

**COMMISSION de SURVEILLANCE
du SECTEUR FINANCIER**

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

Luxembourg, 7 December 2012

To all Luxembourg payment
institutions

CIRCULAR CSSF 12/550

**Re: Practical rules concerning the mission of the *réviseurs d'entreprises agréés*
(approved statutory auditors) of payment institutions**

Ladies and Gentlemen,

The purpose of this circular is to specify the scope of the mandate for the audit of annual accounting documents and to set the rules relating to the content of the long form report that payment institutions are required to communicate to the Commission de Surveillance du Secteur Financier (the "CSSF") pursuant to Article 37 of the law of 10 November 2009 on payment services, on the activity of electronic money institution and settlement finality in payment and securities settlement systems (the "LPS Law").

The LPS Law transposes into national law the provisions of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market. The purpose of that directive is to establish a coherent legal framework for the construction and smooth functioning of a single European market for payment services.

The LPS Law introduces a new status of financial institution, i.e. that of "payment institutions" and imposes authorisation, operating and prudential supervisory requirements on these payment institutions.

Pursuant to Article 37(3) of the LPS Law, this circular generally defines the role and mission of the *réviseurs d'entreprises agréés* (approved statutory auditors) in the context of the statutory audit of annual accounts, and more specifically the aspects that

must be analysed in the long form report of the *réviseur d'entreprises agréé*. The long form report is a key supervisory instrument for the CSSF in its supervisory mission.

The provisions of this circular shall apply to the payment institutions under Luxembourg law.

The provisions of this circular shall not apply to the branches of payment institutions of EU origin, i.e. branches of payment institutions whose head office is in an EU Member State. Payment institutions whose head office is in another country which is party to the European Economic Area Agreement shall be considered as EU payment institutions, within the limits set forth by this Agreement and related Acts¹.

In accordance with Circular CSSF 11/523, branches of EU payment institutions shall have audited by a *réviseur d'entreprises agréé* certain specific areas for which the CSSF maintains a supervisory responsibility as host authority:

- compliance with the entire legislation and regulations concerning the fight against money laundering and terrorist financing applicable to payment institutions;
- compliance with the provisions to which Article 58(1) and (2) of the LPS Law refers.

¹ Currently Iceland, Liechtenstein and Norway.

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I. Mandate

Every payment institution, notwithstanding any exemption provided for in any non-specific law, shall specify in writing to its *réviseur d'entreprises agréé* the terms of engagement containing at least the following provisions:

1. Annual accounts shall be audited according to the professional standards covering the tasks referred to in Article 1(29)(a) of the law of 18 December 2009 concerning the audit profession as stated in Chapter I of Regulation CSSF N°11-01 of 8 July 2011 (hereinafter "CSSF Regulation").

For statutory audits, the CSSF Regulation notably provides for the application of the International Standards on Auditing (ISAs) published by IFAC (International Federation of Accountants), adapted to or supplemented by, as needed, the national legislation or practice.

2. The audits shall cover all business areas of the payment institution falling within the CSSF's scope of supervision in accordance with Article 31(2) of the LPS Law.

The *réviseur d'entreprises agréé* shall state for every audited business area the verification tasks performed. The findings of the *réviseur d'entreprises agréé* shall be set out in a clear and positive manner.

The long form report shall include a detailed description of the identified weaknesses and irregularities.

3. The mandate given to the *réviseur d'entreprises agréé* shall not exclude from the scope of the audit a particular type of activity, category of transaction or specific transaction falling within the supervisory scope of the CSSF. Furthermore, the audit shall cover all the risks, as well as all the financial, organisational and internal control-related aspects of the payment institution. The audit shall allow providing any information required in the long form report defined in this circular (cf. Chapter III. below).
4. The mandate shall expressly contain the task consisting of:
 - verifying compliance with Article 28 (Professional obligations concerning the fight against money laundering and terrorist financing) and Article 29 (Cooperation requirements with the authorities) of the LPS Law and the entire

legislation on the fight against money laundering and terrorist financing applicable to payment institutions;

