies and procedures shall be implemented effectively at the level of branches and majority-owned subsidiaries established in Member States and third countries.
- (2) The professionals that operate establishments in another Member State shall ensure that those establishments respect the national provisions of that other Member State transposing Directive (EU) 2015/849.

⁸⁸ Law of 13 February 2018

⁸⁹ Law of 13 February 2018

⁹⁰ Law of 13 February 2018

⁹¹ Law of 13 February 2018

⁹² Law of 17 July 2008

- (3) The professionals shall apply in their branches and majority-owned subsidiaries located abroad measures at least equivalent to those laid down in Articles 2-2 to 7, their implementing measures or Directive (EU) 2015/849 with regard to risk assessment, customer due diligence, adequate internal management and cooperation with the authorities.

The professionals shall pay particular attention that this principle is complied with in respect of their branches and subsidiaries in countries which do not or insufficiently apply the anti-money laundering and counter terrorist financing measures.

Where the minimum standards on combating money laundering and the financing of terrorism in a country where the professionals have branches or majority-owned subsidiaries differ from those applicable in Luxembourg, those branches and subsidiaries shall apply the higher standard, to the extent that host country laws and regulations permit. In this context, if the standards of the country in which those branches and subsidiaries are located are less strict than those of Luxembourg, the data protection rules applicable in Luxembourg with respect to the fight against money laundering and terrorist financing shall be complied with.

- (4) Where a third country's law does not permit the implementation of the policies and procedures required under paragraph 1, the professionals shall ensure that their branches and majority-owned subsidiaries in that third country apply additional measures to effectively handle the risk of money laundering or terrorist financing, and inform the supervisory authorities and self-regulatory bodies. If the additional measures are not sufficient, the supervisory authorities and self-regulatory bodies shall exercise additional supervisory actions, including requiring that the group does not establish or that it terminates business relationships, and does not undertake transactions and, where necessary, requesting the group to close down its operations in the third country.”

“Article 5. Cooperation requirements with the authorities

- (1) The professionals, their *dirigeants* and employees are obliged to cooperate fully with the Luxembourg authorities responsible for combating money laundering and terrorist financing.

Without prejudice to the obligations vis-à-vis the “supervisory authorities or self-regulatory bodies”⁹³, the professionals, their directors, *dirigeants* and employees are required to:

- (a) inform promptly, on their own initiative, the Financial Intelligence Unit (...) ⁹⁴ when they know, suspect or “have reasonable grounds to suspect that money laundering, an associated predicate offence or terrorist financing”⁹⁵ is being committed or has been committed or attempted, in particular in consideration of the person concerned, its development, the origin of the funds, the purpose, nature and procedure of the operation. This report must be accompanied by all supporting information and documents having prompted the report.

(*Law of 10 August 2018*)

“All suspicious transactions, including attempted suspicious transactions, shall be reported, regardless of the amount of the transaction.”

The obligation to report suspicious transactions shall apply regardless of whether those filing the report can determine the predicate offence.

- (b) provide without delay to the Financial Intelligence Unit, at its request, any information. This obligation includes the submission of the documents on which the information is based.

“The identity of the professionals, *dirigeants* and employees having provided such information” ⁹⁶ is kept confidential by the aforementioned authorities, unless disclosure is essential to ensure the regularity of legal proceedings or to establish proof of the facts forming the basis of these proceedings.

⁹³ Law of 10 August 2018

⁹⁴ Law of 13 February 2018

⁹⁵ Law of 10 August 2018

⁹⁶ Law of 10 August 2018

- (1a) With regard to combating terrorist financing, the obligation to report suspicious transactions set forth in paragraph 1, point (a) also applies to funds where there are reasonable grounds to suspect or they are suspected to be linked or related to, or to be used for terrorism, terrorist acts, by terrorist associations, organisations or groups or by those who finance terrorism.
- (2) The communication of information and documents referred to in paragraphs 1 and 1a is usually carried out by the individual(s) appointed by the professionals for this purpose, in accordance with the procedures laid down in “Article 4(1)”⁹⁷. The elements of information and documents provided to the authorities, other than the judicial authorities, in application of paragraphs 1 and 1a may only be used in the combat against money laundering and terrorist financing.
- (3) “The professionals must refrain from carrying out transactions of which they know, suspect or have reasonable grounds to suspect to be related to money laundering, to an associated predicate offence or to terrorist financing until they have informed the Financial Intelligence Unit thereof in accordance with paragraphs 1 and 1a and have complied with any specific instructions from the Financial Intelligence Unit. The Financial Intelligence Unit may give instructions not to carry out the operations relating to the transaction or the customer.

