Global Financial Services Regulatory Guide - Luxembourg

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# 1. Who regulates banking and financial services in your jurisdiction?

## Who regulates banking and financial services in your jurisdiction?

**Commission de Surveillance du Secteur Financier**

In Luxembourg, the Commission de Surveillance du Secteur Financier (CSSF) is the supervisory authority responsible for the prudential supervision of credit institutions, professionals of the financial sector (PFS); undertakings for collective investment (UCI); management companies;  alternative investment fund managers; authorized securitization undertakings; fiduciary representatives having dealings with securitization undertakings; regulated markets and their operators; multilateral trading facilities; payment institutions; and electronic money institutions. It also supervises the securities markets, including their operators.

The CSSF is also the competent authority for monitoring compliance with professional obligations relating to the fight against money laundering and terrorist financing by all persons subject to its supervision. In this respect, the CSSF has all the supervisory and investigatory powers provided for in the Law of 12 November 2004 on the fight against money laundering and terrorist financing (“**AML/CTF Law**”) and in various sectorial laws for the purpose of carrying out its duties, in addition to the powers granted in the context of its supervision role.

Being part of the European Union, Luxembourg institutions are part of the European system set up for the supervision of the finance sector, which consists of three European Supervisory Authorities (ESAs): the European Securities and Markets Authority (ESMA), the European Banking Authority, and the European Insurance and Occupational Pensions Authority.

The objective of the ESAs is to improve the functioning of the internal market by ensuring appropriate, efficient and harmonized European regulation and supervision. Meanwhile, the CSSF as national supervisory authority remains in charge of supervising the individual financial institutions.

**Banque Centrale du Luxembourg**

The Banque Centrale du Luxembourg is responsible for: (i) the supervision of the global liquidity situation as well as the supervision of the individual situation of the liquidity of each operator; and (ii) the oversight of payment and settlement infrastructures.

Luxembourg is part of the Eurozone, and, as such, the European Central Bank has become the supervisor of Luxembourg banks under the EUs Single Supervisory Mechanism.

**Commissariat aux Assurances**

The Commissariat aux Assurances (CAA) is the public institution supervising insurance and reinsurance companies, insurance intermediaries and professionals of the insurance sector. The CAA also has supervision over three main types of regulated pension funds in Luxembourg: (i) pension savings companies with variable capital (sociétés d'épargne-pension à capital variable or SEPCAVs); (ii) pension savings associations (associations d'épargne-pension or ASSEPs); and (iii) other regulated pension funds (CAA pension funds).

# 2. What are the main sources of regulatory laws in your jurisdiction?

## What are the main sources of regulatory laws in your jurisdiction?

A significant proportion of Luxembourg regulations in the financial sector is derived from EU directives and regulations. In many respects, therefore, Luxembourg’s domestic legislation and rules simply give effect to pan-European legal requirements. However, as European directives are aimed at harmonizing the European legislations, the way in which they are implemented across Europe can vary. Directives contain mandatory rules but also rules that can be implemented at the discretion of the member state.

That said, there are key areas that are not harmonized, such as the legal framework of funds. The different regulatory regimes applying in particular to alternative investment funds have been adopted at the level of the Luxembourg parliament and present a vast tool box for funds set-up.

The Law of 5 April 1993 on the Financial Sector, as amended (“**Law on the Financial Sector**”), is the main framework law for banking and financial services in Luxembourg. The core regulation for the insurance business in Luxembourg is set out by the Law of 7 December 2015 on the Insurance Sector, as amended. With regard to electronic money institutions and payment services, the Law of 10 November 2009 on Payment Services, as amended, lays down the specific rules for these financial service providers. A large number of Grand-ducal Regulations and CSSF and CAA Regulations complete the regulatory framework of financial services in Luxembourg.

# 3. What types of activities require a license in your jurisdiction?

## What types of activities require a license in your jurisdiction?

Luxembourg regulates a broad range of activities, including:

Banking, custody

Activities of credit institutions ̶ Receiving deposits or other repayable funds from the public and granting credits for their own account; such activity would be considered as an activity of a credit institution. Eligible credit institutions that act as custodian banks holding the underlying assets of Luxembourg life insurance contracts or pension funds require approval from the CAA.

Providing custody ̶ Safeguarding and settlement of transactions and other related administration in relation to assets that include investments is a regulated activity.

Electronic money and payment services

Issuing, distributing and redeeming electronic money – Electronic money is a prepaid electronic payment product that can be card- or account-based.

Carrying on payment services – This covers a broad range of activities involving matters such as money remittance, card issuance, acquiring card transactions and the operation of payment accounts.

