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COMBAT AGAINST MONEY LAUNDERING AND TERRORIST FINANCING

Law of 27 October 2010

enhancing the anti-money laundering and counter terrorist financing legal framework;

organising the controls of physical transport of cash entering, transiting through or leaving the Grand Duchy of Luxembourg;

implementing United Nations Security Council resolutions as well as acts adopted by the European Union concerning prohibitions and restrictive measures in financial matters in respect of certain persons, entities and groups in the context of the combat against terrorist financing;

amending:

1. the Penal Code;

2. the Code of Criminal Procedure;

3. the Law of 7 March 1980 on the organisation of the judicial system, as amended;

4. the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended;

5. the Law of 19 February 1973 on the sale of medicinal substances and the fight against drug addiction, as amended;

6. the Law of 11 April 1985 approving the Convention on the Physical Protection of Nuclear Material, opened for signature at Vienna and New York on 3 March 1980, as amended;

7. the Law of 31 January 1948 on the regulation of air navigation, as amended;

8. the Law of 20 June 2001 on extradition;

9. the Law of 17 March 2004 on the European arrest warrant and surrender procedures between Member States of the European Union;

10. the Law of 8 August 2000 concerning mutual legal assistance in criminal matters;

11. the Law of 23 December 1998 establishing a financial sector supervisory commission (“Commission de surveillance du secteur financier”), as amended;

12. the Law of 5 April 1993 on the financial sector, as amended;

13. the Law of 6 December 1991 on the insurance sector, as amended;

14. the Law of 9 December 1976 on the organisation of the profession of notary, as amended;

- 15. the Law of 10 August 1991 on the legal profession, as amended;**
- 16. the Law of 10 June 1999 relating to the organisation of the accounting profession, as amended;**
- 17. the Law of 18 December 2009 concerning the audit profession;**
- 18. the Law of 20 April 1977 on gaming and betting on sporting events, as amended;**
- 19. the Law of 17 March 1992 approving the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances signed in Vienna on 20 December 1988, as amended;**
- 20. the Law of 14 June 2001 approving the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, signed in Strasbourg on 8 November 1990, as amended;**

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as amended by:

the Law of 19 December 2020 implementing financial restrictive measures

(Mém. A 2020, No 1072)

We, Henri, Grand-Duke of Luxembourg, Duke of Nassau,

Having consulted the Council of State;

With the consent of the Parliament;

Having regard to the decision of the Parliament of 13 October 2010 and the decision of the Council of State of 26 October 2010, ruling that a second vote is not required;

Have ordered and do hereby order:

PART I
Amending provisions

Title I – Amendments to the Penal Code

Art. 1 The Penal Code is amended and supplemented as follows:

1) Article 32-1 of the Penal Code is amended as follows:

“In the event of a money laundering offence referred to in Articles 506-1 to 506-8, and in the event of any offence referred to in Articles 112-1, 135-1 to 135-6 and 135-9, special confiscation measures apply to:

- 1) property including assets of any kind, whether corporeal or incorporeal, movable or immovable, as well as any legal document or instrument in any form evidencing title to, or any interest in, any asset or assets constituting the subject or the proceeds, whether directly or indirectly, of an offence or giving rise to any financial benefit deriving from the offence, including income from these assets;
- 2) any property used, or intended for use, in the commission of the offence;
- 3) property substituted for that mentioned in points 1 and 2 above, including the income generated by the substituted property;
- 4) property held or owned by the convicted offender whose monetary value corresponds to that of the property mentioned in points 1 and 2 above, if the latter cannot be located in order to be confiscated.

The confiscation of property referred to in the first paragraph of this article is decided even in the case of acquittal or exemption from penalty, if criminal proceedings have been terminated or if the time limit for the commencement of criminal proceedings has lapsed.

When the property is held or owned by the party injured as a result of the offence, they are returned to this party. Confiscated property is also turned over to this party in cases where the judge orders confiscation on the grounds that the property constitutes property substituted for items belonging to the party injured as a result of the offence or when they constitute their value as defined in the first subparagraph of this article.

Any third party claiming to hold title to the confiscated property is entitled to put forward such a claim. Should these claims be recognised as legitimate and justified, the court shall rule on the return of property to this party.

The court having ordered confiscation remains competent to hear requests for restitution, submitted to the public prosecutor or the court of jurisdiction by the injured party itself or a third party making a claim of title to the confiscated property.

This request must be submitted within a period of two years from the date when the confiscation decision was rendered, after which the seeking of such a remedy shall be barred.

Such a remedy may also not be sought if the confiscated property has been transferred to the requesting state in execution of an agreement between two states or an arrangement between the Luxembourg government and the government of the requesting state.”

- 2) Book II, Title I of the Penal Code is supplemented with a Chapter I-1, which reads as follows:

“Chapter I-1. Crimes against internationally protected persons

Article 112-1. (1) The maximum penalties provided for the offences defined in chapters I, IV, and IV-1 of Title VIII of Book II, in section I of chapter III of Title IX of Book II and in Article 521 of the Penal Code may be raised, within the limits for penalties set forth in Articles 54, 56 and 57-1, when the offences target an internationally protected person, his/her official premises, his/her private accommodation or his/her means of transport.

(2) Threats to commit such an offence are punished as provided for under Articles 327 to 331. The increase of the penalties mentioned in paragraph 1 applies.

(3) For the application of paragraphs (1) and (2), the following persons are assumed to be internationally protected persons:

- any head of state, including any member of a collegial body performing the functions of a head of state under the constitution of the state concerned; any head of government or minister for foreign affairs, whenever any such person is in a foreign state, as well as any accompanying members of his/her family;
- any representative or official of a state or any official or other agent of an international organisation of an intergovernmental character who, at the time when and in the place where a crime against him/her, his/her official premises, his/her private accommodation or his/her means of transport is committed, is entitled pursuant to international law to special protection from any attack on his/her person, freedom or dignity, as well as members of his/her family forming part of his/her household;

- 3) In Book II, Title I, Chapter III-1 of the Penal Code, Articles 135-1 to 135-8 are combined to form a Section I entitled “Terrorism-related offences”.

- 4) Article 135-2 of the Penal Code is amended as follows:

“Article 135-2. Any person who has committed an act of terrorism as defined under the previous article shall be subject to a term of imprisonment of between fifteen and twenty years.

If this act results in the death of one or more persons, the punishment is extended to life imprisonment.”

- 5) Article 135-3 of the Penal Code is amended as follows:

“Article 135-3. The term ‘terrorist group’ refers to any structured group of at least two persons, established over a period of time to commit in concert one or several of the terrorist offences as defined under Articles 112-1, 135-1, 135-2, 135-5, 135-6, 135-9, and 442-1.”

- 6) Article 135-5 of the Penal Code is amended as follows:

“Article 135-5. The expression ‘terrorist financing offence’ refers to the unlawful and wilful providing or collecting of funds, securities or assets of any type by any means, directly or

indirectly, with the intention that they should be used or in the knowledge that they are to be used, in full or in part, to carry out or attempt to carry out one or more offences defined in Articles 112-1, 135-1 to 135-4, 135-9 and 442-1, even if they were not effectively used to carry out or attempt to carry out any of these offences, or if they are not linked to one or more specific terrorist acts.

The term ‘funds’ means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit without such enumeration being exhaustive.”

7) Article 135-6 of the Penal Code is amended as follows:

“**Article 135-6.** Any person who has committed a terrorist financing offence as defined in the preceding article shall be subject to the same punishment as that provided under Articles 112-1, 135-1 to 135-4, 135-9 and 442-1, and in accordance with the distinctions established therein.”

8) Article 135-7 of the Penal Code is amended as follows:

“**Article 135-7.** Exemptions from penalties are granted to any person who, prior to any attempted offence under Articles 112-1, 135-1, 135-2, 135-5, 135-6 and 135-9 and before any proceedings have commenced, provides information to the authorities on the plans to commit the offences defined in said articles or the identity of those involved.

Reduced prison sentences are granted in these same cases, pursuant to the provisions of Article 52 and in accordance with the scale of reductions specified therein in respect of any person who, after proceedings have commenced, reveals to the authorities the identity of perpetrators who had hitherto remained unknown.”

9) Article 135-8 of the Penal Code is amended as follows:

“**Article 135-8.** Exemptions from penalties are granted to any person found guilty of membership in a terrorist group who, prior to any attempted terrorist act by the group, and before any proceedings have commenced, provides information to the authorities as to the existence of said group and the names of its leaders or their immediate subordinates.”

10) Book II, Title I, Chapter III-1 of the Penal Code is supplemented with a Section II, which reads as follows:

“**Section II – Terrorist attacks using explosive devices**

Article 135-9.

- (1) Without prejudice to Article 520, any person who unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against a place of public use, a State or government facility, a public transportation system or an infrastructure facility:
 - 1) with the intent to cause death or serious bodily injury; or
 - 2) with the intent to cause extensive destruction of such a place, facility or system, where such destruction results in or is likely to result in major economic lossshall be subject to a term of imprisonment of between five and ten years.
- (2) This term of imprisonment shall be increased to between ten and fifteen years if the offence set forth in paragraph 1 caused bodily injury or illness.