Where refraining from carrying out transactions referred to in sub-paragraph 1 is impossible or is likely to frustrate efforts to pursue the beneficiaries of a suspected operation, the professionals concerned shall inform the Financial Intelligence Unit immediately afterwards.

Where the instruction is communicated orally, it must be followed by a written confirmation within 3 business days, otherwise the effects of the instruction cease on the third business day at midnight.

The professional is not authorised to disclose this instruction to the customer without the express prior consent of the Financial Intelligence Unit.

The Financial Intelligence Unit may order systematically and at any time the total or partial withdrawal of the order not to carry out the operations pursuant to sub-paragraph 1.”⁹⁸

- (3a) The provisions of paragraph 1, point (b) and paragraph 3 apply even in the absence of a suspicious transaction report made by the professionals according to paragraph 1, point (a) and paragraph 1a.
- (4) “No professional secrecy applies vis-à-vis the Financial Intelligence Unit in respect of the provisions of paragraphs 1, 1a and 3.

The disclosure in good faith to the Luxembourg authorities responsible for combating money laundering and terrorist financing “or, if the professional is a lawyer, to the relevant President of the Bar Association (*bâtonnier de l’Ordre des avocats*)”⁹⁹, by the professionals or employees or *dirigeants* of such professionals of any information referred to above “in accordance with this article and Article 7”¹⁰⁰ does not constitute a breach of any restriction on disclosure of information imposed by contract“, by professional secrecy or a legislative, regulatory or administrative provision”¹⁰¹ and shall not involve such persons in liability of any kind“, even in circumstances where they were not precisely aware of the “associated”¹⁰² predicate offence and regardless of whether illegal activity actually occurred”¹⁰³.”

(Law of 13 February 2018)

“Individuals, including employees and representatives of the professionals, who report suspicions of money laundering or terrorist financing internally or to the Financial Intelligence Unit, shall be protected from being exposed to threats or hostile action, and in particular from adverse or discriminatory employment actions.”

⁹⁷ Law of 10 August 2018

⁹⁸ Law of 10 August 2018

⁹⁹ Law of 10 August 2018

¹⁰⁰ Law of 13 February 2018

¹⁰¹ Law of 13 February 2018

¹⁰² Law of 10 August 2018

¹⁰³ Law of 13 February 2018

- (4a) Reports, information and documents supplied by the professionals pursuant to the provisions of paragraphs 1 and 1a cannot be used against these professionals in proceedings on the basis of Article 9.
- (5) The professionals and their *dirigeants* and employees shall not disclose to the customer concerned or to other third persons the fact that information “is being, will be or has been reported or provided”¹⁰⁴ to the authorities in accordance with paragraphs 1, 1a, 2 and 3 or that a money laundering or terrorist financing investigation by the Financial Intelligence Unit is being or may be carried out.”¹⁰⁵

“This prohibition does not apply to a disclosure to the “supervisory”¹⁰⁶ authorities or, if appropriate, the self-regulatory bodies of the different professionals.

“The prohibition laid down in the first sub-paragraph shall not apply to disclosure between the credit institutions and financial institutions or between those institutions and their branches and majority-owned subsidiaries located in third countries, provided that those branches and majority-owned subsidiaries fully comply with the group-wide policies and procedures, including procedures for sharing information within the group, in accordance with Article 4-1 or Article 45 of Directive (EU) 2015/849, and that the group-wide policies and procedures comply with the requirements laid down in this law or in Directive (EU) 2015/849.”¹⁰⁷

The prohibition laid down in the first sub-paragraph of this paragraph shall not prevent the disclosure between the professionals referred to in Article 2(1)(8), Article 2(1)(9), Article 2(1)(11), Article 2(1)(12) and Article 2(1)(13), from Member States or from Third Countries which impose requirements equivalent to those laid down in this law or in “Directive (EU) 2015/849”¹⁰⁸, who perform their professional activities, whether as employees or not, within the same legal person or a network. For the purposes of this sub-paragraph, a “network” means the larger structure to which the person belongs and which shares common ownership, management and compliance control.

For credit and financial institutions and the professionals referred to in Article 2(1)(8), Article 2(1)(9), Article 2(1)(11), Article 2(1)(12) and Article 2(1)(13), in cases related to the same customer and the same transaction involving two or more professionals, the prohibition laid down in the first sub-paragraph of this paragraph shall not prevent disclosure between the relevant professionals provided that they are situated in a Member State, or in a Third Country which imposes requirements equivalent to those laid down in this law or in “Directive (EU) 2015/849”¹⁰⁹ and that they are from the same professional category and are subject to equivalent obligations as regards professional secrecy and personal data protection. The information exchanged must be used exclusively for the purposes of the prevention of money laundering and terrorist financing.

