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NEWSLETTER
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1. Law of November 7, 2007 implementing Directive 2006/48/CE relating to the taking up and pursuit of the business of credit institutions and Directive 2006/49/CE on the capital adequacy of investment firms and credit institutions

The law of November 7, 2007 (the "Law") implements the institutional provisions introduced by the two above mentioned European directives. These directives constitute recasts of two previously existing directives in the same field and are mainly aiming at introducing in European law the capital adequacy requirements as modified by the Basel Committee on Banking Supervision in June 2004. The Law implements the new rules by way of amendments to the law of April 5, 1993 on the financial sector. The new provisions mainly cover three areas.

Governance arrangements

Instead of a sound administrative and accounting organisation and adequate procedures of internal control, credit institutions and investment firms are now requested to have robust governance arrangements, which include a clear organisational structure with well-defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks it is or might be exposed to, and adequate internal control mechanisms, including sound administrative and accounting procedures.

The arrangements, processes and mechanisms shall be comprehensive and proportionate to the nature, scale and complexity of the credit institution's or the investment firm's activities.

Consolidated supervision

In general, the new provisions clarify the competencies of the authorities for consolidated supervision and enhance the role of the supervisory authority of the parent company in charge of consolidated supervision compared to the authority of the host country responsible for the individual supervision of the subsidiaries. On the specific point of validation of the models of calculation of capital adequacy requirements in relation to credit risk and operational risk, where the competent authorities are in disagreement, the view of the supervisory authority of the parent company shall prevail.

Formal obligations of cooperation and exchange of information are introduced and are applicable in normal circumstances as well as in case of urgency situations that may have a negative impact on the stability of the financial sector. Where the *Commission de Surveillance du Secteur Financier ("CSSF")* is the competent authority in charge of the consolidated supervision, it shall establish written agreements on coordination and cooperation with the other competent authorities.

The scope of consolidated supervision is extended to the operational risk, the internal evaluation process of the internal capital adequacy requirements and to the governance arrangements. Certain exemptions to the requirements for consolidated supervision that may be granted are specified.

Powers of the CSSF

The CSSF shall require each credit institution or investment firm that does not respect the provisions introduced by the two European directives to take the necessary actions or steps at an early stage to address the situation. In case of non respect of such requirements, the CSSF may require the defaulting credit institution or investment firm to hold own funds in excess of the minimum level required, to reinforce the internal governance arrangements, to apply a specific provisioning policy or treatment of assets in terms of own funds requirements, to reduce the risk inherent in the activities, products and systems or to restrict or limit the business, operations or network.

The detailed capital adequacy rules requiring a minimum of own funds underlying the risks associated to the assets of credit institutions and investment firms are not laid down in the Law because of their technical nature, but have been implemented in the CSSF circulars 06/273 as amended by CSSF circular 07/317 applicable to credit institutions

respectively CSSF circular 07/290 applicable to investment firms.

2. New Rules and Regulations of the Luxembourg Stock Exchange

New Rules and Regulations of the Luxembourg Stock Exchange (the "LSE") entered into force on 1st November 2007. The Rules and Regulations were entirely restated mainly to implement the Luxembourg law of 13 July 2007 on markets in financial instruments (MiFID), but also for clarification purposes.

The first part of the former Rules and Regulations concerning the functioning of the LSE was withdrawn.

Since 1st November 2007, the LSE is no longer a Grand Ducal concessionary and any further amendment to the Rules and Regulations will be subject to prior control by the Commission for Supervision of the Financial Sector.

The majority of the changes to the Rules and Regulations effective on 1st November 2007 are of a formal nature. Some amendments may have an impact on UCITS/UCIs (all together the "UCIs") and can be summarised as follows:

- The application for admission of securities to trading on the securities markets of the LSE and to its official list does no longer require the intervention of a member of the LSE acting as listing agent.
- Although the financial service for the securities holders must still be ensured in Luxembourg, the credit or financial institution appointed to provide these services is not necessarily established in Luxembourg.
- Foreign UCIs are submitted to the same admission conditions as those applicable to Luxembourg UCIs.
- The LSE has set up a standard Letter of undertaking to be provided together with the application for admission to trading and official listing and by which the person seeking the admission declares that amongst others it will comply with all relevant and applicable European Community legislation and/or Luxembourg laws and regulations. This Letter of undertaking replaces the undertaking provided for by article 28 of Part II, Chapter II, of the former Rules and Regulations.

