

PRESS RELEASE 15/16

■ BEARER SHARES AND UNITS: WARNING TO HOLDERS AND ISSUERS

The CSSF reminded in its press release 15/09 of 26 January 2015 the Luxembourg issuers of bearer shares and units of the obligation to appoint a depositary for these securities before 18 February 2015 in accordance with the [law of 28 July 2014 regarding immobilisation of bearer shares and units](#) (hereafter "the law").

Following completion of this first step, the CSSF draws attention to the following steps to be taken by both the holders and the issuers of the securities referred to in the law. In this respect, **the CSSF emphasises from the outset that the persons who do not hold their securities physically but who deposited them in an account are not required to undertake any steps**; in this case, the institution, with which the account was opened, must, where needed, ensure compliance with the law.

Regarding the application of the law, it is important to bear in mind that the concrete objective of the law is to permanently withdraw any bearer shares and units by immobilising them with a depositary which will never again be able to return them in the form of physical securities. Indeed, it is important that the holder of these securities can be identified at any time, in particular to comply with the legislation regarding the fight against money laundering and terrorist financing.

WHICH SECURITIES ARE CONCERNED BY THE LAW?

The CSSF notes that when they fulfil the triple condition,

- that their issuer has its registered office in Luxembourg, and
- that they exist in individualised physical form, and
- that they are in bearer form,

the following securities are concerned by the law:

- shares and units issued by *sociétés anonymes* (public limited companies) and *sociétés en commandite par actions* (partnerships limited by shares) (including in the form of a *société européenne* (European company));
- units in undertakings for collective investment (UCIs) (i.e. UCITS, alternative investment funds (AIFs), specialised investment funds (SIFs) and investment companies in risk capital (SICARs) which do not qualify as AIFs), incorporated in the form of investment companies with variable capital (SICAVs) or investment companies with fixed capital (SICAFs), incorporated in the form of a *société anonyme* (public limited company) or a *société en commandite par actions* (partnership limited by shares);
- units in UCIs (as specified above) incorporated in the form of *fonds commun de placement* (FCPs) (common funds).

However, the CSSF admits that the law does not concern:

- units of securitisation funds;
- depositary receipts in respect of bearer shares or units (for example ADR, ADS, GDR), because these receipts are not themselves shares or units;
- bearer shares or units deposited in a securities settlement system and represented by a global certificate or by securities in individualised physical form, thereby losing their bearer securities nature.

WHAT IS THE HOLDER OF BEARER SECURITIES IN INDIVIDUALISED PHYSICAL FORM CONCERNED BY THE LAW REQUIRED TO DO?

In order to ensure that they do not lose their rights, the holders of bearer securities in individualised physical form concerned by the law are strongly advised to:

- deposit their securities in an account with a financial institution;
- or seek information from the issuer of the securities regarding the conditions for conversion of their bearer securities in individualised physical form into registered and/or dematerialised securities, these forms being recommended by the Financial Action Task Force (FATF);
- or, as regards bearer securities of UCIs, to seek information from the usual sources used by the UCI mentioned in the prospectus;
- or request the issuer of the securities to provide the name of the appointed depositary with which they can immobilise their bearer securities in individualised physical form and then deposit the securities with this depositary without undue delay,

at the earliest possible opportunity.

In particular, in view of the next annual meetings of the issuers organised in corporate form, it is recalled that the voting rights attached to the securities concerned which have not been immobilised, are automatically suspended until their immobilisation.

It is also specified that the distributions attached to bearer securities which have not been immobilised, are deferred until their immobilisation.

The securities concerned which have not been immobilised before 18 February 2016, shall be **cancelled**.

WHAT IS THE ISSUER OF SECURITIES (other than UCI units) CONCERNED BY THE LAW REQUIRED TO DO?

In view of the next annual meetings, the issuers of securities concerned by the law are strongly advised to:

- ensure a clear and comprehensive provision of information to the holders of their securities on the implementation of the law;
- provide these holders with the possibility to convert their bearer securities in individualised physical form into registered and/or dematerialised securities, these forms being recommended by the FATF and to communicate the conditions for conversion to the holders;
- or, to offer holders of their securities any assistance in order to carry out the immobilisation with their appointed depositary,

at the earliest possible opportunity.

WHAT IS THE ISSUER OF UCI UNITS CONCERNED BY THE LAW REQUIRED TO DO?

Issuers of UCI units are strongly advised to:

- send clear and comprehensive information to the holders of their securities on the implementation of the law either by a notice to the shareholders published in two newspapers having a sufficiently large circulation, including at least one Luxembourg newspaper, or by inserting the information in the convening notices to the next annual meetings for UCIs organised in corporate form;

- provide these holders with the possibility to convert their bearer securities in individualised physical form into registered and/or dematerialised securities, these forms being recommended by the FATF and to communicate the conditions for conversion to the holders;
- or, to offer holders of their securities any assistance in order to carry out the immobilisation with their appointed depository.

WHAT KIND OF SUPERVISION WILL BE EXERCISED BY THE CSSF TO ENSURE COMPLIANCE WITH THE LAW?

Credit institutions, private portfolio managers, distributors of units/shares in UCIs, Family Offices, corporate domiciliation agents, professionals providing company incorporation services, registrar agents, professional depositaries of financial instruments and *réviseurs d'entreprises* (statutory auditors) are on the restrictive list of the law of entities which can be appointed as **depositaries** within the meaning of the law. As these professionals fall within the competence of the CSSF, the latter will ensure with the tools at its disposal that they comply with the law. The CSSF will specify its requirements, notably regarding reporting, directly in respect of the entities concerned.

The CSSF will do the same in respect of any **issuers** of securities concerned by the law which would fall within its field of competence.

The CSSF's supervision of compliance with the law is without prejudice to the criminal provisions of the latter.

Luxembourg, 27 March 2015