- (3) A term of imprisonment of between fifteen and twenty years shall apply if:
- 1) the offence set forth in paragraph 1 caused either an illness appearing to be incurable, or permanent disability, or the loss of full use of an organ, or serious mutilation;
 - 2) the offence set forth in paragraph 1 directly resulted in the destruction of a place of public use, a State or government facility, a public transportation system or an infrastructure facility, or seriously damages said facility or system.
- (4) The punishment will be life imprisonment if the offence set forth in paragraph 1 leads to the death of at least one person.”

Article 135-10. For the application of Article 135-9:

- “Government or other public facility” includes any permanent or temporary facility or conveyance that is used or occupied by representatives of a state, members of government, the legislature or the judiciary or by officials or employees of a state or any other public authority or entity or by employees or officials of an intergovernmental organisation in connection with their official duties.
 - “Infrastructure facility” means any publicly or privately owned facility providing or distributing services for the benefit of the public, such as water, sewage, energy, fuel or communications.
 - “Explosive or other lethal device” means:
 - 1) an explosive or incendiary weapon or device that is designed, or has the capability, to cause death, serious bodily injury or substantial material damage; or
 - 2) a weapon or device that is designed, or has the capability, to cause death, serious bodily injury or substantial material damage through the release, dissemination or impact of toxic chemicals, biological agents or toxins or similar substances or radiation or radioactive material.
 - “Place of public use” means those parts of any building, land, street, waterway or other location that are accessible or open to members of the public, whether continuously, periodically or occasionally, and encompasses any commercial, business, cultural, historical, educational, religious, governmental, entertainment, recreational or similar place that is so accessible or open to the public.
 - “Public transportation system” means all facilities, conveyances and instrumentalities, whether publicly or privately owned, that are used in or for publicly available services for the transportation of persons or cargo.
- 11) In Article 198 of the Penal Code, the phrase “two years” is replaced by the phrase “three years”.
- 12) In Article 199 of the Penal Code, the phrase “two years” in the first paragraph is replaced by the phrase “three years”.
- 13) In Article 199bis of the Penal Code, the phrase “one year” is replaced by the phrase “three years”.
- 14) In Article 200 of the Penal Code, the phrase “two years” is replaced by the phrase “three years”.
- 15) In Article 201 of the Penal Code, the phrase “two years” is replaced by the phrase “three years”.
- 16) In Article 205 of the Penal Code, the phrase “one year” in the first paragraph is replaced by the phrase “three years”.

In Article 205 of the Penal Code, the phrase “six months” in the second paragraph is replaced by the phrase “three years”.

- 17) In Article 206 of the Penal Code, the phrase “one year” in the second paragraph is replaced by the phrase “three years”.
- 18) In Article 209 of the Penal Code, the phrase “two years” in the first paragraph is replaced by the phrase “three years”.
- 19) In Article 210 of the Penal Code, the phrase “three months” is replaced by the phrase “three years”.
- 20) Article 506-1, point 1 of the Penal Code is supplemented as follows:
“those who have knowingly facilitated, by any means, the false attribution of the true nature, source, location, disposition, movement, or ownership of or rights with respect to property referred to in Article 32-1, first paragraph, point 1 constituting the subject or the proceeds, whether directly or indirectly, of,”
- 21) The first indent of Article 506-1, point 1 of the Penal Code is supplemented as follows:
“an offence as set forth in Articles 112-1, 135-1 to 135-6 and 135-9 of the Penal Code;”.
- 22) Article 506-1, point 2 of the Penal Code is supplemented as follows:
“2) those who have knowingly provided assistance for the investment, concealment, disguise, transfer or conversion of the property referred to in Article 32-1, first paragraph, point 1 constituting the subject or proceeds, whether directly or indirectly, of the offences listed under point 1 of this article or giving rise to any financial benefit deriving from one or more of these offences;”.
- 23) In Article 506-1, point 3 of the Penal Code, the reference to “Article 31, first paragraph, point 1” is replaced by a reference to “Article 32-1, first paragraph, point 1”.
- 24) Book II, Title IX, Chapter II, Section V of the Penal Code is supplemented with an Article 506-8, which reads as follows:
“**Article 506-8.** The offences defined in Article 506-1 are punishable irrespective of any proceedings or convictions delivered for any of the predicate offences listed in Article 506-1.”

Title II – Amendments to the Code of Criminal Procedure

Art. 2 The Code of Criminal Procedure is amended as follows:

- 1) Article 5-1 of the Code of Criminal Procedure is supplemented as follows:
“**Article 5-1.** Any Luxembourger, including any foreigner on the territory of the Grand Duchy of Luxembourg, who has committed any of the offences set forth in Articles 112-1, 135-1 to 135-6, 135-9, 163, 169, 170, 177, 178, 185, 187-1, 192-1, 192-2, 198, 199, 199bis and 368 to 382-2 of the Penal Code in a foreign country, may be prosecuted and judged in the Grand Duchy, even in cases where the offence is not punishable under the laws of the country where it was committed and in respect of which the Luxembourg authorities have received neither a complaint from the injured party nor a formal notice from the authorities of the country where the offence was committed.”

2) Article 7-4 of the Code of Criminal Procedure is supplemented as follows:

“Whenever a person who committed in a foreign country any of the offences set forth in Articles 112-1, 135-1 to 135-6, 135-9, 260-1 to 260-4, 382-1 and 382-2 of the Penal Code is not extradited, the matter shall be submitted to the competent authorities for the purpose of prosecution in accordance with the applicable rules.”

3) Article 24-1, paragraph 1 of the Code of Criminal Procedure is amended as follows:

“**Article 24-1.** (1) “For any misdemeanour (*délit*), the state prosecutor may apply with the investigating judge to order a search, seizure, or either witness or expert testimony without a formal preliminary investigation being opened.

The state prosecutor may proceed in the same manner for any of the offences set forth in Articles 196 and 197 of the Penal Code relating to the use of the types of forged documents listed in Article 196, and for any of the offences set forth in Articles 467, 468 and 469 of the Penal Code.”

(2) The investigating judge in charge of the matter decides whether to merely carry out the requested investigating measure and returns the file to the state prosecutor or whether to continue the instruction himself/herself.

In the latter case however, he/she must immediately, and prior to any further measures, make a written application to the state prosecutor to be formally put in charge of such matter (*réquisitoire de saisine in rem*), which the state prosecutor must deliver immediately.

(3) If the investigating judge returns the file, the persons who are the subject of the inquiry are interrogated prior to the summoning or referral by the *chambre du conseil* to the judge deciding the case. Prior to the interrogation, the officers and agents of the judiciary police designated in Article 13 inform the person to be interrogated of his/her right to counsel, in writing and with acknowledgment of receipt, in a language the person understands, except in cases where it is not materially possible.

(4) The state prosecutor may make a second application (*réquisitoire*) in the sense of paragraph 1 only within a period of three months following the return of the file by the investigating judge.

(5) The state prosecutor as well as any person proving that he/she has a legitimate personal interest (*intérêt légitime personnel*) may apply by way of a request (*requête*) for any of the investigating measures or implementing measures thereof to be declared void.

(6) The application must be filed with the *chambre du conseil* of the district court.

The state prosecutor must file the application within five days from the moment he/she is aware of the measure.

Subject to the provisions of paragraph 7 of this article, any person concerned must file the application within a period of two months from the moment the investigating measure that is being challenged, or the last of the investigating measures that are being challenged, was executed, whether a formal preliminary investigation was opened further to the investigating measure or not.

(7) The application can be filed:

- if a formal preliminary investigation was opened based on the investigating measure, by the defendant, with the *chambre du conseil* of the district court, within a period of five days from his/her indictment, after which the filing of such an application shall be barred;
- if no formal preliminary investigation was opened based on the investigating measure, by the defendant, with the court deciding the case (*juridiction de jugement*) and, subject to being barred, prior to any other application, defence or plea other than a plea of lack of jurisdiction.

(8) If the application is filed by a concerned person, the registry of the court forwards it to the state prosecutor. If the application is filed by the defendant in accordance with the provisions of the first indent of paragraph 7 above, the registry of the court forwards it to the other involved parties.

(9) If the application is filed with the *chambre du conseil*, it shall be urgently decided upon and the decision shall be notified to the parties in accordance with the notification procedures laid down for criminal matters.

(10) If the *chambre du conseil* or the court deciding the case admits that there are grounds for nullity, it declares nul the procedural measure taken in violation of the law, as well as the measures taken as part of the subsequent inquiry or, if applicable, the subsequent investigation and which were taken as a consequence of the procedural measure declared null and determines the effects of such nullity.

4) Article 26, paragraph 2 of the Code of Criminal Procedure is supplemented as follows:

“(2) Notwithstanding the provisions of paragraph 1 above, the state prosecutor and the courts of the district of Luxembourg are the only competent authorities for cases relating to money laundering offences, as well as to any of the offences set forth in Articles 112-1, 135-1 to 135-6 and 135-9 of the Penal Code.”

