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Newsletter Q4 2016

Luther S.A.

Entry into force of the law dated 23 December 2016 on market abuse

The law dated 23 December 2016 on market abuse was published in the Luxembourg official gazette (*Mémorial A*) on 27 December 2016 and entered into force 3 days after its publication (the "**MAL**").

Adapting to the new European legal framework

The MAL:

- completes and clarifies the provisions of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (the "**MAR**");
- implements Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse (the "**MAD**") into national law; and
- also implements the Commission Implementing Directive (EU) 2015/2392 of 17 December 2015 on MAR as regards reporting to competent authorities of actual or potential infringements of MAR.

The MAL repeals the Luxembourg law dated 9 May 2006 on market abuse (the "**Repealed Law**"), which is no longer into force and is adapting Luxembourg national law to the new European legal framework on market abuse.

Even though the provisions of the MAR are directly applicable into member states national laws, it was necessary for each member states to take additional measures in order to ensure a proper application of the MAR.

Hence, according to the MAR, member states shall take the appropriate measures to comply with the provisions of the MAR relating to, amongst others, competent authorities and their powers, administrative sanctions and other administrative measures, exercise of supervisory and sanctioning powers, reporting violations and publication of the decisions.

The below items aim at giving a high level overview of how Luxembourg implemented such measures.

1 The main administrative aspects

(a) Investigation and supervisory powers of the Supervision Commission of the Financial Sector

The Supervision Commission of the Financial Sector (the "**CSSF**"), the Luxembourg competent authority under the MAR, is granted with a comprehensive set of investigation and supervisory powers, such has a right to access any document or information, to conduct inspections and seize any document, whenever the persons under the investigation is under its supervision. When the person is neither supervised by the CSSF nor an issuer, such powers can be exercised after a judicial authorization of the investigating judge, who will verify that the required measure is justified and proportionate to the aim.

With regard to persons not supervised by the CSSF and issuers, the CSSF can carry on-site inspections on the ground of the judicial authorization or with the consent of the investigated person. Such inspection takes place with a member of the police department designated by the investigating judge and under certain conditions laid down by the MAL.

The MAL maintains in its Article 7 the same consultation mechanism which was already provided by the Repealed Law between the CSSF and the state prosecutor. This means that when the CSSF has enough proof to initiate an administrative proceeding, which may lead to the imposition of an administrative sanction, it will inform the state prosecutor before any criminal proceeding. If the state prosecutor decides to proceed, the CSSF will refrain from proceeding. If the state prosecutor does not proceed within two weeks, the CSSF can proceed. This principle aims at avoiding double prosecution for the same facts.

(b) Cooperation of the CSSF with the European Securities and Markets Authority (ESMA) and other competent authorities

According to Article 22 of the MAR, competent authorities, among which the CSSF, shall cooperate with ESMA and provide ESMA with all information necessary to carry out its duties, without delay .

The CSSF shall also, according to Article 10 of the MAL, cooperate with the other competent authorities referred to in article 25 of the MAR.

This includes the competent authorities of other member states and third countries competent authorities.

The CSSF can require other competent authorities to investigate or to carry on-site inspections on its territory in the same conditions as it was provided in the Repealed Law.

According to the MAL, the CSSF can exchange information with third countries competent authorities when this information is necessary to the other authority's mission. The authority receiving the information has a duty to keep it confidential and can use the received information only for the aim for which it was transmitted.

Indeed such information cannot be transmitted by the CSSF to another competent authority if judicial proceedings are already engaged in Luxembourg for the same facts or if the person was already convicted for such facts in Luxembourg.

(c) Administrative sanctions and other administrative measures

In its implementation, the Luxembourg legislator meant to be more severe than the minimum level of protection provided in the European legislation.

The MAL provides for administrative and criminal sanctions that are of a higher level of those provided in the MAR. This was made possible by Article 30, paragraph 3 of the MAR.

Hence, it is provided in the MAL that the CSSF can impose a temporary ban of a person discharging managerial responsibilities within an entity supervised by the CSSF or another natural person who is held responsible for the infringement, from dealing on own account, and thus for a maximum of five years. In the same way, a maximum administrative fine of at least ten times the amounts of the profit gained or losses avoided because of the infringement, while the MAR provides for an amount of a maximum of three times such amounts.

(d) Exercise of supervisory and sanctioning powers

The MAL does not differ from the provisions of the MAR regarding the exercise of supervisory and sanctioning powers by the CSSF. Therefore the provisions of the MAR relating to the exercise of supervisory and sanctioning powers are directly applicable into national law as it stands.

