



Circular IML
96/126
as amended by Circular
CSSF 22/806

Administrative and
accounting organisation



Commission de Surveillance
du Secteur Financier

Circular IML 96/126 as amended by Circular CSSF 22/806

Re : Administrative and accounting organisation

Luxembourg, 11 April 1996

Ladies and gentlemen,

To all electronic money institutions, payment institutions and to all professionals of the financial sector other than investment firms

The purpose of this circular is to clarify the application of Articles 11 and 24-7 of the law of 10 November 2009 on payment services (“**LPS**”) for electronic money institutions and payment institutions (hereinafter referred to as “**EMI/PI**”) and Article 17(2) of the law of 5 April 1993 on the financial sector (“**LFS**”) for the professionals of the financial sector other than investment firms (hereinafter referred to as “**PFS**”). When used in this circular and where applicable, the term “**institution(s)**” refers collectively to EMI/PI and PFS

TABLE OF CONTENTS

1. Content of Articles 11, 24-7 of the LPS and Article 17(2) of the LFS	4
2. Scope	4
3. Responsibility of the institution's management	4
4. Sound administrative and accounting organisation	6
4.1. Operating staff	6
4.2. Execution venues	7
4.3. Documents relating to transactions	7
4.4. Administrative infrastructure of the business functions	8
4.5. Support functions	8
5. Assessment of the administrative and accounting organisation by the statutory auditor	10

1. Content of Articles 11, 24-7 of the LPS and Article 17(2) of the LFS

Articles 11 and 24-7 of LPS and Article 17(2) of the LFS provide that EMI/PI and PFS authorised to carry out their activities in Luxembourg shall have a sound administrative and accounting organisation. This circular aims to define its requirements.

This circular cannot claim to contain comprehensive rules given the diversity and complexity of the transactions undertaken by EMI/PI and PFS, but it rather aims to provide general guidelines governing the design and operation of the administrative and accounting organisation.

This Circular should be read in conjunction with Circular IML 95/120 on central administration, as amended. Indeed, the requirements of the latter circular are fully met only when organisation quality standards as defined in this circular are achieved.

The rules defined hereinafter are, where appropriate, to be adapted to the size and nature of the activities of an institution. This is, for example, the case for certain categories of PFS which carry out specialised activities.

2. Scope

Articles 11 and 24-7 of the LPS and Article 17(2) of the LFS are applicable to EMI/PI and PFS, respectively, which are legal persons governed by Luxembourg law, including their branches abroad.

EMI/PI governed by Luxembourg law shall ensure that the rules defined hereinafter are applied by their subsidiaries established in Luxembourg and transposed by their subsidiaries abroad, insofar as the subsidiaries fall within the scope of the consolidated supervision exercised by the CSSF.

As regards the branches in Luxembourg of EMI/PI having their registered office outside the European Union (“EU”) as well as branches in Luxembourg of EU or non-EU PFS, Articles 22(4) and 24(16) of the LPS and Article 32(4) of the LFS provide that they are required to produce evidence of the existence of a satisfactory administrative infrastructure in Luxembourg. In order to meet the requirements of the law, the rules defined hereinafter are applicable to these branches.

3. Responsibility of the institution's management

The persons in charge of the daily management and authorised pursuant to Articles 13 and 24-9 of LPS and Article 19(2) of the LFS (hereinafter referred to as “**the**

management") are responsible for the establishment of a sound administrative and accounting organisation. This organisation reflects the powers of the management and the delegation made in this regard, under its responsibility.

By establishing a sound administrative and accounting organisation, the management pursues, in particular, the following objectives:

- ensuring the sound administration of securities and assets;
- ensuring the adequate execution of transactions;
- ensuring the correct and comprehensive registration of transactions and the provision of reliable and quickly available information;
- ensuring the implementation of the decisions taken by it or by the persons acting by delegation and under its responsibility as well as the compliance with the rules imposed during the exercise of the EMI/PI or PFS activities.

The management lays down in writing the rules of a sound administrative and accounting organisation. It determines the human and technical means to be implemented. The principles and rules of organisation relate to all the operational, administrative and accounting areas of functioning of the EMI/PI or the PFS.