- verifying compliance with the conditions laid down in Article 10(3)(a) to (c) of the LPS Law where the payment institution grants credits related to payment services referred to in points 4, 5 or 7 of the Annex of the LPS Law;
 - verifying compliance with the provisions of Article 14(1) of the LPS Law concerning safeguarding requirements of funds imposed on payment institutions, which carry out business activities other than the provision of payment services under Article 10(1)(c). Secure, liquid low-risk assets referred to in Article 14(1)(a) of the LPS Law are asset items that fall into one of the categories set out in Table 1 of point 14 of Annex I to Directive 2006/49/EC for which the specific risk capital charge is no higher than 1.6%, but exclude other qualifying items as defined in point 15 of that Annex. Units in an undertaking for collective investment in transferable securities (UCITS) which invests solely in the aforementioned asset items are also secure, liquid low-risk assets.
 - verifying compliance with the provisions of Article 17(1) of the LPS Law on the calculation of own funds;
 - verifying compliance with the circulars applying to payment institutions as regards central administration and infrastructure as listed in Circular CSSF 11/510.
5. The mandate shall encompass all the payment institution's branches abroad.

Concerning the agents located abroad through which the payment institution intends to provide payment services, the *réviseur d'entreprises agréé* shall describe and assess the control and support framework of these agents by the payment institution. Specific attention shall be paid to the professional obligations relating to the fight against money laundering and terrorist financing.

As far as compliance with Luxembourg standards concerning money laundering and terrorist financing and conduct of business rules is concerned, the mandate shall also cover all the subsidiaries of the payment institution established abroad.

Payment institutions are requested to provide the CSSF with a copy of the mandate given to their *réviseur d'entreprises agréé* for the audit of annual accounts, and, where applicable, of consolidated accounts. Payment institutions shall also notify the CSSF of any change to this mandate or of any renewal thereof under other terms than those initially communicated to the CSSF.

6. The tasks performed by the *réviseur d'entreprises agréé* within the framework of its mandate defined above shall be documented, on the one hand, by a report on annual accounts (cf. Chapter II. below) and, on the other hand, by an annual long form audit report (cf. Chapter III. below).
7. Where the payment institution is subject to supervision on a consolidated basis by the CSSF, an annual long form audit report on a consolidated basis, based on the consolidated financial situation, shall also be established.
8. Payment institutions shall immediately inform the CSSF if the *réviseur d'entreprises agréé* terminates his mandate before expiry of the term or if he decides not to renew his mandate.

Payment institutions shall also provide the CSSF with a duly reasoned notification of their intention to terminate the mandate of their *réviseur d'entreprises agréé* or not to renew it. The CSSF will analyse, for each request to change the *réviseur d'entreprises agréé*, the reasons for the envisaged change and assess whether the payment institution has, during the selection procedure of the new *réviseur d'entreprises agréé*, carefully assessed the adequacy of the competence and resources of the latter based on the type and volume of the payment institution's activities and the nature and complexity of its internal systems. At the same time, the payment institutions shall transmit a copy of the mandate given to the new *réviseur d'entreprises agréé* to the CSSF.

II. Report on annual accounts / consolidated accounts

The report of the *réviseur d'entreprises agréé* (auditor's report or short form report, *Bestätigungsvermerk*) is subject to legal publication together with the (consolidated) annual accounts and the (consolidated) management report it covers, in accordance with Article 79(1) of the law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings ("RCC Law") (Article 341 of the amended law of 10 August 1915 on commercial companies ("LCC Law")).

The auditor's report shall include the elements set out in Article 69a of the RCC Law and in Article 340(3) of the LCC Law. The *réviseur d'entreprises agréé* shall issue his report in accordance with the international standards on auditing ISA 700 to 799 (Audit Conclusions and Reporting) as adopted by the CSSF Regulation. Where

appropriate, it shall take into account technical notes issued by the Institut des Réviseurs d'Entreprises.

The report on (consolidated) annual accounts must include the elements it refers to, i.e. the (consolidated) annual accounts and the (consolidated) management report. In accordance with Article 26(1) of the RCC Law (Article 319 of the LCC Law), the (consolidated) annual accounts shall comprise the (consolidated) balance sheet, the (consolidated) profit and loss account, as well as the notes to the accounts; these documents shall form a whole. The (consolidated) management report is defined in Article 68(1) of the RCC Law (Article 339 of the LCC law).

The audit of the *réviseur d'entreprises agréé* shall cover the annual accounts and, where applicable, the consolidated accounts.

