



CHEVALIER & SCIALES  
LUXEMBOURG LAW FIRM

Q1

# INVESTMENT MANAGEMENT

Quarterly newsletter 2022 - Q1

JANUARY TO MARCH



## INVESTMENT FUNDS

*'Direct engagement with the partners. Specialised in setting up investment funds in Luxembourg.'*

*'The team provides impressive responsiveness and an outstanding expertise in relation to investment fund matters.'*

*'The team is friendly, (not arrogant at all) and very open to work for new business opportunity, especially in the world of crypto/blockchain.'*

*'It is a human scale firm where you are not considered as a small client.'*

*'Olivier Sciales has the ability to translate "law-speak" into clear common language.'*

## BANKING, FINANCE & CAPITAL MARKETS

*'Although the firm is undoubtedly best known for its investment funds expertise, Chevalier & Sciales also handles capital markets and securitisation work. Rémi Chevalier is the main contact.'*



*'Well-positioned to handle alternative funds, whether first-time managers or historical players, the firm advises on time-to-market vehicles with a high demand for RAIFs and SCSps. Concerning asset classes, Chevalier & Sciales practice covers a diversity of assets, such as PE and real estate and is increasingly active in relation to crypto, hedge and debt funds.'*




*'Chevalier & Sciales Litigation practice with values of certain litigations exceeding a billion US dollars, has successfully created a strong and reputable presence in the Luxembourg courts as well as abroad. Combining creative litigation strategies with business practicality, the boutique consistently resolves high-stake disputes for private entities, companies, and investors in sectors such as investment funds and private banking.'*

## OTHER 2023 RANKINGS:

*Private equity  
Restructuring & Insolvency  
Mergers & Acquisitions  
Banking & Finance*

# Investment management - Quarterly Update //

01 CSSF ISSUES CIRCULAR 21/788 ON AML/CFT EXTERNAL REPORTING	PAGE 5
02 CSSF PUBLISHES WHITE PAPER ON RISKS AND OPPORTUNITIES OF BLOCKCHAIN AND DLT	PAGE 6
03 FRESH EXTENSION OF REMOTE REGIME FOR BOARD AND SHAREHOLDER MEETINGS UNTIL END OF 2022	PAGE 7
04 ELTIF   COMMISSION PROPOSES REVISED REGULATION TO BOOST ELTIF REGIME	PAGE 8
05 CSSF PUBLISHES FAQ ON INTERNATIONAL FINANCIAL SANCTIONS	PAGE 10
06 GLOSSARY OF TERMS	PAGE 12
07 HOW CAN WE ASSIST YOU?	PAGE 13



# CSSF ISSUES CIRCULAR 21/788 ON AML/ CFT EXTERNAL REPORTING

On December 22, 2021, the CSSF issued guidelines for the fund industry regarding the new external report on anti-money laundering and financing of terrorism measures that must be drawn up by an external expert.

## **To whom does the circular apply, and who is exempt?**

According to the circular, all Luxembourg investment fund managers, including registered alternative fund managers and Luxembourg funds supervised by the CSSF for AML/CFT purposes, must provide the external report. It is not required from Luxembourg funds that have appointed a fund manager, whether established in Luxembourg or abroad. In these cases, the external auditor of the funds must nevertheless perform an AML assessment as prescribed by Article 49 (1) of CSSF Regulation No 12-02 of December 12, 2012 on combating money laundering and the financing of terrorist financing.

## **Who should draft the report?**

All investment fund managers required to appoint an approved statutory auditor (*réviseur*

*d'entreprises agréé / REA*) to audit their annual accounts shall designate the same REA to prepare the external report.

The registered AIFMs, which do not have the legal requirement to appoint a REA for the audit of their annual accounts, must appoint an REA for the specific purpose of preparing the AML/CFT external report.

## **What should the report contain?**

The report is divided into two sections. The first concern the corroboration of answers given by the AIFMs as part of the CSSF annual AML/CFT online survey. The second deals with sample testing or specific work to be performed by the external expert.

