

## Luxembourg fund industry: new mandatory AML/CFT external audit and new reporting requirements

### In brief

On 22 December 2021, the Commission de Surveillance du Secteur Financier (CSSF) published three circulars to improve the risk-based supervision of the CSSF, both for anti-money laundering and countering the financing of terrorism (AML/CFT) and prudential purposes.

All professionals of the Luxembourg fund industry must consider these circulars as they may apply to the following:

- Luxembourg investment fund managers ("IFMs"), i.e., management companies of Chapter 15 and 16 of the law of 17 December 2010 relating to undertakings for collective investment ("UCI Law"); Luxembourg branches of IFMs subject to Chapter 17 of the UCI Law; SICAVs that did not designate a management company within the meaning of Article 27 of the UCI Law ("SIAGs"); alternative investment fund managers (AIFMs) governed by the law of 12 July 2013 ("AIFM Law"); internally managed alternative investment funds within the meaning of Article 4(1) of the AIFM Law ("FIAAGs"); and branches and representative offices that an IFM listed above has established in Luxembourg and/or abroad
- Luxembourg investment funds supervised by the CSSF for AML/CFT purposes, e.g., undertakings for collective investments (UCIs) subject to the UCI Law, including undertakings for collective investments in transferable securities (UCITS); pension funds under the supervision of the CSSF; specialized investments funds (SIFs); and investment companies in risk capital ("SICARs")

Circular 21/788 introduces a mandatory external AML/CFT audit for IFMs while Circular 21/789 and Circular 21/790 introduce new reporting requirements for (i) all authorized IFMs, SIAGs and FIAAGs and (ii) UCITS and UCIs subject to part II of the UCI Law, and SIFs and SICARs respectively.

### AML/CFT external report

#### Purpose and scope

All IFMs including registered AIFMs and all Luxembourg investment funds supervised by the CSSF for AML/CFT purposes will be subject to a mandatory AML/CFT audit to be performed by their approved statutory auditor (réviseur d'entreprises agréé (REA)). The REA will draw up an AML/CFT external report ("**AML/CFT External Report**") assessing the compliance of the supervised entity with their AML/CFT obligations and submit it to the CSSF.

Any significant deficiencies noted by the REA must be reported in the fund's management letter.

Luxembourg investment funds that have appointed an IFM (established in Luxembourg or abroad) are excluded from the scope of Circular 21/788. However, the CSSF expects that for such funds the AML controls set out in [CSSF Regulation 12- 02 as amended](#) will be performed by their REA.

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## Role of the REA and content of the CSSF AML/CFT External Report

The AML/CFT External Report must be prepared by the REA in charge of the legal audit of the annual accounts of the in- scope supervised entity (if any) or by any other REA appointed for that specific purpose.

The first section of the AML/CFT External Report will be devoted to the corroboration of the solutions given by the IFMs and UCIs within the context of the CSSF annual AML/CFT online survey and the second section to pattern testing or particular work to be carried out by the REA, who should answer the questions of the CSSF.

### Procedure

The AML/CFT External Report must be exclusively filed on the CSSF eDesk Portal by (i) the compliance officer in charge of the control of compliance with the professional obligations (responsable du contrôle du respect des obligations professionnelles (RC)) or (ii) the person responsible for compliance with the professional obligations (responsable du respect des obligations professionnelles (RR)) or (iii) a member of the board of directors or managers of the IFM or UCI.

### Frequency and deadline

- The AML/CFT External Reports must be filed on an annual basis within six months after the closing of the financial year from 1 January 2022.
- The entities closing on 31 December 2021 have until the 30 September 2022 to submit their AML/CFT External Report.

The board of directors/managers is also liable for the submission of an online survey through the CSSF e-Desk Portal. The annual online survey will be available from 15 February 2022.

## Self-assessment questionnaire and separate report

### Purpose

Circulars 21/789 and 21/790 introduce a new self-assessment questionnaire (SAQ) to be completed annually by the following:

- All authorized IFMs, SIAGs and FIAAGs (generally referred to as the IFMs)
- UCITS, UCIs subject to part II of the UCI Law, SIFs and SICARs ("**Regulated UCIs**")

The purpose of the SAQ is to assess the conformity and compliance of the IFMs and Regulated UCIs with the legal and regulatory requirements applicable to them.

The content of the SAQ therefore depends on the legal and regulatory requirements applicable to each relevant entity, according to the license it holds.