By way of derogation from the preceding paragraphs, a grand-ducal regulation can prohibit the disclosure between the aforementioned professionals and institutions or persons situated in a Third Country if there is a risk of money laundering or terrorist financing.

Where the professionals referred to in Article 2(1)(8), Article 2(1)(9), Article 2(1)(11), Article 2(1)(12) and Article 2(1)(13), seek to dissuade a customer from engaging in illegal activity, this shall not constitute a disclosure within the meaning of the first sub-paragraph.”¹¹⁰

¹⁰⁴ Law of 10 August 2018

¹⁰⁵ Law of 27 October 2010

¹⁰⁶ Law of 13 February 2018

¹⁰⁷ Law of 10 August 2018

¹⁰⁸ Law of 10 August 2018

¹⁰⁹ Law of 10 August 2018

¹¹⁰ Law of 17 July 2008

(Law of 10 August 2018)

“(6) Information on suspicions that funds are the proceeds of money laundering, of an associated predicate offence or are related to terrorist financing reported to the Financial Intelligence Unit shall be shared within the group, unless otherwise instructed by the Financial Intelligence Unit.”

Chapter 3: Special provisions for certain professionals

Section 1: Special provisions applicable to the insurance sector

Article 6. (Repealed by the Law of 17 July 2008)

Section 2: Special provisions applicable to lawyers

Article 7.

“(1) Lawyers are not subject to the obligations referred to in Article 3(4)(5) and in Article 5(1) and (1a) with regard to information they receive from or obtain on one of their clients, in the course of providing legal advice or ascertaining the legal position for their client or performing the task of defending or representing that client in judicial proceedings or concerning such proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings.

(2) In lieu and instead of a direct information or transmission of documents to the Financial Intelligence Unit the information or documents referred to in Article 5(1) and (1a) have to be disclosed to the President of the Bar Association (*bâtonnier de l’Ordre des Avocats*) before whom the disclosing lawyer is enrolled in conformity with the Law of 10 August 1991 on the legal profession, as amended. In this case, the President of the Bar Association (*bâtonnier de l’Ordre des Avocats*) shall verify compliance with the conditions laid down under the previous paragraph and under Article 2(1)(12). In case of compliance, he shall transmit the information or documents received to the Financial Intelligence Unit.”¹¹¹

(...)¹¹²

(Law of 13 February 2018)

“Chapter 3-1: Supervision and sanctions

Section 1 - Supervision of the professionals

Article 8-1. Exercise of supervisory powers by the supervisory authorities and self-regulatory bodies

(1) The supervisory authorities and self-regulatory bodies shall monitor effectively and take the measures necessary to ensure compliance by the professionals with their professional obligations as regards the fight against money laundering and terrorist financing.

(2) Where the professionals with the head office in another Member State operate establishments in Luxembourg, the supervisory authorities and self-regulatory bodies shall supervise that the establishments operated in Luxembourg respect the professional obligations laid down in Articles 2-2, 3, 3-1, 3-2, 3-3, 4, 4-1, 5 and 7 and their implementing measures.

The supervisory authorities and self-regulatory bodies shall cooperate with their respective counterparts of the Member State in which the professionals have their head office, to ensure effective supervision of the requirements of this law, its implementing measures and Directive (EU) 2015/849.

(3) In the case of electronic money issuers as defined in point (3) of Article 2 of Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending

¹¹¹ Law of 27 October 2010

¹¹² Law of 13 February 2018

Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC, hereinafter referred to as "Directive 2009/110/EC", and payment service providers as defined in point (9) of Article 4 of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC, hereinafter referred to as "Directive 2007/64/EC", established in Luxembourg in forms other than a branch and whose head office is situated in another Member State, the supervision referred to in the first subparagraph of paragraph 2 may include the taking of appropriate and proportionate measures on the basis of Article 8-4 to address serious failings that require immediate remedies. Those measures shall be temporary and be terminated when the failings identified are addressed, including with the assistance of or in cooperation with the supervisory authorities of the Member State in which the professionals have their head office.

Electronic money issuers as defined in point (3) of Article 2 of Directive 2009/110/EC and payment service providers as defined in point (9) of Article 4 of Directive 2007/64/EC established in Luxembourg in forms other than a branch, and whose head office is situated in another Member State, shall appoint a central contact point in Luxembourg to ensure, on behalf of the appointing institution, compliance with anti-money laundering and counter terrorist financing rules and to facilitate supervision by supervisory authorities. The central contact point in Luxembourg shall provide, on request, the supervisory authorities with documents and information necessary to exercise their functions within the limits laid down in this law.

