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Flash

November 28, 2005

**Anti - Money Laundering (AML) Circular 05/211  
dated October 13, 2005**

Following the issuance of the law dated November 12, 2004, on the fight against money laundering and the financing of terrorism ("AML Law"), the "Commission de Surveillance du Secteur Financier" (CSSF) has issued a related circular dated October 13, 2005.

This circular is a precise and consolidated document, built on the laws of August 11, 1998, August 12, 2003, November 12, 2004, previous CSSF circulars, FATF recommendations and EU directive (2001/97/CE) in relation with AML. By its form and its substance, this circular aims to become the **new single Luxembourg regulatory reference** providing all the rules and professional obligations to be respected with regard to AML.

We have listed below the main additional interpretations introduced by the AML Circular 05/211 (“the Circular”) in comparison with the legal Luxembourg AML framework:

Subject	Legal framework set by the Law of November 12, 2004	Additional interpretation from the CSSF Circular 05/211	Paragraph in the Circular
<b>Professionals concerned</b>	<ul style="list-style-type: none"> <li>- Professionals of Financial Sector (PFS) and credit institutions</li> <li>- Insurance companies and brokers (life insurance)</li> <li>- Pension funds</li> <li>- Undertakings for Collective Investment (UCI)</li> <li>- Management companies</li> <li>- Independent professionals (external accountants, tax advisors, lawyers with regard to non-judicial services rendered)</li> <li>- External auditors</li> <li>- Real estate agents acting in Luxembourg</li> <li>- Notaries</li> <li>- Gambling casinos</li> <li>- Dealers in high-value goods (for payments in cash exceeding EUR 15 000)</li> </ul>	<ul style="list-style-type: none"> <li>- Regarding UCI, distinction made between:               <ul style="list-style-type: none"> <li>• UCI that directly distribute shares (direct obligation to identify shareholders);</li> <li>• UCI that distribute shares through intermediaries, which are national or foreign financial institutions, with equivalent identification obligations (intermediaries may identify shareholders on behalf of UCI).</li> </ul> </li> </ul>	15
<b>Primary offences</b>	<ul style="list-style-type: none"> <li>- Any offence as already defined in the previous framework (Art. 506-1 of the Criminal Code)</li> <li>- Fraud against European Communities’ financial interests (Art. 496-1 to 4 of the Criminal Code)</li> <li>- Any offence as defined in Art. 135-5 of the Criminal Code and relating to the financing of terrorism</li> </ul>	<ul style="list-style-type: none"> <li>- Implementation of the Law of May 23, 2005, concerning the fight against the corruption (including private corruption as well).</li> <li>- Detailed description of the primary offences provided.</li> </ul>	8  Annex I
<b>Penalties in case of breach</b>	<ul style="list-style-type: none"> <li>- Voluntary participation to money laundering: the sanction remains the same</li> <li>- Voluntary non-respect of professional obligations (“contrevenant conscient”): Max. sanction EUR 125 000</li> <li>- Professional negligence: disciplinary or administrative sanctions</li> </ul>	<ul style="list-style-type: none"> <li>- Concerning the participation to a money laundering transaction, the Circular underlines the fact that a primary offence committed abroad, if it would have constituted an offence in Luxembourg, might be punished in Luxembourg as well.</li> <li>- Voluntary non-respect of professional obligations: the Circular adds that the sanction applies even if no infraction of money laundering has been committed.</li> </ul>	8  153

## Professional Obligations

The following obligations are listed and detailed in the Circular:

- obligation to know the client;
- obligation to monitor carefully transactions;
- obligation to monitor continuously the client depending on the risk to be in relation with money laundering;
- obligation to cooperate with the authorities;
- obligation to keep the documents;
- obligation to have an adequate internal organisation.