Where the payment institution performs business activities other than the provision of payment services and activities referred to in Article 10(1) (a) and (b) of the LPS Law, it shall inform the CSSF thereof. This refers to so-called "hybrid" payment institutions that are commercial companies which may be granted the status of payment institution and provide payment services while carrying out activities other than those falling within the scope of the CSSF's prudential supervision. From the moment a "hybrid" payment institution exists, the CSSF will determine the mandate within which the *réviseur d'entreprises agréé* shall issue a report on "separate financial information" concerning its payment services activity in accordance with Article 19(3) of the LPS Law.

Where a *réviseur d'entreprises agréé* notifies the payment institution that he will issue a qualified opinion or refuse to certify the accounts, the aforementioned payment institution must immediately inform the CSSF thereof.

III. Annual long form audit report

III. A. General principles

The long form report (*compte rendu analytique, Prüfungsbericht*) aims at describing and analysing the observations concerning financial and organisational aspects that the *réviseur d'entreprises agréé* made during the course of his audit.

The long form report that the payment institutions' *réviseur d'entreprises agréé* draws up is not intended for the public. It is issued for the exclusive use of the management

and administrative bodies of the payment institution concerned as well as for the supervisory authority.

The long form report shall be concise, clear and critical, setting out the main observations made for every point listed in the schedule below, allowing assessing whether the payment institution has in place, for the provision of payment services, a robust internal governance framework, which notably include a clear organisational structure with well defined, transparent and consistent lines of responsibility, effective processes to manage, monitor and report the risks it is or might be exposed to, and adequate internal control mechanisms, including sound administrative and accounting procedures and effective control and safeguard mechanisms for its IT and processing systems. The observations included in the long form audit report shall also allow assessing the financial situation of the payment institution, as well as its evolution.

The management of the payment institution shall be responsible for drawing up the descriptive sections of the long form report and shall provide the *réviseur d'entreprises agréé* with all the information needed to draw up the long form report. The *réviseur d'entreprises agréé* shall assess the adequacy of the descriptive sections drawn up by the payment institution based on its works and professional judgement.

The *réviseur d'entreprises agréé* must report in detail the weaknesses and points needing improvement observed during the course of the audit. This may be reported within the scope of the long form report or through a management letter addressed to the management of the payment institution concerned. The observations of the *réviseur d'entreprises agréé* must be accompanied by comments of the payment institution's management. In case a management letter is drawn up, it must be appended to the long form report except in exceptional circumstances where, based on a duly justified request, the CSSF grants a deadline to transmit the management letter after the long form report. The *réviseur d'entreprises agréé* must specifically mention if he does not issue a management letter.

Pursuant to Article 37(1) of the LPS Law, payment institutions shall also spontaneously communicate to the CSSF, on their own initiative, all other documents issued by the *réviseur d'entreprises agréé* within the scope of its annual audit.

The annual long form audit report must be submitted to the CSSF no later than **one month** following the ordinary general meeting of the payment institution. Upon duly justified request, the CSSF may grant a one-month extension of the deadline.

Payment institutions subject to the CSSF's supervision on a consolidated basis, must submit, no later than **three months** following their ordinary general meeting, the consolidated long form audit report, as well as the long form reports of their subsidiaries included in the supervision on a consolidated basis. Upon duly justified request, the CSSF may grant a one-month extension of the deadline.

The long form reports shall be transmitted to the CSSF on paper and in electronic form.

III.B. Schedule of the long form report

The long form report shall be drawn up according to the schedule below. It may be adapted to the nature, volume and complexity of the activities, as well as to the structure of the audited payment institution. Where applicable, the *réviseur d'entreprises agréé* shall supplement the schedule with aspects he deems appropriate. Where a specific item of the schedule does not apply to the audited payment institution, this must be explicitly mentioned under the item concerned.

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III.C. Comments relating to the long form report schedule

1. Mandate

The *réviseur d'entreprises agréé* shall provide a summary description of his annual audit mandate. The *réviseur d'entreprises agréé* shall also mention all other services that he himself, his company or group have provided to the audited payment institution.

2. Significant events

This point indicates, where applicable, the significant events which took place during the year under review. These events are, for example: strategic decisions taken by the board of directors and the executive committee, the beginning or the end of important reorganisations, the launch or discontinuation of an activity, the conclusion of extraordinary transactions or negotiations with other institutions or groups as regards mergers/acquisitions or cooperation.

Where no significant events have taken place during the year under review, the *réviseur d'entreprises agréé* shall specifically mention this fact.