- (4) The supervisory authorities and self-regulatory bodies shall apply a risk-based approach to supervision. When applying this approach, the supervisory authorities and self-regulatory bodies shall:
 - (a) ensure that they have a clear understanding of the risks of money laundering and terrorist financing present in Luxembourg;
 - (b) have on-site and off-site access to all relevant information on the specific domestic and international risks associated with customers, products and services of the professionals; and
 - (c) base the frequency and intensity of on-site and off-site supervision on the risk profile of the professionals, and on the risks of money laundering and terrorist financing in Luxembourg.
- (5) The assessment of the money laundering and terrorist financing risk profile of the professionals, including the risks of non-compliance, shall be reviewed by the supervisory authorities and self-regulatory bodies both periodically and when there are major events or developments in their management and operations.
- (6) The supervisory authorities and self-regulatory bodies shall take into account the degree of discretion allowed to the professionals, and appropriately review the risk assessments underlying this discretion, and the adequacy and implementation of their internal policies, controls and procedures.

Article 8-2. Supervisory powers of the supervisory authorities

- (1) For the purposes of applying this law, the supervisory authorities shall have all the supervisory and investigatory powers which are necessary to exercise their functions within the limits laid down in this law.

The powers of the supervisory authorities referred to in the first subparagraph include the right to:

- (a) have access to any document in any form whatsoever, and to receive or take a copy of it;
- (b) request information from any person and, where applicable, summon any person subject to their respective supervisory power in accordance with Article 2-1 and hear that person to obtain information;
- (c) carry out on-site inspections or investigations, including seize any document, electronic file or other things that seem useful to ascertaining the truth, with the persons subject to their respective supervisory power pursuant to Article 2-1;

- (d) require the communication of recordings of telephone conversations, electronic communications and data traffic records held by the persons subject to their respective supervisory power in accordance with Article 2-1;
 - (e) enjoin from the persons subject to their respective supervisory powers in accordance with Article 2-1 to cease, within such period as they may prescribe, any practice that is contrary to Articles 2-2 to 5 or their implementing measures and to desist from repetition of that conduct;
 - (f) request the freezing or sequestration of assets with the President of the *Tribunal d'arrondissement* (District Court) of Luxembourg deciding on request;
 - (g) impose temporary prohibition, for a period not exceeding 5 years, of professional activities with respect to persons subject to the prudential supervision of the supervisory authority concerned, as well as members of the management body, employees and tied agents linked to these persons;
 - (h) require *réviseurs d'entreprises* (statutory auditors) and *réviseurs d'entreprises agréés* (approved statutory auditors) of the persons subject to their respective supervisory powers in accordance with Article 2-1 to provide information;
 - (i) to refer information to the State Prosecutor for criminal prosecution;
 - (j) require *réviseurs d'entreprises* (statutory auditors), *réviseurs d'entreprises agréés* (approved statutory auditors) or experts to carry out on-site verifications or investigations of persons subject to their respective supervisory powers in accordance with Article 2-1. These verifications and investigations are carried out at the expense of the person concerned.
- (2) When imposing the injunction laid down in point (e) of paragraph 1, the supervisory authorities may impose a coercive fine upon the professionals subject to this measure in order to compel these persons to act upon the injunction. The amount of this coercive fine, on the grounds of an observed failure to perform, may not be greater than EUR 1,250 per day, with the understanding that the total amount imposed due to an observed failure to perform may not exceed EUR 25,000.
- (3) In application of point (e) of paragraph 1, if the situation has not been remedied by the end of the period prescribed by the supervisory authorities, the supervisory authority may, with respect to persons subject to its prudential supervision:
- (a) suspend the members of the management body or any other persons who, by their actions, negligence or lack of prudence brought about the situation found to exist and whose continued exercise of functions may prejudice the implementation of recovery or reorganisation measures;
 - (b) suspend the exercise of voting rights attached to shares or units held by shareholders or members whose influence is likely to operate to the detriment of the prudent and sound management of the person or which are held responsible for the practice that is contrary to Articles 2-2 to 5 or their implementing measures;
 - (c) suspend the pursuit of business by the person or, if the situation found to exist concerns a particular area of activity, the pursuit of such activity.
- (4) The powers of the AED referred to in the first subparagraph of paragraph 1 include the right to make use of all the databases of which it is responsible for the processing and to have at its disposal all the information required for assessing if the professionals comply with their professional obligations under this law.

For the purposes of the first subparagraph, the AED shall have access to the Registre de Commerce et des Sociétés.

The Minister responsible for economy shall transmit to the AED on a monthly basis a list of the professionals having an authorisation of establishment and subject to the supervisory powers of the AED in accordance with Article 2-1(8).