Finally, the Luxembourg view that the admission to trading on the securities markets of the LSE does not involve *de facto* a public offering in Luxembourg and thus the requirement to go through the registration procedure with the CSSF is maintained.

The new Rules and Regulations and the new Admission to trading/prospectus approval form, as well as the standard Letter of undertaking, are available on the Luxembourg Stock Exchange website www.bourse.lu.

3. CSSF Circular 07/323 amending Circular 07/280 on the practical implications of the law of 9th May, 2006 on market abuse

The CSSF issued on 7th November, 2007 a Circular 07/323 in order to amend and clarify certain aspects of Circular 07/280 of 5th February, 2007 on the practical implications of the law of 9th May, 2006 on market abuse (the "Law").

The amendments mainly stem from the publication on 12th July, 2007 of the Level 3 – second set of CESR guidance and information on the common operation of the Directive to the market (the "CESR Guidance").

The amended CSSF Circular 07/280 now expressly refers to and comprises as appendix the CESR Guidance including in particular clarifications with respect to what constitutes inside information and when information relating to clients pending orders constitute inside information.

Further clarifications relate to the list of insiders to be drawn up by issuers and certain amendments to the forms attached to

the Circular 07/280 for the notifications and declarations to be made pursuant to the Law.

An amended and restated version of the CSSF Circular 07/280 has been published by the CSSF.

4. Important changes to the existing Luxembourg tax environment

At the end of 2007, numerous important changes to the existing Luxembourg tax environment were adopted by the Luxembourg legislator.

The 1% capital duty for contributions to the share capital or share premium of capital companies was reduced to 0.50%, effective as from 1 January 2008 and will have to be abolished altogether by 2010. It needs to be seen whether the Luxembourg legislator will vote for 2009 for a further reduction before the complete abolishment of this tax.

From an international tax planning perspective, the important changes and developments are the following :

The second addendum to the tax treaty between France and Luxembourg of 1 April 1958 is entered into force on 27 December 2008. As a consequence, as from 1 January 2008, the sale of French *situs* real estate by a Luxembourg capital company – that previously was neither taxable in France nor in Luxembourg – will be subject to tax in France. As France is a very attractive market for real estate, tax practitioners have implemented civil law partnership structures that permit in principle equivalent tax benefits.

Law n° 5708 of 21 December 2007 has amended a large number of provision of the Luxembourg Income Tax Law to extend to both Luxembourg and EU based "collective undertakings" ("*organisme à caractère collectif*") tax neutrality (e.g., in the case of corporate re-organizations such as mergers or de-mergers as well as business combinations) or tax exemption (e.g., dividend/capital gains/net wealth tax exemption for income received from and the holding of such undertakings or exemption from Luxembourg withholding tax for payments to such undertakings) that previously had only been granted to Luxembourg and EU based capital companies. In this context it is noteworthy that such benefits have also been extended to capital companies and cooperative society that are tax resident in those of the Member States of the EEE that are not also Member States of the EU, namely Iceland, Lichtenstein and Norway, provided that such entities are subject to an effective corporate taxation of at least 11% in their respective home jurisdiction. This might open interesting tax planning opportunities.

In 2007 Luxembourg three new tax treaties, concluded between Luxembourg on the one hand and Latonia, Lithuania and Saint Marin, on the other hand have entered into force. It is however noteworthy that Luxembourg has entered in 2007 into treaty negotiations with Hong Kong and Barbados but more interesting with Bahrain, Kuwait and Qatar. This shows the growing interest for Luxembourg as an investment platform for investors from the Far and Middle East.