3. Organisation and administration

This point shall provide an overview of the operational and decision-making structure of the payment institution. It shall notably allow concluding precisely whether the provisions of the circulars applicable to payment institutions with respect to central administration and infrastructure as listed in Circular CSSF 11/510 are being complied with.

3.1 Description of the shareholding

This point shall describe the direct shareholders of the payment institution and of the group to which it belongs; this structure shall be presented in the form of an organisation chart.

3.2 Payment institution organisation chart

The organisation chart of the payment institution shall differentiate between the management and the different departments and committees, while stating the corresponding number of staff, and represent the corresponding hierarchical and functional structures by indicating the general and particular delegations of power.

The organisational structure should be submitted in the form of a chart including, if necessary, supporting comments.

3.3 Executive and management bodies

The list of the members of the executive bodies shall be indicated, highlighting those who are approved by the CSSF pursuant to Article 13(2) of the LPS Law ("four-eyes" principle). This point shall include a description of the powers of the executive bodies with a precise indication of the limits of these powers.

The *réviseur d'entreprises agréé* shall state if:

- the members of the management (at least two) were given their powers directly by the board of directors, and
- if they have equal powers (which is a condition for a collegial management and which shall be correctly reflected in the organisation chart of the payment institution).

The long form report shall indicate if, besides the board of directors and the authorised management, other decision-making bodies exist: sub-committees of the board of directors (credit committee, etc.), local internal committees, group-level committees in which the payment institution participates (credit committee, treasury committee, etc.). If so, the *réviseur d'entreprises agréé* shall state the composition and powers, as well as possible veto rights that the members of the approved management of the Luxembourg payment institution have over the decisions of these bodies.

The long form report shall also list the persons who are members of the approved management and who are appointed as the persons responsible for certain functions. The following circulars should apply in particular:

- IML 95/118 relating to customer complaint handling;
- IML 96/126 relating to the administrative and accounting organisation;
- IML 98/143 relating to internal control;
- CSSF 04/155 relating to the Compliance function;
- CSSF 08/387 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.

It shall also state all the changes as regards these persons which occurred during the financial year. Since these persons may entrust members of staff with the exercise

of certain practical tasks related to these functions, the long form report shall describe and assess, where appropriate, this cooperation.

3.4 Organisation of the operating network

The description of the network's organisation shall cover the national and foreign subsidiaries, the branches and all the cooperation agreements with respect to payment institution services by partners or services provided by other institutions.

If the payment institution holds branches and/or subsidiaries, the long form report shall also describe and assess the integration of branches and subsidiaries in the organisational, functional and decision-making structure of the payment institution under this point.

A review of the branches' organisation and activities and an analysis of their risks will be provided in a separate chapter for every branch (cf. item 11 of the long form report).

In case the payment institution has subsidiaries subject to consolidated supervision of the CSSF, a consolidated long form audit report shall be drawn up (cf. Chapter IV. "consolidated long form audit report" below).

Finally, the long form report shall also review any other type of cooperation agreement related to the organisation and administration, the internal control or the activities with affiliated or unaffiliated undertakings.

The *réviseur d'entreprises agréé* shall also state in this item any conflicts of the payment institutions in relation with the cooperation agreements.

3.5 Compliance with the provisions of Article 11 of the LPS Law (central administration and infrastructure)

This item shall provide an assessment of compliance with the provisions of Article 11 of the LPS Law concerning central administration and infrastructure. It should be noted that the concept of central administration and infrastructure is specified in Circular IML 95/120, which, according to Circular CSSF 11/510, applies to payment institutions.

3.6 Administrative and accounting organisation

The *réviseur d'entreprises agréé* shall provide a summary description of the administrative and accounting organisation, as well as an appraisal of its

appropriateness regarding the type and volume of the activities of the payment institution. It should be noted that the concept of administrative and accounting organisation is specified in Circular IML 96/126, which, according to Circular CSSF 11/510, applies to payment institutions.

The *réviseur d'entreprises agréé* shall notably state if the human and technical resources available to the payment institution are sufficient to ensure a fair conduct of its business. In this context, the *réviseur d'entreprises agréé* shall assess whether the payment institution complies with the principle of segregation of duties considering the size of the audited payment institution.

The long form report shall explicitly comment on the adequacy of processing dormant accounts and the existence and adequacy of processing internal accounts.