### Deadline to submit the SAQs

The SAQs must be submitted to the CSSF within the following timeframe:

	IFMs	UCITS	UCIs subject to part II of the UCI Law , SIFs and SICARs
<b>First reporting period</b>	Within six months of the financial year ending on or after 31 December 2021	Within three months of the financial year ending on or after 30 June 2022	Within four months of the financial year ending on or after 30 June 2022
<b>Following reporting period</b>	Within four months of the relevant financial year end	Within three months of the relevant financial year end	Within four months of the relevant financial year end



The CSSF announced that the SAQ for the IFMs should be available from 10 January 2022 on the eDesk Portal (<https://edesk.apps.cssf.lu>) along with a user guide, while the SAQ for the Regulated UCIs will be available by 31 March 2022 at the latest on the same platform.

### Role of the REA

The REA will review the answers provided by the conducting officers of the fund managers and the directors or managers of the investment funds in the IFMs and UCIs' SAQs.

The REA will complete a separate report on the eDesk Portal. The purpose of such separate report is to guarantee the reliability and integrity of the answers provided by the respective IFM or UCI in the SAQ and to answer certain predefined questions from the CSSF.

### Deadline to submit the separate reports

The reports must be submitted to the CSSF by the management of the funds within the following timeframe:

	IFMs	UCITS	UCIs subject to part II of the UCI Law	SIFs and SICARs
<b>First reporting period</b>	Within nine months of the financial year ending on or after 31 December 2021	Within five months of the financial year ending on or after 30 June 2022	Within six months of the financial year ending on or after 30 June 2022	Within six months of the financial year ending on or after 30 June 2023
<b>Following reporting period</b>	Within seven months of the relevant financial year end	Within five months of the relevant financial year end	Within six months of the relevant financial year end	Within six months of the relevant financial year end

## REA management letters

The CSSF has reiterated that, as part of the legal audit of their annual accounts, IFMs and UCIs are required to provide the CSSF with (i) the audit report and (ii) the management letter issued by the REA on an annual basis for the attention of the management of the relevant fund following the end of the period of audit of their financial statements.

Circular 21/789 and Circular 21/790 introduce a specific regulatory framework for that management letter. The novelty is that such management letter will have to be issued and completed by the REA using the template form available on the eDesk Portal (<https://edesk.apps.cssf.lu>) within the following timeframe:

	IFMs	UCITS	UCIs subject to part II of the UCI Law, SIFs and SICARs
<b>First reporting period</b>	Within seven months of the financial year ending on or after 31 December 2021	Within four months of the financial year ending on or after 30 June 2022	Within six months of the financial year ending on or after 30 June 2022
<b>Following reporting period</b>	Within seven months of the relevant financial year end	Within four months of the relevant financial year end	Within six months of the relevant financial year end



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## Follow-up on modified opinions

As per Circular 21/790, every time the REA issues a modified opinion with respect to the Regulated UCI or one or more of its compartments, the management of that Regulated UCI is required to voluntarily (without waiting for any request from the CSSF) send a letter to the CSSF explaining the underlying reasons for such a modified opinion, its impact on the Regulated UCI and the corrective actions taken by the management of the Regulated UCI, along with a proposed schedule for implementing such actions.

This letter, signed by the management of the Regulated UCI, should be sent to the CSSF at the following email address [opc\\_sp\\_courrier@cssf.lu](mailto:opc_sp_courrier@cssf.lu) with any supporting documents within a month of the publication of the annual report of the Regulated UCI.

The CSSF has announced that the reports and the type of information to be communicated to the CSSF if the REA issues a modified audit opinion for a Regulated UCI will be made available on the CSSF eDesk Portal and the CSSF website respectively by 31 March 2022 at the latest and that the CSSF will issue a separate communication for that purpose.

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## How to prepare

To be in a position to comply with these new requirements in the prescribed timeframe, the IFMs and Regulated UCIs should consider the following actions:

- ✓ Mandate the REA in charge of auditing the annual accounts of the IFM to also prepare the AML/CFT External Report.
- ✓ Appoint a REA for the specific purpose of preparing the AML/CFT External Report (if the annual accounts of the IFM are not already audited by a REA).
- ✓ Implement procedures to allow the collection and escalation of the information needed to answer the SAQ.
- ✓ Implement procedures to internally review and validate the content of the SAQ before submission.
- ✓ Reflect on how best to address the potential REA comments.
- ✓ Get familiar with these new reporting requirements and deadlines.

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For further information and to discuss what this development might mean for you, please get in touch with your usual Baker McKenzie contact.



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