## **Who should submit the report to the CSSF, when and how?**

The report must be submitted to the CSSF via the eDesk platform within six months of the closing of the annual accounts. This should be carried out by the *Responsable du Contrôle du respect des obligations professionnelles en matière de lutte contre le blanchiment et contre le financement du terrorisme* (compliance officer, or RC); the *Responsable du Respect des obligations professionnelles en matière de lutte contre le blanchiment d'argent et contre le financement du terrorisme* (RR); or a member of the board of directors, or equivalent.



### When does the circular come into force?

Luxembourg funds and managers must comply with the provisions of the circular for the financial years ending on or after December 31, 2021. For the financial year ending on December 31, 2021, an extension of three extra months is granted for the submission, up to the end of September 2022.

CSSF circular 21/788 is available [here](#).

## CSSF PUBLISHES WHITE PAPER ON RISKS AND OPPORTUNITIES OF BLOCKCHAIN AND DLT

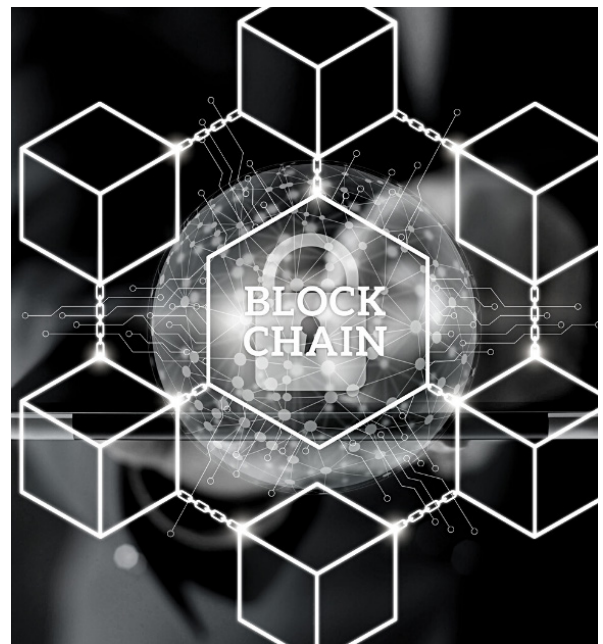
On 21 January, 2022, the CSSF has published a white paper setting out technological risks and recommendations for the financial sector regarding blockchain and distributed ledger technology (DLT).

The regulator says use cases can include, in KYC data management, to confirm identity claims through cryptographic proof. It can also be used for improving the speed and security of payments and fund transfers, and for distribution platforms involving tokenization of investment funds that enable investors to subscribe and redeem fund shares or units

through a web or mobile application.

However, the CSSF points out that risks can include governance issues, regulatory requirements, the ability to comply with judicial decisions, and legal certainty over blockchain technology and smart contracts.

The CSSF white paper on blockchain and DLT is available [here](#).



# FRESH EXTENSION OF REMOTE REGIME FOR BOARD AND SHAREHOLDER MEETINGS UNTIL END OF 2022

On December 17, 2021, Luxembourg's Chamber of Deputies passed into law Bill 7916, which extends provisions on governance measures concerning the holding of meetings in companies and other legal entities in the light of the Covid-19 pandemic legislation of September 23, 2020.

## **What measures have been extended?**

The legislation extends the possibility to hold virtual meetings without a physical presence for Luxembourg companies and other legal entities through amendment of Article 5 of the 2020 law, from the end of 2021 until December 31, 2022.

The explanatory notes of Bill 7916 specifies that the virtual meeting regime is only optional. Companies or entities falling within the scope of the provision that prefer to hold meetings in person may do so in compliance with applicable health measures.

## **What legal entities and meetings are concerned?**

The legislation authorises the holding in virtual rather than physical form of ordinary general meetings of shareholders, boards of directors, and other managing bodies of legal entities including:

- Any types of company.
- Non-profit associations and foundations.
- European economic interest groups.
- Economic interest groups.