5) Article 29, paragraph 2 of the Code of Criminal Procedure is supplemented as follows:

“(2) Notwithstanding the provisions of paragraph 1 above, the investigating judge of the Luxembourg district court is the only competent authority to investigate money laundering offences, as well as any of the offences set forth in Articles 112-1, 135-1 to 135-6 and 135-9 of the Penal Code.”

Title III – Further amendments to the Law of 7 March 1980 on the organisation of the judicial system, as amended

Art. 3 1) The last paragraph of Article 13 of the Law of 7 March 1980 on the organisation of the judicial system, as amended, is deleted.

2) The Law of 7 March 1980 on the organisation of the judicial system, as amended, is supplemented with an article 13bis which reads as follows:

“In particular, the state prosecutor at Luxembourg district court appoints the public prosecutors who handle economic and financial matters, under the supervision of a deputy state prosecutor or of a principal or senior deputy public prosecutor.

A financial intelligence unit is established which consists of public prosecutors specialising in economic and financial matters, economists and financial analysts.

The financial intelligence unit is managed by a deputy state prosecutor delegated by the state prosecutor.

The financial intelligence unit has national and exclusive jurisdiction to investigate both money laundering and terrorist financing cases. The responsibilities of this unit are to:

- 1) serve as the national centre responsible for receiving the suspicious transaction reports and other information regarding potential money laundering or terrorist financing, requesting such information in accordance with the law, analysing them and following up as appropriate;
- 2) ensure that the confidentiality of any information handled by the financial intelligence unit is preserved at all times and that information is only disseminated in accordance with the law. Information obtained from a foreign financial intelligence unit may only be used in support of an investigation, court proceedings or for any other purpose if express written consent has been received from the financial intelligence unit having forwarded the information;

- 3) provide feedback on suspicious transaction reports and any follow-up actions to the reporting person, without jeopardising ongoing investigations or inquiries;
- 4) draw up an annual activity report including in particular the following elements: 1) statistics, covering the number of suspicious transaction reports, the follow-up actions relating to these reports, in addition to, on an annual basis, the number of cases investigated, of individuals charged with and of individuals convicted of money laundering or terrorist financing offences, as well as the amount of frozen, seized or confiscated assets; 2) a listing of categories of offences and trends; 3) a description using sanitised examples illustrating observed money laundering or terrorist financing techniques; 4) information relating to the activities of the financial intelligence unit;
- 5) see to it, in association with the supervisory authorities, self-regulatory organisations or professional associations involved, that those to which the provisions on the prevention of money laundering and terrorist financing apply, have a good knowledge of the laws, regulations and recommendations applicable to them, in order to ensure compliance with the law and adequate cooperation with the authorities.”

Title IV – Further amendments to the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended

Art. 4 The Law of 12 November 2004 on combating money laundering and terrorist financing, as amended, is further amended and supplemented as follows:

- 1) Article 1, paragraph 8, point (e) of the aforementioned Law of 12 November 2004 is amended as follows:
“e) acting as or arranging for another person to act as a nominee shareholder for another person.”
- 2) The first subparagraph of Article 1, paragraph 10 of the aforementioned Law of 12 November 2004 is supplemented after point (f) with a point (g) reading as follows: “important political party officials”.

In the second subparagraph of paragraph 10, the reference to “(a) to (f)” is replaced with a reference to “(a) to (g)”.

In Article 1, paragraph 11 of the aforementioned Law of 12 November 2004, the first sentence is replaced with the following text:

“As used in paragraph 9, “immediate family members” refers to all physical persons, including in particular:”

- 3) In Article 2, paragraph 1 of the aforementioned Law of 12 November 2004, the following items are inserted between point 6 and point 7:
“6a. managers and advisors of undertakings for collective investment, investment companies in risk capital (SICAR) and pension funds;
6b. securitisation undertakings, when they perform trust and company service provider activities;
6c. Insurance and reinsurance undertakings and their intermediaries whenever they perform credit or surety operations;”

- 4) Article 2, paragraph 1, point 7 of the aforementioned Law of 12 November 2004 is amended as follows:

“7. persons other than those listed above who conduct as a business one or more of the activities or operations listed in the annex for or on behalf of a customer, without prejudice to restrictive measures or prohibitions relating to applicable activities or operations, under other laws.”

- 5) The last subparagraph of Article 2, paragraph 2 of the aforementioned Law of 12 November 2004 is supplemented as follows:

“The scope of application of this title and hence the notion of professional also includes branches in Luxembourg of foreign professionals as well as professionals established under the laws of foreign countries who supply services in Luxembourg without establishing any branch in Luxembourg.”

- 6) The aforementioned Law of 12 November 2004 on combating money laundering and terrorist financing is supplemented by an Annex, which reads as follows:

“Annex of activities or operations referred to in Article 2(1)(7)

1. Acceptance of deposits and other repayable funds from the public, including private banking.
2. Lending, including consumer credit, mortgage credit, factoring, with or without recourse, financing of commercial transactions (including forfeiting).
3. Financial leasing, not including financial leasing arrangements in relation to consumer products.
4. Transfer of money or value.
5. Issue and management of means of payment (e.g., credit and debit cards, cheques, travellers cheques, money orders and bankers' drafts, electronic money).
6. Financial guarantees and commitments.
7. Trading in:
 - a) money market instruments (such as, in particular, cheques, bills, certificates of deposit, derivatives);
 - b) foreign exchange;
 - c) exchange, interest-rate and index instruments;
 - d) transferable securities;
 - e) commodity futures trading.
8. Participation in securities issues and the provision of financial services related to such issues.
9. Individual and collective portfolio management.
10. Safekeeping and administration of cash or liquid securities on behalf of other persons.
11. Otherwise investing, administering or managing funds or money on behalf of other persons.
12. Underwriting and placement of life insurance and other investment-related insurance, by either insurance undertakings or insurance intermediaries (agents and brokers).
13. Money and currency changing.
14. Safe-deposit box rental.”

- 7) The third subparagraph of Article 2, paragraph 2 of the aforementioned Law of 12 November 2004 is amended as follows:

“Professionals shall apply measures at least equivalent to those laid down in articles 3 to 8 or in Directive 2005/60/EC in their foreign branches and subsidiaries with regard to customer due diligence, adequate internal organisation and co-operation with authorities.

Professionals shall pay particular attention that this principle is observed with respect to their branches and subsidiaries in countries which do not or insufficiently apply the requirements regarding the combat against money laundering and terrorist financing.

Where the legislation of the foreign country does not permit application of equivalent measures, the professionals concerned shall inform the Luxembourg authorities responsible for combating money laundering and terrorist financing accordingly and take additional measures to effectively handle the risk of money laundering or terrorist financing.

Where the minimum requirements for the combat against money laundering and terrorist financing of host countries differ from those applicable in Luxembourg, branches and subsidiaries in host countries shall apply the higher standard, to the extent that host country laws and regulations permit.”

- 8) In Article 3, paragraph 2, point (b) of the aforementioned Law of 12 November 2004, the expression “risk-based and adequate measures” is replaced in each instance by the expression “reasonable measures”.
- 9) Article 3, paragraph 3 of the aforementioned Law of 12 November 2004 is supplemented by a new subparagraph, which reads as follows:
“Professionals are required to perform an analysis of the risks inherent to their business activities. They must set down in writing the findings of this analysis.”
- 10) The first subparagraph of Article 3-1, paragraph 1 of the aforementioned Law of 12 November 2004 is amended as follows:
“Without prejudice to paragraph 3 of this article, professionals may reduce the customer due diligence measures set forth in Article 3(2) (a) and (b) when the customer is a credit institution or financial institution governed by this law.”
- 11) The first subparagraph of Article 3-1, paragraph 2 of the aforementioned Law of 12 November 2004 is amended as follows:
“Without prejudice to paragraph 3 of this article, professionals may reduce the customer due diligence measures set forth in Article 3(2) (a) and (b) in the following circumstances:”
- 12) Article 3-1, paragraph 2, point (a) of the aforementioned Law of 12 November 2004 is supplemented as follows:
“provided that the country in question complies with the measures for the combat against money laundering and terrorist financing required by international standards and applies them effectively.”
- 13) In the last indent of Article 3-1, paragraph 2, point (e) of the aforementioned Law of 12 November 2004, the phrase “at point (a’)” is replaced by the phrase “at the first indent of this point (e)”.
- 14) Article 3-1, paragraph 3 of the aforementioned Law of 12 November 2004 is amended as follows: “In the cases referred to in paragraphs 1, 2 and 4, professionals are required to gather sufficient information in every circumstance to determine whether the customer satisfies all of the conditions required to apply the simplified customer due diligence measures, which means that professionals must have access to a reasonable amount of information relating to the requirements set forth in Article 3(2) and must monitor the business relationship at all times so as to ensure that the conditions for the application of Article 3-1 continue to be met. If information is available making think that the risk is not low, it is not possible to apply simplified due diligence measures.”