The *réviseur d'entreprises agréé* shall comment on the appropriateness of the procedures set up within the payment institution and on compliance with these procedures.

3.7 IT systems (functional diagram of flows and risk analysis) and payment system

The *réviseur d'entreprises agréé* shall describe the IT and processing systems and assess their reliability and the security of the processed data. The *réviseur d'entreprises agréé* shall comment on the appropriateness of the IT system compared to the volume and type of activity of the payment institution.

The *réviseur d'entreprises agréé* shall also describe the payment systems proposed by the payment institution and assess their reliability and security.

The *réviseur d'entreprises agréé* shall describe and assess the disaster recovery plan and business continuity plan that the payment institution has set up in case of a breakdown of its IT system or of its proposed payment system.

Moreover, the *réviseur d'entreprises agréé* shall conduct a risk analysis which shall cover at least the following points:

- Information security. The *réviseur d'entreprises agréé* shall, in particular, comment on the IT system set up by the payment institution to protect against the risk of intrusion and the risk of misappropriation of funds;
- Development and maintenance of systems;
- Operating procedures;

- Technical support of information systems.

3.8 Outsourcing of operational payment service functions

If the payment institution intends to outsource key payment services operating functions in accordance with Article 11(4) of the LPS Law, the *réviseur d'entreprises agréé* shall state if the requirements set out in points (a) to (d) of this paragraph are being complied with.

4. Internal control

The *réviseur d'entreprises agréé* shall describe the organisation of the internal control system and of the internal audit function and assess its appropriateness with respect to the payment institution's business type and volume and the real and potential money laundering and terrorist financing risks to which it is exposed. It should be noted that the concept of internal control is specified in Circular IML 98/143 as amended by Circular CSSF 04/155, which, in accordance with Circular CSSF 11/510, applies to payment institutions.

Concerning more particularly the internal audit function, the *réviseur d'entreprises agréé* shall provide:

- an assessment on the appropriateness of and compliance with the internal audit plan;
- a description and assessment of the manner in which the internal audit function operates;
- an assessment of this function's quality;
- for payment institutions that have local branches or branches abroad or which provide payment services in Luxembourg or abroad through agents, an assessment of the integration of these establishments in the audit plan;
- an adequacy assessment concerning the follow-up on the recommendations issued by the internal audit.

The *réviseur d'entreprises agréé* shall state if a risk management function exists within the payment institution. Where appropriate, a description and assessment of the competences and functioning of this function shall be provided.

5. Activities and analysis of inherent risks

The *réviseur d'entreprises agréé* shall describe precisely the type and volume of the payment services provided by the payment institution notably based on Article 1(38) of the LPS Law concerning payment services referred to in the Annex to that law.

The *réviseur d'entreprises agréé* shall specify whether, in addition to the provision of payment services as set out in the Annex to the LPS Law, the payment institution also performs one or more of the activities listed in points (a) to (c) of Article 10(1) of the LPS Law. If so, the *réviseur d'entreprises agréé* shall describe the type and volume of these activities.

The *réviseur d'entreprises agréé* shall expressly state if the payment institution has stopped providing a payment service or if it has commenced providing a payment service, or if the institution has started one of the activities set out in points (a) to (c) of Article 10(1) of the LPS Law within the financial year under review.

The *réviseur d'entreprises agréé* shall specify whether the payment institution has established an adequate risk management system. This part shall also include an analysis of the payment institution's exposure to at least the following risks, the list of which shall be completed, where applicable, according to the activities and the situation of the payment institution concerned:

- credit risk/counterparty risk (including the potential chargeback risk);
- risk of fraud;
- risk of fund misappropriation;
- market risk;
- foreign-exchange risk;
- operational risk;
- risk of computer hacking (risk of cyber-attacks);
- risk of breakdown of the payment system;
- profitability risk;
- legal risk and reputational risk;
- settlement risk;
- liquidity risk.

The *réviseur d'entreprises agréé* shall provide for every listed risk a brief analysis both quantitative and qualitative.

Insofar as the risks are quantifiable, the quantitative analysis shall indicate the scale of the risks and the related provisions and value adjustments.

