# COMMISSION de SURVEILLANCE du SECTEUR FINANCIER

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

Luxembourg, 13 October 2005

To all the professionals of the financial sector subject to the supervision of the CSSF and to whom the law of 12 November 2004 on the fight against money laundering and terrorist financing applies

## CIRCULAR CSSF 05/211

**Re:** **Combating money laundering and terrorist financing and prevention of the use of the financial sector for the purpose of money laundering and terrorist financing**

SUMMARY

# Introduction

## I Development of the legislative and regulatory framework

**1.** Since the law of 7 July 1989 had, for the first time under Luxembourg law, introduced the laundering of the proceeds of an illegal activity, namely drug trafficking, as a specific criminal offence, and since circular IML 89/57 had specified the rules to be observed by the professionals of the financial sector in order to prevent them from being used for the purpose of money laundering, the Luxembourg laws and regulations concerning anti-money laundering have been strengthened continually.
Firstly, the law of 5 April 1993 on the financial sector, implementing the Community Directive 91/308/EEC and the FATF recommendations released in 1990, defined a certain number of professional obligations to be observed by the professionals of the financial sector in order to prevent them from being used for the purpose of money laundering.
Secondly, circular IML 94/112, which repealed circular IML 89/57, provided guidance and detailed instructions on how the professionals of the financial sector are supposed to observe the professional obligations imposed upon them by law, notably those of the law of 5 April 1993.
Since then the anti-money laundering framework has developed considerably both at international and national level.
At international level, it is worth mentioning the first revision of the FATF 40 recommendations in 1996, the extension of the fight against money laundering to terrorist financing by means of the FATF special recommendations in October 2001, the adoption of Directive 2001/97/EC in December 2001, amending aforesaid Directive 91/308/EEC and finally the second revision of the FATF 40 recommendations in June 2003.
At national level, reference must be made to the law of 11 August 1998 which, among other things, extended the scope of the money laundering offence, the law of 12 August 2003 on the crackdown on terrorism and its financing, as well as the law of 12 November 2004, implementing Directive 2001/97/EC, while supplementing and strengthening the Luxembourg legislative framework on a certain number of elements in the light of the experience gained in the course of the last 10 years in combating money laundering at international and domestic level.
This development required the CSSF to supplement the reference circular IML 94/112 with many circulars whose purpose was either to amend or to specify certain points.
The purpose of this circular is to integrate, in a consistent manner and within a single circular, all the guidelines and instructions concerning the application of the professional obligations in order to make the existing regulations more comprehensible.
Furthermore, it adapts the existing, precise and detailed guidelines and instructions on how the professionals of the financial sector are supposed to observe the professional obligations imposed upon them by law in order to prevent them from being used for the purposes of money laundering and terrorist financing, by taking account of the recent changes as well as the experience gained.

**2.** The circular replaces circulars IML 94/112, BCL 98/153, CSSF 2000/16, CSSF 2000/21, CSSF 01/31, CSSF 01/37, CSSF 01/40, CSSF 01/48 ; circular letter of 19/12/2001, CSSF 02/66 , CSSF 02/73, CSSF 02/78, CSSF 03/86, CSSF 03/93, CSSF 03/104, CSSF 03/115, CSSF 04/129, CSSF 04/149, CSSF 04/162, CSSF 05/171 and CSSF 05/188.

## II Persons responsible as regards the fight against money laundering and terrorist financing

**3.** The managers in possession of the legally required authorisation are responsible for guaranteeing compliance with the legal and regulatory provisions, establishing internal anti-money laundering and terrorist financing policies and procedures and ensuring their proper implementation.
As regards more particularly the internal organisation, they shall ensure that customer acceptance, identification and monitoring procedures, as well as risk management procedures are established.
They must also define the human and technical resources needed to reach these objectives.
Without prejudice to the above-mentioned managers' own responsibility, the same must appoint an anti-money laundering and terrorist financing officer.

As far as credit institutions and investment firms are concerned, this person shall be the person in charge of the compliance function. In accordance with circular CSSF 04/155 relating to the compliance function, the person in charge of the compliance function shall notably see to it that the professional of the financial sector has set up rules regarding the fight against money laundering and terrorist financing and that the professional complies with these rules. Furthermore, this person is in charge of the obligation to inform the State Prosecutor.
Concerning the other professionals of the financial sector, this person shall be a manager in possession of the legally required authorisation and who has been specifically appointed for this function.

## III Risk-based approach

**4.** In the context of the fight against money laundering and terrorist financing, the professionals of the financial sector shall adopt an approach focused on the real risk both during the customer identification process and the monitoring of transactions.

**5.** As the Luxembourg framework on the fight against money laundering and terrorist financing consists, in the light of the existing regulations at European and global level, of a criminal and a preventive part, Part I of this circular deals with the money-laundering and terrorist financing offences and Part II with the professional obligations.

## Part I Money laundering and terrorist financing offences

**6.** Luxembourg law provides for specific money laundering and terrorist financing criminal offences.
Article 1 of the law of 12 November 2004 on the fight against money laundering and terrorist financing provides that

- "Money laundering" shall mean any action as defined in articles 506-1 of the Penal Code and 8-1 of the amended law of 19 February 1973 concerning the sale of medicinal substances and measures to combat drug addiction;
- "Terrorist financing" shall mean any action as defined in article 135-5 of the Penal Code.

## Title 1 The money laundering offence

**7.** In accordance with the above articles 506-1 and 8-1, the money laundering offence is defined as follows:

- *"knowingly facilitating by any means the false justification of the origin of the property constituting the object or the direct or indirect proceeds, or constituting a patrimonial benefit of any nature whatsoever from one or several of the designated predicate offences";*

- *"knowingly assisting in a placing, dissimulation or conversion transaction of the property constituting the object or the direct or indirect proceeds, or constituting a patrimonial benefit of any nature whatsoever, from one or several of the predicate offences";*

- *"having acquired, held or used the property constituting the object or the direct or indirect proceeds, or a patrimonial benefit of any nature whatsoever from one or several of the predicate offences, knowing, at the time they were received, that they originated from one of the designated offences or from the participation in one or several of these offences".*

These articles define the money laundering offence while listing the constituent facts of this offence and specifying the categories of predicate offences which may give rise to this offence.

## Chapter 1: Predicate offences

**8.** Money laundering presupposes the existence of a predicate offence whose object or proceeds may give rise to a money laundering offence.

Since the laws of 12 November 2004 and 23 May 2005, the predicate offences are the following:

* pursuant to article 506-1 of the Penal Code:

- *Crimes and offences perpetrated within the scope or in relation with an association created with the purpose of attempting on persons or properties or within the scope or in relation with a criminal organisation (articles 322 to 324ter of the Penal Code)*

- *abduction of minors* (articles 368 to 370 of the Penal Code)

- *sexual offences on minors* (article 379 of the Penal Code)

- *procuring* (article 379 bis of the Penal Code)

- *violation of the legislation on arms and ammunition (notably the law of 15 March 1983 on arms and ammunition)*

- *public and private corruption* (articles 246 to 253, 310 and 310-1 of the Penal Code)

- *frauds against the financial interests of the State and international institutions* (articles 496-1 to 496-4 of the Penal Code)

- *offences of terrorism and terrorist financing* (articles 135-1 to 135-6 of the Penal Code)

* pursuant to article 8-1 of the law of 19 February 1973 concerning the sale of medicinal substances and the fight against drug addiction

- *drug trafficking*

Annexe I to this Circular describes the above-mentioned predicate offences. The professionals of the financial sector shall consider these explanations when training their employees.

It should be stressed that the money laundering offence is given even where the predicate offence has been committed abroad, provided however that the latter constitutes a predicate offence both in Luxembourg and abroad.

**Chapter 2: Material element**

**9**. Money laundering consists of any act which relates to the proceeds or the object, i.e. to any economic benefit, of the predicate offence.

The legal definition of money laundering is very broad and encompasses a whole set of devices which all serve the purpose to provide a false justification of the origin of the property forming the object or proceeds of the predicate offences.

**Chapter 3: Intentional element**

**10.** For the money laundering offence to be given, the intentional element is the determining factor. Whoever knowingly launders the proceeds or the object originating from a predicate offence commits money laundering.

## Title 2 Terrorist financing offence

**11**. In accordance with article 135-5 of the Penal Code, the offence of terrorist financing is defined as "*providing or collecting by any means, directly or indirectly, unlawfully and intentionally, funds, assets or properties of any nature, with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out any of the offences referred to in articles 135-1 to 135-4 and 442-1, even if they have not actually been used to commit one of these offences.*"

## Title 3 Criminal sanctions

**12.** Whoever commits a money laundering offence is punishable by sanctions of imprisonment (1 to 5 years) and/or fines (1,250 to 1,250,000 euros) in accordance with articles 506-1 and 8-1 mentioned above.
It should be reminded that the perpetrator, the co-perpetrators and the accomplices are punishable under the terms of these articles.
Whoever commits a terrorist financing offence is punishable under articles 135-1 to 135-4 and 442-1 of the Penal Code, according to the distinctions established therein.
It should be stressed at this point that the violation of the professional obligations as referred to in points 13-145 of this Circular is also penally sanctioned as laid down in point 153 below.

# Part II Preventive part of the anti-money laundering and terrorist financing framework: professional obligations

## Title 1 Scope of application of the professional obligations

### Chapter 1: Material scope of application

**13.** The law of 12 November 2004 extended the professional obligations on the fight against money laundering to the fight against terrorist financing, an offence defined in article 135-5 of the Penal Code. As a consequence, the preventive means to combat money laundering and terrorist financing are of the same nature.

### Chapter 2 Personal scope of application

#### Section 1 Professionals of the financial sector conducting business in Luxembourg

**14.** The group of persons submitted to the professional obligations has been extended by the law of 12 November 2004 to other players of the financial sector, as well as to other defined persons not active in this particular sector, but to whose activity the fight against money laundering and terrorist financing is particularly relevant.

**15.** This circular applies exclusively to the professionals of the financial sector subject to the professional obligations that fall under the supervision of the CSSF, which are the following:

- credit institutions and other professionals of the financial sector (PFS) licensed or authorised to carry on their activities in Luxembourg in accordance with the law of 5 April 1993 on the financial sector as amended.
  These include not only credit institutions licensed as universal banks, but also institutions with special statuses such as electronic money institutions;

- other professionals of the financial sector (PFS): not only all PFS specifically listed under Part I, Chapter 2 (articles 24 to 29-4) of the law of 5 April 1993 on the financial sector as amended, but also all other persons carrying on financial sector activities and authorised in accordance with article 13 (1) of said law;

- undertakings for collective investment which market their units/shares and to which applies the law of 20 December 2002 relating to undertakings for collective investment or the law of 30 March 1988 relating to undertakings for collective investment or the law of 19 July 1991 relating to undertakings for collective investment whose securities are not meant for placement with the public.
  The law of 12 November 2004 imposes the identification requirements on UCIs that market their units themselves, i.e. that are in direct contact with investors, as they market their units without having recourse to other professionals. It should be

stressed that the UCIs that market their units themselves may delegate the material execution of the identification requirements under the terms described in points 80-88 below.