Investment and other financial services

Luxembourg law requires that companies engaged in financial services other than banking, payment or e-money services adopt a regulated status as PFS, of which there are three types:

Investment firms – Luxembourg law recognizes 10 different types of investment firms, including companies active in the business of providing financial advice, investment and brokerage services, market making, and the distribution of financial products.

Specialized PFS – Specialized PFS are financial professionals that conduct activities outside the scope of investment firms as defined in the European directives. Luxembourg law recognizes 14 different types of specialized PFS, such as corporate domiciliation agents, registrar agents, professional depositaries, Family Offices, and professionals performing securities lending.

Support PFS – A support PFS is a company that enters into an outsourcing arrangement with a credit institution, payment institution, investment fund, pension fund, insurance/reinsurance undertaking or another PFS to provide services that require access to confidential data. These services fall under six categories: client communication agents, administrative agents, primary IT systems operators, secondary IT systems, dematerialization service providers and conservation service providers. By virtue of their PFS status, these companies operate under the same regulatory regime as the financial institutions themselves.

Portfolio management, administration and marketing of an undertaking for collective investment (UCI) – All management companies domiciled in Luxembourg, whether UCITS or non-UCITS, must be duly licensed by the CSSF.

Virtual assets services

Following the implementation of the Laws of 25 March 2020 virtual asset service providers (VASPs) have to register with the CSSF in order to provide one or more of the following services: (i) exchange between virtual assets and fiat currencies, including the exchange between virtual currencies and fiat currencies; (ii) exchange between one or more forms of virtual assets; (iii) transfer of virtual assets; (iv) safekeeping and/or administration of virtual assets or instruments enabling control over virtual assets, including custodian wallet services; and (v) participation in and provision of financial services related to an issuer’s offer and/or sale of virtual assets. Once registered, VASPs need to comply with the professional obligations described in the AML/CFT Law.

Insurance

Conducting direct insurance and reinsurance activities in Luxembourg

Insurance and reinsurance mediation activities – Luxembourg regulations cover various mediation activities like presenting and proposing (re)insurance contracts, carrying out preparatory works to their conclusion, as well as contributing to the execution of (re)insurance contracts, notably the handling of claims on behalf of the insured.

# 4. How do the licensing requirements apply to cross-border business in your jurisdiction?

## How do the licensing requirements apply to cross-border business in your jurisdiction?

Financial services providers that are authorized in another EEA member state may carry on their activities and provide their services in Luxembourg through the establishment of a branch, provided that their activities are covered by their authorization. They may provide ancillary services in Luxembourg only if offered together with their core service activity. The exercise of their activities is not subject to any additional authorization by the Luxembourg authorities.

Credit institutions, investment firms, electronic money institutions and payment service providers that are not established in another EEA member state (“**Third Country Firms**”) and any PFS other than investment firms, whether established inside or outside the EEA, wishing to establish a branch in Luxembourg shall be subject to the same authorization rules as those applying to financial services providers governed by Luxembourg law.

Where a firm outside of Luxembourg has a client or a counterparty domiciled in Luxembourg, this does not mean that it performs *ipso facto* regulated activities within the Luxembourg territory. Whether those activities trigger a local licensing obligation will depend on the specific activities and physical travel of agents to Luxembourg. Activities such as simple canvassing of clients or the advertising and organization of a “road show” are exempted from the need for a Luxembourg license. The same applies to mere introductory visits to Luxembourg-based clients. However, if agents of Third Country Firms travel occasionally and temporarily to Luxembourg, notably to collect deposits or other payable funds from the public and to provide any other financial service that is covered by the Law on the Financial Sector, local authorization would be required.

By way of example, the following activities are regarded as being carried on outside of Luxembourg and therefore not subject to Luxembourg regulation:

The activity of accepting deposits is regarded as being carried out where deposit funds are accepted. Where a Luxembourg resident credits funds to a bank account held outside Luxembourg, the foreign bank where the individual holds his account will not be regarded as accepting deposits in Luxembourg. A Third Country bank or a non-passported EEA bank can therefore hold an account for a Luxembourg resident without contravening Luxembourg laws.

Direct insurance activities would generally be considered as having been conducted in Luxembourg if the solicitation of Luxembourg resident policyholders and the conclusion and execution of the insurance contract took place in Luxembourg. However, a Third Country insurance undertaking is not deemed to be performing insurance activities in Luxembourg when the policyholder took the initiative to enter into the contract without having been contacted by the insurance undertaking beforehand.

