

**COMMISSION de SURVEILLANCE
du SECTEUR FINANCIER**

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

Luxembourg, 29 July 2010

To all the professionals of the financial
sector subject to the supervision of the CSSF

CIRCULAR CSSF 10/476

Re: Fight against money laundering and terrorist financing: abrogation and amendment of certain provisions of Circular CSSF 08/387

Ladies and Gentlemen,

We are pleased to draw your attention to the abrogation respectively the amendment of certain provisions of Circular CSSF 08/387 of 19 December 2008 on the fight against money laundering and terrorist financing and the prevention of the use of the financial sector for the purpose of money laundering and terrorist financing (the “Circular”). The provisions at issue are those for which the FATF mutual evaluation report on Luxembourg concluded that they go beyond and are contrary to applicable legislation.

New detail on the legislation concerning the fight against money laundering and terrorist financing, including the Grand-ducal regulation of 1 February 2010 providing details on certain provisions of the amended law of 12 November 2004 on the fight against money laundering and terrorist financing (the “Law”) shall at a later stage be laid down in a CSSF regulation.

I. Consequences of the abrogation of the Grand-ducal regulation of 29 July 2008 establishing the list of “third countries which impose equivalent requirements” within the meaning of the law of 12 November 2004 on the fight against money laundering and terrorist financing

Grand-ducal regulation of 1 December 2009 repealed Grand-ducal regulation of 29 July 2008 establishing the list of “third countries which impose equivalent requirements” within the meaning of the law of 12 November 2004 on the fight against money laundering and terrorist financing. It follows that all references in the Circular to the Grand-ducal regulation of 29 July 2008 are no longer relevant and that the applications of the repealed regulation in the Circular are no longer appropriate.

The following points of the Circular are specifically affected by the abrogation of the Grand-ducal regulation of 29 July 2008: 2, 19, 55, 89, 100, 107 and 108. Annex I of the Circular which contained the repealed regulation is also deleted.

II. Beneficial owner of a legal entity

Point 59 of the Circular shall be completed by the insertion of a second sentence as follows: “This declaration shall not be considered as sufficient to fulfil the professional obligation to take reasonable measures in order to verify the identity of the beneficial owner.”.

III. Non face-to-face entering into business relationships

The second sub-paragraph of point 81 of the Circular is deleted. Given that it provides detail relating to electronic money and not to the non face-to-face entering into a relationship, it might lead to confusion.

The examples listed in brackets at the first indent of point 82 of the Circular (justification of the customer's professional activity; source of the funds, customer address) are deleted given that these examples do not allow the identification of the customer and consequently cannot guarantee his identity.

IV. Enhanced customer due diligence - correspondent banks

Point 89 of the Circular deals with enhanced customer due diligence according to article 3-2(3) of the Law. This enhanced regime must be applied to any cross-border correspondent banking relation with a respondent institution from a third country. Therefore, the end of the sentence in the first sub-paragraph of point 89 “which does not figure on the list of “third countries which impose equivalent requirements” published by way of Grand-ducal regulation of 29 July 2008” shall be deleted.

V. Accepted third parties from other Member States of the European Union or the European Economic Area

The last sub-paragraph of point 99 of the Circular is repealed. Indeed, FATF criticised the fact that this sub-paragraph automatically gave accepted third-party status to credit and financial institutions in the EU and the EEA.

VI. Simplified customer due diligence

Article 3-1(1) of the Law allows the use of simplified customer due diligence measures for certain clients which are credit or financial institutions. Point 108 of the Circular interpreted the conditions for applying this article widely, among others by referring to the now repealed Grand-ducal regulation of 29 July 2008. Point 108 of the Circular is thus also repealed.

VII. Suspicious transaction reports

The second sentence of the first sub-paragraph of point 123 of the Circular (“Indeed, in the event of an inopportune report...”) is deleted. The idea is to avoid professionals using the excuse of a potential risk of violating their professional secrecy or of being held liable in order to not report a suspicious transaction. Article 5(4) of the Law clearly provides that where information is disclosed in accordance with article 5(1) of the Law in good faith, there is no risk of violation of professional secrecy nor of liability of any kind. Furthermore, according to Article 8(5) of the Grand-ducal regulation of 1 February 2010, the protection for disclosures made in good faith shall apply even if the reporting person was not fully aware what the actual illegal activity was and even if the suspicious activity never really occurred.

The second sub-paragraph of point 127 of the Circular shall be completed by the insertion of a second sentence as follows: “The obligation to report suspicious transactions also applies regardless of whether these transactions are thought, among other things, to involve tax matters.”. The aim is to avoid professionals using the excuse of a possible tax aspect of a transaction to not report a suspicious transaction.

This circular supplements Circular CSSF 08/387.

Yours faithfully,

COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER

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