The subscriptions and repurchases in UCIs that do not market their units themselves are necessarily made *via* intermediaries. The law does not subject these UCIs to the identification requirement provided the intermediary is a national or foreign financial institution that meets the requirements laid down in points 90-94 below.
Where the intermediary is not a national or foreign financial institution meeting the requirements laid down in points 90-94, the responsibility for identification lies with the UCI concerned, regardless of whether it sets up structures to identify investors itself or delegates this task as provided for in points 80-88 below.

- management companies under the law of 20 December 2002 on undertakings for collective investment which market units/shares of UCIs or perform additional or auxiliary activities within the meaning of the law of 20 December 2002 relating to undertakings for collective investment;

- pension funds under the prudential supervision of the CSSF, i.e. "assep" and "sepcav" governed by the law of 13 July 2005.

**16.** As the provisions of the law of 12 November 2004 are deemed of public order, they must be complied with not only by the professionals of the financial sector conducting their business in Luxembourg *via* a subsidiary or branch, but also by those operating under the freedom to provide services from an institution abroad.

## Section 2 Branches and subsidiaries of the concerned professionals of the financial sector conducting business in Luxembourg (article 2(2))

### Sub-section 1 General principle

**17.** The professionals of the financial sector shall ensure that the professional obligations are also complied with by their branches and subsidiaries in Luxembourg and abroad in which they have the legal means to impose their will on the conduct of business, notably, as regards subsidiaries, by virtue of voting rights, contractual agreements or a clause in the articles of incorporation.
As regards companies of a certain size in which the professional of the financial sector holds a stake of 20% to 50%, it is for the professional of the financial sector that is not the parent company, to do its utmost, together with the other shareholders or partners concerned, to see that a system of anti-money laundering and terrorist financing which meets the same standards as those in force in Luxembourg is set up.

### Sub-section 2 Branches and subsidiaries established in a country with equivalent professional obligations

**18.** Article 2(2) of the law provides for an exception to this principle, in case these branches or subsidiaries are subject to equivalent professional obligations by virtue of the laws in force in their country of establishment. In such case, the professionals of the financial sector are no longer required to continuously ensure that these branches or subsidiaries comply with the professional obligations. This condition is deemed automatically fulfilled if these branches or subsidiaries are established in a Member State of the EU, EEA or FATF.
Concerning the other countries, it belongs to the professional of the financial sector, if necessary, to verify with regard to any such country and under its own responsibility whether the branches or subsidiaries are subject to equivalent anti-money laundering and terrorist financing obligations.

### Sub-section 3 Branches and subsidiaries established in a country without equivalent professional obligations

**19.** As regards the branches and subsidiaries established in a foreign country which cannot be considered as imposing equivalent professional obligations, the minimum professional obligations to be complied with shall be those imposed under Luxembourg law. Where provisions exist in the host country that prevent compliance with Luxembourg standards, the professional of the financial sector concerned is required to advise the CSSF in order to find a solution to the relevant conflict.
It should be stressed that non-compliance with the professional obligations imposed on branches and subsidiaries by Luxembourg law, or, with those of the foreign law if they are more stringent, may jeopardise the authorisations required for maintaining such branches and subsidiaries or even the authorisation to conduct business in the financial sector in Luxembourg.

### Sub-section 4 Controlling compliance with professional obligations in subsidiaries and branches

**20.** The person particularly in charge of the fight against money laundering and terrorist financing is responsible for controlling compliance with the professional obligations in branches and subsidiaries referred to in point 19.

In addition, internal audit and the person particularly in charge of the fight against money laundering and terrorist financing of the parent company or the head office are required to verify periodically, in accordance with point 152 below, that the branches and subsidiaries referred to in points 18 and 19 actually comply with all their professional obligations imposed by the Luxembourg law and/or the law of the country in which they are established.

Concerning the companies referred to in point 17, 2nd paragraph, the professional of the financial sector shall endeavour to obtain a summary of the audit and/or compliance

reports of these companies and shall have them analysed by the person particularly in charge of the fight against money laundering and terrorist financing.

## Title 2 Content of the professional obligations

**21.** Under the terms of the law of 12 November 2004, the following anti-money laundering and terrorist financing professional obligations apply to the professionals of the financial sector:

1. obligation to know the customer (article 3 (1) to 3 (7));
2. obligation to scrutinise certain transactions with special attention (article 3 (9)(i));
3. obligation to continuously monitor customers according to risk (article 3 (9)(ii));
4. obligation to keep certain records (article 3(8));
5. obligation to establish an adequate internal organisation (article 4);
6. obligation to co-operate with the authorities and obligation to report (article 5).

The law of 5 April 1993 on the financial sector as amended imposes an additional specific professional obligation only on credit institutions and other professionals of the financial sector (PFS), namely:

7. obligation to include the name or the account number of the transferor in the funds transfers and the related messages (article 39).

**22.** In order to ensure a proper and uniform implementation of these professional obligations, all professionals of the financial sector shall comply with the detailed instructions set out below.

### Chapter 1 Obligation to know your customer

**23.** The know-your-customer obligation requires the professionals of the financial sector to:

a) identify their customers by means of documentary evidence;

b) identify their customers by means of any other information.
Customer identification shall thus go further than the pure collection of identity documents;

c) identify the beneficial owner(s), where the customers do not act on their own behalf.
Identification must thus go further than the direct customer and extend to the persons for whose account the direct customer is acting, commonly referred to as "beneficial owners".

It follows from the above that it is prohibited to open anonymous accounts.

**24.** The professionals of the financial sector shall implement each of these due diligence measures pursuant to points 21-89, but according to the degree of risk associated with the type of customer, business relationship or transaction. They shall implement enhanced due diligence measures with respect to certain high-risk categories, among which those referred to in points 61-76.

**25.** The law distinguishes moreover between ongoing relationship customers and occasional customers.

## Section 1 Identification of ongoing relationship customers

### Sub-section 1 Customer: definition

**26.** The word "customer" means not only the person on whose behalf an account or savings account is opened, but also all co-holders of the account and the proxies.

**27.** All professionals of the financial sector are obliged to require the identification of their customers by means of documentary evidence when entering into a business relationship and, in particular when opening an account or a savings account, or when offering safe custody facilities, be it in the form of the opening of an account or safe custody services.
As entering into a business relationship entails in principle, in one form or another, the "opening of an account", this expression will be used in this sense hereafter.

**28.** Ongoing customers shall also include those customers for whom accounts are opened solely for the purpose of one or more transactions.

## Sub-section 2 The preliminary nature of the identification

### *Paragraph 1 General principle*

**29**. The identification of a customer for whom the professional of the financial sector opens an account shall occur and be entirely completed before the professional of the financial sector performs any transaction for this customer.

**30**. If prior to full completion of the identification, the professional of the financial sector accepts nevertheless funds from the customer, be it on a temporary basis and on a blocked account, or if the professional accepts to open an even non-operational account for the customer, the professional of the financial sector is not entitled to return the funds, through cash payment or transfer, for the benefit or according to the order of this customer, as long as the customer's identity has not been established to its full satisfaction. In the meantime, the professional of the financial sector shall continue to ensure custody of these assets in the customer's interest, in accordance with the terms agreed upon at the time of the deposit, unless the professional pays them to an escrow account [at the Caisse de consignation] if all the conditions therefore are fulfilled. In such case and depending on the circumstances, the professional of the financial sector should consider filing a suspicious activity report in relation to this customer (cf. points 119-144 of this circular).
It must be stressed that professionals of the financial sector are held liable should they nevertheless allow customers to have access to the funds or to simply mention the account's existence before the customers' identification has been fully completed.

### *Paragraph 2 Exceptions*

I Companies in the process of formation

**31.** It is allowed to open an account for a company in the process of formation, subject to the identification of the company's founders, and to deliver to a notary a certificate of escrow for the funds held in the account. The identification of the founders shall be accompanied by a declaration of the founders stating that they act either for their own account or that of the owners whom they name. The identification and documents relating to the beneficial owners indicated by the founders, the company and any other beneficial owners shall be completed as soon as possible by the company's constitutive documents and before the release of the funds by the professional of the financial sector concerned.

II Customers of accepted delegates

**32**. It may be that an account opening request for a customer is made by a professional of the financial sector with whom the customer already holds an account and with whom the professional receiving the request has a delegation agreement referred to in points 80-88 of this circular. In this case, the account may be opened before a new customer identification is carried out by the professional of the financial sector

concerned, provided that the account opened can only be debited in favour of the customer account of the professional of the financial sector having requested the opening of the account.

**Sub-section 3 Mandatory written authorisation**

**33.** The opening of an account for a new client shall be submitted for approval in writing to an officer or a body of the professional of the financial sector duly empowered for this purpose. This officer or body shall assess both whether it is appropriate that an account should be opened for this customer, and assume the responsibility for the identification of the customer and the related documentation.

**34.** As regards the customers considered as presenting a high risk, among whom in particular those referred to in points 61-76 below, enhanced due diligence measures, such as for example the approval of a duly authorised manager, are mandatory.

**Sub-section 4 Identification based on documentary evidence**

**35.** A distinction must be made between customers who are natural persons and those who are legal persons.

***Paragraph 1 Natural persons***

**36.** The identification of the natural person-customer shall be made on the basis of an official legitimising document which certifies the identity of the person (e.g. passport, identity card, driving license, residence permit, or any other official document carrying a photograph and allowing to unequivocally establish the identity of the person concerned).

**37**. The professionals of the financial sector shall also:

- make sure that the documents produced really belong to their holder, by comparing the signature on the official document to that on the account opening form and, where applicable, by comparing the photograph on the official document with the customer in person;

- make a copy of the identity documents and keep them on file, or transcribe the following information on the account opening form: surname and first name of the customer, date of birth, exact address, profession, number of the identity card;

- make sure that the account opening request, signed by the customer, is made on a form of the Luxembourg professional of the financial sector;

- make sure that all the account opening documents are duly and legibly completed, dated and signed by the customer.