In determining the type and level of the applicable sanctions, the CSSF shall take into account all relevant circumstances, including the following: the gravity and duration of the infringement, the degree of responsibility of the person responsible of it, the financial strength of the person responsible for the infringement (total turnover or annual income), the importance of the profits gained or losses avoided by committing the infringement, the level of cooperation of the person with the CSSF, previous infringements of that person, and the measures taken by that person to avoid repeating the infringement.

(e) Procedures for reporting violations

Rules relating to reporting violation are laid down in the Annex to the MAL.

Specific procedure is settled for the treatment of any reported violation, whereby the CSSF shall assign trained member of its staff. Any reported violations shall be published on the CSSF's website.

Privacy of the information is guaranteed through the use of specific independent and autonomous communication channels differing from the normal communication channels of the CSSF.

The MAL also provides that the CSSF shall cooperate with the Labor and Mines Inspection in order to protect against reprisals, discrimination and unfair treatment any employee who would have reported a violation under the MAR.

(f) Publication of decisions

The MAL provides that any decision shall be published on the CSSF's website and be available for at least five years after its publication, in accordance with the MAR.

Moreover, it is provided that any personal data shall be kept on the CSSF's website only for a maximum period of twelve months. This was added by the MAL in order to increase the protection of privacy.

2 The main criminal aspects

The MAL also provides for criminal sanctions applying to persons committing or recommending or inducing another person to commit insider dealing, unlawful disclosure of inside information and market manipulation.

Those infringements are punishable with imprisonment, fine or even both.

For natural persons the penalties for insider dealing and market manipulation are a term of imprisonment of between three months and four years or a fine of between EUR 251 and EUR 5,000,000. For insider dealing, this fine may be increased up to ten times the amount of the profit realised and shall under no circumstances be less than this profit.

For legal persons, the penalties for those infringements are a fine of between EUR 500 and EUR 15,000,000 . For insider dealing, this fine may be increased to ten times the amount of the profit realised and shall under no circumstances be less than the said profit.

For natural persons, the penalties for unlawful disclosure of inside information are a term of imprisonment of between eight days to two years or a fine of between EUR 251 and EUR 500,000. For legal persons, penalties for such infringement are a fine of between EUR 500 and EUR 15,000,000.

The MAL brings graver protection against market abuse than it is required under the European legal framework. Consequently to such strengthen of the sanctions, it is now time for persons concerned by this matter to update their internal policies.

For more information, please do not hesitate to contact us.

Laurent Massinon
Avocat à la Cour
Partner
Luther S.A.
Luxembourg
Phone +352 27 484 658
laurent.massinon@luther-lawfirm.com

Charlotte Mortz-Kezic
Avocat
Luther S.A.
Luxembourg
Phone +352 27484 694
charlotte.mortz-kezic@luther-lawfirm.com

Modernization of the SARL: key points

A few weeks after the adoption of the simplified private limited liability company (*société à responsabilité limitée simplifiée*), the Luxembourg legislator has decided to profoundly amend the legal regime applicable to the private limited liability company (*société à responsabilité limitée*) ("**SARL**") pursuant to the law dated 10 August 2016 modernizing the law regarding the commercial companies dated 10 August 1915 (the "**Law**"). The key points to this reform are thus the following but remain subject to any contrary provision of the articles of association ("**AoA**"):

1 Legal requirements

- The **minimum share capital** required for the incorporation of a SARL was reduced from EUR 12,500 to **EUR 12,000**. It still must be fully paid-up; and

- **The maximum number of shareholders** has been raised from 40 to **100**.

2 Management of the company

The Law now recognizes:

- The **board of managers** (*collège de gérance*) ("**Board**") as the executive body of the SARL in case of a plurality of managers; and

- The possibility to delegate to one or several managers the **daily management** (*gestion journalière*) of the SARL who may thus bind the company by his/her/their signature(s).

3 Issuance of securities – Authorized share capital

- Possibility for a SARL to issue:

(a) **Tracking shares** (*parts sociales traçantes*) which allow the holder(s) to receive distributions based on the performance of one or several assets or of underlying assets;

(b) **Redeemable shares** (*parts sociales rachetables*) which, if provided by the AoA, may be redeemed by a mere decision of the Board, instead of a decision of the general meeting of the shareholders, provided that all the shareholders are equally treated;

(c) **Securities not giving access to the share capital of the company** but entitling its/their holder(s) to economic and, as the case may be, political rights,
- **Beneficiary shares** (*parts bénéficiaires*) which are nominative and freely transferable shares if not vested with voting rights;
- **Shares issued in the context of a contribution of industry** (*apport en industrie*) which are not freely transferable;

(d) to third parties, **convertible bonds or instruments giving access to the share capital of the company** subject to the fact that the rules related to the transfer of the shares or to the prior approval of the shareholders shall apply.