Subject	Legal framework set by the Law of November 12, 2004	Additional interpretation from the CSSF Circular 05/211	Paragraph in the Circular
<b>Identification of the client</b>	Professionals are in charge of identifying all the clients with whom they enter into a business relation or for whom they open a bank account (Art 3(1)). This requires asking for the relevant documentation. Identification of ultimate clients when an intermediary is acting on their behalf (Art 3(3)).	The Circular specifies documents that are necessary in order to identify a client.  General rules are set forth in the Circular for identifying effective beneficial owners when they are a physical person or a legal person. Effective beneficial owner is considered as from a capital ownership of 25% for legal persons. The Circular points out situations considered as requiring particular attention (e.g. opening of accounts by correspondence, politically exposed persons and transactions with non-cooperative countries). Risk-based approach is foreseen.	36 to 38 and 40 to 42  47 to 59  58  61 to 76
<b>Occasional customer identification duty</b>	The identification requirement shall also apply for any transaction with occasional customers involving a sum amounting to EUR 15 000 or more, whether the transaction is carried out in a single operation or in several operations which seem to be linked.	Identification of occasional customer must respect procedures applied for a client entering into a business relationship. Specific cases are mentioned in the Circular when identification of occasional clients is mandatory due to other laws (bearer shares; transaction in gold or silver).	78 to 79

Subject	Legal framework set by the Law of November 12, 2004	Additional interpretation from the CSSF Circular 05/211	Paragraph in the Circular
<b>Exemption of identification's obligation</b>	When the client is a domestic or foreign financial institution subject to equivalent obligations of identification, the professional does not need to identify this client (Art 3(5)).	<p>Description of domestic financial institutions: credit institutions subject to the modified Law of April 5, 1993, insurance company subject to the modified Law of December 6, 1991, and UCI subject either to the Law of 2002, the Law of 1988 or the Law of 1991.</p> <p>Description of foreign financial institutions: the same as the domestic one but located abroad. The equivalent obligation of identification is deemed fulfilled when financial institutions are located in a Member State of the UE, of EEA or of the FATF.</p> <p>Despite this exemption, the professional must still monitor transactions and cooperate with the authorities.</p>	91  92  94
<b>Delegation of the identification process</b>	Professionals may delegate certain customer identification tasks on the basis of a written agreement giving them access at any moment to the customer identification documents and being able to obtain copies of these documents. This delegation can only be made between professionals of the same business activity and who are subject to equivalent customer identification obligations. The delegation does not exempt the professional from its duty that the identification process has been properly completed (Art. 3(7)).	Details provided regarding the conditions to apply in case of KYC (Know Your Customer) delegation. The case of "apporteur d'affaires" is also mentioned.	82 to 89
<b>Client transaction monitoring</b>	<p>Obligation to monitor continuously the clients and transactions made during the existence of the business relationship.</p> <p>This obligation is based on a risk approach (Art 3(9)).</p>	<p>Depending on the number of clients and the risk of transactions, it is recommended to use an Information Technology System that may detect money laundering or financing of terrorism offences.</p> <p>Risky clients are defined as those coming from Non-Cooperative Countries and Territories (NCCT), the Politically Exposed Persons (PEP), and clients bearing high level of risk due to their behaviour and the transactions performed.</p> <p>The Circular specifies that in order to be able to properly respect this obligation, it is recommended to limit the number of clients by account manager and to be supported by technical means.</p>	102  105  106