**38.** Where the customer carries on an activity of the financial sector that involves the management of third-party funds, a copy of the required authorisation or a note indicating that such authorisation is not required, shall be placed on file.

***Paragraph 2 Legal persons***

**39.** The formal identification must be made at two levels, namely:

- legal person;
- representatives (proxies) of the legal person.

I. Identification of the legal person

**40**. The identification of a legal entity-customer must be based on the following documents:

1) articles of incorporation (or equivalent constitutive document)
2) recent extract from the register of commerce and companies (or equivalent document).

Concerning documents 1) and 2) mentioned above, the purpose is to obtain proof of the constitution and of the legal status of the legal person (nationality, legal form), as well as information on the name of the company, the name of the directors and the managers and the provisions governing the power to bind the entity, as well as the address of its registered office.

Concerning the latter point, the professionals are required to enquire whether the company is domiciled in Luxembourg and, if that is the case, with whom it is domiciled. Where the entity is a foreign company with an address in Luxembourg, the professionals of the financial sector shall in addition obtain clear and precise information on the jurisdiction under which the company is incorporated or organised, and, where applicable, the address of its principal office abroad. These information and data may be obtained from public registers, the customer or from other reliable sources.

**41.** Where the customer carries on an activity of the financial sector that involves the management of third-party funds, a copy of the authorisation required for that purpose or a note that such authorisation is not required, shall be placed on file.

II Identification of the representatives (proxies) of the legal person

**42.** Identification of the representatives (proxies) of the legal persons or the persons empowered by these bodies is, in principle, limited to the persons who are members of the bodies of the legal person acting on behalf of the company in its relation with the professional of the financial sector, i.e. those having power to operate the accounts of the legal person with the professional of the financial sector. Such persons shall be identified in the same manner as natural person-customers.
The professional of the financial sector must also verify whether the competent governance body has actually authorised the account opening concerned and whether

the persons having power to operate the account are indeed entitled thereto under the terms of the articles of incorporation or a resolution of the competent governance body.

***Paragraph 3 Verification regarding terrorist lists and customers who require enhanced due diligence measures***

**43.** Once the formal identification has been finalised, the professional of the financial sector shall verify whether the customer and, where applicable, the persons having power to operate the account, appear on the lists of terrorists mentioned in the circulars listed in Annexe III to this circular, and whether they qualify as customers requiring enhanced due diligence measures in accordance with points 61-76 of this circular.

***Paragraph 4 Regularisation / updating of expired documentary evidence***

**44.** At the time of the initial identification on the basis of valid documentary evidence, every professional of the financial sector had to check the customer's identity. The identification is not challenged by the fact that the relevant documentary evidence (e.g. ID card or passport) will expire one day.
The professionals of the financial sector may thus rely on the identification and verification measures already undertaken, except where in the course of their monitoring of the business relationship they have reason to doubt the veracity of the information obtained. Suspicions of money laundering or terrorist financing with respect to a customer may arise where the transactions on the customer's account change noticeably, in a manner that is not consistent with the customer's activities, or where the professional of the financial sector realises that the information on the customer is insufficient. In such case, the professional of the financial sector may, according to his assessment of the situation, be led to updating the identification file or renewing the identification.

**Sub-section 5 Identification based on any other information**

**45.** The obligation to know the customer requires the professional of the financial sector to go beyond a purely documentary identification.
As a consequence, opening an account for a new customer implies a judgment on the customer. This judgment must be supported by information on the customer, his activities and the purpose of the business relationship sought.

**46**. This information should allow the professional of the financial sector to reduce as far as possible the risk of being used for the purposes of money laundering or terrorist financing, and later to detect transactions which are suspicious because not consistent with the information obtained.
Any unusual fact noticed at the time of the identification could be an indication of money laundering or terrorist financing and should as such prompt the professional of the financial sector to require additional information. Particular attention should be paid where the reasons given for seeking a business relationship are not clear or where the

customer uses structures with no obvious economic justification (tangle of accounts, potentially misleading account names, etc.).

## Sub-section 6 Identification of the beneficial owners

### *Paragraph 1 General rules*

**47.** Identification of both the person(s) in whose name an account is opened and the persons for whose account these customers are acting is mandatory.

**48.** The principle of identifying beneficial owners applies both to natural persons and legal persons.

**49**. Where there is any doubt as to whether the customers subject to identification are acting on their own behalf or where there is certainty that they are not acting for their own account, the professionals of the financial sector must take reasonable measures in order to obtain information on the real identity of the persons for whose account those customers are acting.

**50.** The expression “persons for whose account the customer is acting" refers to the identification of persons commonly called “beneficial owners” or “effective beneficiaries” (*“bénéficiaires effectifs”).*

**51.** The identification of the beneficial owner is a key element as regards customer identification, allowing to better know the customer. Thus, suspicions of money laundering or terrorist financing concerning the beneficial owner reflect on the customer and constitute a fact that could constitute an indication of money laundering or terrorist financing which the professional of the financial sector is obliged to report to the State Prosecutor in accordance with points 119-144 of this circular.

**52.** However, where it is a customer whose identification is not required (cf. point 90-94 relating to the exemption from the identification requirement), identification of possible beneficial owners is not required.

### *Paragraph 2 Natural persons*

**53**. In general, when identifying the customer, the professional of the financial sector should require a written declaration stating that the customer is acting for his/her own account or, where applicable, that he/she is not acting for his/her own account.
Where the professional of the financial sector is certain that the customer is not acting for his/her own account, notably by virtue of his/her declaration, the professional must obtain from the customer the documents necessary in order to establish the identity of the beneficial owner(s). It is recommended that the professional of the financial sector requires in each case a written declaration from the beneficial owner himself in confirmation of the customer's statements.

**54.** Where the professional of the financial sector has a doubt as to whether the customer is acting for his/her own account, the professional should dispel the doubt either by obtaining a written and credible confirmation from the customer that the latter is acting for his/her own account, or by identifying the beneficial owner in the manner described above. It must be stressed that the doubt is not necessarily dispelled by a negative statement from the customer or by the fact that a third party confirms being the beneficial owner. Where the professional of the financial sector is not able to remove the doubt, it shall refrain from dealing with the customer.
Furthermore, it shall, according to the circumstances, consider filing a report with the State Prosecutor.

***Special case: Customers whose professional activities imply the holding of third-party funds (i.e. lawyers, notaries, etc)***

**55**. Where a customer's professional activity includes holding third-party funds with a professional of the financial sector and where the customer himself is not an authorised and supervised professional of the financial sector with respect to whom the exemption from the identification requirements of points 90-94 hereunder applies (e.g. lawyers or notaries), the professional of the financial sector shall also expressly ask such customers whether they are acting for their own account or for the account of others and must assess the plausibility of the response. The professional of the financial sector shall obtain from the customer, at the time of the acceptance and during the ongoing business relationship, the information it deems necessary to make sure that the relations are not being used for money laundering or terrorist financing purposes.
Where such customers are acting for their own account, the usual identification procedures as set out in this circular apply.
Where such customer is acting for the account of third parties, it is worth reiterating that the persons referred to above may open accounts serving basically two different purposes:

a) The funds passing through these accounts may be connected with the professional activity of the above persons consisting in assisting their customers in the planning and execution of transactions concerning in particular:

   - buying or selling of real property or business entities;
   - management of money, securities or other assets belonging to the customer;
   - organising the contributions necessary for the creation, operation or management of companies or similar structures;
   - creation, domiciliation, operation or management of trusts (*fiducies, Stiftungen*), companies or similar structures.

   In this case, the professional of the financial sector must identify the beneficial owners of the funds.

b) The funds passing through these accounts are related to any other professional activity of the aforementioned persons, consisting notably in advising their customers as regards the assessment of the legal situation of the latter, excluding the

activities referred to under point a) above, or in representing their customers in legal proceedings.
In this case, the professional of the financial sector shall assess the plausibility of the statements of these persons and may refrain from identifying the beneficial owners provided the professional is satisfied with the explanations given by these persons.

**56.** In all cases, the professionals of the financial sector remain obliged to carefully monitor the transactions carried out by these persons and must gather all the information necessary to keep away any risk of money laundering or terrorist financing.

***Paragraph 3 Legal persons***

**57.** When the professional of the financial sector accepts a legal person as customer, the beneficial owners shall also be identified. Identification of the beneficial owners of a company or a legal arrangement includes understanding the ownership and control structure.
In order to fulfil this duty in a satisfactory manner, the professional of the financial sector shall adopt adequate measures in accordance with the risk of the client.

**58**. Generally, identification shall be required for natural persons who as beneficial owners hold a controlling interest, i.e. more than 25% of the capital.
This interest may be held either directly or through the intermediary of natural or legal persons.
Where the direct shareholder holding a controlling interest is a natural person, it is recommended that the professional of the financial sector requires a written and credible declaration of this shareholder certifying either that the latter is the beneficial owner or that he is acting for the account of someone else.
As stressed already in points 53-54 above, the doubt is not necessarily removed by a negative statement by the aforementioned shareholder(s) or by the fact that a third party states being the beneficial owner. Where the professional of the financial sector is unable to remove the doubt, it shall refrain from dealing with the customer.
Where the direct shareholder holding a controlling interest is a legal person, the professional of the financial sector shall trace back to the natural persons who as beneficial owners hold the controlling interest.
The pertinent information or data on the beneficial owners and on the control of legal persons may be obtained from public registers, from the customers or other reliable sources.

**59.** As regards the identification of the beneficial owners of a legal person, a distinction can, in principle, be made between front companies set up for the purpose of preserving the anonymity of the beneficial owners and for which identification of the beneficial owners is required, and other companies.

Among the main distinguishing elements of front companies the limited number of shareholders, the absence of a stock-market listing and the absence of a commercial activity can be mentioned.

Indeed, small-sized companies are in principle more suitable for being used for the purpose of money laundering or terrorist financing than listed companies with a large number of shareholders for which it is difficult to identify each individual shareholder.
Therefore, in general, where a corporate customer or the holder of a controlling interest is a listed company and is subject to regulatory information requirements, it is not necessary to seek identification of the shareholders and the beneficial owners of this company nor to verify their identity.
It must be stressed however that the fact that a company is listed on a stock market, does not in absolute terms prevent it from being used as front company. Listed companies with a small number of shareholders may thus also be used for the purpose of money laundering and terrorist financing.
Another criterion is the distinction between companies carrying on a commercial activity and companies with a patrimonial purpose and whose structures are devoid of trading activities.
However, companies with a patrimonial purpose cannot systematically be regarded as front companies. Neither can trading companies be systematically excluded from this category.
As regards trading companies, a distinction should be made according to their risk profile.
As it is impossible to identify front companies on the basis of a single and specific criterion, the professional of the financial sector must assess the situation of the legal person case by case.