The qualitative analysis shall provide an analysis of the internal risk control and notably:

- identification of risks stemming from the payment institution's activities;
- risk measurement systems;
- organisational framework (existence of an independent risk control unit);
- compliance with the conditions and limits laid down in Article 10(3) of the LPS Law where the payment institution grants credits related to payment services referred to in points 4, 5 or 7 of the Annex of the LPS Law;
- provisioning policy and accounting treatment;
- follow-up by the management and board of directors (management information system).

If, in accordance with Article 10(1)(c) of the LPS Law, the payment institution performs activities other than the provision of payment services, the *réviseur d'entreprises agréé* shall verify compliance with the provisions of Article 14(1) of the LPS Law.

6. Periodic reports to submit to the CSSF

The long form report shall describe and assess the systems and infrastructure implemented in order to draw up periodic prudential reports for the CSSF in accordance with Circular CSSF 11/511 regarding the periodic reporting scheme for payment institutions, as well as the internal control measures aiming to guarantee that the data submitted to the CSSF are complete, correct and drawn up according to the applicable rules.

The *réviseur d'entreprises agréé* shall carry out sampling tests, the methodology and the results of which shall be commented.

Where applicable, explicit information shall be provided on the integration of branch data into the reporting.

In this item, the *réviseur d'entreprises agréé* shall also review the processing of and the follow-up on the correspondence between the payment institution and the CSSF. The *réviseur d'entreprises agréé* shall state if the payment institution keeps a centralised file in this respect and indicate the name and function of the person in

charge of this file. In case there is no centralised file within the payment institution, the *réviseur d'entreprises agréé* shall review the manner in which the institution allows the full consulting of the correspondence between the payment institution and the CSSF.

7. Own funds

The *réviseur d'entreprises agréé* shall describe and assess the means implemented by the payment institution to ensure compliance with the provisions of Circular CSSF 10/462 on the definition and calculation of own funds for payment institutions.

The *réviseur d'entreprises agréé* shall confirm whether the payment institution's own funds are calculated in accordance with the provisions of Article 16(2) of the LPS Law.

The *réviseur d'entreprises agréé* shall specify the method chosen by the payment institution to calculate the capital requirements and state if the payment institution complies with the provisions of Article 17(1) of the LPS Law.

8. Analysis of annual accounts

The long form report shall analyse the annual accounts, and include specific comments on important items and significant developments of the financial situation.

The long form report shall also state items, of which the *réviseur d'entreprises agréé* becomes aware after the closing and which may influence the assessment of the economic and financial situation of the payment institution.

9. Professional obligations as regards prevention of money laundering and terrorist financing

The long form report shall describe the procedures set up by the payment institution concerning the prevention of money laundering and terrorist financing as required by the laws and regulations applying to payment institutions.

The long form report shall provide, in particular, the following elements:

- a description of the customer acceptance policy;
- an assessment of the adequacy of the internal procedures of the payment institution relating to the prevention of money laundering and terrorist

financing as well as their compliance with the provisions of Articles 28 to 30 of the LPS Law and the laws and regulations that apply to payment institutions;

- a statement on the existence of a regular control of compliance with procedures by the internal audit department;
- 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 transaction reports filed by the payment institution to the State Prosecutor (Financial Intelligence Unit), as well as the total amount of funds involved;
- assessment of the payment institution's analysis of money laundering and terrorist financing risks to which it is exposed. The *réviseur d'entreprises agréé* shall verify if the procedures, infrastructures and controls with respect to fighting money laundering and terrorist financing set up by the institution, as well as the extent of the measures taken by the payment institution, are appropriate considering the money laundering and terrorist financing risk to which the payment institution is or might be exposed notably through its activities, the nature of its customers and the products and services offered.

The *réviseur d'entreprises agréé* shall state how the reviewed files were sampled and indicate the coverage ratio of the population (number of files reviewed / total number of customers; volume of funds reviewed / total volume of funds).

Where the *réviseur d'entreprises agréé* identifies cases of non-compliance with the legal or regulatory provisions or deficiencies, the *réviseur d'entreprises agréé* shall give detailed indications enabling the CSSF to assess the situation (number of pending incomplete files as a percentage of the total number of reviewed files, details of the deficiencies identified, etc.). (cf. Chapter V. "Reporting to the CSSF by virtue of Article 37(4) of the LPS Law" below).

Note: It should be noted that the *réviseurs d'entreprises agréés* shall also inform the CSSF of all the denunciations made under Article 5 of the law of 12 November 2004 on the fight against money laundering and terrorist financing and which concern a professional of the financial sector under the supervision of the CSSF.