However, the legislation does not authorise further extensions regarding the holding of annual general meetings and approval of annual accounts.

## **How should votes take place, and how many participants are required?**

A company holding any general meetings of shareholders can require shareholders and other participants to exercise their rights by a vote in writing or electronic form (subject to identification), provided that written resolutions have been circulated or published before the meeting, through video conference or other means of communication enabling identification of participants, or by proxy.

Boards of directors or executives or any other corporate bodies may hold remote meetings by written circular resolutions, video conference or other means of communication enabling identification of participants. These provisions apply regardless of the number of participants at shareholder or board meetings.

### **How should a quorum or majority at a remote meeting be calculated?**

Shareholders or directors who participate in such meetings are deemed to be present for purposes of calculation of the quorum and majority requirement.

### **Must the option to hold remote meetings be provided for in the articles of association?**

Remote meetings without physical presence may be held even if the articles of association do not explicitly provide for this option.



## ELTIF | COMMISSION PROPOSES REVISED REGULATION TO BOOST ELTIF REGIME

The European Commission has unveiled its proposed amendments to the European Long-Term Investment Fund regime on November 25, following extensive consultation with members of the investment industry. The changes are intended to make the framework more attractive to asset managers and especially retail investors for a fund framework that has hitherto struggled to gain traction.

The ELTIF rules were introduced in December 2015 to encourage private investment in long-term assets such as physical infrastructure, notably from individual as well as institutional and professional investors. As of the beginning of October 2021 just 57 ELTIFs with around €2.4 billion in assets had been established across Europe, with Luxembourg the most popular domicile home to 26 funds, followed by France, Italy and Spain.

Many asset managers have complained that the original regime was overly complex and inflexible, discouraging them from using it to



offer alternative strategies to high net worth and mass affluent investors. The revamp of the ELTIF rules is intended to remedy these issues and to boost private investment in real assets, with the added benefit of contributing to economic recovery from the impact of the Covid-19 pandemic.

It is also intended to complement other measures to extend the EU Capital Markets Union to boost access by companies and long-term investment projects to stable, sustainable and diverse sources of funding, and has been put forward as part of a package of measures under the Commission's updated CMU action plan.

The Commission proposes that projects eligible for investment by ELTIFs need no longer be located within the EU and clarifies that they may pursue a global investment mandate. It provides a definition of 'real assets' to include infrastructure, intellectual property, vessels, equipment, machinery, aircraft, rolling stock, immovable property, rights attached to or associated with real assets such as water, forest and minerals, commercial property, education, counselling, research, sports or other facilities, and accommodation including senior residents and social housing. It also sets out a definition of simple, transparent and standardised securitisation under the EU's 2017 legislation.

The proposed revision seeks to streamline the approval process for ELTIFs and clarifies that its AIFM is not required to have its registered office in the ELTIF's home member state or to

carry out or delegate any activity there. It would lower the minimum investment value of real assets to €1 million, and specify the scope of eligible securitisations of residential property, commercial and corporate loans as well as trade receivables.

The revised regulation would waive or simplify requirements including diversification rules and borrowing limits for ELTIFs marketed exclusively to professional investors. For retail investors, the restrictions remain but have become more flexible. The maximum exposure of a retail ELTIF to securities issued by or loans granted to any single portfolio business rises from 10% to 20%; the 20% threshold also applies to single real assets and eligible securitisations that meet the EU's Simple, Transparent, and Standardised criteria.

The revised regulation completely removes the previous minimum investment restrictions for retail investors: an initial minimum investment threshold of EUR 10,000 and a maximum 10% exposure threshold for retail investors with financial portfolios of less than €500,000. It also clarifies that employees of an ELTIF manager should not be considered as retail investors for the purposes of a fund the firm manages.

The proposals meet a key demand of industry members by authorising ELTIFs to operate as funds of funds that may invest in EU alternative investment funds investing in assets eligible under the regulation, as well as master-feeder structures, subject to additional reporting and other requirements.