### Sub-section 7 Domiciled companies

**60.** The professionals of the financial sector must, in addition to this circular, also comply with all the legal obligations set out in circulars CSSF 01/28, CSSF 01/29, CSSF 01/47 and CSSF 02/65.

## Section 2 Particular situations and customers that require enhanced due diligence measures

**61.** The professionals of the financial sector shall implement each of the due diligence measures defined in this circular and take enhanced due diligence measures according to the degree of risk associated in particular with the type of customers, business relationship or transaction.

### Sub-section 1 Non face-to-face entering into business relationships

**62.** The terms of article 3(6) of the law of 12 November 2004 allow to enter into a business relationship with a customer who is not physically present for identification purposes, but require the professionals of the financial sector to take the necessary specific and adequate measures to be able to effectively face the higher risks of money

laundering or terrorist financing. These measures shall ensure identification of the customer.

**63.** The professional of the financial sector may choose between the following two measures for the non face-to-face customer acceptance:

- require a copy of the customer's identification document, certified by a competent authority (for example, embassy, consulate, notary, police superintendent), or by a financial institution which is subject to identification standards that are equivalent to those in force in Luxembourg, or by the delegate in case the account is opened within the framework of a delegation under the terms of points 80-88 above;

- require a simple copy of the customer's identification document, as well as any other information required as applicable, provided that the first transfer of funds is carried out through an account opened in the customer's name with a credit institution which is subject to equivalent identification requirements.
  One procedure accepted by the CSSF consists in the transfer order signed by the customer being directly sent by the Luxembourg bank to the customer's bank, and bearing a reference number. On receipt of the transfer, the Luxembourg bank is able to verify by means of the account number and the reference number that the funds really originated from an account of the customer with the source bank.

**64.** Any other procedure shall be subject to the CSSF's prior consent.

**65.** Depending on the risk level associated with the type of customers, the type of business relationship or transaction, it is recommended that the professionals of the financial sector require any other documentary evidence such as, for example, a reference from another financial institution or evidence concerning the customer's business activity, the source of the funds or the customer's address.

**66.** Moreover, the professional of the financial sector shall pay special attention to ensure that it obtains not only all the required documentation, but also comprehensive and satisfactory answers to all the questions considered appropriate to ask in order to make an informed assessment of the customer and on the purpose of the business relationship sought.

**67.** Prior to opening an account or executing a transaction, the professionals of the financial sector shall analyse all the information provided by the customer, in accordance with their customer acceptance procedures.

## Sub-section 2 Politically exposed persons (PEPs)

**68.** Politically exposed persons (PEPs) are natural persons who are or have been entrusted with a prominent public function as well as the immediate family members or persons known to be closely linked with such persons.
Examples of PEPs include Heads of State or of government, political leaders, senior government or military officials, judges, senior executives of state-owned companies or important political party officials. It should be stressed that this definition does not cover middle ranking or more junior individuals in the foregoing categories.

**69.** In order to avoid implication in acts of money laundering, the professionals of the financial sector shall pay special attention when seeking to enter into business relationships or accept custody of assets belonging, directly or indirectly, to PEPs residing in a foreign country.

**70.** The professionals of the financial sector shall, as far as politically exposed persons residing in a foreign country are concerned, implement normal due diligence measures, bearing in mind that customer identification and determination of beneficial ownership are of particular importance.

**71.** In addition to normal due diligence measures, they shall:

- have appropriate procedures in order to determine whether the customer or the beneficial owner is a politically exposed person residing in a foreign country as defined in point 68. They shall thus set up criteria, known by all the employees in contact with customers, enabling them to detect such persons;

- verify the source of the funds and at the slightest doubt, request documentary evidence;

- set up special control policies and procedures, in order to have all the necessary guarantees when dealing with customers belonging to or joining the circle of the persons concerned;

- involve the person more particularly in charge of the fight against money laundering and terrorist financing in the acceptance procedure of such customer and, before entering into a business relationship with or executing an occasional transaction for such customers, have, where applicable, the authorisation of one of the managers in possession of the legally required authorisation, given the sensitivity of the matter.

**72.** The ensuing business relationship shall also be closely monitored by the person more particularly in charge of the fight against money laundering and terrorist financing.

## Sub-section 3 Non-cooperative countries and territories (NCCTs)

**73.** On a regular basis, the Financial Action Task Force (FATF) publishes a list of non-cooperative countries and territories (NCCTs) as regards the fight against money laundering and terrorist financing, i.e. those jurisdictions whose anti-money laundering and terrorist financing legislation and regulations are not considered to comply with FATF recommendations.
FATF also publishes a second list which includes NCCTs against which counter-measures have been ordered as they are not making sufficient efforts to improve their anti-money laundering and terrorist financing framework.
These updated lists are available on the FATF website at http://www.fatf-gafi.org.htm.

**74.** The financial services institutions shall:

- set up acceptance and transaction monitoring policies and procedures as regards relations with counterparties located in NCCTs, be they natural or legal persons, including professionals of the financial sector. Enforcement of this policy shall be monitored by the person particularly in charge of the fight against money laundering and terrorist financing.

- in particular, apply an enhanced identification procedure. In this context, the source of funds shall be verified (at the slightest doubt or uncertainty, documentary evidence shall be required) and the professional of the financial sector shall obtain from the stated beneficial owner written confirmation of his beneficial ownership;

- obtain the authorisation from one of the managers in possession of the legally required authorisation before entering into a business relationship with or executing an occasional transaction for such customers. The acceptance procedure of such customers shall also involve the person particularly in charge of the fight against money laundering and terrorist financing;

- examine with due attention the transactions involving NCCT counterparties, be they natural or legal persons, including professionals of the financial sector, or the transactions relating to funds from such countries or territories.

**75.** The external auditor shall verify compliance with the relevant internal procedures and specifically refer thereto in the analytical report.

**76.** As regards the countries against which FATF has ordered or will order counter-measures, the professionals of the financial sector shall, without prejudice to other measures, show enhanced vigilance.

## Section 3 Identification of occasional customers

**77.** The identification requirement also applies where transactions are executed for customers other than those with whom a business relationship has been established, and which amount to EUR 15,000 or more, whether they are carried out in a single operation or in several operations which seem to be linked. Where the total amount of the transaction is unknown at the time the transaction is committed, the professional of the financial sector shall perform the identification procedure as soon as the amount is known and the EUR 15,000 threshold reached. The professionals of the financial sector are required to identify the customer even if the amount of the transaction is below the EUR 15,000 threshold as soon as there is a suspicion of money laundering or terrorist financing.
This requirement applies to occasional transactions, notably at the bank counter, for which no file is prepared or account opened.

**78.** Where identification of an occasional customer is required, it shall be carried out and documented in accordance with the same procedures as those applying to customers engaged in a business relationship.
The situation in which identification of an occasional customer becomes mandatory due to suspicions of money laundering or terrorist financing, calls on the judgment of the professional of the financial sector.
Where identification of such customer, and, where applicable, his answers to the professional's additional questions are insufficient to remove, or conversely confirm the suspicion, the professional of the financial sector shall refrain from executing the transaction and consider filing a suspicious activity report with the State Prosecutor (cf. points 119 to 144 of this circular).

**79.** It should be borne in mind that specific laws, adopted for other purposes than for anti-money laundering, impose identification requirements of which some are more stringent than those laid down in the law of 12 November 2004. It is clear that compliance with these specific laws is mandatory, notably with article 5 of the law of 3 September 1996 concerning the involuntary dispossession of bearer shares, which requires that all professionals of the financial sector verify and record the exact identity of the persons with whom they carry out operations over securities, regardless of the amount involved. This also concerns article 74 of the law of 9 November 1797 on the monitoring of gold and silver, which requires professionals of the financial sector to record the identity of the persons to whom or from whom they sell or buy gold or silver.

## Section 4 Delegation of the material performance of identification

**80.** Customer identification shall in principle be performed by the professional of the financial sector itself, as this facilitates in principle the forging of a personal and precise opinion of the customer.

**81.** However, article 3(7) of the law of 12 November 2004 allows, under certain conditions, to delegate the physical process of identification.

### Sub-section 1 Terms and conditions under which the physical process of customer identification may be delegated

**82.** Firstly, it should be borne in mind that only the physical process of customer identification may be delegated and that the final decision as to whether a business relationship is established is always incumbent on the professional of the financial sector.
The financial professionals may not delegate the responsibility for identifying their customers, thereby eluding their obligation to know their customers with the responsibility associated with this knowledge.

**83.** Delegation shall always be governed by a written mandate. The mandate shall precisely define the delegated tasks by taking into account Luxembourg and equivalent foreign standards and in particular by describing in detail which documents and information should be required and verified by the delegates.
These documents shall notably include a copy of one of the identification documents allowed in accordance with point 36 of this circular. Concerning the form of the contract, it may be a separate letter through which the delegate undertakes *vis-à-vis* the professional of the financial sector to observe all the obligations stated on a detailed list.

**84.** The mandate contract shall provide that at least a copy of all the requested identification documents is transmitted to the professional of the financial sector.

**85.** The copies shall be certified true to the original by the delegates or the authorised persons when opening an account for a remote customer in accordance with points 62-67 of this circular. The professional of the financial sector shall not accept a certificate drawn up by a third party, irrespective of his/her status, stating that this third party knows the identity of the client, has verified it and holds the required documentation.
Where a client is transferred by a partner bank, all documentation required in Luxembourg shall also be transferred.

**86.** It should be stressed that the law of 12 November 2004 also requires that the mandate contract must guarantee to the professional of the financial sector access, at any time, to the original account opening documents during the record keeping period laid down in article 3(8) of the law of 12 November 2004 and that these documents are presented to the professional of the financial sector upon request.
These documents consist of the official identification document and the account opening form printed on headed notepaper of the Luxembourg institution and contain all other information required to fulfil the know-your-customer obligation (purpose of the business relationship, professional activity, beneficial owner and, where applicable, the source of funds).