- (5) In order to ensure the supervision of the professionals laid down in point (14a) of Article 2, the AED and the Administration des douanes et accises shall cooperate closely and be authorised to exchange information that is necessary for the fulfilment of their respective duties.

Article 8-3. Reporting of breaches to the supervisory authorities

- (1) The supervisory authorities shall establish effective and reliable mechanisms to encourage the reporting of potential or actual breaches of the professional obligations as regards the fight against money laundering and terrorist financing by the professionals subject to their respective supervisory powers in accordance with Article 2-1.
- (2) The mechanisms referred to in paragraph 1 shall include at least:
 - (a) specific procedures for the receipt of reports on breaches and their follow-up;
 - (b) appropriate protection for employees or persons in a comparable position, of legal persons subject to the supervision of the supervisory authorities under Article 2-1 who report breaches committed within this entity;
 - (c) appropriate protection for the accused person;
 - (d) protection of personal data concerning both the person who reports the breaches and the natural person who is allegedly responsible for the breach, in compliance with the provisions of the Law of 2 August 2002 on the protection of individuals with regard to the processing of personal data, as amended;
 - (e) clear rules that ensure that confidentiality is guaranteed in all cases in relation to the person who reports the breaches referred to in paragraph 1, unless disclosure is required by or pursuant to a law.

Section 2 - Administrative enforcement

Article 8-4. Administrative sanctions and other administrative measures

- (1) The supervisory authorities have the power to impose administrative sanctions and to take other administrative measures laid down in paragraph 2 with respect to the professionals subject to their respective supervisory powers in accordance with Article 2-1 which do not comply with the professional obligations laid down in Articles 2-2, 3, 3-1, 3-2, 3-3, 4, 4-1 and 5 or their implementing measures, as well as with respect to the members of their executive bodies, effective *dirigeants* or other persons responsible for the non-compliance by the professionals with their obligations.
- (2) In the event of a breach referred to in paragraph 1, the supervisory authorities have the power to impose the following administrative sanctions and to take the following administrative measures:
 - (a) a warning;
 - (b) a reprimand;
 - (c) a public statement which identifies the natural or legal person and the nature of the breach;
 - (d) where the professionals are subject to authorisation granted by the supervisory authority which has the power to supervise the professionals in accordance with Article 2-1, the withdrawal or suspension of that authorisation;
 - (e) a temporary ban, imposed by the CSSF and the CAA, for a period not exceeding 5 years:
 - (i) to exercise a professional activity of the financial sector or to carry out one or several transactions with respect to the persons subject to their respective supervisory powers in accordance with Article 2-1; or
 - (ii) to exercise managerial functions within the professionals subject to their respective supervisory powers in accordance with Article 2-1 with respect to any person discharging managerial responsibilities within such professionals or any other natural person held liable for the breach;
 - (f) maximum administrative sanctions of twice the amount of the benefit derived from the breach, where that benefit can be determined, or EUR 1,000,000 at the most.

In the cases referred in the first subparagraph, the AED shall cooperate closely with the Minister responsible for economy. Based on the reasoned opinion of the director of the AED, the Minister of Economy shall decide the final or temporary withdrawal of the authorisation of establishment, until the director of the AED issues a new opinion, as soon as the non-compliance with the provisions referred to in paragraph 1 affect the *dirigeant's* professional properness.

- (3) Where the professionals concerned are credit institutions or financial institutions, the maximum administrative sanction referred to in point (f) of paragraph 2 shall amount to:
 - (a) in the case of legal persons, EUR 5,000,000 or 10 % of the total annual turnover according to the latest available accounts approved by the management body; where the professionals are parent undertakings or subsidiaries of a parent undertaking required to prepare consolidated financial accounts in accordance with Article 22 of Directive 2013/34/EU, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant accounting directives according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking;
 - (b) in the case of natural persons, EUR 5,000,000.
- (4) The supervisory authority may impose an administrative sanction of between EUR 250 and EUR 250,000 on the natural and legal persons obstructing the application of their powers laid down in Articles 8-2(1), failing to act in response to injunctions issued pursuant to point (e) of Article 8-2(1), or purposefully providing it with documents or other information that are incomplete, incorrect or false following a request based on Article 8-2(1).
- (5) The expenses for the forced recovery of sanctions shall be borne by the persons on whom the sanctions are imposed.