They also provide that management groups, affiliated entities and their staff may co-invest in ELTIFs run by the manager, subject to compliance with conflict of interest rules. Once the draft amending regulation has been adopted by the European Parliament and EU Council – which could happen in the first half of 2022 – the changes will come into effect six months after its publication in the EU’s Official Journal.

The Commission’s proposal for revision of the ELTIF regulation is available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=COM:2021:722:FIN&qid=1536654936443&from=EN>.

## CSSF PUBLISHES FAQ ON INTERNATIONAL FINANCIAL SANCTIONS

The CSSF published a FAQ on March 17, 2022 regarding international financial sanctions (FAQ) as it is the authority responsible for the supervision of the professionals falling under its scope for the compliance of the Law of December 19, 2020 on the implementation of restrictive measures in financial matters (2020 Law).

The CSSF reminds that professionals need to comply with the 2020 Law, and with the CSSF

Regulation 12-02 on the fight against money laundering and terrorist financing as modified (CSSF Regulation 12-02) as well as consider the UN and European regulatory framework regarding financial restrictive measures which are directly applicable in Luxembourg.

Following Questions 3, 4 and 5, professionals are required to report by email ([sanctions@fi.etat.lu](mailto:sanctions@fi.etat.lu)) or by post (Ministère des Finances, 3 Rue de la Congrégation, L-1352 Luxembourg) to the Ministry of Finance, with in copy the CSSF ([adm\\_jurcc@cssf.lu](mailto:adm_jurcc@cssf.lu)), without delay of measures taken by professionals that are formal restrictive measures in financial matters.

“Restrictive measures in financial matters” means (1) the prohibition or restriction of financial activities of any kind, (2) the prohibition or restriction on the provision of financial services, technical assistance, training or advice in relation to a State, natural or legal person, entity or group referred to in the 2020 law or (3) the freezing of funds, assets or other economic resources owned or controlled, directly, indirectly or jointly, with or by a person, entity or group referred to in the 2020 Law or by a person acting on their behalf or at their direction. In respect of the freezing of funds, specific forms can be found on the website of the Ministry of Finance or of the CSSF.

The CSSF also indicates that under the Law of November 12, 2004 on the fight against money laundering and terrorist financing, if in relation with the relationship, to which the professional has to apply financial restrictive measures, the

professional also identifies a suspicion of money laundering or terrorism financing or an associated predicate offence, the professional shall also inform without delay the Luxembourg FIU via the platform goAML (<https://justice.public.lu/fr/organisation-justice/crf/goaml.html>) (Question 9).

The CSSF's FAQ can be found at : [https://www.cssf.lu/wp-content/uploads/FAQ\\_International\\_financial\\_sanctions.pdf](https://www.cssf.lu/wp-content/uploads/FAQ_International_financial_sanctions.pdf)



# GLOSSARY OF TERMS

**AIF:** Alternative Investment Fund as defined by article 1 (39) of the AIFM Law, namely collective investment undertakings, including investment compartments thereof, which (a) raise capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and (b) do not require authorization pursuant to article 5 of Directive 2009/65/EC (i.e. UCITS).

**AIFMD:** Directive 2011/61/EU on alternative investment fund managers.

**AIFMD registration regime:** An AIFM that wishes to make use of the registration regime must have assets under management of less than EUR 100 million, or EUR 500 million if it manages only funds closed for at least 5 years not using leverage.

**AIFM:** A legal person whose regular business is managing one or more AIFs.

**AIFM Law:** Luxembourg law of 12 July 2013 on alternative investment fund managers (transposing the AIFM directive into Luxembourg law).

**AIFM Law threshold:** the thresholds provided for in article 3 (2) of the AIFM Law.

**CSSF:** The Luxembourg Supervisory Authority of the Financial Sector (*Commission de Surveillance du Secteur Financier*).