**Sub-section 2 Accepted delegates**

**87.** Article 3(7) of the law of 12 November 2004 provides that the national or foreign professionals operating in the same business sector and subject to equivalent identification requirements are the only acceptable delegates. Accepted national professionals are:

a) credit institutions or other professionals of the financial sector (PFS) licensed or authorised to carry on their activities in Luxembourg in accordance with the law of 5 April 1993 on the financial sector as amended;

b) Insurance undertakings licensed or authorised to carry on their activities in Luxembourg in accordance with the law of 6 December 1991 on the insurance sector as amended;

c) undertakings for collective investment which market their units/shares and to which the law of 20 December 2002 relating to undertakings for collective investment or the law of 30 March 1988 relating to undertakings for collective investment or the law of 19 July 1991 relating to undertakings for collective investment whose securities are not meant for placement with the public apply;

d) management companies under the law of 20 December 2002 relating to undertakings for collective investment which market units/shares of undertakings for collective investment or perform additional or auxiliary activities within the meaning of the law of 20 December 2002 relating to undertakings for collective investment;

e) pension funds under the prudential supervision of the Commission de surveillance du secteur financier.

**88.** Accepted foreign professionals comprise the institutions, companies or undertakings comparable to those referred to under a), b), c), d) and e) above and subject to identification requirements equivalent to those required by Luxembourg law.
This condition is deemed automatically fulfilled if they are established in an EU, EEA or FATF Member State. Concerning the other countries, it is for the professional of the financial sector to verify for each country, under its responsibility if they are subject to equivalent identification requirements or, if not, to impose by contract such requirements on the foreign professional, and to ensure compliance therewith.
Consequently, where a customer has been transferred by a professional of the financial sector, either the above conditions apply if a co-operation agreement has been agreed upon in writing, or the professional of the financial sector must perform a new customer identification process if such agreement does not exist.

### Sub-section 3 Business providers (*Apporteurs d'affaires*)

**89.** As regards business providers that qualify as delegates under sub-section 2 above, the above conditions apply where a co-operation agreement has been agreed upon in writing. Where the business provider is not an acceptable delegate, the professional of the financial sector shall perform the identification process.

## Section 5 Exemption from the identification requirement

**90.** Pursuant to article 3(5) of the law of 12 November 2004, the professionals of the financial sector are not subject to the identification requirements where the customer is a "national or foreign financial institution" subject to an equivalent identification requirement.

**91.** National financial institutions are:

a) credit institutions and other professionals of the financial sector (PFS) licensed or authorised to conduct business in Luxembourg in accordance with the law of 5 April 1993 on the financial sector as amended;

b) insurance undertakings licensed or authorised to carry on their activities in Luxembourg in accordance with the law of 6 December 1991 on the insurance sector, as amended;

c) undertakings for collective investment which market their units/shares and to which the law of 20 December 2002 relating to undertakings for collective investment, the law of 30 March 1988 relating to undertakings for collective investment or the law of 19 July 1991 relating to undertakings for collective investment whose securities are not meant for placement with the public, apply.
Where a customer of the professional of the financial sector is a UCI that does not market its units/shares itself, a management company or a pension fund as referred to in point 15 of this circular, it must be identified by means of its articles of incorporation.

**92.** Foreign financial institutions comprise the institutions, companies or undertakings comparable to those referred to under a), b) and c) above, established abroad and subject to identification requirements equivalent to those required by Luxembourg law. The latter condition is deemed automatically fulfilled if the financial institutions are established in an EU, EEA or FATF Member State. Concerning the other countries, it is for the professional of the financial sector to verify for each country, under its responsibility, if these financial institutions are subject to equivalent identification requirements.
The condition of equivalence is also deemed fulfilled by branches or subsidiaries of financial institutions from one of the aforementioned countries, irrespective of the country in which they are located, provided that the financial institutions concerned

require their branches and subsidiaries to comply with the provisions applicable to them, either by virtue of a legal provision or of a group rule.

**93.** The identification exemption does not apply where such a financial institution merely introduces one or several of its customers to a professional of the financial sector. Indeed, where the customers themselves are not financial institutions as defined above, they must be identified by the professionals of the financial sector themselves with whom they enter into a business relationship, on a non face-to-face basis where applicable, or within the scope of a delegation, in compliance with the applicable provisions.

**94.** Furthermore, it should be stressed that the identification exemption for these customers does not exempt the professionals of the financial sector from the other requirements, notably monitoring transactions and co-operating with the authorities, required by law with respect to all their customers.

## Chapter 2 Requirement to scrutinise certain transactions with special attention

### Section 1 Transactions and operations potentially linked to money laundering or terrorist financing

**95.** Pursuant to article 3(9)1) of the law of 12 November 2004, the professionals of the financial sector are required to examine with special attention all transactions that they consider as particularly likely, by their nature, the surrounding circumstances or the type of persons involved, to be linked to money laundering or terrorist financing.

**96.** In order to avoid being used for the purpose of money laundering or terrorist financing and to be able to detect suspicious transactions, the professionals of the financial sector must have a good understanding of the transactions requested by the customers. To this end, they shall carefully monitor the transactions carried out for these customers and gather, where applicable, all the information necessary to remove any risk of money laundering or terrorist financing to a minimum.

**97.** Transactions which, by their nature, shall be considered as particularly likely to be linked to money laundering or terrorist financing include, in particular, complex transactions, transactions involving unusually large amounts or low amounts but carried out at an unusually high frequency, high-risk transactions (e.g. linked to high-risk countries or activities) and transactions that are unusual compared to the transactions normally carried out by the customer in question (e.g. unusual transaction compared to the usual operation of the account, transactions inconsistent with the declarations made when the account was opened, source and/or destination of the funds).

Annex II to this circular contains an indicative list of examples of such transactions.

**98.** To confirm that reference to the nature of a transaction shall not be interpreted in a restrictive manner, the law additionally refers to the circumstances surrounding a transaction and to the type of persons involved. The examination of a transaction with respect to the type of persons involved covers both PEPs residing abroad and persons from countries whose anti-money laundering and terrorist financing framework is considered as deficient at international level (e.g. non-cooperative countries and territories).

**99.** Professionals of the financial sector shall take account of the specificities of combating terrorist financing, given that in such cases the process is often inverted as compared to money laundering in that the funds that may originate from perfectly legal sources are injected into terrorist networks and systems.

**100.** Where, despite the efforts of the professionals of the financial sector to obtain the information enabling them to understand a transaction, doubts remain as to the absence of any relation with money laundering or terrorist financing, without having identified however any fact that might indicate money laundering or terrorist financing, the professionals shall refuse to execute the transaction and even terminate the business relationship with the customer. If the professionals identify a fact that might be an indication of money laundering or terrorist financing, the provisions presented below concerning the reporting of suspicions to the competent authorities and the behaviour to adopt in the event of suspicious transactions shall apply.

## Section 2 Procedures, systems and mechanisms to implement in order to detect suspicious transactions

**101.** The professionals of the financial sector shall set up procedures and implement mechanisms and systems enabling them to detect both customers recorded on official lists (e.g. list of terrorists) or private/internal lists (e.g. politically exposed persons (PEPs) residing abroad), as well as the funds from countries recorded on official lists (e.g. countries under embargo or NCCTs) and dubious/suspicious transactions, given their abnormal or unusual nature or compared with the normal transactions of the customer concerned.
These mechanisms and systems shall be set up in co-operation with the person particularly in charge of the fight against money laundering and terrorist financing.

**102.** Depending on the number of high-risk customers and transactions, it is recommended to set up a computer system that helps to detect transactions potentially linked to money laundering or terrorist financing, in order to ensure efficient monitoring of the transactions.
However, setting up an anti-money laundering computer system does not exempt the professionals of the financial sector from applying their anti-money laundering or terrorist financing policies by other means. The responsibility of the professional of the financial sector cannot be transferred to the designer of the software. Where such an anti-money laundering or terrorist financing computer tool is set up, this tool shall be configured under the supervision of the person particularly in charge of the fight against

money laundering and terrorist financing. Any inappropriate, changes to the configuration, voluntary or involuntary, may indeed weaken, in the medium or in the long run, the efficiency of the computer tool in detecting money laundering and terrorist financing transactions.

### Section 3 Written record of the results of the analyses performed

**103.** The professionals of the financial sector shall document in writing the result of the review they made on the transactions considered as particularly likely to be linked to money laundering or terrorist financing.

## Chapter 3 Obligation of ongoing follow-up on customers according to risk

**104.** The law of 12 November 2004 (article 3(9)) requires the professionals of the financial sector also to continuously monitor their customers throughout the term of the business relationship according to the degree of risk that customers are linked to money laundering or terrorist financing.
The professionals of the financial sector shall therefore implement a methodology to define and target high-risk customers and to determine the risk degree of every client.

**105**. The following shall be considered as high-risk customers:

- customers from a country or territory whose anti-money laundering or terrorist financing framework is considered deficient by FATF;

- PEPs as defined in point 68 and who reside abroad;

- customers who have become high-risk customers due to their behaviour, notably with respect to the transactions executed.

**106.** In order to be able to comply with the monitoring obligation, the professionals of the financial sector should restrict the number of customers per account manager according to the type of customer and the technical systems and means.

## Chapter 4 Obligation to keep certain documents

### Section 1 Documents relating to identification

**107.** Customer identification documents shall include notably:

- the account opening request form, signed and dated by the customer, detailing the customer's surname and first name, date of birth, full address, profession and reference number and date of the official identity document;
- where applicable, a copy of the official identity documents required for identification;
- the documents relating to the identification of beneficial owners.

### Section 2 Documents relating to transactions

**108.** The documents relating to transactions shall include notably:

- the statement of the transactions (nature and date of the transaction, transaction currency and amount, account type and account number);
- the correspondence;
- the contracts.

**109.** All these documents must allow the reconstruction of individual transactions. The results of the reviews referred to in point 103, that the professional of the financial sector has to perform with respect to transactions that are particularly likely to be linked to money laundering or terrorist financing, shall also be recorded.

### Section 3 Record keeping

**110.** Credit institutions and other professionals of the financial sector are required to keep the documents mentioned in points 107-109 above, in order to serve as evidence in any investigation into money laundering or terrorist financing, for a period of at least five years beginning from the end of the business relationship with their customer as regards identification documents, and, as regards transaction documents, for a period of at least five years following the carrying-out of the transactions, without prejudice to longer record keeping periods prescribed by other laws.

## Chapter 5 Obligation to establish adequate internal organisation

**111.** Pursuant to article 4 a) and b) of the law of 12 November 2004, the professionals of the financial sector shall:

- establish adequate internal control and communication procedures, in order to forestall and prevent operations related to money laundering or terrorist financing;

- take appropriate measures to make their employees aware of and train them as regards the provisions concerning the professional obligations with respect to combating money laundering and terrorist financing applicable to them. These measures shall include participation of the employees concerned in special training programmes to help them recognise operations that may be related to money laundering or terrorist financing and to instruct them as to how to proceed in such cases.