10. Compliance with the provisions to which Article 58(1) and (2) of the LPS Law refer

The *réviseur d'entreprises agréé* shall describe and assess the means implemented by the payment institution to ensure compliance with the provisions of:

- Title III of the LPS Law entitled "Transparency of conditions and information requirements for payment services";
- Title IV of the LPS Law entitled "Rights and obligations in relation to the provision and use of payment services";
- Regulation (EC) No. 924/2009 of the European Parliament and of the Council of 16 September 2009 on cross-border payments in the Community and repealing Regulation (EC) No. 2560/2001 and of Regulation (EC) No. 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds by the payment institution.

11. Branches and agents

The payment institution's branches shall be included by the *réviseur d'entreprises agréé* in the annual audit of the payment institution.

This control shall be handled in a separate chapter in the long form report for every individual branch and must cover the prudential aspects (financial situation, risks, organisation) as well as compliance with the provisions applicable to the prevention of money laundering and terrorist financing, as well as conduct of business rules.

For every branch, the following shall be provided in particular:

- an organisation chart;
- a description of the activities;
- an analysis of risks incurred by the branch, including money laundering and terrorist financing risk;
- a description and assessment of the risk management in the branch;
- a description and assessment of the procedures as regards internal control implemented by the branch, the existence of an own internal audit function and the modes of integration of the branch within the inspection plan of the internal audit service of the payment institution;
- the serious deficiencies that the internal control at the branch may have revealed;
- an assessment of the appropriateness of the administrative and accounting organisation;
- the implementation and verification of compliance with procedures as regards the prevention of money laundering and terrorist financing within the branch;
- the implementation and verification of compliance with Luxembourg procedures as regards the rules of conduct within the branch;

- the integration of the branch from an accounting point of view;
- the integration of the IT and processing systems of the branch and their integration in the IT and processing systems of the payment institution.

The long form report shall also indicate the legal and regulatory provisions that the branches established in another Member State of the European Community (including Iceland, Liechtenstein and Norway) shall comply with in the host country, as well as the compliance with those provisions by the institution concerned.

Concerning the agents located abroad through which the payment institution intends to provide payment services, the *réviseur d'entreprises agréé* shall describe and assess in a separate chapter how these agents are overseen by the payment institution. Specific attention shall be paid to the professional obligations relating to the fight against money laundering and terrorist financing.

12. Relations with affiliated undertakings

The *réviseur d'entreprises agréé* shall certify in the long form report that it has examined the intragroup transactions and specify if they are carried out at arm's length.

The *réviseur d'entreprises agréé* shall state how the sample of audited transactions was selected as well as the coverage ratio of the population.

The following shall notably be described and commented upon:

- the policies and goals pursued by the payment institution in its relation with the affiliated companies;
- the type of executed intragroup transactions;
- the guarantees issued to the benefit of/received by the affiliated companies;
- the part of interests received from the affiliated undertakings, or the part of interests paid to the affiliated undertakings respectively;
- the fees charged for services provided or received;
- the split of the margins received on clients transferred in the group, etc.

13. Follow-up on issues raised in previous reports

The *réviseur d'entreprises agréé* shall follow up on serious irregularities and weaknesses observed during the previous audits and described in detail either in the previous long form report, or in a separate management letter addressed to the management.

14. General conclusion

The *réviseur d'entreprises agréé* shall take position in the general conclusion on the key points of its audit, so as to provide an overview of the situation of the audited payment institution.

More generally, the *réviseur d'entreprises agréé* shall summarise the main notes and conclusions of the report. The *réviseur d'entreprises agréé* shall also indicate the main recommendations and observations made to the management of the payment institution within the scope of the audit of the annual accounts, as well as the management's response thereto. Where the *réviseur d'entreprises agréé* addresses a separate management letter to the management, this part of the general conclusion only needs to refer to the document concerned, which must be annexed to the long form report.

The *réviseur d'entreprises agréé* shall indicate the complete list of all the documents issued during its audit of the annual accounts of the financial year under review.

The *réviseur d'entreprises agréé* shall describe the existence of any problems of the institution with foreign supervisory authorities.

IV. Consolidated long form audit report

The consolidated long form audit report shall be drawn up according to the same principles and schedule as the annual audit report. It shall however focus on the specific information regarding the consolidated situation.