Subject	Legal framework set by the Law of November 12, 2004	Additional interpretation from the CSSF Circular 05/211	Paragraph in the Circular
<b>Document keeping duty</b>	ID documentation: during the entire business relationship and for at least 5 years after the end of that relationship and Transactions documentation: for at least 5 years from the date on which the transaction was executed (Art 3(8)).	The Circular describes the documents to be kept: documents for identification and documents relating to transactions, and the outcome of the examination of doubtful transactions.	107 to 109
<b>Internal adequate organisation</b>	<ul style="list-style-type: none"> <li>- AML training duty: appropriate measures to raise employee awareness of the legislative provisions regarding anti-money laundering professional obligations (Art 4(b)).</li> <li>- Implementation of internal control and communication procedure (Art 4(a)).</li> </ul>	<ul style="list-style-type: none"> <li>- Duty to educate employees through training, meetings and sharing of information; this must be specifically tailored to Luxembourg law.</li> <li>- Creation of procedures to be applied in different cases: entering into business relations with clients, indication of money laundering offences, etc. (details provided)</li> <li>- Nomination of a person dedicated to AML questions (= compliance officer for credit institutions and investments companies).</li> </ul>	114 to 115  113  3
<b>Banking secrecy &amp; Cooperation with authorities</b>	Banking secrecy is not breached in case of cooperation with the judicial and supervisory authorities. In addition: <ul style="list-style-type: none"> <li>- if necessary, the Luxembourg entity being part of a financial group, is allowed to give access to information to the internal control services of the group for AML and fight against terrorism purposes within the context of the global risk management;</li> <li>- in the same context as above, the professional can communicate to the group regarding information provided to the Prosecutor’s office only if the Prosecutor’s office is informed and has agreed to it beforehand (Art. 5 (5)).</li> </ul>	Detailed information given by the Circular on how the Professional of the Financial Sector must behave depending on the circumstances, including informing the Prosecutor’s office and/or the “CSSF”, and how the Professional may be exempted from the banking secrecy and the attached liability.	116 to 144
<b>Wire transfers</b>	There is a new obligation to provide more information on wire transfers regarding the originator of the payment (e.g. SWIFT payment). As from now, the name or the bank account number of the originator of the payment is required to be included in the wire transfer instructions (Art. 16 (1)).	Applicable to all payments whether national, outside the EU, inside the EU.	145

## Specific considerations

### **PEP (Politically Exposed Person)**

PEP are people in charge of important public functions. Members of their families and close associates may be considered as PEP as well. There is an obligation for the professionals of the financial sector to closely monitor the opening of business relations with PEP (Paragraphs 68 to 72 of the Circular).

### **NCCT (Non-Cooperative Countries and Territories)**

NCCT must implement AML measures to remedy deficiencies that are identified by the FATF (Financial Action Task Force). It was decided on February 11, 2005 that the Cook Islands, Indonesia and the Philippines have been removed from the list of NCCT's. More recently, Nauru has been removed as well; the current list includes only Myanmar and Nigeria. Special attention must be paid when dealing with transactions or clients from these countries (Paragraphs 73 to 76 of the Circular).

### **Branches and subsidiaries**

The Circular applies also to subsidiaries and branches abroad. The professional must ensure proper application of the Luxembourg rules. This control should not be applied when a subsidiary or a branch is in a country with equivalent obligations (EU, EEA, FATF) (Paragraph 18).

Moreover, the Circular added (in Paragraph 17) that a control should exist for any participation between 20% and 50%.

### **One single regulatory reference**

This document consolidates all the previous AML laws and circulars. The result is a single complete document that may be used to update the anti-money laundering and financing of terrorism instruction manual. The full text is available on the following web site: <http://www.cssf.lu>.

### **Recommended Actions**

We recommend that each professional concerned reviews its Anti - Money Laundering/Know Your Customer (AML/KYC) procedures in order to ensure their full compliance with the Luxembourg AML legislation and regulation.

### **How can we help?**

The PricewaterhouseCoopers AML team has extensive experience that has been gained through AML/KYC remediation and documentation enhancement projects and while undertaking regulatory reviews.

PwC can also provide the following services:

- AML risk analysis based on industry sector, products and customers;
- Diagnostic review of AML compliance;
- Advice on appropriate transaction monitoring processes and systems;
- Remediation services;
- Training.

For further information on this issue (or alternatively for the organisation of a workshop), please refer to the following contact persons:

### Assurance & Business Advisory Services

If you have any queries regarding this Flash, please do not hesitate to contact one of the following specialists:

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