- 15) The first subparagraph of Article 3-1, paragraph 4 of the aforementioned Law of 12 November 2004 is amended as follows:
“Without prejudice to paragraph 3 of this article, professionals may reduce the customer due diligence measures set forth in Article 3(2) (a) and (b) in regard to:”
- 16) In Article 3-2, paragraph 2 of the aforementioned Law of 12 November 2004, points (b) and (c) are supplemented by the following phrase: “governed by this law or subject to equivalent professional obligations relating to the combat against money laundering or terrorist financing.”
- 17) The first sentence of Article 3-2, paragraph 3 of the aforementioned Law of 12 November 2004 is amended as follows:
“In the event of cross-border correspondent banking and other similar relationships with respondent institutions in Third Countries and, contingent upon the assessment of a higher risk, with respondent institutions in Member States, credit institutions and other institutions involved in such relationships must:”
- 18) Article 3-2, paragraph 4 of the aforementioned Law of 12 November 2004 is amended as follows:
The first sentence of paragraph 4 is supplemented as follows:
“With regard to transactions or business relationships with politically exposed persons residing abroad or holding a public function in a foreign country or holding a public function on behalf of a foreign country, professionals are required to:”

In paragraph 4, point (a), the phrase “if the customer is a politically exposed person” is replaced with the phrase “if the customer or beneficial owner is a politically exposed person”.

At the end of paragraph 4, a new subparagraph is added, which reads as follows:

“The provisions of this paragraph also apply where a customer has already been accepted and the customer or the beneficial owner is subsequently found to be, or subsequently becomes, a politically exposed person.”

- 19) In Article 3-2, paragraph 5 of the aforementioned Law of 12 November 2004, the term “credit institutions” is replaced by the term “professionals”.
- 20) In Article 5 of the aforementioned Law of 12 November 2004 on combating money laundering and terrorist financing, paragraphs 1 to 4 and the first subparagraph of paragraph 5 are amended and supplemented as follows:

“Art. 5. Cooperation requirements with the authorities

- (1) Professionals, their directors, officers and employees are obliged to cooperate fully with the Luxembourg authorities responsible for combating money laundering and terrorist financing.

Without prejudice to their obligations *vis-à-vis* the competent regulatory or supervisory authorities, professionals, their directors, officers and employees are required to:

- a) inform without delay, on their own initiative, the financial intelligence unit of the office of the state prosecutor at the Luxembourg district court (hereinafter referred to as “the financial intelligence unit”) when they know, suspect or have reasonable grounds to suspect that money laundering or terrorist financing is being committed or has been committed or attempted, in particular in consideration of the person concerned, its development, the origin of the funds, the purpose, nature and procedure of the operation.

This report must be accompanied by all supporting information and documents having prompted the report.

The obligation to report suspicious transactions shall apply regardless of whether those filing the report can determine the predicate offence.

- b) provide without delay to the financial intelligence unit, at its request, any information. This obligation includes the submission of the documents on which the information is based.

The identity of the employees of the professional having provided such information is kept confidential by the aforementioned authorities, unless disclosure is essential to ensure the regularity of legal proceedings or to establish proof of the facts forming the basis of these proceedings.

- (1a) With regard to combating terrorist financing, the obligation to report suspicious transactions set forth in paragraph 1, point (a) also applies to funds where there are reasonable grounds to suspect or they are suspected to be linked or related to, or to be used for terrorism, terrorist acts, by terrorist associations, organisations or groups or by those who finance terrorism.
- (2) The communication of information and documents referred to in paragraphs 1 and 1a is usually carried out by the individual(s) appointed by the professionals for this purpose, in accordance with the procedures laid down in Article 4. The elements of information and documents provided to the authorities, other than the judicial authorities, in application of paragraphs 1 and 1a may only be used in the combat against money laundering and terrorist financing.
- (3) Professionals must refrain from carrying out a transaction which they know or suspect to be related to money laundering or terrorist financing before having informed the financial intelligence unit thereof in accordance with paragraphs 1 and 1a. The financial intelligence unit can give instructions not to execute one or more operations relating to the transaction or the customer.

Where a transaction is suspected of giving rise to money laundering or terrorist financing and where to refrain in such manner is impossible or is likely to frustrate efforts to pursue the beneficiaries of a suspected money laundering or terrorist financing operation, the professionals concerned shall submit the necessary information immediately afterwards.

An instruction by the financial intelligence unit to block the execution of one or more operations in accordance with the first sub-paragraph of this paragraph is valid for a maximum period of 3 months from the date of the communication of the instruction to the professional. Nevertheless, this period may be extended by written order by one month each time, with the understanding that the total duration may not exceed six months. Where the instruction is communicated orally, it must be followed by a written confirmation within 3 business days, otherwise the effects of the instruction cease on the third business day at midnight.

The professional is not authorised to disclose this instruction to the customer without the express prior consent of the financial intelligence unit.

- (3a) The provisions of paragraph 1, point (b) and paragraph 3 apply even in the absence of a suspicious transaction report made by the professional according to paragraph 1, point (a) and paragraph 1a.
- (4) No professional secrecy applies *vis-à-vis* the financial intelligence unit in respect of the provisions of paragraphs 1, 1a and 3.

The disclosure in good faith to the Luxembourg authorities responsible for combating money laundering and terrorist financing by a professional or by an employee or a director or officer of such a professional of any information referred to above does not constitute a breach of any restriction on disclosure of information imposed by contract or by professional secrecy and shall not involve such persons in liability of any kind.

- (4a) Reports, information and documents supplied by a professional pursuant to the provisions of paragraphs 1 and 1a cannot be used against this professional in proceedings on the basis of Article 9.
- (5) The professionals and their directors, officers and employees shall not disclose to the customer concerned or to other third persons the fact that information is being reported or provided to the authorities in accordance with paragraphs 1, 1a, 2 and 3 or that a money laundering or terrorist financing investigation by the financial intelligence unit is being or may be carried out.
- 21) In Article 8, point 1 of the aforementioned Law of 12 November 2004, the phrase “all casino customers” is replaced by the phrase “all casino customers and, where applicable, their beneficial owners”.
- 22) In Article 8, point 2 of the aforementioned Law of 12 November 2004, the phrase “customers” is replaced by the phrase “customers and, where applicable, their beneficial owners”.
- 23) Article 9 of the aforementioned Law of 12 November 2004 is amended as follows:
“A fine of between EUR 1,250 and EUR 1,250,000 shall be imposed on any person who knowingly contravenes the provisions of articles 3 to 8.”
- 24) The aforementioned Law of 12 November 2004 is supplemented by a new Title I-1, which reads as follows:
“Title I-1: Cooperation between competent authorities
Art. 9-1. The competent supervisory authorities in the area of the combat against money laundering and terrorist financing and the financial intelligence unit work in close cooperation and are authorised to exchange all information necessary for the accomplishment of their respective duties.
- 25) Article 7 of the aforementioned Law of 12 November 2004 is amended as follows:
“(1) Lawyers are not subject to the obligations referred to in Article 3 (4)(5) and in Article 5(1) and (1a) with regard to information they receive from or obtain on one of their clients, in the course of providing legal advice or ascertaining the legal position for their client or performing the task of defending or representing that client in judicial proceedings or concerning such proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings.
(2) In lieu and instead of a direct information or transmission of documents to the financial intelligence unit the information or documents referred to in Article 5(1) and (1a) have to be disclosed to the president of the Bar (*bâtonnier de l’Ordre des Avocats*) before whom the disclosing lawyer is enrolled in conformity with the law of 10 August 1991 on the legal profession, as amended. In this case, the president of the Bar (*bâtonnier de l’Ordre des Avocats*) shall verify compliance with the conditions laid down under the previous

paragraph and under Article 2(1)(12). In case of compliance, he shall transmit the information or documents received to the financial intelligence unit.”

26) In Title II of the aforementioned Law of 12 November the following articles are inserted:

“**Art. 26.** The supervision and monitoring of the professionals listed in Article 2(1) (9a), (10), (13), (13a) and (15) of this law are exercised by the *Administration de l’Enregistrement et des Domaines*.

Art. 27. With a view to monitoring compliance with professional obligations relating to the combat against money laundering and terrorist financing by these professionals, the civil servants and employees of the *Administration de l’Enregistrement et des Domaines* are granted the same investigative powers and the professionals in question are subject to the same disclosure obligations as those resulting from the second and third subparagraphs of Article 70(1), from the second subparagraph of Article 70(3) and from the first subparagraph of Article 71 of the law of 12 February 1979 relating to value-added tax. To this end, the territorial competence of civil servants and employees covers the entire country.

Art. 28. In the event of a failure to comply with professional obligations relating to money laundering or in the event of any obstacle to the exercise of the authority of the *Administration de l’Enregistrement et des Domaines*, a fine of between €250 and €250,000 can be imposed by the director of the *Administration de l’Enregistrement et des Domaines* or his/her representative.

An appeal (*recours en réformation*) may be filed with the administrative court (*Tribunal administratif*) within a period of one month following the notification of the decision by the director of the *Administration de l’Enregistrement et des Domaines* or his/her representative.”

