

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

Luxembourg, 24 September 2001

To credit institutions and other professionals of the financial sector, as well as to undertakings for collective investment and pension funds

**CIRCULAR CSSF 01/34**

**Re: Entry into force of a series of laws concerning the financial sector**

Ladies and Gentlemen,

We are pleased to draw your attention to the entry into force of several laws important for the Luxembourg financial sector. The purpose of this circular is to briefly describe the laws concerned.

1. Law of 1 August 2001:
    - transposing Article 1 of Directive 98/33/EC amending Directives 77/780/EEC, 89/647/EEC and 93/6/EEC, and partially transposing Directive 2000/64/EC of the European Parliament and of the Council of 7 November 2000 amending Directives 85/611/EEC, 92/49/EEC, 92/96/EEC and 93/22/EEC as regards exchange of information with third countries, into the Law of 5 April 1993 on the financial sector, as amended;
    - amending Article 8 of the Law of 23 December 1998 relating to the supervision of securities markets.
- (*Mémorial* A-no. 112 of 7 September 2001, pages 2251 and 2252)

First, the law extends the list of authorities, bodies and persons from third countries with which the *Commission de surveillance du secteur financier* may exchange information within the context of its supervisory mission of credit institutions and other professionals of the financial sector in order to carry out their respective duties. The law also sets the conditions under which this information exchange may take place.

Second, the law adapts the regime for the exchange of information which the Commission may use within the context of its mission for the supervision of securities markets to Community law. The law also specifies the conditions under which the Commission may exchange information and co-operate with authorities of other countries, whether EU Member States or third countries, entrusted with the public mission of supervising securities markets.

2. Law of 1 August 2001:

- transposing Article 1 of Directive 2000/64/EC, amending Directives 85/611/EEC, 92/49/EEC, 92/96/EEC and 93/22/EEC as regards exchange of information with third countries, in the law of 30 March 1988 relating to undertakings for collective investment, as amended;
- amending Article 76 of the law of 30 March 1988 relating to undertakings for collective investment, as amended.

(*Mémorial* A-no. 112 of 7 September 2001, pages 2250 and 2251)

This law is complementary to the law mentioned in the previous point as regards undertakings for collective investment. The law extends the list of authorities, bodies and persons from third countries with which the *Commission de surveillance du secteur financier* may exchange information within the context of its mission of supervision of undertakings for collective investment in order to carry out their respective duties.

Furthermore, it adapts the provisions regarding professional secrecy which applies to the Commission when carrying out its mission of supervision of undertakings for collective investment. Thus, Article 76 of the law of 30 March 1988 relating to undertakings for collective investment, as amended, enables, henceforth, the Commission to exchange information and co-operate with other authorities, bodies and persons not only within the context of its mission of supervision of undertakings for collective investment in transferable securities but also of its mission of supervision of other undertakings for collective investment.

3. Law of 1 August 2001 amending certain provisions of the law of 8 June 1999 creating pension funds under the form of pension savings companies with variable capital (Sepcav) and pension savings associations (Assep)  
(*Mémorial* A-no. 107 of 4 September 2001, pages 2193 to 2198)

The law provides certain precisions and clarifications concerning provisions of the outline law of 8 June 1999 in order to enhance legal security and to ensure proper supervision of the pension funds.

The amendments concerning the conditions and procedures for the agreement of asset and liability managers as well as the provisions regarding the publication of the articles of incorporation and pension regulation. They also introduce a definition of the task prescribed by law for the liability manager and the possibility for contributors to provide initial means in order to allow an appropriate allocation of risks as from the creation of the fund.

Furthermore, the provisions concerning the qualification of external auditors, the segregation of the assets inside the umbrella-type pension fund and the procedure to observe in case of liquidation are aligned with the law of 30 March 1988 relating to undertakings for collective investment, as amended, for the purpose of parallelism.

4. Law of 1 August 2001 regarding the circulation of securities and other fungible instruments  
(*Mémorial* A-no. 106 of 31 August 2001, pages 2180 to 2182)

The law replaces Grand-ducal regulation of 17 February 1971 relating to the circulation of transferable securities, as amended. The developments which took place on the financial markets during the last decades made the revision of this Grand-ducal regulation necessary. The purpose of the law is to enhance legal certainty in the area of conservation of transferable securities and of securities settlement which is one of the strongest activity area of the financial centre.

The main legal innovations are:

- the scope of the Grand-ducal regulation is extended by a new definition of securities and custodians;
- the legal situation of the depositors is strengthened by the specification of their rights;
- the rules of constituting and realising pledges are eased and meet the clients requests better.

5. Law of 1 August 2001
- on the transfer of ownership under guarantees
  - amending and supplementing the Law of 21 December 1994 on borrowing by credit institutions against security pledging
  - amending and supplementing the Law of 5 April 1993 on the financial sector, as amended
  - amending and supplementing the Law of 21 June 1984 on futures markets dealt on the Luxembourg Stock Exchange and futures markets on which a credit institution intervenes
- (*Mémorial* A-no. 106 of 31 August 2001, pages 2183 to 2185)

The transfer of ownership under guarantees is an interesting technique for raising credits with reduced rate and is now the most commonly used safety measure on international financial markets. The purpose of the law is to adapt the legal framework of the Luxembourg financial centre to international practices in order to remove any legal insecurity.

The law confirms, in particular, the validity and enforceability to transfer ownership under value guarantees on third parties in ordinary situation as well as in bankruptcy situation. In the latter case, the creditor may realise its guarantee *via* a settlement as laid down in an agreement notwithstanding any situation of bankruptcy or of reorganisation.

Yours faithfully,

COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER

Charles KIEFFER  
Director

Arthur PHILIPPE  
Director

Jean-Nicolas SCHAUS  
Director General