Article 8-5. Exercise of the sanction powers

- (1) When determining the type and level of administrative sanctions, the supervisory authorities take into account all relevant circumstances, including, where applicable:
 - (a) the gravity and the duration of the breach;
 - (b) the degree of responsibility of the natural or legal person held responsible for the breach;
 - (c) the financial situation of the natural or legal person held responsible for the breach, as indicated for example by the total turnover of the legal person held responsible or the annual income of the natural person held responsible;
 - (d) the benefit derived from the breach by the natural or legal person held responsible, insofar as it can be determined;
 - (e) the losses to third parties caused by the breach, insofar as they can be determined;
 - (f) the level of cooperation of the natural or legal person held responsible for the breach with the supervisory authorities and the Financial Intelligence Unit;
 - (g) previous breaches by the natural or legal person held responsible;
 - (h) any potential systemic consequences of the offence.
- (2) In the exercise of their powers to impose administrative sanctions and measures, the supervisory authorities shall cooperate closely in order to ensure that those administrative sanctions or measures produce the desired results and coordinate their action when dealing with cross-border cases.

Article 8-6. Publication of the decisions by the supervisory authorities

- (1) The supervisory authorities shall publish any decision, into force (*force de chose décidée*) or which has become res judicata (*force de chose jugée*) and imposing an administrative sanction or measure for breach of the provisions referred to in Article 8-4(1), on their official website immediately after the person sanctioned is informed of that decision. The publication shall include information on the type and nature of the breach and the identity of the persons responsible.

The supervisory authorities shall assess on a case-by-case basis the proportionality of the publication of the identity or personal data of the person responsible referred to in the first subparagraph. Where they consider this publication as disproportionate or where this publication jeopardises the stability of financial markets or an on-going investigation, the supervisory authorities shall:

- (a) delay the publication of the decision to impose an administrative sanction or measure until the moment at which the reasons for not publishing it cease to exist;

- (b) publish the decision to impose an administrative sanction or measure on an anonymous basis in a manner in accordance with national law, if such anonymous publication ensures an effective protection of the personal data concerned; in the case of a decision to publish an administrative sanction or measure on an anonymous basis, the publication of the relevant data may be postponed for a reasonable period of time if it is foreseen that within that period the reasons for anonymous publication shall cease to exist;
 - (c) not publish the decision to impose an administrative sanction or measure at all in the event that the options set out in points (a) and (b) are considered insufficient to ensure:
 - (i) that the stability of financial markets would not be put in jeopardy; or
 - (ii) the proportionality of the publication of the decision with regard to measures which are deemed to be of a minor nature.
- (2) The supervisory authorities shall ensure that any publication in accordance with this article shall remain on their official website for a period of five years after its publication. However, personal data contained in the publication shall only be kept on the official website of the supervisory authority for a period of 12 months at the most.

Article 8-7. Administrative remedies

The *Tribunal administratif* (Administrative Tribunal) can undertake a full review of the merits of the decision taken by the supervisory authorities in connection with this chapter. The case must be filed within one month from the date of notification of the contested decision, or otherwise shall be time-barred.

Article 8-8. Informing the European Supervisory Authorities

The supervisory authorities shall inform the European Supervisory Authorities of all administrative sanctions and measures imposed on credit institutions and financial institutions in accordance with Article 8-4, including of any remedy in relation thereto and the outcome thereof.

The supervisory authorities shall check the existence of a relevant conviction in the criminal record of the person concerned. Any exchange of information for those purposes shall be carried out in accordance with the Law of 29 March 2013 on the organisation of the criminal record, as amended.

Article 8-9. Recovery of pecuniary sanctions by the AED

- (1) For the recovery of debts resulting from administrative sanctions and other measures which it imposed in accordance with this law, the AED shall have the following means available:
 - (a) the right of enforcement by administrative constraint;
 - (b) the right to register a mortgage pursuant to the administrative constraint;
 - (c) the right to issue a third-party debt order (*somation à tiers détenteur*) in accordance with Article 8 of the Law of 27 November 1933 on the recovery of direct contributions, excise duties on spirits and social security contributions, as amended.
- (2) The first act in the proceedings for the debt recovery by the AED pursuant to this law shall be a constraint issued by the receiver of the Bureau de recette in charge of its recovery or by his representative. The constraint shall be endorsed and rendered enforceable by the director of the AED or his representative. It shall be served by writ of a bailiff or by an agent of the AED or by post. Legal interests shall be due as from the day on which the constraint is served.
- (3) The enforcement of the constraint may only be interrupted by reasoned opposition with a summons to appear on a determined date (*assignation à jour fixe*) before the Luxembourg *Tribunal d'arrondissement* (District Court), sitting in civil matters. The writ containing the opposition shall be served on the State in the person of the civil servant who has issued the constraint. The opposition to the constraint may only be based on the nullity for defect in form (*nullités de forme*) either of the constraint or of the order or on the causes for the extinguishment of debt.
- (4) In case of distraint (*saisie-exécution*), the proceedings are carried out by a bailiff or an agent of the AED in accordance with the New Code of Civil Procedure.

