Keywords :

- Money Laundering
- Financing of Terrorism
- Luxembourg Investment Fund Managers
- Luxembourg Funds
- IFM

FAQ CSSF – AML/CTF Clarifications

Luxembourg Fund Industry

Mazars Regulatory Watch – December 2019

MAZARS

Following the results of the Luxembourg national risk assessment, which classifies the fund industry as posing a high ML/FT risk, the CSSF set their focus to review and provide further clarification of certain aspects outlined in previous publications.

On November 25th, 2019 the CSSF issued a FAQ[1] providing further clarification for persons involved with AML/CTF for Luxembourg Investment Funds ("**Funds**") and Investment Fund Managers ("**IFMs**") that are subject to supervision by the CSSF. This important clarification applies to Funds (e.g UCITS, UCI, SICAV and SICAR) and IFMs (e.g those covered by Chapter 15 or 16 of the 2010 Law[2] and AIFMs[3]).

I. RESPONSIBLE PERSONS FOR AML/CTF

Pursuant to Article 4(1) of the AML Law[4], IFMs and Funds must appoint **two persons in charge of AML/CTF**, being:

- One person among the members of management (e.g the management body), responsible for AML/CFT obligations (specified as "***responsable du respect des obligations***" in the original French version of the AML Law, and herein referred to as "**RR**")
- One person at the appropriate hierarchical level to be responsible for compliance with AML/CFT obligations (specified as "***responsable du contrôle du respect des obligations***" in the original French version of the AML Law, and herein referred to as "**RC**")

The AML Law stipulates that an **RC** must be appointed only *"if the size and nature of the activity so require*[5]*"*. However, taking into account the results of the Luxembourg national risk assessment citing the Luxembourg fund industry as presenting a high ML/FT risk, the CSSF indicates in the FAQ that this principle cannot be applied.

In this respect, the FAQ expressly specify that all IFMs and Funds subject to supervision must appoint **both an RR and an RC.**

The CSSF provides guidelines specifying the persons who may be appointed as an **RR** and an **RC** and the criteria for the appointment of an **RR** and an **RC**.

II. WHO MAY BE APPOINTED AS AN RR AND AN RC?

a. For FUNDS

- the RR[6] may be the board of directors (or other management body subject to the legal form of the Fund) acting collectively, or only one of its members;

- the RC[7] must be mandated *intuitu personae* and may be a member of the board of directors (or other management body subject to the legal form of the Fund) or a third-party delegate;

- Where the appointed RC is a third-party delegate, the CSSF requires the Fund to enter into a contract with either:

  (i) the RC;

  (ii) the employer of the RC (provided that the name of the RC is expressly mentioned) and any replacement must be subject to the approval of the Fund, and the RC must acknowledge in writing.

There have been no specific requirements outlined to confirm that the RR should reside in Luxembourg, however, the RR should be contactable at any time by the competent Luxembourg authorities.

On the other hand, the RC must be located in Luxembourg, unless expressly agreed by the CSSF and providing that the RC has access to all necessary internal documentation and systems required for performing daily tasks and may be available without delay upon the request of the competent Luxembourg authorities.

b. For IFMs

- the RR may also be the board of directors (or other managing body) acting collectively, or only one of its members;

- the RC must be a compliance officer at the appropriate hierarchical level in charge of AML/CFT aspects.

III. REQUIREMENTS FOR APPOINTMENT AS RR OR RC?

The RR and the RC must both:

- have sufficient AML/CFT knowledge and understanding and experience of the Luxembourg legal framework and be able to demonstrate this (e.g. by evidence of training);

- be knowledgeable about the investments and distribution strategies of the Fund or about the services offered by the IFM;

- be available without delay, upon request, to the competent Luxembourg authorities (or at least one managing member if the RR is a collegial body)

The RC must in addition:

- have adequate professional expertise with the Luxembourg AML/CFT legal framework and be able to demonstrate this (e.g. through evidence of training and work experience);

- have access to all internal documents and systems required necessary for the performance of its tasks, particularly where the RC is not located in Luxembourg.

HOW MAZARS CAN HELP YOU

Please do not hesitate to contact us should you need additional information or require our assistance.

In particular, we can help you:

- To perform remediation plans
- To prepare for on-site inspections from the CSSF
- To identify areas for improvement and address recommendations
- To adapt your policies and procedures (road map definition, implementation and onsite support)
- By organizing informational workshops or internal trainings to raise awareness on the key contents

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Legal references

[1] The FAQ issued by CSSF on November 25, 2019
[2] Law of 17 December 2010 on Undertakings for Collective Investments
[3] Law of 12 July 2013 on alternative investment fund managers
[4] Law of November 12, 2004 on the fight against money laudering and terrorist financing
[6] Referred to as "an AML/CFT officer at management level" in CSSF Circular 18/698
[7] Referred to as "an AML/CFT compliance officer" in CSSF Circular 18/698