- **Authorized share capital** (***capital autorisé***): the Board may now be authorized pursuant to the AoA for a maximum period of 5 years, renewable, to increase the share capital of the SARL in an amount and under the terms and conditions determined in the AoA subject to the fact that the shares are issued in favor of existing shareholders or to third parties preliminary approved by the shareholders. The Board may also decide to redeem the redeemable shares and to resolve upon the subsequent share capital reduction which shall be further recorded by a notarial deed.

4 Transfer of the shares and beneficiary shares

The transfer of shares or of beneficiary shares requires the prior approval of the shareholders representing at least three quarter of the corporate units. The same rule applies to the dismemberment of the right of ownership.

The company must be notified by any shareholder who contemplates selling its shares or beneficiary shares. In case of refusal and unless the contemplated transfer is abandoned by the transferor, the shareholders may either acquire the shares or the company may decide to reduce its capital by the amount of the nominal value of the shares and to redeem them. Otherwise, the selling shareholder may proceed to the transfer.

Subject to the provisions of the AoA, the transfer of shares by reason of death to persons who are not shareholders also requires the prior approval of the shareholders unless if the shares are transferred to rightful heirs, to the surviving spouse or partner or to other legal heirs (if the AoA authorize such transfer).

The Law now also provides rules related to the determination of the price for the redemption of the shares and a specific procedure for any disagreement regarding this price.

5 General meetings of the shareholders

- **Holding of general meetings of the shareholders** is compulsory only in case of any amendment to the AoA or regarding the annual general meeting where the number of shareholders exceed 60. In any other case the attendance by videoconference, by telecommunication means permitting identification or through voting forms is recognized.

- **Decisions of the general meetings:**
  - any change to the AoA shall be resolved upon by shareholders representing at least three quarters of the share capital: the former condition of double majority (majority of shareholders representing 3/4 of the share capital of the company) is no longer required;
  - the unanimity is no longer required for the change of nationality but is maintained for any decision that leads to an increase of the shareholders' commitments.

- **Determination of the voting rights of the shareholders**
  - **Waiver of the voting rights:** a shareholder may decide in its name and on its behalf, on a permanent or temporary basis to waive its voting right and its right to take part in decisions, during a general meeting, as shareholder of the SARL;
  - **Suspension of voting rights:** the Board may decide to suspend the voting rights of any shareholder in breach of its obligations under the AoA or under its subscription commitments;
  - **Voting agreements:** any shareholder may agree in advance upon how it shall exercise its voting rights. However is void any agreement which is contrary to the Law and the corporate interest of the company and is made in accordance with directions given by the company, any bodies of the group or an affiliate. Votes cast in a general meeting or by written resolutions in virtue of such void agreement shall invalidate the related resolution unless they have no impact on the result of the vote; and

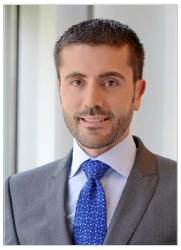
  - **Dismemberment of ownership:** the Law provides general principals regarding the allotment of voting rights between the usufructary (*usufruitier*) and bare-owner (*nu-propriétaire*) which may be organized differently pursuant to the AoA. Moreover the Law recognizes a right for the usufructary (*usufruitier*) and bare-owner (*nu-propriétaire*) to access to certain documents before the general meeting.

6 Interim Dividends

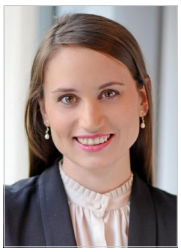
The Law acknowledges the possibility for a SARL to proceed to the payment of interim dividends based on the rules already applicable to the public limited companies (*sociétés anonymes*) if provided by the AoA.

7 Conversion of a SARL

The Law introduced general rules related to the conversion of companies and other entities clarifying and simplifying the previous rules. However an enhanced regime has been implemented for any conversion of a SARL into a public limited company (*société anonyme*) or a corporate partnership limited by shares (*société en commandite par actions*) when (i) a SARL has benefited from a contribution in kind or a quasi-contribution within a period of two years prior to the members' decision to proceed with the previous mentioned conversion, and when (ii) that contribution in kind or quasi-contribution has not been subject to a report by a statutory auditor (*réviseur d'entreprises*) and where such report would be required for a public limited company (*société anonyme*) or a corporate partnership limited by shares (*société en commandite par actions*).