From a Luxembourg corporate tax law prospective the other important change is the introduction of an 80% exemption on the net positive income derived from the use of or from the right to use the following IP rights: copyright on software, patents and trade marks, designs and models. Net income means gross income minus directly related cost (including depreciation and amortization). This leads to an effective rate of taxation of 5.93 % for such IP income. The tax exemption only applies if the IP has been acquired from an unrelated third party or has been created by the company itself. In this last case the mechanism would be that of a notional tax deduction that is computed by reference to a market remuneration that the IP company should have received, if it had licensed the IP to an unrelated third party under market conditions. The tax exemption also applies to the capital gain realised upon disposal of the IP asset, subject to recapture of any negative net income previously deducted. The exemption provisions only apply to IP assets acquired or created after 31 December 2007. The mechanism put into place contains certain anti-abuse provisions to avoid undue deduction of certain cost and expenses. IP assets benefiting from the specific tax exemption regime are not eligible for other tax incentives under Luxembourg law.

A certain number of changes had been made to the provision of the Luxembourg income tax law concerning taxation of individuals:

- The various tax brackets have been indexed by 6%. Tax rates remain unchanged. As a result of this taxpayers will benefit from annual tax savings of up to € 473 (for tax class 1) and of up to € 946 (for tax class 2).

- Bonus payments for overtime, night or weekend work to employees of the private sector (as opposed to civil servants and other State employed personal) is exempt from personal income tax without limitations. Compulsory social security contributions in relation with such bonus payments are tax deductible (which is not the case for the same charges on the base salary for such work).

- Individuals covered by a Luxembourg or a foreign formal recognition of common law status for at least 1 full tax year (i.e. from 1 January to 31 December) may elect to be tax assessed together, thus benefiting of tax class 2. This collective taxation will in principle be advantageous when only one of the partners derives taxable income. This provision will apply to Luxembourg residents and under certain conditions to non-residents. In addition, various other provisions of the Income Tax Law have been amended to put common-law partners on an equal footing for Luxembourg income tax purposes with married spouses.

- The yearly tax credit for dependent children (currently set at € 922.5 per child) has been replaced by an equivalent yearly tax bonus payable by the "*Caisse Nationale des Prestations Familiales*". From a practical point of view, this will benefit to taxpayers whose tax liability was not sufficient to take advantage of the old tax credit.

- As a consequence of the ECJ judgement in the Lakebrink case (C-182/06), the tax assessment rules for non-resident taxpayers have been modified. Such non-resident taxpayers, when deriving more than 90% of their professional income from Luxembourg source, may elect to be taxed in Luxembourg as if they were residents. In the future for determining the applicable tax rate for such Luxembourg source income, the worldwide global (positive and negative) income is taken into account (and not only their worldwide professional income).

5. Law of 11 January 2008 on the transparency obligations of issuers whose securities are admitted to trading on a regulated market

Luxembourg has implemented Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 (Transparency Directive) by law of 11 January 2008 on the transparency obligations of issuers whose securities are admitted to trading on a regulated market (the "**Law**"). A grand-ducal decree of even date implements the Commission Directive 2007/14/EC of 8 March 2007 and sets out execution measures related to the Law (the "**Decree**", and together with the Law the "**Transparency Legislation**").

On 6th February 2008, the CSSF has published a Circular (Circular CSSF 08/337) containing explanations with respect to several provisions of the Law and the Decree and some practical aspects. This Circular is also available in English language. In addition, the CSSF published on 20th February 2008 a frequently asked questions document giving in particular advice as to when and to which extent the new provisions will apply.

The Transparency Legislation establishes requirements in relation to the disclosure of periodic and ongoing information by issuers whose securities are admitted to trading on a regulated market situated or operating within a member state of the EC and whose home member state is Luxembourg. Units issued by UCIs others than close-ended, and units acquired by or transferred in UCIs are excluded from the scope of the Transparency Legislation.

Disclosure, filing and storage of regulated information

The new provisions require the disclosure of regulated information, which includes:

Periodic financial information:

- annual and half-yearly reports (articles 3 and 4 of the Law)
- interim management statements (article 5 of the Law)
- quarterly financial statements (article 5 of the Law)

Ongoing information:

- notification of major holdings (articles 8 to 12 of the Law)
- notifications of transactions concerning own shares (article 13 of the Law)
- notification of total number of voting rights and capital in case of increase of decrease of such rights or capital (article 14 of the Law)
- changes in the rights attaching to various classes of shares, derivative securities or other securities; new loan issues (article 15 of the Law)
- inside information in accordance with article 6 of the Market Abuse Directive concerning issuers.