**112.** These procedures and measures shall be established and controlled in accordance with the provisions set down in point 3 above.

## Section 1 Obligation to establish written internal control and communication procedures

**113.** Every professional of the financial sector shall set up an anti-money laundering and terrorist financing programme comprising internal policies, procedures and controls, including the appointment of a person particularly in charge of the fight against money laundering and terrorist financing, and appropriate procedures for the recruitment of personnel.
To this end, professionals of the financial sector shall have a regularly updated, precise and comprehensive procedures manual, comprising notably:

- the detailed description of the procedures to follow, as regards the content and form, when commencing a business relationship with a customer or executing transactions for occasional customers, according to type of business relationship or transaction, and according to type of customer (private individual, retailer, commercial company, holding company, etc.).

  Enhanced due diligence measures shall be implemented with respect to certain high-risk situations and customers, including notably those referred to in points 61-76 and 104 above.

- the detailed description of the procedures to follow, as regards the content and form, where the professional of the financial sector receives a request to enter into a business relationship or to execute an occasional transaction for a person (e.g. a lawyer or a notary) whose normal professional activity includes the holding of third-party funds with a professional of the financial sector.
  Point 55 of this circular specifies that the professional of the financial sector shall expressly enquire of such persons whether they act for their own account or for the account of others and must assess the plausibility of the response given.

- the detailed description of the procedures to follow, with respect to the content and form, where a fact that could be an indication of money laundering or terrorist financing is detected;

- the detailed description of the procedures to follow with respect to the content and form, where a fact that could be an indication of money laundering or terrorist financing is detected and comes to the professional of the financial sector's attention while performing its professional activities without a business relationship being established or a transaction executed. The procedures shall require that all contacts be documented, whatever the form such contacts take. The notion "entering into contact" with a customer refers to any possible form of contact, including contacts by post, phone conversation or electronic means (such as Internet). The procedures that the professionals of the financial sector shall apply must be adapted to the

different possible forms of contact and notably comprise the appropriate questions professionals of the financial sector shall ask according to the form of contact concerned and the degree of intensity of the contact.
The professionals of the financial sector shall document all indications of money laundering and terrorist financing that have come to their attention within the context of their commercial contacts.
The documentation must contain all the information that the professional of the financial sector has obtained on the person who entered into contact. Furthermore, it must state the reasons of the professional of the financial sector's refusal to establish a business relationship or to execute the transaction concerned for this potential customer. Where the decision of the professional of the financial sector not to enter into a business relationship or to execute a transaction is not based on a fact related to an indication of money laundering or terrorist financing, this decision shall also be documented as far as possible.

- the detailed description of the procedures to follow, with respect to the content and form, to monitor the transactions executed for their customers in order to detect suspicious transactions.
  Special procedures must be implemented to ensure reinforced monitoring of high-risk customers, including notably those referred to in points 61-76 above.

- the detailed description of the procedures to follow, with respect to the content and form, to comply with the obligation to report to the CSSF, concomitant to the communication of information to the State Prosecutor in accordance with article 5 (1) of the law of 12 November 2004, the same information as that communicated to the State Prosecutor;

- the detailed description of the procedures to follow, with respect to the content and form, where the professional of the financial sector performs non face-to-face transactions;

- the exact definition of the respective responsibilities of all the employees involved in these procedures.

## Section 2 Obligation to train and inform employees

**114.** The professionals of the financial sector shall set up an information programme for their employees, which is adapted to the development of money laundering and terrorist financing techniques, and which comprises notably:

- an ongoing training programme of courses given at regular intervals, in particular to employees that are in direct contact with customers, in order to help them recognise operations that are related to money laundering or terrorist financing and to instruct them as to how to proceed;

- regular information meetings for employees to keep them abreast of the preventive rules and procedures to follow with respect to the fight against money laundering or terrorist financing;

- the appointment of one or several persons competent to respond at any time to the questions of other employees on money laundering or terrorist financing;

- the systematic distribution of money laundering and terrorist financing documentation, providing notably examples of money laundering or terrorist financing operations, such as the indicative list of indications of money laundering appended to this circular.

**115.** Where the professionals of the financial sector adopt procedure manuals and information programmes developed abroad, e.g. by their head office or parent company, they are required to adapt these procedures and programmes to the rules applicable in Luxembourg.

## Chapter 6 Obligation to co-operate with the authorities and obligation to inform

### Section 1 General obligation to co-operate with the authorities in charge of the application of the laws

**116.** Pursuant to article 40 of the law of 5 April 1993 on the financial sector as amended, the professionals of the financial sector, their directors and employees are obliged to respond and co-operate as comprehensively as possible with respect to any legal request received from the authorities in charge of the application of the laws, issued by the latter in the exercise of their duties.

### Section 2 Obligation to co-operate with the Luxembourg authorities responsible for combating money laundering and terrorist financing

**117.** Pursuant to article 5 of the law of 12 November 2004, the professionals of the financial sector are obliged to co-operate with the Luxembourg authorities responsible for the combating money laundering and terrorist financing.

#### Sub-section 1 Obligation to provide all the required information to the State Prosecutor at the Luxembourg district court upon his request

**118.** Pursuant to article 5(1)(b), the professionals of the financial sector shall fully co-operate with the State Prosecutor. They shall therefore refrain from systematically putting forward their professional secrecy.
Where a professional of the financial sector is contacted by the State Prosecutor under article 5(1)(b) in order to determine whether a person or company under investigation is a customer of this professional, the latter shall scrupulously analyse whether the situation is covered by article 5(1)(a) of the aforementioned law, which would oblige it to file a suspicious activity report.

## Sub-section 2 Obligation to inform, on its own initiative, the State Prosecutor at the Luxembourg district court of any fact that could be an indication of money laundering or terrorist financing

### *Paragraph 1 Persons responsible of informing the State Prosecutor*

**119.** The communication of information to the State Prosecutor, upon his request or on the initiative of the professional of the financial sector, shall be performed by the person particularly in charge of the fight against money laundering and terrorist financing in accordance with the internal procedures that the professionals of the financial sector are required to set up. It should be borne in mind that this person must be the compliance officer, or the person replacing him, as far as credit institutions and investment firms are concerned. As regards the other professionals of the financial sector, this person shall be a manager in possession of the authorisation required by law.

**120.** Every professional of the financial sector is required to inform the CSSF of the name of the persons designated to the State Prosecutor as being responsible for the information communicated to the State Prosecutor. These persons shall also be the contact persons of the CSSF for any question relating to money laundering or terrorist financing.

**121.** In this context, the State Prosecutor's office to the district court of Luxembourg, being competent in this field for the entire territory of the Grand Duchy of Luxembourg, has issued a circular to all professionals of the financial sector in order to set down the practical considerations regarding the information to provide to the State Prosecutor.

**122.** It should also be stressed that the information on the indications of money laundering or terrorist financing is communicated to the State Prosecutor under the responsibility of the professional of the financial sector.

### *Paragraph 2 Circumstances in which the State Prosecutor must be informed*

**123.** This point purports to clarify the approach to be adopted by the professionals of the financial sector when confronted with a suspicious situation or person, in order to make them aware of the risks they may incur and to reassure them in their way to proceed. Indeed, in the event of an inopportune report, the professionals can risk to be blamed by the customer for violating their professional secrecy obligation. Conversely, they risk criminal proceedings should they refrain from filing a report under circumstances covered by article 5 of the law of 12 November 2004.

I Specification of the criteria that should be taken into account to detect a fact that could be an indication of money laundering or terrorist financing

**124.** The above-mentioned article 5(1)(a) specifies the criteria (person concerned, development of the customer, source of the funds, nature, purpose or terms of the transaction) that should be taken into account in order to assess whether a fact could be an indication of money laundering or terrorist financing. Furthermore, a non-exhaustive list of money laundering indicators is presented in Annex II to this circular.

**125.** In order to inform the professionals of the financial sector of the scope of the money laundering and terrorist financing offence, as well as of the scope of the reporting obligation, Annex I to this circular provides a brief description of the predicate offences that may lead to a money laundering offence.

**126.** In the context of combating terrorist financing, professionals of the financial sector shall also report to the State Prosecutor the transactions that involve persons mentioned in the official lists of presumed terrorists or terrorist organisations. These lists are presented in Annex III to this circular.

II Specifications concerning the obligation to inform as regards the fight against money laundering and terrorist financing

**127.** Faced with a situation that appears suspect, the professional of the financial sector shall consider whether it could be an indication of money laundering or terrorist financing as referred to in article 5 of the law of 12 November 2004, i.e. whether the funds are likely to be the proceeds of one of the predicate offences that give rise to a money laundering offence or likely to be linked to the financing of terrorism. In order to be able, in these circumstances, to form a personal conviction on the presence of an indication of money laundering or terrorist financing, the professional of the financial sector shall seek to clarify the situation in the short run, notably by questioning the customer on the source of the funds and by inviting him/her to provide any useful additional information.

**128.** The professional of the financial sector will then assess the plausibility of the explanations provided. In the case of contacts with PEPs residing abroad as defined in point 68, the professional shall consider involving the person particularly in charge of the fight against money laundering and terrorist financing. Where such approach does not permit the satisfactory clarification of the situation or where the professional of the financial sector is personally convinced that the suspicion is justified, the professional is obliged to report the facts that could be an indication of money laundering or terrorist financing to the State Prosecutor at the district court of Luxembourg.

**129.** However, the professional of the financial sector has not to penally classify the facts nor prove their accuracy. This task falls to the competent judicial authorities.

**130.** The professional's approach shall be the same with respect to facts that have been committed abroad.

III Specifications concerning the obligation to inform in the event of a first contact without entering into a business relationship and/or without making a transaction

**131.** Where facts linked to an indication of money laundering or terrorist financing exist, the obligation to inform the State Prosecutor, as provided in article 5 of the law of 12 November 2004, also covers situations where the professional of the financial had a contact with an individual or a company without a business relationship being commenced or a transaction executed.
In this event, the professionals shall document every information they obtained on the person who had the contact with them, as well as all indications of money laundering or terrorist financing which came to their attention as a result of this contact.

**132.** No report is to be filed where the decision not to enter into a business relationship or execute a transaction has been made without there being a fact related to an indication of money laundering or terrorist financing.
In this event, the reasons underlying the formal refusal of the professional's officer or body empowered to authorise a new customer relationship shall also be documented as far as possible, together with the information that the professional has obtained on the person who contacted them.

***Paragraph 3 Exemption from the secrecy requirement and absence of any liability whatsoever in case of bona fide reports***

**133.** The professional secrecy obligation ceases where the disclosure of information is authorised or required by law.