In other cases, the activities might be deemed to be carried out in Luxembourg and subject to Luxembourg laws. For example, advice is regarded as being given where the recipient of the advice is located, so that where a foreign firm is advising a client in Luxembourg, the firm will be regarded as carrying out the activity of advising in Luxembourg. The same analysis applies in relation to the activity of dealing, so that where a counterparty to a transaction is located in Luxembourg, the activity of dealing will be regarded as being carried out in Luxembourg.

An exclusion to this could apply if the Luxembourg client approached the financial service provider in their home country solely upon their own initiative and without having been previously solicited by the service provider (i.e., reverse solicitation).

Recent EU legislation and developments that will have an impact on doing business in Luxembourg in particular are as follows:

Brexit – The EU-UK Trade and Cooperation Agreement (TCA), applicable from 1 January 2021, does not provide a substitute for the EU market access that was available to UK firms through passporting rights prior to the end of the Brexit transition period (and which were terminated when the UK departed the EU). In order to access the single market, UK-based financial services firms now have to either comply with the regulatory requirements for market access set at the level of individual member states or rely on the possibility of equivalence decisions that, even if concluded, will not cover the same range of financial activities as passporting and can be unilaterally revoked.

AIFMD II (the revised Alternative Investment Fund Managers Directive) –The initial directive on Alternative Investment Fund Managers adopted in 2010 was been amended on 26 March 2024. EU member states have two years from the directive's entry into force to transpose it within their national law. The revised text provides for additional professional obligations for the managers of alternative investment funds that are within its scope.

MiFID II (comprising a recast of the Markets in Financial Instruments Directive and a European regulation) – MIFID II harmonizes the ability of Third Country Firms to access the EU market. Under the MIFID II regime, Third Country Firms are able to apply to ESMA for status as permitted Third Country Firm, which allows them to provide investment services or perform activities directly to specific counterparties and clients (excluding retail clients) across the EU without first establishing a branch.

IDD (the Insurance Distribution Directive, recasting the Insurance Mediation Directive) – The IDD extends the supervisory control to all distribution channels of (re)insurance contracts, including direct sales by (re)insurance undertakings, ancillary insurance intermediaries, and certain activities by insurance aggregator or price and product comparison websites. At the same time, the IDD contains important new or slightly reworded carve-outs excluding certain activities from regulation.

In Luxembourg, cryptoassets are referred to as virtual assets and are regularly the object of guidance published by the Commission de Surveillance du Secteur Financier. As mentioned above in question 3, virtual asset service providers have to register with the CSSF and comply with the requirements of the AML Law. In addition, alternative investment fund managers that carry out mandate in respect of funds investing in cryptoassets need to request an authorization within the context of their AIFM license.

With the adoption of the Regulation on Markets in Cryptoassets (MICAR) at the European level, there is a harmonized framework for the issuance, offer to the public, admission to trading, and provision of services related to certain cryptoassets in the European Union, being the asset-referenced token (ART), e-money token (EMT) and other cryptoassets that do not qualify as financial instruments. The CSSF is the supervisory authority that shall deliver the authorization to cryptoasset service providers, bearing in mind that certain of these entities may already have a regulated status (e.g., credit institutions, investment firms) and may provide services upon a simple notification.

The types of services that fall under the scope of MiCAR are as follows:

Custody and administration of cryptoassets on behalf of clients

Operation of a trading platform for cryptoassets

Exchange of cryptoassets for funds

Exchange of cryptoassets for other crypto-assets

Execution of orders for cryptoassets on behalf of clients

Placement of cryptoassets

Reception and transmission of orders for cryptoassets on behalf of clients

Provision of advice on cryptoassets

Portfolio management on cryptoassets

Transfer services for crypto-assets on behalf of clients

MiCAR entered into force on 29 June 2023 and will apply as follows:

On 30 June 2024 (12 months after its entry into force) regarding the provisions of Titles III and IV of the regulation relating to the authorization and supervision of ARTs/EMTs

On 30 December 2024 (18 months after its entry into force) the rest of the provisions provided for by the regulation, in particular on CASPs

# 5. What are the requirements to obtain authorization in your jurisdiction?

## What are the requirements to obtain authorization in your jurisdiction?

Depending on the financial institutions' activity and the risks they are likely to face, the intensity of the rules applicable to them will vary.

Broadly, however, the following conditions will need to be satisfied:

**Shareholder structure** – The applicant must be capable of being effectively supervised. The regulator will also consider the transparency of the firm's structure, that is, whether there are any impediments to the supervision of the applicant, including the group structure and any relevant laws restricting access to information.