Title V – Further amendments to the Law of 19 February 1973 on the sale of medicinal substances and the fight against drug addiction, as amended

Art. 5 The Law of 19 February 1973 on the sale of medicinal substances and the fight against drug addiction, as amended, is further amended as follows:

- 1) Article 8-1, point 1 of the aforementioned Law of 19 February 1973 is supplemented as follows: “those who have knowingly facilitated, by any means, the false attribution of the true nature, source, location, disposition, movement, or ownership of or rights with respect to property or income generated by any of the offences mentioned in Article 8, paragraph 1, points (a) and (b)”;
- 2) Article 8-1, point 2 of the aforementioned Law of 19 February 1973 is supplemented as follows: “2) those who have knowingly provided assistance for the investment, concealment, disguise, transfer or conversion of the subject or proceeds, whether indirectly or directly, of any of the offences mentioned in Article 8, paragraph 1, points (a) and (b);”
- 3) In Article 8-1, point 3 of the aforementioned Law of 19 February 1973, the reference to “Article 8, points (a) and (b)” is replaced by a reference to “Article 8, paragraph 1, points (a) and (b)”.
- 4) Article 8-1 of the aforementioned Law of 19 February 1973 is supplemented by a point 5, which reads as follows:

“5) The offences set forth in points 1 to 3 are punishable irrespective of any proceedings brought or convictions delivered for any of the offences mentioned in Article 8, paragraph 1, points (a) and (b).”

Title VI – Further amendments to the Law of 11 April 1985 approving the Convention on the Physical Protection of Nuclear Materials, opened for signature at Vienna and New York on 3 March 1980, as amended

Art. 6 The Law of 11 April 1985 approving the Convention on the Physical Protection of Nuclear Materials, opened for signature at Vienna and New York on 3 March 1980, as amended, is further amended and supplemented as follows:

1) Article 3 of the aforementioned Law of 11 April 1985 is supplemented as follows:

“**Article 3.** Any person who, by any means whatsoever, directly or indirectly, unlawfully and wilfully, provides or collects funds, securities or assets of any type with the intention that they should be being used, or with the knowledge that they are to be used, in full or in part, to carry out or attempt one or more offences set forth in Article 2, even if they were not effectively used to carry out or attempt any of these offences, or if they are not linked to one or more specific terrorist acts, shall be subject to the same penalties as those specified in Article 2 of this law and in accordance with the distinctions drawn in said article.

The term ‘funds’ refers to assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit without such enumeration being exhaustive.”

2) Article 4 of the aforementioned Law of 11 April 1985 is supplemented as follows:

“**Article 4.** Whenever a person who committed in a foreign country any of the offences set forth in Articles 2 and 3 is not extradited, the matter shall be referred to the competent authorities for the purpose of prosecution in accordance with the applicable rules.”

Title VII – Further amendments to the Law of 31 January 1948 on the regulation of air navigation, as amended

Art. 7 The Law of 31 January 1948 on the regulation of air navigation, as amended, is further amended and supplemented as follows:

1) The aforementioned Law of 31 January 1948 is supplemented by a new Article 31-1, which reads as follows:

“**Article 31-1.**

(1) A prison term of five to ten years shall be imposed for any person convicted of having, unlawfully and intentionally, through the use of any device, substance or weapon:

- 1) performed an act of violence against a person at an airport serving international civil aviation which causes or is likely to cause serious injury or death; or
- 2) destroyed or seriously damaged the facilities of an airport serving international civil aviation or aircraft not in service located thereon or disrupts the services of the airport, if such an act endangers or is likely to endanger safety at that airport.

(2) A term of imprisonment of between ten and fifteen years shall apply if the offence set forth in paragraph 1, points 1 and 2 caused bodily injury or illness.

- (3) A term of imprisonment of between fifteen and twenty years shall apply if:
 - 1) The offence set forth in paragraph 1, points 1 and 2 caused either an illness that appears to be incurable, or permanent disability, or the loss of full use of an organ, or serious mutilation;
 - 2) The offence set forth in paragraph 1, points 1 and 2 directly resulted in the destruction of, or serious damage to, the facilities of the airport or the aircraft.
 - (4) If the offence set forth in paragraph 1, points 1 and 2 leads to the death of at least one person, those found guilty shall be subject to life imprisonment.”
- 2) The current Article 31-1 is renumbered and becomes Article 31-2.
 - 3) Article 31-2 is supplemented as follows:

“**Article 31-2.** Any person who, by any means whatsoever, directly or indirectly, unlawfully and wilfully, provides or collects funds, securities or assets of any type with the intention that they should be used, or with the knowledge that they are to be used, in full or in part, to carry out or attempt one or more offences set forth in Articles 31 and 31-1, even if they were not effectively used to carry out or attempt any of these offences, or if they are not linked to one or more specific terrorist acts, shall be subject to the same penalties as those specified in Articles 31 and 31-1 of this law and in accordance with the distinctions drawn in said article.

The term ‘funds’ refers to assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit without such enumeration being exhaustive.”

Title VIII – Amendment of the Law of 20 June 2001 on extradition

- Art. 8** The Law of 20 June 2001 on extradition is supplemented by a new Article 14-1, which reads as follows:
- “**Article 14-1.** If, in application of the preceding provisions, Luxembourg refuses extradition, it must submit the case to its competent authorities for the purpose of prosecution in accordance with the applicable rules.”

Title IX – Amendment of the Law of 17 March 2004 on the European arrest warrant and surrender procedures between Member States of the European Union

- Art. 9** Article 20 of the Law of 17 March 2004 on the European arrest warrant and surrender procedures between Member States of the European Union is supplemented by a paragraph 4, which reads as follows:
- “4. If the surrender is not carried out, Luxembourg must submit the case to its competent authorities for the purpose of prosecution in accordance with the applicable rules.”

Title X – Amendment of the Law of 8 August 2000 concerning mutual legal assistance in criminal matters

Art. 10 The second paragraph of Article 3 of the Law of 8 August 2000 concerning mutual legal assistance is amended as follows:

“Subject to the provisions of conventions, any request for mutual legal assistance is refused if it exclusively involves offences related to taxes, customs duties or currency exchange under Luxembourg law.”

Title XI – Further amendments to the Law of 23 December 1998 establishing a financial sector supervisory commission, as amended

Art. 11 The Law of 23 December 1998 establishing a financial sector supervisory commission, as amended, is supplemented as follows:

- 1) The fourth subparagraph of Article 2, paragraph 1 of the aforementioned Law of 23 December 1998 is supplemented as follows:

“The CSSF also sees to it that natural or legal persons known to have ties other than strictly professional, either directly or indirectly, with organised crime do not take either direct or indirect control of natural or legal persons under its supervision, whether as beneficial owners, by acquiring a significant or controlling interest, by holding a management function or otherwise. As part of this role, the CSSF assesses whether directors and senior management personnel are fit and proper, which includes an assessment of their expertise and integrity. To this end, the CSSF may request the opinion of the office of the state prosecutor at the Luxembourg district court or the Grand Duchy’s police.”

- 2) The aforementioned Law of 23 December 1998 is supplemented by a new Article 3-4, which reads as follows:

“**Article 3-4.** The CSSF is authorised to draw up statistics in the fulfilment of its responsibilities and to gather the necessary data to this end from all undertakings and persons under its supervision.”

Title XII – Further amendments to the Law of 5 April 1993 relating to the financial sector, as amended

Art. 12 The Law of 5 April 1993 relating to the financial sector, as amended, is further amended and supplemented as follows:

- 1) The following sentence is added to the last paragraph of Article 39 of the aforementioned Law of 5 April 1993:

“All professionals are required to respond, exhaustively and without delay, to requests submitted to them by the competent authorities responsible for the combat against money laundering and terrorist financing and that relate to information accompanying transfers of funds and corresponding recorded information, irrespective of any rule of professional secrecy.”

- 2) Article 63 of the aforementioned Law of 5 April 1993 relating to the financial sector is amended as follows:

“Article 63. Administrative sanctions

- (1) Legal persons subject to the supervision of the CSSF and natural persons in charge of the administration or management of these legal persons as well as natural persons subject to such supervision may be sanctioned by the CSSF in the event that:

- they fail to comply with applicable laws, regulations, statutory provisions or instructions,
 - they refuse to provide accounting documents or other requested information,
 - they have provided documentation or other information that proves to be incomplete, incorrect or false,
 - they preclude the performance of the powers of supervision, inspection and investigation of the CSSF,
 - they contravene the rules governing the publication of balance sheets and accounts,
 - they fail to act in response to injunctions of the CSSF,
 - they act such as to jeopardise the sound and prudent management of the institution concerned.
- (2) In order of seriousness, the CSSF may impose the following sanctions:
- a warning,
 - a reprimand,
 - a fine of between 250 and 250,000 euros,
 - one or more of the following measures:
 - a) a temporary or definitive prohibition on the execution of any number of operations or activities, as well as any other restrictions on the activities of the person or entity,
 - b) a temporary or definitive prohibition on participation in the profession by the de jure or de facto, directors or senior management personnel of persons or entities subject to the supervision of the CSSF.