**134.** The law of 12 November 2004 underlines that when a report is filed to the State Prosecutor in good faith, the professionals of the financial sector incur no liability of any kind. By applying this notion which is wider than the mere reference to civil and criminal liability, the law also excludes any disciplinary liability.

**135.** This exemption from liability does not cover disclosures in bad faith, such as disclosures of facts of which the professional of the financial sector is certain that they are not facts of money laundering or terrorist financing or disclosures made to prejudice the customer or the employer, while there are no indications justifying such disclosures.

***Paragraph 4 Obligation to transmit the same information to the CSSF as to the State Prosecutor***

**136.** It should be borne in mind that the information on the indicators of money laundering or terrorist financing shall be communicated to the State Prosecutor under the responsibility of the professional of the financial sector.

**137.** The professionals of the financial sector shall transmit, separately and simultaneously, the same information to the CSSF as that transmitted to the State Prosecutor under article 5(1)(a) whatever the origin of the information process and the content of the information concerned, so that the CSSF may carry out its supervisory mission.

***Paragraph 5 Powers of the State Prosecutor following the receipt of information***

I Instruction to block

**138.** Article 5(3) allows the State Prosecutor to block one or several suspicious transaction(s), thereby confirming that the State Prosecutor's block instruction may relate not only to a single transaction, but also to a set of operations relating to a suspicious transaction or to a customer suspected of intending to execute such transactions.

II Block instruction restricted in time

**139.** Article 5(3) specifies the effect in time of a block instruction of the State Prosecutor. An instruction of the State Prosecutor to block the execution of one or several operations is valid for a maximum period of 3 months from the written or oral communication of the block instruction to the professional of the financial sector.
Where the instruction is communicated orally, it must be followed by a written confirmation from the State Prosecutor within 3 days; failing the written confirmation the effects of the instruction cease on the third day at midnight.

***Paragraph 6 Behaviour of the professional of the financial sector in the event of a suspicious transaction and information of the State Prosecutor***

I Prohibition to execute the transactions before having informed the State Prosecutor

**140.** The professionals of the financial sector are required to refrain from carrying out the transaction which they know or suspect to be related to money laundering or terrorist financing before having informed the State Prosecutor thereof. Where such transaction is suspected of giving rise to a money laundering or terrorist financing operation 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 of the financial sector concerned shall inform the State Prosecutor immediately afterwards.

II Prohibition to tip off the customer whose transactions have been blocked owing to an instruction of the State Prosecutor

**141.** Article 5(5) of the law of 12 November 2004 clearly prescribes the behaviour to adopt towards customers whose transactions have been blocked by a State Prosecutor instruction.

Principle and exception:
While article 5(5) of the law of 12 November 2004 confirms the general "no tipping off" principle, i.e. the ban from informing the customers or third parties concerned (the CSSF, the external auditors engaged to audit the accounts of the professionals of the financial sector and the lawyers advising the professionals of the financial sector are not considered third parties) that information has been transmitted to the State Prosecutor or that an investigation into money laundering or terrorist financing is under way, article 5(3) authorises the professional of the financial sector to refer to the State Prosecutor's block instruction against the customer to justify its refusal to execute the customer order, where the customer requests such justification.

III Relations with the group's internal control bodies

**142.** In order to coordinate the fight against money laundering and terrorist financing at the highest level of an international financial group to which the professional of the financial sector established in Luxembourg belongs, the law of 12 November 2004 allows to share information within the group in two instances.

*A. Within the context of an information of the State Prosecutor*

**143.** Article 5(5) authorises the professional of the financial sector, subject to the State Prosecutor's prior written and express authorisation, to inform its group's internal control bodies that information has been communicated to the State Prosecutor.

*B. Outside the context of an information of the State Prosecutor*

**144.** Article 16(5) of the law of 12 November 2004 adds a new indent to article 41(4) of the law of 5 April 1993 on the financial sector as amended, guaranteeing access, where necessary, for the internal control bodies of the group to which the professional of the financial sector established in Luxembourg belongs, to the information concerning specific business relationships, in so far as this information is necessary to the overall management of legal and reputational risks related to money laundering or terrorist financing under the Luxembourg law.

## Chapter 7 Requirements regarding bank and funds transfers

**145.** Article 16(1) of the law of 12 November 2004, which introduces a new article 39 into the law of 5 April 1993 on the financial sector as amended, imposes an additional obligation on credit institutions and other professionals of the financial sector (PFS) of customers that submit bank and funds transfers.
This obligation requires that either the name or the account number of the transferor is included in the bank or funds transfers as well as in the accompanying messages. The aim of the provision is to facilitate the detection and reporting of suspicious transactions especially with regard to combating terrorist financing. The obligation encompasses all

transfers of funds, namely domestic, outside or within the EU performed by Luxembourg credit institutions or PFS.

# Title 3 Control of compliance with professional obligations

## Chapter 1 The competent authority: the CSSF

**146.** Article 15 of the law of 12 November 2004 provides that the CSSF is the competent authority to ensure compliance with professional obligations with regard to the fight against money laundering and terrorist financing without prejudice to the competence of the State Prosecutor, and thereby expressly confirms the role played by the CSSF in the field of anti-money laundering and terrorist financing.

**147.** To fulfil this mission, the CSSF:

- carries out on-site inspections on a regular basis;

- requires, in the event of a report to the State Prosecutor, that a copy of the relevant file is transmitted at the same time to the CSSF. The files shall also be transmitted to the CSSF where the investigation has been initiated by the competent judicial authorities;

- requires, on the one hand, that the assignment that the professionals of the financial sector award to their external auditors for the audit of the annual accounts includes the review of compliance with legal provisions as regards the fight against money laundering and terrorist financing, the CSSF circulars in this respect, as well as the proper implementation of the relevant internal procedures and, on the other hand, that the report of the external auditor is transmitted to the CSSF;

- requires that compliance with these obligations and procedures is reviewed on a frequent basis by the compliance officer of the professional of the financial sector and by its internal audit department.

## Chapter 2 The external auditor

**148.** The assignment that the professional of the financial sector awards to its external auditor for the audit of the annual accounts shall include the review of compliance with the legal professional obligations with regard to combating money laundering and terrorist financing, this and other circulars, as well as the proper implementation of the relevant internal procedures aimed at preventing money laundering and terrorist financing.

**149.** The analytical report provides a description of the procedures set up by the institution in order to prevent money laundering and terrorist financing, as laid down in the law of 12 November 2004, in article 39 of the law of 5 April 1993 as amended, as well as in this circular.

The long-form report shall provide, in particular:

- a description of the customer acceptance policy;
- an appraisal of the adequacy of the internal procedures of the professional of the financial sector with regard to combating money laundering and terrorist financing and their compliance with the provisions of the law of 12 November 2004, of article 39 of the law of 5 April 1993 as amended, as well as of this circular, notably as regards identification of customers and beneficial owners. The external auditor shall also review the proper implementation of the procedures concerned. The outcome of these controls shall also be annexed to the summary schedule “Compliance with this circular” of IRE (Institut des réviseurs d'entreprises, Luxembourg Institute of auditors). This IRE schedule, established with the comments "yes", "no" and "n/a" (non applicable), shall be completed, where applicable, with figures or supplementary explanations. The auditor may also refer to the outcome of these controls in other sections of the analytical report;
- a statement on the regular performance of such controls of compliance with procedures by the internal audit department and the compliance officer;
- employee training and information on the detection of money laundering and terrorist financing operations;
- historical statistics concerning the detected suspicious transactions, the number of suspicious transactions reported to the State Prosecutor by the professional of the financial sector, as well as the total amount of funds involved.

The external auditor shall state how the sample of reviewed files was selected, as well as the coverage ratio of the population (number of files reviewed / total number of customers; volume of deposits reviewed / total volume of deposits).

**150.** Where the external auditor identifies cases of non-compliance with the legal or regulatory provisions or deficiencies, the external auditor shall give detailed indications enabling the CSSF to assess the situation (number of incomplete and pending files, also to be indicated as a percentage of the total number of reviewed files, details of the deficiencies identified, etc.).
It should be noted that external auditors shall also inform the CSSF of all the declarations made under article 9-1 of the law of 28 June 1984 on the organisation of the auditing profession as amended, relating to a professional of the financial sector under the supervision of the CSSF.

**151.** Luxembourg branches of EU credit institutions and investment firms shall, pursuant to the law of 5 April 1993, appoint an external auditor to perform the necessary controls in the Luxembourg branch in accordance with the Luxembourg standards. The branch shall communicate the audit report issued by the external auditor to the CSSF.

## Chapter 3 The internal auditor and the person particularly in charge of the fight against money laundering and terrorist financing

**152.** Compliance with the legal and regulatory provisions, as well as with the procedures relating to the fight against money laundering and terrorist financing shall be

verified very frequently by the person particularly in charge of the fight against money laundering and terrorist financing. These controls shall be coordinated with the controls the internal audit department is required to carry out in this area as well.
Moreover, professionals of the financial sector shall define their programmes and terms according to which these checks should be performed.

## Title 4 Penal sanctions in the event of non-compliance with professional obligations

**153.** The non-compliance with any professional obligations, excluding those concerning bank transfers, committed knowingly, is liable to a fine of between EUR 1,250 to EUR 125,000. Such penal sanctions apply even in the absence of an offence of money laundering or terrorist financing.

## Part III Repealing provisions

**154.** This circular replaces the following circulars: IML 94/112, BCL 98/153, CSSF 2000/16, CSSF 2000/21, CSSF 01/31, CSSF 01/37, CSSF 01/40, CSSF 01/48, circular letter of 19/12/2001, CSSF 02/66, CSSF 02/73, CSSF 02/78, CSSF 03/86, CSSF 03/93, CSSF 03/104, CSSF 03/115, CSSF 04/129, CSSF 04/149, CSSF 04/162, CSSF 05/171 and CSSF 05/188.

Yours faithfully,

COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER

| | | |
|---|---|---|
| Simone DELCOURT<br>Director | Arthur PHILIPPE<br>Director | Jean-Nicolas SCHAUS<br>Director General |

Annexes.

**ANNEXE I**

In order to inform the professionals of the financial sector of the scope of the money laundering and terrorist financing offence, as well as of the scope of the reporting obligation, this annex provides a brief description of the predicate offences that may give rise to a money laundering offence.