- (5) Acts to proceedings, including the constraints and commands, acts of seizure and procedural documents to which the debt recovery of the AED gives rise, shall be exempt from the stamp and registration duties and formalities.”

Chapter 4: Criminal sanctions

Article 9.

“A fine of between “EUR 12,500 and EUR 5,000,000”¹¹³ shall be imposed on any person who knowingly contravenes the provisions of “Articles 2-2, 3, 3-1, 3-2, 3-3, 4, 4-1 and 5”¹¹⁴.”¹¹⁵

(Law of 27 October 2010)

“TITLE I-1

Cooperation between competent authorities

“Article 9-1. Cooperation between the supervisory authorities and the Financial Intelligence Unit

The supervisory authorities and the Financial Intelligence Unit shall cooperate closely. The supervisory authorities shall cooperate closely with each other.

For the purposes of the first subparagraph, the supervisory authorities and the Financial Intelligence Unit are authorised to exchange information that is necessary for the fulfilment of their respective duties in the framework of the fight against money laundering and terrorist financing. The supervisory authorities and the Financial Intelligence Unit shall use the exchanged information solely to carry out these duties.”¹¹⁶

(Law of 13 February 2018)

“Article 9-2. Cooperation with the European Supervisory Authorities

The CSSF and the CAA may provide the European Supervisory Authorities with all the information that they have in the framework of their duties laid down in Article 2-1 and that are necessary to allow the European Supervisory Authorities to carry out their duties under Directive (EU) 2015/849.

The CSSF and the CAA shall inform the ESAs of instances in which a third country's law does not permit the implementation of the policies and procedures required under Article 4-1(1).”

(Law of 10 August 2018)

“TITLE I-II:

Appeal against the instruction of the Financial Intelligence Unit

Article 9-3.

- (1) Any person demonstrating an interest in the property concerned by the instruction from the Financial Intelligence Unit not to carry out the operations in accordance with Article 5(3) and the professional concerned by this instruction may request, by simple request to the *Chambre du Conseil du Tribunal d'arrondissement de Luxembourg* (Judges' Council Chamber of the Luxembourg District Court), the withdrawal of this instruction.
- (2) The request shall be communicated within 24 hours upon its receipt by the registry (*greffe*) of the *Chambre du Conseil* to the Financial Intelligence Unit and to the State prosecutor.
- (3) The Financial Intelligence Unit shall draw up a written and reasoned report justifying the instruction taken in application of Article 5(3) and transmit it to the registry (*greffe*) of the *Chambre du Conseil* within five days of the receipt of the request. This report shall be communicated by the registry (*greffe*) of the *Chambre du Conseil* to the State prosecutor and the requestor.
- (4) The *Chambre du Conseil* may request or authorise a judge of the Financial Intelligence Unit to provide his/her observations orally.

¹¹³ Law of 13 February 2018

¹¹⁴ Law of 13 February 2018

¹¹⁵ Law of 27 October 2010

¹¹⁶ Law of 13 February 2018

- (5) The *Chambre du Conseil* shall rule based on the report transmitted in accordance with paragraph 3, the comments made in application of paragraph 4 and after hearing the State prosecutor and the requestor.
- (6) The order of the *Chambre du Conseil* can be appealed by the State prosecutor or by the requestor in the forms and within the deadlines set out in Articles 133 and following of the Code of Criminal Procedure.”

TITLE II
Amending, repealing and various provisions

... (p.m.)

Article 25.

This law may be referred to in abbreviated form using the designation “law on the fight against money laundering and terrorist financing”.

(...) ¹¹⁷

¹¹⁷ Law of 13 February 2018

“ANNEX I

Activities or operations referred to in point (e) of Article 1(3a):