The CSSF may disclose to the public any sanctions imposed under this article, unless such disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.

The decision to impose a sanction may be referred to the administrative court to pass judgement on the merits of the case, within a period of one month, after which no such referral may be made.”

- (3) In connection with the exercise of the powers provided for in Articles 53 and 59, the CSSF may impose a coercive fine upon the persons referred to in paragraph 1 above in order to compel these persons to act upon the injunctions issued by the CSSF. The amount of this coercive fine, on the grounds of an observed failure to perform, may not be greater than 1,250 euros per day, with the understanding that the total amount imposed due to an observed failure to perform may not exceed 25,000 euros.”

Title XIII – Further amendments to the Law of 6 December 1991 on the insurance sector, as amended

Art. 13 The Law of 6 December 1991 on the insurance sector, as amended, is further amended and supplemented as follows:

- 1) Article 2, point 2 of the aforementioned Law of 6 December 1991 is amended as follows:

“2. to perform a supervisory role, including financial supervision, over the natural and legal persons referred to in point 1, in accordance with applicable legal and regulatory provisions concerning the supervision of the insurance sector.”
- 2) Article 2, point 3, of the aforementioned Law of 6 December 1991 is amended as follows: “to make regulations within the limits of its powers”
- 3) Following point 4 of Article 2 of the aforementioned Law of 6 December 1991, a point 4a is inserted, which reads as follows:

“4a. to ensure the application of laws and regulations relating to:

- the relations between parties to insurance contracts and insurance operations, and in particular compliance with legal provisions governing insurance contracts,
 - reinsurance and reinsurance securitisation operations, and
 - relations between policyholders and insurance intermediaries.”
- 4) Following point 4a of Article 2 of the aforementioned Law of 6 December 1991, a point 4b is inserted, which reads as follows:
“4b. to ensure that natural or legal persons known to have ties other than strictly professional, either directly or indirectly, with organised crime do not take either direct or indirect control of natural or legal persons under its supervision, whether as beneficial owners, by acquiring a significant or controlling interest, by holding a management function or otherwise. As part of this role, the Commissariat assesses whether directors and senior management personnel are fit and proper, which includes an assessment of their expertise and integrity. To this end, the Commissariat may request the opinion of the office of the state prosecutor at the Luxembourg district court or the Grand Duchy’s police.”
- 5) Following Article 21 of the aforementioned Law of 6 December 1991, a new Article 21bis is added, which reads as follows:
“Article 21bis. In connection with the fulfilment of the responsibilities defined in Article 2, points 1, 2, 4, 4a, 4b and 5:
1. The Commissariat gives instructions with regard to the accounting and other documents to be forwarded to the Commissariat by undertakings and persons approved in the Grand Duchy of Luxembourg.
 2. The Commissariat may request that undertakings and persons approved in the Grand Duchy of Luxembourg provide all information and documents deemed useful or necessary for the exercise of its supervision. A grand-ducal regulation may limit the authority of the Commissariat regarding the monitoring of general and specific terms and conditions and rates for insurance and reinsurance contracts, of forms and other printed documents that approved undertakings and persons plan to use in their relationships with customers.
 3. The Commissariat may perform on-site inspections on the premises of undertakings and persons approved in the Grand Duchy of Luxembourg, perform remote inspection or take copies of ledgers, accounts, registers or other instruments and documents.
 4. The Commissariat may hear members of the board of directors or of other supervisory and management bodies, senior management personnel and other employees of insurance and reinsurance undertakings and their agents as well as insurance and reinsurance brokers, insurance sub-brokers, and other employees of insurance and reinsurance brokers.
The Commissariat may also obtain all information deemed useful from other administrative or judicial bodies or from any other persons.
 5. The Commissariat monitors relationships between, on the one hand, undertakings and persons approved in the Grand Duchy of Luxembourg and, on the other hand, other undertakings and persons, whenever approved undertakings and persons assign to these other undertakings and persons functions having an influence on their financial position or of material importance for the effectiveness of the Commissariat’s inspections. This supervision entails the authority to perform on-site inspections of these undertakings and persons to whom these functions have been assigned.
- 6) Article 22, paragraph 1 of the aforementioned Law of 6 December 1991 is supplemented and reads as follows:
“1. The Commissariat is authorised to draw up statistics in the fulfilment of its responsibilities and to gather the necessary data to this end from all insurance undertakings operating in the Grand Duchy of Luxembourg as well as reinsurance undertakings approved in the Grand Duchy of

Luxembourg and insurance and reinsurance intermediaries approved in the Grand Duchy of Luxembourg.

- 7) Following point 3 of Article 34 of the aforementioned Law of 6 December 1991, a point 3a is inserted, which reads as follows:

“3a) Insurance undertakings registered in Luxembourg and foreign undertakings with operations in Luxembourg are required to ensure that their account files and other documents relating to their business activities remain in the Grand Duchy of Luxembourg at all times, either at the registered office of Luxembourg undertakings or at the office of operations of foreign undertakings, or in any other place duly notified to the Commissariat.”
- 8) Article 43 of the aforementioned Law of 6 December 1991 is repealed.
- 9) Paragraph 5 of Article 44 of the aforementioned Law of 6 December 1991 is amended as follows: “5. In the cases provided for under points 1, 2 and 3 as well as for any violation of this law, of legislation relating to the combat against money laundering and terrorist financing and of legislation governing insurance contracts, of their implementing regulations and of instructions given by the Commissariat, the Commissariat may order an undertaking to take, within a specific deadline, any measures with the aim, in particular, of re-establishing or reinforcing its financial stability, safeguarding the interests of insurance creditors and ceding insurers or reinsurers or correcting its practices. It may also reassign, in full or in part, the powers granted by the law to the undertaking’s directors or senior management personnel to a special representative authorised to exercise these powers.”
- 10) Article 46 of the aforementioned Law of 6 December 1991 is supplemented as follows:
 - “5. All sanctions provided for in this article also apply to violations of the legislation relating to the combat against money laundering and terrorist financing, of its implementing regulations and of instructions given by the Commissariat in this area. In the event of such a violation, the maximum fine provided for in the first subparagraph of the first paragraph is raised to €250,000.
 6. The Commissariat may make public any sanctions imposed under this article, unless such disclosure would seriously jeopardise the insurance sector or cause disproportionate damage to the parties involved.
 7. In fulfilment of the responsibilities defined in Article 2, points 1, 2, 4, 4a, 4b and 5 of this law, the Commissariat may impose a coercive fine upon the persons under its supervision, in order to compel these persons to act upon the injunctions issued by the Commissariat. The amount of this coercive fine, on the grounds of an observed failure to perform, may not be greater than €1,250 per day, with the understanding that the total amount imposed due to an observed failure to perform may not exceed €25,000.”
- 11) Article 100-1 of the aforementioned Law of 6 December 1991 is repealed.
- 12) Paragraph 4 of Article 100-2 of the aforementioned Law of 6 December 1991 is amended as follows:

“In the cases provided for under paragraphs 1, 2 and 3 as well as for any violation of this law, of legislation relating to the combat against money laundering and terrorist financing, of their implementing regulations and of instructions given by the Commissariat, the Commissariat may order an undertaking to take, within a specific deadline, any measures with the aim, in particular, of re-establishing or reinforcing its financial stability, safeguarding the interests of ceding insurers or reinsurers or correcting its practices. It may also reassign, in full or in part, the powers granted by the law to the undertaking’s directors or senior management personnel to a special representative authorised to exercise these powers.”

13) Article 101 of the aforementioned Law of 6 December 1991 is supplemented as follows:

- “6. All sanctions provided for in this article also apply to violations of the legislation relating to the combat against money laundering and terrorist financing, of its implementing regulations and of instructions given by the Commissariat in this area. In the event of such a violation, the maximum fine provided for in the first paragraph is raised to €250,000 and the maximum fine provided for in the second paragraph is raised to €50,000.
7. The Commissariat may make public any sanctions imposed under this article, unless such disclosure would seriously jeopardise the insurance sector or cause disproportionate damage to the parties involved.
8. In fulfilment of the responsibilities defined in Article 2, points 1, 2, 4, 4a, 4b and 5 of this law, the Commissariat may impose a coercive fine upon reinsurance undertakings and their directors or senior management personnel, in order to compel these persons to act upon the injunctions issued by the Commissariat. The amount of this coercive fine, on the grounds of an observed failure to perform, may not be greater than €1,250 per day, with the understanding that the total amount imposed due to an observed failure to perform may not exceed €25,000.”