The disclosure has to be made within certain delays by way of communication to the medias which can be reasonably expected to guarantee an efficient diffusion to the public in all member states. Pursuant to the CSSF it is not sufficient to make the regulated information simply available in a way that would require an active search of the information by the investors (i.e. on the internet site). The information must be disclosed proactively by the issuer through such medias.

Generally, the information has to be transmitted to the medias in its entirety. As regards the financial reports mentioned above it will be sufficient if the issuer announces such reports to the medias and transmits together with such announcement the address of the website where such reports can be found.

The Transparency Legislation provides that each time an issuer whose home member state is Luxembourg discloses regulated information, it shall also notify this information to the CSSF (article 18 of the Law). Until all technical measures for the disclosure have been implemented, the notification shall be made to the following email address: transparency@cssf.lu.

If Luxembourg is the home member state and the securities are admitted to trading on a regulated market situated or operating only in Luxembourg or in Luxembourg and other member states, regulated information shall be disclosed in Luxemburgish, English, French or German language. In the case of regulated markets of other member states being concerned, such information shall in addition be disclosed in a language accepted by the authorities of the host member states or in a usual language of the financial market, recognised by the CSSF (English).

The regulated information shall be made available for the purposes of centralised storage to an officially appointed mechanism ("**OAM**") which will be designated by grand-ducal decree. Such OAM has not been determined yet in Luxembourg. The CSSF considers that, as long as the OAM is not operational, the issuers are exempted from their storage obligations as long as they disclose the relevant information on their internet site. The address of the internet site shall be notified to the CSSF together with the indication of the page where the information can be found.

The information to be provided by issuers to holders of securities admitted to trading on a regulated market (articles 16 and 17 of the Law) is not considered as regulated information. Hence, in this context the aforementioned requirements regarding disclosure, storage and filing have not to be complied with.

Disclosure and notification of large shareholdings

Each issuer whose home member state is Luxembourg and whose shares are admitted to trading on a regulated market and to which voting rights are attached was required to disclose for a first time the total number of voting rights and capital until 19th February 2008.

The holders of shares, including certificates representing such shares, in such company shall notify to the issuer until 19th March 2008 the percentage of voting rights they are holding in it at that date, provided that such percentage exceeds or falls below the thresholds of 5 %, 10 %, 15 %, 20 %, 25 %, 33 1/3 %, 50 % and 66 2/3 % and provided that they have not already addressed a notification containing equivalent information before that date.

The issuers shall disclose the information they received from the shareholders until 19th April 2008.

The new provisions replace the law of 4th December 1992 regarding the information to be published in case of acquisition and the disposal of large holdings in a listed company.

Transitory aspects as regards financial reports

With regard to the annual and half-yearly financial reports and the interim management statements, the following transitory provisions will apply:

(i) Periodic financial reports covering periods starting 19th January 2008 or later

- The provisions of the Transparency Legislation are entirely applicable (i.e. as regards the content of the reports as well as regards the publication mode and period, the storage and the deposit with the CSSF).
- The CSSF considers that the full regime also applies to annual reports covering financial years beginning 1st January 2008 or later.

(ii) Periodic financial reports published on 19th January 2008 or later and covering periods terminated before that date

- The CSSF considers that only the provisions regarding the publication mode, the transmission to the OAM and the deposit with the CSSF apply.
- This means that, as regards the content and the delay for publication, such reports do not have to comply with the provisions of the Law. However, they have to be in accordance with the legal provisions applicable before the entry into force of the Law.

(iii) Periodic financial reports covering periods having started before 19th January 2008 and terminating after that date (except for annual reports mentioned under (i))

The CSSF considers that the provisions regarding the publication mode, the transmission to an OAM, the deposit with the CSSF, and the delays for publication apply. Only the content of such reports does not have to comply yet with the provisions of the Transparency Legislation.

For any further information please contact us or visit our website at www.ehp.lu .