



Commission de Surveillance
du Secteur Financier

Frequently Asked Questions AML/CFT

PERSONS INVOLVED IN
AML/CFT FOR A
LUXEMBOURG INVESTMENT
FUND OR INVESTMENT FUND
MANAGER SUPERVISED BY THE
CSSF FOR AML/CFT
PURPOSES

Frequently Asked Questions AML/CFT

Update March 2021: The entry into force of the CSSF Regulation n° 12-02 of 14 December 2012 on the fight against money laundering and terrorist financing as amended by CSSF Regulation n° 20-05 of 14 August 2020 does not change the content of these FAQs.

Question 1:

How do the requirements of Article 4(1) of the Law of 12 November 2004 as amended ("the Law") that call for the appointment of two different persons in charge of AML/CFT need to be implemented by a Luxembourg Investment Fund or Investment Fund Manager supervised for AML/CFT purposes by the CSSF ?

Answer: Article 4 (1) (fourth paragraph and second paragraph, sub-paragraph a) of the Law requires professionals to appoint:

- i) a person among the members of their management bodies, responsible for compliance with the professional obligations as regards the fight against money laundering and terrorist financing (the original French version of the law refers to a "*responsable du respect des obligations*" and thus, the acronym "**RR**" will be used hereafter), and
- ii) if the size and nature of the activity so require, a compliance officer at appropriate hierarchical level (the original French version of the law refers to a "*responsable du contrôle du respect des obligations*" and thus, the acronym "**RC**" will be used hereafter).

Taking into consideration the results of the National Risk Assessment regarding in particular ML/FT risk exposure of the sector of collective Investments i.e. Investment Funds, the CSSF would like to recall that every Luxembourg Investment Fund and Investment Fund Manager subject to AML/CFT supervision, is legally required to appoint, **both** an RR and an RC.

This means the following in practice :

1. For Investment Funds supervised by the CSSF for AML/CFT purposes :

The following rules are general rules, these may however need to be adapted on a case-by-case basis since it is not possible to address all the different scenarios in these FAQs :

- The RR can be the board of directors (or other governing body depending on the legal structure of the Fund) acting as a collegial body . Alternatively, the board may appoint one of its members as RR. The RR must be reachable for any contact by the Luxembourg AML/CFT competent authorities.
- The RC shall be mandated *intuitu personae* by the board of directors (or other governing body) of the Fund.
 - The RC may be a member of the board with appropriate experience meeting the conditions set forth in the answer to Question 2 below.
 - Or, where the Fund appoints a third party RC, the Fund must enter into a contractual relationship with the RC personally or, where the contract is concluded with the employer of the RC, (i) the contract must name the RC, (ii) any replacement of the RC must be subject to the Fund's approval and (iii) the RC must acknowledge its appointment in writing.
 - Said appointee can for example be chosen among the staff of the designated Investment Fund Manager (IFM) of the Fund (in case the Fund has designated an IFM).
 - As a principle, the RC must be available in Luxembourg, for the accomplishment of his/her tasks. However, on an exceptional basis, and under the conditions set forth in the answer to Question 2 below, it is acceptable that the RC is located outside of Luxembourg, if the IFM and its relevant staff member acting as RC are not domiciled in Luxembourg.

2. For Investment Fund Managers supervised by the CSSF for AML/CFT purposes :

The following rules are general rules, these may however need to be adapted on a case-by-case basis since it is not possible to address all the different scenarios in these FAQs :

- The RR can be the entire board of directors (or other governing body depending on the legal structure of the Investment Fund Manager) of the IFM acting as a collegial body or can be one of the members of such board of directors (or other governing body).
- The RC shall be the compliance officer at appropriate hierarchical level in charge of AML/CFT aspects for the Investment Fund Manager.

Question 2:

What are the conditions applicable to the persons in charge of AML/CFT pursuant to Article 4(1) of the Law ?

Answer: With respect to the RR, the CSSF requests notably that the RR :

- has sufficient AML/CFT knowledge with regard to the applicable Luxembourg legislation and regulation and can demonstrate (e.g. trainings) this upon request,
- is knowledgeable about the investments and distribution strategies of the Fund/about the services offered by the IFM, and

- will be available without delay upon contact by the Luxembourg AML/CFT competent authorities (if the RR is a collegial body, at least one of its members must fulfil this requirement).

With respect to the RC, the CSSF requests that the RC :

- has sufficient AML/CFT knowledge and expertise with regard to the applicable Luxembourg legislation and regulation and can demonstrate (e.g. trainings, work experience, etc.) this upon request,
- is knowledgeable about the investments and distribution strategies of the Fund/about the services offered by the IFM,
- will be available without delay upon request by the Luxembourg AML/CFT competent authorities, and
- has access to all internal documents and systems required necessary for performing its tasks. This condition is particularly relevant where the RC is not present in Luxembourg on an on-going basis.

Please refer to Articles 40 (3) to 43 of CSSF Regulation N° 12-02 of 14 December 2012 for further details regarding the skills and duties of the RC.

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