14) Following Article 105 of the aforementioned Law of 6 December 1991, a new Article 105bis is added, which reads as follows:

“Article 105bis

1. The approval of a brokerage firm or an insurance agency is contingent upon the submission to the Commissariat of information pertaining to the identities of all shareholders or partners, whether direct or indirect, natural or legal persons, having a qualifying holding in the brokerage firm or insurance agency requesting approval or an interest allowing them to exert significant influence on the conduct of the brokerage firm or insurance agency’s business, as well as the amount of these holdings. Said shareholders or partners must be deemed suitable, given the need to guarantee sound and prudent management of the legal entity as an intermediary.
2. In order to be approved, the ownership structure, including both direct and indirect shareholders, of the brokerage firm or insurance agency seeking approval must be found to be transparent.
3. When close ties exist between the brokerage firm or insurance agency and other natural or legal persons, approval is only granted if these ties do not impede or hinder the proper exercise of the Commissariat’s supervisory responsibilities.
Approval is also refused if any legislative or regulatory provisions of a foreign country governing one or more natural or legal persons with whom the brokerage firm or insurance agency maintains close ties, or difficulties relating to their application, impede or hinder the proper exercise of the Commissariat’s supervisory responsibilities.
Brokerage firms or insurance agencies must provide the information requested by the Commissariat to ensure that the requirements set out in this point are fulfilled at all times.
4. Any natural or legal person with the intention of having, either directly or indirectly, a qualifying holding in a brokerage firm or insurance agency must notify the Commissariat in advance, specifying the intended amount of this holding. Any natural or legal person must also notify the Commissariat whenever it has plans to increase its qualifying holding such that the proportion of voting rights or shares held reaches or exceeds the thresholds of 20%, 33% or 50%.
5. Within a period of three months from the date of the submission of the information provided for in point 4, the minister may declare his/her opposition to said proposal if, in taking into account the need to guarantee sound and prudent management of the legal entity as intermediary, he/she feels that the person in question is not a suitable choice. When there is no opposition, the minister may set a maximum time limit for implementing the project. When a holding is acquired in spite of the minister’s opposition, the Commissariat may suspend the

exercise of the corresponding voting rights or request that any votes cast be declared null or cancelled.

6. Any natural or legal person with the intention of relinquishing its qualifying holding, whether direct or indirect, in a brokerage firm or insurance agency must notify the Commissariat in advance, specifying the intended amount of the disposal. Any natural or legal person must also notify the Commissariat whenever it has plans to decrease its qualifying holding such that the proportion of voting rights or shares held falls below the thresholds of 20%, 33% or 50%.
7. Brokerage firms or insurance agencies are required to inform the Commissariat, as soon as they become aware of acquisitions or disposals of holdings in their share capital that cross, in either direction, any one of the thresholds referred to in points 4 and 6. In addition, at least once each year they must submit to the Commissariat a list identifying the shareholders or partners having qualifying holdings as well as the amount of these holdings, on the basis, in particular, of the information recorded at the annual general meeting of shareholders or partners, or the information received in respect of obligations relating to publicly traded companies.
8. In cases where the influence exerted by any of the persons referred to in point 1 is likely to jeopardise the sound and prudent management of the brokerage firm or the insurance agency, the Commissariat takes the appropriate measures to put an end to the situation. In this respect, it may in particular choose to implement the sanctions provided for in Article 111 or suspend the exercise of voting rights attaching to the shares held by the shareholders or partners in question.

The same measures may be taken with regard to natural or legal persons who do not comply with the obligation to give advance notification referred to in point 4.”

- 15) Article 110 of the aforementioned Law of 6 December 1991 is amended as follows:

“Article 110

1. The persons referred to in this section are required to ensure that their account files and other documents relating to their business activities remain in the Grand Duchy of Luxembourg at all times, either at the main place of business for natural persons, or the registered office for legal persons, or at any other place duly notified to the Commissariat.
2. Without prejudice to Article 21bis, in order to monitor the obligations incumbent, under this law and its implementing regulations, upon the persons referred to in this section, the Commissariat may request delivery, where applicable, of all documents and any other useful elements by insurance undertakings whom those persons represent. It may also perform on-site control at the professional premises of insurance undertakings whom those persons represent.”

- 16) Article 111 of the aforementioned Law of 6 December 1991 is supplemented as follows:

- “4. All sanctions provided for in this article also apply to violations of the legislation relating to the combat against money laundering and terrorist financing, of its implementing regulations and of instructions given by the Commissariat in this area. In the event of such an offence, the maximum fine provided for in the first sentence of the first paragraph is raised to €50,000.
5. The Commissariat may make public any sanctions imposed under this article, unless such disclosure would seriously jeopardise the insurance sector or cause disproportionate damage to the parties involved.
6. In fulfilment of the responsibilities defined in Article 2, points 1, 2, 4, 4a, 4b and 5 of this law, the Commissariat may impose a coercive fine upon the persons referred to in this section, in order to compel these persons to act upon the injunctions issued by the Commissariat. The amount of this coercive fine, on the grounds of an observed failure to perform, may not be greater than €1,250 per day, with the understanding that the total amount imposed due to an observed failure to perform may not exceed €25,000.”

17) In the first paragraph of Article 111-2 of the aforementioned Law of 6 December 1991, an indent is added, which reads as follows:

“- insurance and reinsurance undertakings as well as insurance intermediaries approved or authorised in the Grand Duchy of Luxembourg when they engage in credit and surety operations.”

Title XIV – Further amendments to the Law of 9 December 1976 on the organisation of the profession of notaries, as amended

Art. 14 The Law of 9 December 1976 on the organisation of the profession of notaries, as amended, is amended and supplemented as follows:

1) Article 71, point 1bis of the Law of 9 December 1976 on the organisation of the profession of notaries, as amended, is supplemented by a second sentence reading as follows:

“The *Chambre des Notaires* can adopt regulations setting forth the rules relating to the notaries’ professional obligations resulting from legislation on the combat against money laundering and terrorist financing.”

2) The Law of 9 December 1976 on the organisation of the profession of notaries, as amended, is supplemented by a Section X which is re-introduced as follows:

“Section X. Powers granted in support of the combat against money laundering and terrorist financing

Art. 100-1. For the application of point 1bis of Article 71, the *Chambre des Notaires* is vested with the following powers:

- to carry out on-site inspections in notarial offices;

- to request any information that it deems necessary from notaries with a view to verifying that their practices are consistent with professional obligations resulting from legislation on the combat against money laundering and terrorist financing.

On-site inspections are performed in accordance with procedures approved by the *Chambre des Notaires*.

In the event of a failure to comply with professional obligations resulting from legislation on the combat against money laundering and terrorist financing, or in the event of any obstacle to the exercise of the authority of the *Chambre des Notaires* as defined in the first paragraph of this article, the sanctions set forth in Article 87 shall apply. The maximum fine set forth in point 4 of the first paragraph of Article 87 is raised to €250,000.”

Title XV – Further amendments to the Law of 10 August 1991 on the legal profession, as amended

Art. 15 The Law of 10 August 1991 on the legal profession, as amended, is amended and supplemented as follows:

1) Article 19 of the Law of 10 August 1991 on the legal profession, as amended, is supplemented as follows:

“The *Conseil de l’Ordre* can lay down internal rules of conduct determining the professional obligations regarding notably:

1. professional ethics among lawyers and vis-à-vis clients and third parties;
2. professional secrecy;
3. fees and expenses;
4. information of the public regarding the lawyers and their professional activities;
5. the protection of the clients’ and third parties’ interests; the relevant rules may provide for individual or collective, optional or mandatory insurance and lay down rules regarding the holding of third parties’ funds;
6. the professional obligations resulting from the legislation on the combat against money laundering and terrorist financing and the monitoring procedures, notably the carrying out of on-site inspections at the offices of the *Ordre*’s members.

2) The Law of 10 August 1991 on the legal profession, as amended, is supplemented by a Chapter IV-1, which reads as follows:

“Chapter IV-1. Powers granted in support of the combat against money laundering and terrorist financing

Article 30-1. For the application of the powers established by the third indent of Article 17, the *Conseil de l’Ordre* is vested with the following powers:

- to carry out on-site inspections at the offices of the *Ordre*’s members;
- to request any information that it deems necessary from the *Ordre*’s members with a view to verifying that their practices are consistent with professional obligations resulting from legislation on the combat against money laundering and terrorist financing.

On-site inspections are performed in accordance with procedures approved by the general meeting, acting upon a proposal submitted by the *Conseil de l’Ordre*.

In the event of a failure to comply with professional obligations resulting from legislation on the combat against money laundering and terrorist financing, or in the event of any obstacle to the exercise of the authority of the *Conseil de l’Ordre* as defined in the first paragraph of this article, the sanctions set forth in Article 27 shall apply, with the exception of the fine referred to in Article 27, paragraph 1, point 2bis. The maximum fine set forth in Article 27, paragraph 1, point 3 is raised to €250,000.”

Title XVI – Further amendments to the Law of 10 June 1999 relating to the organisation of the accounting profession, as amended

Art. 16 The Law of 10 June 1999 on the organisation of the accounting profession, as amended, is supplemented by a new Article 38-1, which reads as follows:

“**Article 38.1.** For the application of Article 11, point (f), the *Ordre des Experts-Comptables* is vested with the following powers:

- to carry out on-site inspections at the offices of the *Ordre*’s members;
- to request any information that it deems necessary from the *Ordre*’s members with a view to verifying that their practices are consistent with professional obligations resulting from legislation on the combat against money laundering and terrorist financing.