**CLO:** Collateralised Loan Obligation.

**Company Law:** The Luxembourg law of 10<sup>th</sup> August 1915 on commercial companies, as amended from time to time.

**FCP:** Common fund (*fonds commun de placement*).

**Part II UCI:** Undertaking for collective investment established under Part II of the Luxembourg law of 17 December 2010.

**RAIF:** Reserved alternative investment fund (*fonds d'investissement alternatif réservé*).

**S.A.:** Public limited liability company (*société anonyme*).

**S.à r.l.:** Private limited liability company (*société à responsabilité limitée*).

**SAS:** Simplified stock company (*société par actions simplifiée*).

**S.C.A.:** Corporate partnership limited by shares (*société en commandite par actions*).

**SCoSA:** Cooperative company organised as a public limited company (*société cooperative organisée comme une société anonyme*).

**SCS:** Common limited partnership (*société en commandite simple*).

**SCSp :** Special limited partnership (*société en commandite spéciale*).

**SICAF:** Investment company with fixed capital (*société d'investissement à capital fixe*).

**SICAR:** Investment company in risk capital (*société d'investissement en capital à risqué*).

**SICAV:** Investment company with variable capital (*société d'investissement à capital variable*).

**SIF:** Specialised investment fund (*fonds d'investissement spécialisé*).

**SPF:** Private wealth management company (*société de gestion de patrimoine familial*).

**UCITS:** Undertakings for collective investments in transferable securities.

**Well-informed investors:** A well-informed investor is an institutional investor, a professional investor or any other investor who has stated in writing that s/he adheres to the status of well-informed investor and invests a minimum of 125,000 Euro in the SIF/SICAR/RAIF, as applicable, or has been subject of an assessment made by a credit institution, by an investment firm or by a management company certifying his/her expertise, his/her experience and his/her knowledge to adequately appraise an investment in the SIF/SICAR/RAIF, as applicable.

# HOW CAN WE ASSIST YOU?

Our team:

- Supports clients in finding appropriate investment vehicles to meet their requirements and goals from a marketing, regulatory and legal perspective.
- Introduces clients to service providers that meet their requirements, including custodian banks, AIFMs, fund administrators, registrars and transfer agents, auditors, paying agents and listing agents.
- Assists with the establishment of UCITS and alternative investments funds such as SIFs, RAIFs, SICARs, special limited partnerships (SCSp and common limited partnerships (SCS) as well as securitisation companies and securitisation funds including drafting of PPMs, assistance with incorporation of the fund, the general partner, carried interest vehicles, the co-investment vehicles and SPVs and regulatory filing with the CSSF.
- Assists with the migration of offshore funds to Luxembourg.
- Provides corporate support services throughout a fund's lifetime, including amendment of fund documents, restructuring, and launch or closure of sub-funds or share classes.
- Assists with changes of service provider.
- Assists with the clearing and the listing of shares, units, notes and bonds on the Luxembourg Stock Exchange's regulated or EURO MTF markets.
- Supports registration of the fund in other jurisdictions, in co-operation with local service providers.
- Advises on AIFMD-related issues.
- Advises fund promoters on domestic private placement rules for marketing their funds in Luxembourg.
- Keeps clients up to date with legal and regulatory developments.



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Chevalier & Sciales is a Luxembourg law firm established 17 years ago with specialist expertise in investment management, corporate transactions, banking and finance as well as high-level litigation and dispute resolutions. Our dynamic litigation and transaction teams have an international reputation for bringing together excellence and intellectual rigour with a practical and business-minded approach in serving our clients.

Our aim is to offer a one-stop-shop service to our clients and to provide tailored solutions to meet their needs, responsively and cost-effectively. Our practice areas are structured to ensure a comprehensive understanding of our clients' business and markets. We work with recognised tax experts and other service providers to provide you with the assistance and services you require through every aspect of your transactions and business.

Chevalier & Sciales is recommended and listed in the area of investment funds, litigation and dispute resolution and banking and finance.

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