Selim Souissi
Avocat (Chalon-sur-Saône Bar)
Partner
Luther S.A.
Luxembourg
Phone +352 27484 1
selim.souissi@luther-lawfirm.com



Julie Prunier
Avocat
Luther S.A.
Luxembourg
Phone +352 27484 659
julie.prunier@luther-lawfirm.com

Maxime Wagner
Jurist
Luther S.A.
Luxembourg
Phone +352 27484 655
maxime.wagner@luther-lawfirm.com

New capital impairment rules

The Luxembourg law of 10 August 2016 modernising the law on commercial companies of 10 August 1915 (the "**Company Law**") and amending the Civil Code (the "**New Law**") has amended article 100 of the Company Law concerning the impairment rules. The new text is in force since 23 August 2016.

If Luxembourg law accepts that companies which have losses continue to exist, there are nonetheless rules protecting the shareholders of such companies in a loss situation. These rules are of particular importance in case of a dispute or a disagreement between shareholders.

1 Recall of the previous capital impairment rules

According to the former version of the Company Law, when it appeared that a *société anonyme* (SA) or a *société en commandite par actions* (S.C.A.) was confronted with a loss of half the share capital or more, the management body of the company shall convene a general meeting to resolve on the possible dissolution of the company to be held in a period not exceeding two months from the time at which the loss was or should have been ascertained by the management body.

The resolution on the dissolution of the company was to be adopted according to the rules applicable to the amendment of the company's articles of association unless the loss was equal or exceeded three-quarters of the share capital, in which case a resolution to wind up the company could be adopted with the approval of only a quarter of the votes cast at the general meeting.

In the event of any infringement of their obligations to convene a meeting in due time, all members of the management body of the company could be declared personally and jointly severally liable vis-à-vis the company for all or part of the increase of the loss. This risk is not theoretical and there are have been precedents of sentencing of directors and managers under this article. Luxembourg case law has also specified that a third party such as a creditor may also introduce a claim against the management body following a violation of the impairment rules by the management body.

The principle of the impairment rules of the Company Law, including the majority rules to vote the dissolution and the liability regime of the management body remains unchanged with the New Law.

However, the New Law has clarified the triggering conditions of the rule and strengthened the information of the shareholders by extending the mission of the management body.

2 Clarification of the triggering conditions of the alarm mechanism

The first contribution of the New Law is the clarification of the triggering conditions. The law now expressly states that the capital impairment rules will only apply if, as result of losses, the net asset (*actif net*) of the company falls below half or more of the share capital of the company.

From now on, the alarm mechanism shall be applied as soon as, pursuant to losses incurred, the company's net asset (*actif net*) falls below half of its share capital.

3 Substantial strengthening of the protection of shareholders by extending the scope of mission of the management body

Further to the New Law, the management body shall prepare a special report explaining the reasons of the company's financial situation. Should the management body proposes to continue the company's activity despite the loss situation, it shall then proposes measures to remedy the company's financial situation.

This report has to be made available to the shareholders at least eight days before the holding of the general meeting called to vote on the continuation or dissolution of the company.

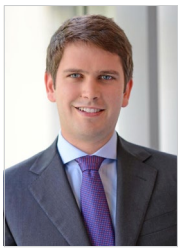
Failure of the management body to establish and provide this report shall render any resolutions passed at the general meeting invalid, unless all shareholders waive this requirement.

4 Primary effects of the New Law

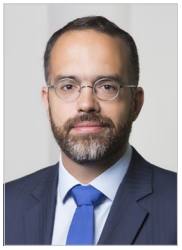
Since the capital impairment rules are still not legally applicable to certain types of companies and especially not to SARLs (limited liability companies), it will remain an important criterion to consider when choosing a corporate form for a joint-venture vehicle.

As of now, it is also recommended to management bodies to ensure in advance either that the shareholders waive the requirement of a special report or that the special report that they will submit will correspond to the requirements of the law.

It should finally be reminded that the holders of non-voting shares will in principle have the right to vote at shareholders' meetings called to decide on the possible continuation of the company.



Mathieu Laurent
Avocat à la Cour
Partner
Luther S.A.
Luxembourg
Phone +352 27484 662
mathieu.laurent@luther-lawfirm.com



Maurice Goetschy
Avocat à la Cour
Luther S.A.
Luxembourg
Phone +352 27484 676
maurice.goetschy@luther-lawfirm.com

New year, new benefit and employment laws: Are you compliant?

