

In case of discrepancies between the French and the English texts, the French text shall prevail

Luxembourg, 11 December 2000

To all credit institutions, undertakings for collective investment and other professionals of the financial sector

CSSF CIRCULAR 00/21

Supplement to Circulars IML 94/112 and BCL 98/153 concerning the fight against money laundering and the prevention of the use of the financial sector for money-laundering purposes.

Dear Sir, Madam,

The Luxembourg criminal law punishes the laundering of assets linked to bribery: since the law of 11 August 1998 extending the money-laundering offence and introducing the incrimination of criminal organisations, the offence of bribery is listed as a constituent element of money laundering. The ensuing obligations for the establishments concerned have been the object of BCL Circular 98/153, which constitutes a supplement to IML Circular 94/112, relating to the fight against money laundering and the prevention of the use of the financial sector for money laundering purposes.

Current international developments demonstrate the necessity to reinforce the fight against bribery and embezzlement of public funds and to define certain rules applicable in this context. The Convention of the Organisation for Economic Co-operation and Development (OECD) on Combating Bribery of Foreign Public Officials in International Business Transactions marks an important step as it imposes a certain number of obligations on contracting parties, including Luxembourg. The

Convention, the ratification of which is the subject of the draft law no.4400, establishes principles which allow a multilateral co-operation, supervision and follow-up of the fight against bribery in terms of international business transactions, defined as follows: *“any person intentionally offering, promising or giving any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for the official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, to obtain or retain business or other improper advantage in the conduct of international business”*.

The scope of the Convention is broad as it concerns *“any person holding a legislative, administrative or judicial office of a foreign country, whether appointed or elected; any person exercising a public function for a foreign country, including for a public agency or public enterprise; and any official or agent of a public international organisation”*.

The possible implication in an act of money laundering linked to bribery puts the reputation of the professionals of the financial sector at risk and entails legal and financial risks, resulting for instance from the seizure and freezing of funds.

The entities concerned must therefore be particularly careful to comply with their professional obligations. Pursuant to the existing laws and regulations, and more specifically to Articles 38 and 39 of the Law of 5 April 1993 on the financial sector as amended, the entities concerned must not accept funds, which they know or cannot reasonably ignore to originate from bribery.

The entities concerned have to pay their utmost attention when entering business relationships, accepting or holding assets belonging, directly or indirectly, to high-ranking civil servants of a State or to persons and companies manifestly close to or connected with them. According to the principles defined in IML Circular 94/112 relating to the identification of customers, the entities concerned have to set up specific control procedures in order to dispose of all the necessary guarantees in their relationship with a customer belonging or recently having started to belong to the circle of persons the Convention aims at. In view of the sensitivity of the subject, the approval procedure of such a client must involve the management on the highest hierarchical level of the entities concerned as well as the person designated by the entity to be responsible for the fight against money laundering. The development of the business relationship must also be closely monitored at this level.

The obligations imposed on the entities (please refer to IML Circular 94/112) also include the setting up of specific internal rules relating to money laundering linked to bribery. Furthermore, the entities shall create a special function aimed at advising the persons in charge of client relations on questions relating to this problem.

The identification of the co-contracting parties and the identification of the economic beneficiary are particularly important in this context.

In addition, the entities concerned are exposed to similar risks and, in particular, that of the professional reputation of their managers being jeopardised, should they accept money originating from embezzlement of public funds, keep or channel bribery money; in this latter case, the persons involved within the entities concerned may get charged with complicity with those who actively practice bribery. In both cases, the entities have to apply the same diligence as prevails for the fight against money laundering linked to bribery.

Yours faithfully,

COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER

Charles KIEFFER
Director

Arthur PHILIPPE
Director

Jean-Nicolas SCHAUS
Director General