**Contemplated activities** – The authorization requested by the entity seeking authorization must correspond to the contemplated activities, and the entity must actually carry out the activities covered by the license. The activities must also include the required anti-money laundering and "know your customer" (KYC) procedures. The application for authorization shall not be examined in terms of the economic needs of the Luxembourg market.

**Central administration** – The registered office and the central administrations must be located in Luxembourg. This emphasizes the need for firms to have a substantive presence in Luxembourg that is accessible to the regulator and enables the regulator to supervise the firm.

**Appropriate infrastructure and resources** – Applicants must satisfy the regulator that they have adequate resources to carry out the relevant regulated activities, including qualified management of the firm in a healthy and prudent manner. Resources include financial resources as well as human resources (including the composition and qualification of the board of directors and key functions holder’s suitability) and infrastructure comprising the appropriate accounting and IT system.

**External auditing** – The annual accounts must be audited by an external auditor who must be an established Luxembourg réviseur d’entreprise agréé (approved statutory auditor) and have adequate professional experience.

# 6. What is the process for becoming authorized in your jurisdiction?

## What is the process for becoming authorized in your jurisdiction?

Authorization as a financial service provider requires an application to the CSSF. An applicant must complete a formal process to obtain authorization, which involves the completion of required application forms and the submission of supporting information. The documents that have to be provided for submission to the regulator will depend on the nature of the regulated activities to be conducted.

The application file will vary depending on the license. However, it must generally include the following:

Main application form – This form is the core document that must be completed. The five sections within this form include details about the applicant, information on the shareholder structure, the contemplated activities and the central administration, the infrastructure, and the internal governance of the firm

Articles (or draft articles) of incorporation, together with an extract from the Trade and Companies Register in Luxembourg if the entity has already been incorporated

Detailed memorandum describing the contemplated activities

Supporting documents with regard to the identification of the group head shareholder, the beneficial owner, the direct shareholders having a qualifying holding, and the shareholders’ agreement (where applicable)

Annual report and accounts for the previous three years (if the entity has already been incorporated)

Organization chart of the company

Names, curriculum vitae, criminal records in each country where the person has lived for the past five years and in the country/countries of their nationality/nationalities (issued within the last three months), and personal declaration of honor of natural persons and of each board member and each supervisory board member, as well as of the people who will be responsible for the day-to-day management of the entity

Engagement letter of the external auditor

Name and curriculum vitae of the compliance officer and of the internal auditor

Provisional budget for each of the three upcoming years

Details of the human, technical and material resources to be employed in Luxembourg

AML and KYC procedures

Description of the IT infrastructure

Description of the compliance and risk management function

Information on the membership in an authorized investor compensation scheme

In relation to timing, in most cases the regulator takes six months from receipt of a completed application to determine whether or not to approve the application. The approval must typically be decided on within 12 months after the receipt of the application. The absence of a decision within 12 months shall be deemed to constitute rejection of the application.

Luxembourg has adopted a technology-neutral strategy in relation to fintech; there is no "regulatory sandbox." The legal qualification of each project presented to the CSSF is assessed on the basis of the services effectively provided, regardless of the technology used, with a risk-based approach, to assess the way the chosen technology is implemented. However, the CSSF has created an Innovation Hub, consisting of a dedicated point of contact for market players to contact it in order to present an innovative project, request information on the regulatory framework applicable to a project, or to initiate a dialogue regarding new technologies or regulations that may impact the financial sector.

# 7. What financial services passporting arrangements does your jurisdiction have with other jurisdiction?

## What financial services passporting arrangements does your jurisdiction have with other jurisdiction?

A European “passport” permits the provision of services on a cross-border basis, with or without the establishment of a physical branch location in other member states of the European Union.

In Luxembourg, credit institutions, payment institutions and electronic money institutions, and PFS belonging to the category of investment firms within the meaning of MIFID II, can be passported. Specialized and support PFS as mentioned above cannot benefit from the passport within the EU single market. Passporting means that in accordance with the required notification procedure of the CSSF, relevant financial service providers can exercise in other EEA member states the specific investment services and ancillary services that are covered by their authorization in Luxembourg.

However, ancillary services only benefit from a European passport if they are provided together with an investment service and/or investment activity. As a general principle, a European passport is only available to firms having their head office established in Luxembourg or another EU jurisdiction and will not be available to branches of Third-Country Firms.

Alternative investment fund managers fully authorized by the CSSF also benefit from a European passport to manage or market alternative investment funds in the European Union.

# 8. Authors and contact information

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