The management ensures that an organisation manual is established. It shall include at least a set of procedures on the administrative organisation (cf. item 4.2.), accounting procedures (cf. item 4.5.1.) as well as a definition of the functions and responsibilities related thereto (cf. item 4.1.). The level of detail of this manual depend on the type of activity and the complexity of the organisational structure.

The management designates one of its members to be in charge of the administrative and accounting organisation and who shall assume responsibility for implementing the policy and rules that it has established in this context. S/he is, in particular, responsible for the establishment of this organisation manual which s/he shall submit to the management for approval prior to its implementation. S/he shall then ensure its proper implementation.

The institution may provide that the definition and the follow-up of the procedures as regards a specific area of activity are the responsibility of the member of the management in charge of this activity. In this case, the member in charge of the administrative and accounting organisation ensures a consistent and coordinated approach in the institution and the implementation of these procedures in all areas of activities.

As may be inferred from item 4.5.1. below, the member in question shall also be in charge of the provision and publication of accounting information intended for third parties and the transmission of periodic information to the CSSF. Thus, s/he shall ensure that the form and content of this information comply with the legal and CSSF rules in this field.

The mode of operating of the management may provide that the responsibilities in the area of administrative organisation and those in the accounting area are shared by two people who are members of the management.

4. Sound administrative and accounting organisation

Each EMI/PI and each PFS shall have an administrative and accounting organisation complying with the conditions defined hereafter, which relate, in particular, to:

- operating staff;
- execution venues;
- documents relating to transactions;
- administrative infrastructure of the business functions;
- support functions.

In each area, the organisation to be implemented shall be adequate to the principle of effective internal control.

The detailed requirements to be complied with as regards the internal control procedures will be the subject of a specific circular.

4.1. Operating staff

The institution shall have a sufficient number of competent persons on-site in order to take decisions under the policies laid down by the delegated powers, and in order to implement the decisions taken. These tasks are carried out on the basis of a detailed description set by the management and within the framework of an organisation chart of functions adopted by it.

The organisation chart includes for the different departments their structure and their reporting and business lines between them and with the management.

The task description to be filled in by the operating staff shall explain the function, powers and responsibility of each officer.

The organisation chart and task description shall be established based on the principle of segregation of duties. Pursuant to this principle, the duties and responsibilities shall be assigned so as to avoid that they are incompatible for the same person who is not a member of the management, regardless of his/her position in the hierarchy. The goal pursued is to prevent, through a peer review environment, a person from making mistakes and irregularities which would not be identified.

Where, due to the small size of the institution, several duties and responsibilities have to be assigned to the same person, this grouping shall be organised so that it does not prejudice the objective pursued by the segregation of duties.

The organisation chart and task description shall be laid down in writing and made available to all relevant staff. They may usefully be part of the organisation manual (cf. item 3. above).

4.2. Execution venues

4.2.1. The institution shall develop procedures for the execution of transactions. These procedures shall be established in writing as provided for in item 3 above. In order to ensure that the procedures are effectively followed, the necessary controls are to be planned.

The description of the procedures relates to the following points considering the complexity of the institution:

- successive and logical stages of the transaction processing, from initiation to documentation storage;
- flow of the documents used;
- periodic reviews to be carried out, as well as the means to ensure that they have been carried out.

As the purpose is to ensure that the transactions are properly executed, the procedures' content should be clear and comprehensive and made known to all employees concerned. Moreover, the procedures shall be updated forthwith when an internal or external change having an impact on their content takes place.

4.2.2. The institution shall also have the technical equipment required for the execution of its transactions. In this regard, the principles laid down as regards the IT tool as support function shall apply (cf. 4.5.2. below).

4.2.3. All transaction orders initiated by the institution and all contracts with the customers or their proxies shall be issued by the institution in Luxembourg; all correspondence shall be addressed to and sent from the institution. In the case where the institution has a branch abroad, the latter is the contact point for its own customers.

4.3. Documents relating to transactions

Any process which includes a commitment on the part of the institution as well as the decisions relating thereto shall be documented. The documentation shall be updated and kept by the institution in accordance with the law. It should be organised in such a way that it can be easily accessed by any authorised third party.