***Description of the predicate offences***

The predicate offences, i.e. those whose object or proceeds can give rise to a money laundering offence, are the following:

***Drug trafficking (law of 19 February 1973 concerning the sale of medicinal substances and the fight against drug addiction)***
In general, this offence encompasses all the activities to which drug trafficking may lead, as well as the participation in such activities.

***Abduction of minors (articles 368 to 370 of the Penal Code)***
Abduction of minors is a predicate offence where there is a ransom demand or a demand to execute an order or a condition which is likely to give rise to a pecuniary benefit. Indeed, the proceeds of this crime, whose source the direct or indirect abductor seeks to conceal, is the reason why the offence of abduction of minors is considered as a money laundering predicate offence.

***Sexual offences on minors (article 379 of the Penal Code)***
Besides sexual exploitation of minors for prostitution or for the production of pornographic shows or material, this offence also includes inducing to lead a dissolute life, to corruption or prostitution, as well as facilitating the entry, transit, stay or departure from the Luxembourg territory of these persons, for the purposes of the above offence.

***Procuring (article 379bis of the Penal Code)***
This offence consists in hiring, involving or corruption of an individual for the purpose of prostitution or leading a dissolute life, either on the territory of the Grand Duchy or abroad. The offence also includes facilitating the entry, transit, stay or departure from the Luxembourg territory of persons, for the purposes of the above offence.
This offence also covers the act of owning, managing or making available, or even tolerating the running of a brothel.

***Corruption (articles 246 to 253, 310 and 310-1 of the Penal Code)***
In general, corruption consists of the act of soliciting, approving or receiving offers, promises, donations or presents for the purpose of performing or refraining from performing an act of obtaining particular favours or benefits. Corruption is considered passive where it is instigated by the corrupted party and active where it is the result of an act of the corrupting party.

The offence of corruption concerns the corruption of persons holding public office, including civil servants and public agents of other States, the European Union and international bodies, as well as the corruption of individuals who manage or work for a private sector entity. The predicate offence which may give rise to a money laundering offence should be limited in principle to the passive corruption of these individuals, given that it is the concealment by the corrupt party of the source of the corruption's proceeds that constitutes a money laundering offence.

***Violation of the legislation on arms and ammunition (notably the law of 15 March 1983 on arms and ammunition)***

Illegal trading, as well as illegal importing, exporting, manufacturing, repairing, transforming, selling, storing and transporting of arms and ammunition may give rise to the money laundering offence.

***Crimes and offences perpetrated within the scope or in relation with a group created with the purpose of attempting on persons or properties or within the scope or in relation with a criminal organisation (articles 322 to 324ter of the Penal Code)***

By classifying as predicate offences all crimes and offences committed within the scope or in relation with a criminal group, a multitude of offences such as fraud, breach of trust, theft or terrorist activities are covered by anti-money laundering legislation.

A criminal group consists in the association of individuals formed with the aim of attempting on persons or properties.

It does not necessarily require the existence of a hierarchy or an organic structure. The absence of hierarchy is even typical of modern criminal groups. Members do not have to know each other to play a role in such groups.

A criminal organisation differs from a criminal group in that its structure comprises more than two individuals in order to jointly commit crimes and offences, liable to a maximum term of imprisonment of at least four years, for the purpose of pecuniary benefits. Just as for criminal groups, the scope of anti-money laundering legislation now extends to a large number of offences, as many crimes and offences committed by or in relation to criminal organisations are defined as predicate offences.

***Acts of terrorism and terrorist financing (law of 12 August 2003 on the crackdown of terrorism and its financing)***

An act of terrorism is defined as crime or offence liable to a maximum imprisonment of at least three years or a more severe sentence, which, through its nature or context, may be a serious threat to a country, an international body, and which has been committed intentionally with the purpose of:

- seriously intimidating a population;
- constraining public authorities, organisations or international bodies without due cause to perform an act or to refrain from performing an act; or
- seriously destabilising or destroying fundamental political, constitutional, economic or social structures of a country, organisation or international body.

Terrorist financing is defined as providing or collecting by any means, directly or indirectly, unlawfully and intentionally, funds, assets or properties of any nature, with a view to utilise them or knowing that they will be utilised, as a whole or in part, to perpetrate one or several of the offences defined as terrorist act or hostage taking, even if they have not actually been used to perpetrate one of these offences.

***Frauds to the financial interests of the State and institutions (articles 496-1 to 496-4 of the Penal Code)***

Scope:

- false or incomplete statements in order to obtain or retain a subsidy, benefit or other allowance, which is totally or partly financed by the State, a public institution or an international institution;

- wrongly receiving a subsidy, benefit or allowance following a false or incomplete statement;

- using a subsidy, benefit or allowance for other purposes than those for which it was initially granted;

- wrongly accepting or retaining a subsidy, benefit or other allowance;

- false or incomplete statements, or omitting to communicate an information in violation of a specific obligation in order to avoid or reduce the legal contribution to the budget resources of an international institution;

- misappropriating a benefit legally obtained and illegally reducing the budget resources of an international institution.

**ANNEX II**

**Money laundering indicators**

The following list, adapted from a list drawn up by the Swiss Federal Banking Commission, primarily intends to raise awareness among the staff of banks and other professionals of the financial sector and claims in no way to be comprehensive. A comprehensive list would require constant updating to take into account new money laundering methods. A single indicator or a suspicious transaction is not necessarily in itself sufficient grounds for suspecting a money laundering operation.

In practice, only the combination of several indicators or suspicious transactions may be indicative of a money laundering activity.

**I. General indicators**

Particular money laundering risks are inherent in transactions:

- where the structure indicates an illegal purpose, where the economic purpose is unclear, or where the transactions appear absurd from an economic point of view;

- where assets are withdrawn shortly after having been deposited on an account, provided that the customer's activity does not furnish a plausible reason for this immediate withdrawal;

- where the customer's reasons for selecting this particular bank or branch for his business are unclear;

- where, as a result, an account which was previously mostly dormant becomes extremely active without plausible reason;

- that are inconsistent with the financial intermediary's knowledge and experience of the customer or the stated purpose of the business relationship.

Moreover, customers who provide false or misleading information to the financial intermediary or refuse without plausible explanation to provide the necessary information and documentation routinely required for the relevant business activity, must be treated with suspicion.

There may be grounds for suspicion if a customer regularly receives transfers from a bank established in a country considered non-cooperative by the Financial Action Task Force (FATF), or if a customer regularly performs transfers to such a country.

## II. Specific indicators

1. Cash transactions

- Exchange of a large amount of small-denomination banknotes (euros or foreign currency) for large-denomination banknotes.

- Major currency exchange without entry in the customer's account.

- Cashing of cheques, including travellers' cheques for large amounts.

- Purchase or sale of large amounts of precious metals by occasional customers.

- Purchase of bank drafts for a large amount by occasional customers.

- Transfer orders abroad performed by occasional customers, without apparent legitimate reason.

- Frequent cash transactions in amounts just below the threshold above which customer identification is required.

- Acquisition of bearer securities with physical delivery.

2. Account and deposit transactions

- Frequent withdrawals of large amounts of cash, not justified by the customer's activity.

- Use of international trade financing methods, even though the use of such instruments is inconsistent with the stated activity of the customer.

- Accounts used intensively for payments, even though the accounts usually receive no or few payments.

- Absurd economic structure of the business relationship between the customer and the bank (large number of accounts with the same institution, frequent transfers between accounts, excessive liquidity, etc.).

- Provision of security (pledges, guarantees, etc.) by third parties unknown to the bank who do not seem to be closely related to the customer nor to have a plausible reason for granting such guarantees.

- Transfers to another bank without indication of the beneficiary.

- Acceptance of transfers from other banks without indication of the name or account number of the beneficiary or the transferor.

- Repeated large amount transfers abroad with instruction to pay the beneficiary in cash.

- Large and repeated transfers to or from drug-producing countries.

- Provision of deposits or bank guarantees to secure loans between third parties, which are not in conformity with market terms.

- Cash payments by a large number of different individuals into a single account.

- Unexpected repayment of a non-performing loan, without reasonable explanation.

- Use of pseudonym or electronic accounts for commercial transactions by tradesmen, commercial or industrial companies.

- Withdrawal of assets shortly after having been deposited on an account.

3. Fiduciary transactions

- Fiduciary loans (back-to-back loans) without obvious legal reason.

- Holding of shares in a fiduciary capacity in non-listed companies, whose activity the bank is unable to determine.

4. Others

- Attempts of the customer to avoid personal contact with the professional of the financial sector.

**III. Qualified indicators**

- Customer requesting to close an account and to open new accounts in his/her name or in the name of certain members of his/her family without leaving a paper trail at the bank.

- Customer requesting to obtain receipt for cash withdrawals or deliveries of securities which where not effectively performed or which have been immediately deposited afterwards in the same institution.

- Customer requesting the execution of payment orders incorrectly indicating the remitter.

- Customer requesting that certain payments be performed through a nostro account of the professional of the financial sector or a "sundry" account, instead of his own account.

- Customer requesting to accept or document guarantees that are inconsistent with the economic reality or to grant back-to-back loans based on fictitious coverage.

- Criminal proceedings against a customer of the professional of the financial sector for crime, corruption or misuse of public funds.

**Annexe III**

**Circulars concerning**

- identification and declaration of business relationships with terrorist circles in accordance with EC Council Regulations imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban.

  CSSF 01/46, 02/61, 02/62, 02/68, 02/70, 02/72, 02/74, 02/75, 02/79, 03/89, 03/91, 03/92, 03/96, 03/98, 03/99, 03/101, 03/102, 03/103, 03/105, 03/109, 03/110, 03/111, 03/112, 03/116, 03/117, 03/119, 04/125, 04/126, 04/127, 04/130, 04/131, 04/134, 04/138, 04/141, 04/148, 04/150, 04/152, 04/157, 04/160, 04/164, 04/166, 05/169, 05/170 et 05/173, 05/183, 05/184 ,05/190, 05/198, 05/202, 05/204, 05/206, 05/207 and 05/209.

- combating terrorism

  CSSF 02/59, 03/111, 05/175 and 05/191

An updated list of these circulars is available on the CSSF website (www.cssf.lu).

Useful website as regards terrorist lists:

http://europa.eu.int/comm/external_relations/cfsp/sanctions/list/consol-list.htm

**ANNEXE IV**

**Useful websites concerning the fight against money laundering and terrorist financing**

| | |
|---|---|
| CSSF website | http://www.cssf.lu |
| EU legislation website: | http://europa.eu.int/eur-lex/fr/index.html |
| FATF website | http://www.fatf-gafi.org/index-fr.htm |
| Basel Committee website | http://www.bis.org/publ/bcbs.htm |