- (1) Acceptance of deposits and other repayable funds from the public, including portfolio management.
- (2) Lending, including consumer credit, mortgage credit, factoring, with or without recourse, and financing of commercial transactions (including forfeiting).
- (3) Financial leasing, not including financial leasing arrangements in relation to consumer products.
- (4) Payment services as defined in point (3) of Article 4 of Directive 2007/64/EC.
- (5) Funds or value transfer services insofar as this activity is not covered by point (4). It refers to financial services consisting of accepting cash, cheques or any other payment instrument or value deposit and paying an equivalent amount in cash or any other form to a payee by means of a communication, a message, a transfer or a clearing system to which the funds or value transfer service belongs. The operations carried out through these services may involve one or several intermediaries and a third-party recipient of the final payment and may include any new means of payment. It does not refer to the exclusive provision of messages or any other support system for the purposes of transferring funds to financial institutions.
- (6) Issue and administration of other means of payment (e.g. cheques, travellers' cheques, money orders and bank drafts, letters of credit) insofar as such activity is not covered by points (4) or (15).
- (7) Financial guarantees and commitments.
- (8) Trading and transactions for own account or for account of customers in:
 - (a) money market instruments (such as, cheques, bills, banknotes, certificates of deposit (CDs), derivatives);
 - (b) foreign exchange;
 - (c) exchange, interest rate and index instruments;
 - (d) transferable securities;
 - (e) commodity futures trading;
 - (f) financial futures and options;
- (9) Participation in securities issues and the provision of financial services related to such issues.
- (10) Advice to undertakings on capital structure, industrial strategy and related questions and advice as well as services relating to mergers and the purchase of undertakings.
- (11) Money broking.
- (12) Individual and collective portfolio management and advice.
- (13) Safekeeping and administration of cash or liquid securities.
- (14) Safe custody services.
- (15) Issuing electronic money.
- (16) Otherwise investing, administering or managing funds or money on behalf of other persons.
- (17) Underwriting and placement of life insurance and other investment related insurance by both, insurance undertakings and insurance intermediaries (agents and brokers).
- (18) Money and currency changing.

ANNEX II

The following is a non-exhaustive list of risk variables that the professionals shall consider when determining to what extent to apply customer due diligence measures in accordance with Article 3(2a):

- (i) the purpose of an account or relationship;
- (ii) the level of assets to be deposited by a customer or the size of transactions undertaken;
- (iii) the regularity or duration of the business relationship.

ANNEX III

The following is a non-exhaustive list of factors and types of evidence of potentially lower risk referred to in the second subparagraph of Article 3-1(2):

1. Customer risk factors:

- (a) public companies listed on a stock exchange and subject to disclosure requirements (either by stock exchange rules or through law or enforceable means), which impose requirements to ensure adequate transparency of beneficial ownership;
- (b) public administrations or enterprises from countries or territories having a low level of corruption;
- (c) customers that are resident in geographical areas of lower risk as set out in point (3);

2. Product, service, transaction or delivery channel risk factors:

- (a) life insurance policies for which the premium is low;
- (b) insurance policies for pension schemes if there is no early surrender option and the policy cannot be used as collateral;
- (c) a pension, superannuation or similar scheme that provides retirement benefits to employees, where contributions are made by way of deduction from wages, and the scheme rules do not permit the assignment of a member's interest under the scheme;
- (d) financial products or services that provide appropriately defined and limited services to certain types of customers, so as to increase access for financial inclusion purposes;
- (e) products where the risks of money laundering and terrorist financing are managed by other factors such as purse limits or transparency of ownership (particularly, certain types of electronic money);

3. Geographical risk factors:

- (a) Member States;
- (b) third countries having effective anti-money laundering and counter terrorist financing systems;
- (c) third countries identified by credible sources as having a low level of corruption or other criminal activity;
- (d) third countries which, on the basis of credible sources such as mutual evaluations, detailed assessment reports or published follow-up reports, have requirements to combat money laundering and terrorist financing consistent with the revised FATF Recommendations and effectively implement those requirements.

ANNEX IV

The following is a non-exhaustive list of factors and types of evidence of potentially higher risk referred to in the second subparagraph of Article 3-2(1):

1. Customer risk factors:

- (a) the business relationship is conducted in unusual circumstances;
- (b) customers that are resident in geographical areas of higher risk as set out in point (3);
- (c) legal persons or arrangements that are personal asset-holding vehicles;
- (d) companies that have nominee shareholders or shares in bearer form;
- (e) businesses that are cash-intensive;
- (f) the ownership structure of the company appears unusual or excessively complex given the nature of the company's business;

2. Product, service, transaction or delivery channel risk factors:

- (a) private banking;
- (b) products or transactions that might favour anonymity;
- (c) non-face-to-face business relationships or transactions, without certain safeguards, such as electronic signatures;
- (d) payment received from unknown or unassociated third parties;

- (e) new products and new business practices, including new delivery mechanism, and the use of new or developing technologies for both new and pre-existing products;

3. Geographical risk factors:

- (a) without prejudice to Article 3-2(2), countries identified by credible sources, such as mutual evaluations, detailed assessment reports or published follow-up reports, as not having effective anti-money laundering and counter terrorist financing systems;
- (b) countries identified by credible sources as having significant levels of corruption or other criminal activity;
- (c) countries subject to sanctions, embargos or similar measures issued by, for example, the European Union or the United Nations;
- (d) countries providing funding or support for terrorist activities, or that have designated terrorist organisations operating within their country.”¹¹⁸

¹¹⁸ Law of 13 February 2018