By way of illustration as regards credit transactions, full documentation of the decisions to grant, change or terminate credit transactions shall be included in the EMI/PI's and Professionals performing lending operations' files in Luxembourg, as well as the agreements and any documents relating to the follow-up of the debt service and evolution of the debtor's financial situation.

4.4. Administrative infrastructure of the business functions

Each business function shall be based on an adequate administrative infrastructure. This infrastructure shall guarantee the implementation of the business decisions taken and their proper execution, as well as the compliance with the powers and procedures for the area in question.

4.5. Support functions

The accounting and IT functions require the following additional clarification:

4.5.1. Accounting function

This section has to be read in conjunction with the Circular CSSF 22/806 on outsourcing arrangements and in particular with Section 4.1.4 Outsourcing arrangements relating to the financial and accounting function.

4.5.1.1. The accounting organisation implies that the institution shall have a financial and accounting department whose mission is to assume the accounting management of the institution. Some parts of the accounting function within the institution may be decentralised, provided however that the central accounting department centralises and controls all the entries made by the various departments and prepares the global accounts. The accounting department shall ensure that other departments intervene in full compliance with the chart of accounts and the instructions relating thereto. The central department shall remain responsible for the preparation of the annual accounts and the preparation of the periodic information to be provided to the CSSF.

The accounting management shall operate according to the rules and procedures which allow:

- identifying and recording all transactions undertaken by the institution;
- explaining the changes in the accounting balances from one closing date to the next by keeping the movements which had an impact on the accounting items;

- preparing the accounts by applying all the valuation and accounting rules laid down by the accounting laws and relevant regulations;
- issuing periodic information and providing supervisory authority with it;
- keeping all accounting documents in accordance with the applicable legal provisions;
- drawing up, where appropriate, accounts according to the accounting scheme applicable in the home country of the shareholder in order to prepare consolidated accounts;
- issuing reliable financial information quickly available to the management ("management information") in order to enable it to closely monitor the developments in the financial situation of the institution and its compliance with budget data. This information shall be used as management control tool and will be more effective if it is based on analytical accounting.

Larger-sized institutions should have a management control which is attached either to the accounting management or, in the organisation chart, directly to the management of the institution.

The tasks carried out within the accounting department cannot be combined with other incompatible business and administrative tasks.

- 4.5.1.2. In connection with opening counterparties' accounts, each institution shall define specific rules on the recording of accounts in its accounting system. Moreover, it shall specify the conditions under which the authorisation is granted so that these accounts work and under which conditions they might be closed.

The institution shall avoid having, in its accounting records, a multitude of accounts with uncontrollable items that could lead to the execution of nonauthorised or fraudulent transactions; particular attention should be paid to dormant accounts. In this respect, the institution shall put in place appropriate verification and monitoring procedures.

- 4.5.1.3. The opening and closing of internal accounts in the accounting records shall be validated by the accounting department before these accounts become operational. The institution shall set out rules concerning the use of such accounts and the powers relating to their opening. The accounting department shall ensure that the internal accounts are periodically subject to a justification procedure.

It is necessary to ensure that internal accounts and payable-through accounts which would no longer be suitable for a use defined by the rules are not kept open.

4.5.1.4. The entire accounting organisation and procedures are described in an accounting procedure manual or book, as provided for in item 3 above.

4.5.2. IT function

Institutions shall organise their IT function so as to have control over it and to ensure robustness, effectiveness, consistency and integrity. For those purposes, they shall comply with the requirements of Circular CSSF 20/750 on information and communication technology (ICT) and security risk management.

The institutions, which rely on third parties as regards the IT function, shall comply, in particular and when appropriate, with the conditions laid down in Circular CSSF 22/806 on outsourcing arrangements.

5. Assessment of the administrative and accounting organisation by the statutory auditor

As regards EMI/PI, the long form report established by the statutory auditor pursuant to CSSF Circulars 13/569 and 12/550 shall include a description and a point-to-point assessment of the rules relating to the administrative and accounting organisation as laid down in this Circular.

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