The consolidated long form audit report shall specify the perimeter of consolidation and any changes thereto during the year under review.

Where the payment institution subject to the consolidated audit of the CSSF is exempt from publishing consolidated accounts or where the perimeter of consolidation of the publication of consolidated accounts differs from the perimeter of consolidation of the supervision on a consolidated basis, the consolidated long form audit report shall be based on the accounting situation corresponding to the perimeter of consolidated supervision carried out by the CSSF.

The aim of the consolidated long form audit report is to provide an overview of the situation of the group and give indications on the organisation and activities of the group, as well as on the management and structure of the group's risks.

The consolidated long form audit report shall briefly present the different points of the schedule for each consolidated subsidiary.

V. Notifications to the CSSF in accordance with Article 37(4) of the LPS Law

In accordance with Article 37(4) of the LPS Law, the *réviseur d'entreprises agréé* is required to notify the CSSF without delay of any fact or decision of which he becomes aware in the course of his audit of the annual accounting documents of a payment institution or another legal mission, where this fact or decision:

- relates to that payment institution, and
- is such as to:
 - constitute a serious breach of the provisions of the LPS Law or the implementing regulatory provisions, or
 - affect the continuous functioning of the payment institution, or
 - entail the refusal of the certification of accounts or the expression of reservations thereon.

The *réviseur d'entreprises agréé* is also required to report without delay to the CSSF any fact or decision meeting one of the three above-mentioned criteria, of which he becomes aware during the course of his audit of the annual accounting documents or another legal mission at a company linked by virtue of control to the payment institution for which he carries out a legal mission.

"Another legal mission" means, among others:

- a specific audit performed within the payment institution at the CSSF's request in accordance with Article 37(2) of the LPS Law.
- an intervention in the framework of a proposed merger of undertakings, pursuant to the LCC Law;
- an intervention in the framework of a proposed split of undertakings, pursuant to the LCC Law;
- an intervention when the share capital is being paid up with contributions other than in cash, pursuant to the LCC Law.

Examples of facts or decisions falling or likely to fall under the reporting obligation to the CSSF

- credit risk/counterparty risk evaluation issues (including the potential chargeback risk)

- frauds likely to entail important losses;
- important disputes;
- financial difficulties in a branch or subsidiary;
- major event in the branch or subsidiary;
- significant errors in the periodical statements as defined by Circular CSSF 11/511;
- granting of an interim dividend whereas the payment institution has insufficient or barely sufficient own funds;
- important and repeated exceeding of the internal limits;
- change of activity without appropriate infrastructure;
- serious deficiencies in the internal control system;
- important increase of the risks linked to the payment institution's activity;
- non-compliance with the professional obligations arising from the legislation on the fight against money laundering and terrorist financing applicable to payment institutions;
- non-compliance with the professional obligations as laid down in Titles III and IV of the LPS Law;
- breach by a manager of the "four-eyes" principle (e.g. during a procedure for the granting of credit);
- major conflicts within the decision-making bodies of the institution;
- unexpected departure of a manager of a key management position;
- important malfunctioning in the IT organisation or infrastructure;
- major reorganisation;
- change of shareholder with a qualifying holding without the prior approval of the CSSF;
- acquisition of a qualifying holding without the prior approval of the CSSF.
- non-compliance with Article 14 of the LPS Law concerning the safeguarding requirements of funds.

The *réviseur d'entreprises agréé* is also required to provide the CSSF with all the information or attestations it requires with respect to matters the *réviseur d'entreprises agréé* is or should be aware of within the scope of his mission.

In return for this requirement to report to the CSSF, Article 37(5) of the LPS Law guarantees that the *réviseur d'entreprises agréé*, who, in good faith, discloses confidential information pursuant to paragraph (4) of that Article, is protected against any third party claims.

VI. Final provisions

The CSSF may, upon a written and duly justified request, exempt a payment institution from drawing up an annual long form audit report or a consolidated long form audit report considering the nature and inherent risks of its activities. Circular CSSF 12/533 specifies the terms and conditions for the exemption regime for payment institutions as provided for in Article 48 of the LPS Law.

The provisions of this circular shall be binding in their entirety for the annual accounts of the financial year starting **after** 31 December 2011.

Yours faithfully,

COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER

Claude SIMON
Director

Andrée BILLON
Director

Simone DELCOURT
Director

Jean GUILL
Director General