2017 has arrived and some legislative changes with it.

In order to assess if your HR department is compliant with the new laws, you will find a short summary of the major innovations:

1 Minimum salary increase and indexation of wages from January 1st 2017

After long discussions and much expectation, the salary indexation has been implemented by a law dated December 15, 2016.

The new index used in the mobile salary grid is increased from 775.17 points to 794.54 points, which will lead to an automatic increase by 2.5% of all salaries and pensions and will thus adjust the remunerations to the evolution of the cost of living.

Besides this increase, the amount of the minimum wage has also be increased by 1.4%.

Therefore, from January 1st, 2017 the minimum wage:

- for unskilled employees will amount to 1,998.59 EUR (instead of 1,922.96 EUR); and
- for skilled employees will amount to 2,398.30 EUR (instead of 2,307.56 EUR).

As a result employees benefitting from minimum wage will see their remuneration increased by 3.9%.

2 Reform of working time legislation

The law dated December 23, 2016 (hereinafter the "**New NAP Law**") will succeed to the law dated February 12, 1999 (the "**NAP Law**") which has implemented a national action plan for employment.

The Labour Code fixes working hours at 40 hours per week which can be extended under certain conditions to 48 hours per week. Nevertheless, flexible options are granted to the employer, who is notably entitled to implement a working hours plan (*Plan d'Organisation du Travail*, hereinafter "**POT**"), fixing the working conditions during a reference period (the "**Reference Period**") by taking into consideration both the normal and also exceptional and unexpected activity of the business. During the Reference Period, which was under the NAP Law fixed to one month or 4 weeks, the employees can work beyond the threshold of 8 hours per day and 40 hours per week, under the condition that the average weekly working hours are not exceeding 40 hours. Moreover, such POT must be approved by the staff representatives.

One of the major amendments introduced by the New NAP Law, is the extension of the Reference Period to 4 months. However such extension has only to be considered as an option for the employer. Thus, companies having already implemented a POT with a Reference Period of 1 month can continue under such regime or chose to adopt a longer Period of Reference.

To be noted that in case of amendment of the duration of the Reference Period, the staff delegation (or the employees if no delegation is set up) shall be informed and consulted.

Such extension of the Reference Period will under certain conditions have a beneficial effect for the employees concerned by the POT as they will be granted additional holidays (1.5 day off if the Reference Period is comprised between 1 and 2 months, 3 days off if the Reference Period is comprised between 2 and 3 months, etc.).

The New NAP Law also introduces some innovations with regard to working time, indeed, even under a POT, working hours cannot exceed certain thresholds. Therefore, if the Reference Period does not exceed one month, the standard thresholds mentioned above will apply (i.e.: maximum of 48 hours per week which corresponds to an increase of 20% of the normal working hours), nevertheless should the Reference Period be higher than one month, the monthly working hours cannot exceed:

- 12.5% (i.e.: an average of 45 hours per week) should the Reference Period be comprised between 1 and 3 months; and
- 10% (i.e.: an average of 44 hours per week should the Reference Period be comprised between 3 and 4 months.

Should the aforementioned limits be exceeded, any additional hour will be considered as overtime and shall be paid accordingly.

Finally, should a company be under the regime of a collective bargaining agreement setting forth the duration of the Reference Period, such duration will, despite the New NAP law, remain

unchanged until a denunciation of the collective bargaining agreement occurs. However, if an applicable collective bargaining agreement remains silent about the duration of the Reference Period, the maximum duration of such period cannot exceed one month and this until the expiration of the collective bargaining agreement or renegotiation.

The New NAP Law is an opportunity for employers having a cyclical business activity; nevertheless before implementing such new regime, the company shall determine if efficient cost saving can be made.

3 Equal treatment expressly recognized in the Labor Code

The labor code (the "**Code**") has been amended by a law dated December 15, 2016 and now includes a Chapter V entitled "Equal Treatment Between Men and Women".

Article L. 225-1 of the Code provides that the employer has to grant equal pay for work of equal value.

Shall be considered as remuneration the salary as well as any advantages granted in cash or in kind, directly or indirectly to the employee.

Prior to the amendment of the Code, reference was made to a Grand Ducal Regulation dated July 10, 1974 and to articles L.241-1 and L-241-2 prohibiting gender discrimination.