On-site inspections are performed in accordance with procedures approved by the general meeting, acting upon a proposal submitted by the *Ordre's* board.

In the event of a failure to comply with professional obligations resulting from legislation on the combat against money laundering and terrorist financing, or in the event of any obstacle to the exercise of the authority of the *Ordre des Experts-Comptables* as defined in the first paragraph of this article, the sanctions set forth in Article 27 shall apply. The maximum fine set forth in point (c) of the first paragraph of Article 27 is raised to €250,000.”

Title XVII – Amendments to the Law of 18 December 2009 on the audit profession

Art. 17 Point (c) of the first paragraph of Article 47 of the Law of 18 December 2009 on the organisation of the audit profession is supplemented as follows:

“In the event of a failure to comply with professional obligations resulting from legislation on the combat against money laundering and terrorist financing, or in the event of any obstacle to the exercise of the authority of the IRE as defined in Article 32 in respect of the powers referred to in Article 31, point (d), the maximum fine is raised to €250,000.”

Title XVIII – Further amendments to the Law of 17 March 1992 approving the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances signed in Vienna on 20 December 1988, as amended

Art. 18 Article 5 of the Law of 17 March 1992 approving the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances signed in Vienna on 20 December 1988, as amended, is further amended as follows:

- 1) In paragraph 1, the fund named “*Fonds de lutte contre le trafic des stupéfiants*” is replaced by the fund named “*Fonds de lutte contre certaines formes de criminalité*”.
- 2) Paragraph 2 is replaced by the following text: “The role of this Fund is to promote the development, coordination and implementation of methods for combating certain types of criminal activities.”
- 3) In the first subparagraph of Article 5, paragraph 3, the phrase “in application of Article 8-2 of the Law of 19 February 1973 on the sale of medicinal substances and the fight against drug addiction, as well as Article 5, paragraph 4 of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, signed in Vienna on 20 December 1988” is replaced with the following text:

“in application of the provisions listed below:

 - Articles 8-2 and 18 of the Law of 19 February 1973 on the sale of medicinal substances and the fight against drug addiction;
 - Article 32-1 of the Penal Code concerning assets confiscated by the Luxembourg authorities deriving from one or more of the offences set forth in Articles 112-1, 135-1 to 135-10 and 506-1 to 506-8 of the Penal Code.
 - Article 5, paragraph 4 of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances signed in Vienna on 20 December 1988;
 - Article 13 of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, signed in Strasbourg on 8 November 1990;
 - Article 13 of the United Nations Convention against Transnational Organised Crime, adopted by the UN General Assembly in New York on 15 November 2000.”

- 4) In Article 5, paragraph 3, subparagraph 2, the phrase “without prejudice to a potential sharing of assets in accordance with the last subparagraph of Article 3, paragraph 2” is replaced with the phrase “without prejudice to a potential sharing of assets between Luxembourg and foreign authorities having occurred during the confiscation procedure.”
- 5) All references to the “treasury minister” are replaced by references to the “minister exercising authority over the financial sector”, all references to the “foreign minister” are replaced by the “minister with responsibility for international cooperation”, all references to the “justice minister” are replaced by the “minister with responsibility for justice” and all references to the “health minister” are replaced by references to the “minister with responsibility for public health”.

Title XIX – Further amendment of the Law of 20 April 1977 on gaming and betting on sporting events, as amended

Art. 19 Article 11, point 3 of the Law of 20 April 1977 on gaming and betting on sporting events, as amended, is supplemented by a point (hi) inserted after the existing point (gh), which reads as follows:

“hi) money laundering, terrorism and terrorist financing offences”.

Title XX – Further amendment of the Law of 14 June 2001 approving the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, signed in Strasbourg on 8 November 1990, as amended

Art. 20 The last paragraph of Article 9 of the aforementioned Law of 14 June 2001 approving the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, signed in Strasbourg on 8 November 1990, as amended, is further amended as follows:

“Assets confiscated by the Luxembourg authorities are transferred to the *Fonds de lutte contre certaines formes de criminalité*, established by the Law of 17 March 1992, which acquires title to these assets.”

PART II

Art. 24 At the date of the present law, a new law is adopted, which takes the following form:

“Law of 27 October 2010 on the organisation of measures to monitor the physical transportation of cash entering, transiting via or leaving the Grand Duchy of Luxembourg

Art. 1 The *Administration des Douanes et Accises* is designated as the competent authority for monitoring the physical transportation of cash entering, transiting via or exiting the Grand Duchy of Luxembourg and for the monitoring of cash entering or leaving the European Union as referred to by Regulation (EC) No. 1889/2005 of the European Parliament and of the Council of 26 October 2005 relating to controls on cash entering or leaving the Community.

Art. 2 For the purposes of this law, by “cash” is meant:

- a) bearer negotiable instruments, including monetary instruments in bearer form such as travellers cheques, negotiable instruments (including cheques, promissory notes and money orders) that are either in bearer form, endorsed without restriction, made out to a fictitious payee, or otherwise in such form that title thereto passes upon delivery, incomplete instruments (including cheques, promissory notes and money orders) signed, but with the payee’s name omitted;
- b) currency (banknotes and coins in circulation as a medium of exchange).

Art. 3 1) In order to comply with article 3 of the above-mentioned Regulation (EC) No. 1889/2005, a declaration must be filed with the *Administration des Douanes et Accises* at the place where the European Union is entered or left. Information shall be provided in writing or electronically on forms made available to the declarant by the *Administration des Douanes et Accises*.

2) Any other transportation of cash of a value of €10,000 or more, under any form or by any means, entering, transiting via or leaving the Grand Duchy of Luxembourg must, upon request by the agents mentioned in Article 4, be declared by any natural person carrying the cash or, if the cash is not carried by a natural person, by its owner. Information shall be provided in writing on the forms made available to the declarant by the *Administration des Douanes et Accises*.

The declaration shall contain details of:

- (a) the declarant, including full name, date and place of birth and nationality;
- (b) the owner of the cash;
- (c) the intended recipient of the cash;
- (d) the amount and nature of the cash;
- (e) the provenance and intended use of the cash;
- (f) the transport route;
- (g) the means of transport.

Art. 4 Violations of this law or of the above-mentioned Regulation (EC) 1889/2005 are recorded and tracked by agents of the *Administration des Douanes et Accises* having at least the rank of *brigadier principal*, who are considered as officers of the judiciary police.

They record violations by way of violation reports, which are considered as authoritative until proved otherwise. Their territorial competence covers the entire Grand Duchy of Luxembourg.

They must have received specific training for the recording and tracking of the violations and on the provisions of this law and the above-mentioned Regulation (EC) 1889/2005. The programme and duration of the training as well as the exam procedures are determined by way of a grand-ducal decree.

Before taking up their duties, they swear the following oath before the president of the district court with competence for their place of residence, sitting in civil proceedings: "I promise to fulfil my duties with integrity, exactitude and impartiality." Article 458 of the Penal Code applies to these individuals.

Art. 5 In the exercise of their duties referred to in this title, agents of the *Administration des Douanes et Accises*, in application of the powers vested in them by the provisions of the general law on customs and excise, are authorised to perform controls on natural persons, their means of transport and their luggage, as well as any other recipient or parcel.

Agents of the *Administration des Douanes et Accises* are also entitled to demand that persons transporting cash produce identity documents for verification as well as any information and documents attesting to the origin and destination of this cash.

Art. 6 The information obtained under Article 3 and collected during the controls referred to in Articles 4 and 5 of this law is recorded and processed by the *Administration des Douanes et Accises*.

It is made available to the financial intelligence unit and, where applicable, to the competent authorities mentioned in Article 5 of the aforementioned Regulation (EC) No. 1889/2005.

Art. 7 Whenever agents of the *Administration des Douanes et Accises* note the absence of a declaration or receive an untruthful declaration or, in any other case, are aware or suspect that the cash in question derives from unlawful activities such as money laundering or terrorist financing, they shall without delay notify the financial intelligence unit.

Agents of the *Administration des Douanes et Accises* restrain this cash while waiting to receive a response from the financial intelligence unit. This restraining period may not exceed 24 hours as from the time of notification of the financial intelligence unit.

The financial intelligence unit may, prior to the expiration of this 24-hour period, decide to release the cash or instruct that it be blocked.

The instruction by the financial intelligence unit to block the cash is limited in validity to a maximum period of three months, which starts on the first day following the restraining. In the event of an instruction delivered orally, this communication must be followed within three business days by a written confirmation. In the absence of a written confirmation, the instruction ceases to apply on the third business day at midnight.

Art. 8 Violations of Article 3 of this law and of Article 3 of the above-mentioned Regulation (EC) No. 1889/2005 are punishable by a fine of between €251 and €25,000.

For repeat offenders, penalties can be doubled.

If applicable, the judge orders the confiscation of the cash."

PART III

(...)¹

We instruct and order that this Law be inserted into the Official Journal to be enforced and complied with by all whom it may concern.

Doc. Parl 6163; ord. sess. 2009-2010 and 2010-2011.

¹ Repealed by the Law of 19 December 2020