Nevertheless, despite those provisions, unequal treatment between men and women is a reality which must be considered; the comments of the draft bill indeed refer to a remuneration inequality of 8% in disfavor of women in Luxembourg.

The recognition of the principle of equal treatment between men and women is therefore an essential step even if it is always difficult for employees to prove the inequality because evidence of an identical position, identical tasks and competences has to be produced.

Marie Sinniger
Avocat à la Cour
Luther S.A.
Luxembourg
Phone +352 27484 681
marie.sinniger@luther-lawfirm.com

ESMA Updates on AIFMD and UCITS

1 Update of the ESMA Q&As relating to the application of AIFMD

On 16 November 2016 and 16 December 2016 respectively, the European Securities and Markets Authority ("**ESMA**") updated its Questions and Answers with regard to the application of the Alternative Investment Fund Managers Directive ("**AIFMD**") (Ref. ESMA/2016/1669) ("**AIFMD Q&As**"). The new points concern (i) notification of material changes relating to an alternative investment fund ("**AIF**") in case of cross-border marketing, (ii) reporting obligations by non-EU AIFMs, and (iii) delegation of functions by an alternative investment fund manager ("**AIFM**").

- **Section II of the AIFMD Q&As, Questions 6 and 7:** ESMA clarifies that the creation of a new share class within a sub-fund of an AIF (which is already marketed in a host Member State by way of the AIFMD marketing passport) should not be regarded as a material change entailing a new notification. ESMA further clarifies that in case of notification of a material change, an AIFM should provide the full set of documentation with the revised notification letter.

- **Section III of the AIFMD Q&As, Question 1:** ESMA clarifies that when non-EU AIFMs report information to the national competent authorities of a Member State under Article 42 of AIFMD, they should also include information on EU master AIFs which are not marketed in the EU.

- **Section VIII of the AIFMD Q&As, Questions 2 and 3:** ESMA states that where a third party performs a function stated in Annex I of AIFMD, such function should be considered as having been delegated by the AIFM to the third party. Furthermore, ESMA takes the view that an external AIFM may not delegate any function set out in Annex I of AIFMD to the governing body (or any other internal resource) of the AIF it manages, as the AIF is not a "third party" in accordance with Article 20(1) of AIFMD.

The latest version of the AIFMD Q&As is available on ESMA's website.

https://www.esma.europa.eu/sites/default/files/library/2016-1669_qa_on_aifmd.pdf [1]

[1] If you cannot access the link directly, please copy and paste the web address in your web browser.

2 Update of the ESMA Q&As relating to the application of the UCITS Directive

On 21 November 2016, ESMA updated its Questions and Answers with regard to the application of the UCITS Directive (Ref. ESMA/2016/1586) ("**UCITS Q&As**"). The UCITS Q&As now include some clarifications on how investment limits should be applied where a UCITS wants to invest in an umbrella fund:

- **Section I of the UCITS Q&As, Question 4a:** Pursuant to Article 56(2)(c) of the UCITS Directive, a UCITS may not acquire more than 25% of the units of any single UCITS or other undertaking for collective investment ("**UCI**"). Where the underlying UCITS or UCI (the "**Target Fund**") is an umbrella fund, ESMA clarifies that this limit should be applied at the level of the individual sub-funds within such umbrella fund.

- **Section I of the UCITS Q&As, Question 4b:** Pursuant to Article 55(1) of the UCITS Directive, no more than 10% of the assets of the Target Fund should be invested in units of a single UCITS or other UCI. Where the latter is an umbrella fund, ESMA clarifies that this limit should also be applied at the level of the individual sub-funds within the umbrella fund.

- In respect of the above limits, ESMA further states that where an existing UCITS fund or management company applies a different interpretation, it must at the earliest convenience adjust the relevant fund's investment portfolios.

The latest version of the UCITS Q&As is available on ESMA's website.

https://www.esma.europa.eu/sites/default/files/library/2016-1586_qa_on_ucits_directive.pdf [1]

3 Guidelines on sound remuneration policies under UCITS and AIFMD

On 14 October 2016, ESMA published (i) the "Guidelines on sound remuneration policies under the UCITS Directive" (Ref. ESMA/2016/575) ("**UCITS Remuneration Guidelines**") and (ii) the "Guidelines on sound remuneration policies under the AIFMD" (Ref. ESMA/2016/579) ("**AIFMD Remuneration Guidelines**") which are effective from 1 January 2017:

- **UCITS Remuneration Guidelines:** ESMA provides clarity on the UCITS V requirements to be complied with by UCITS management companies and self-managed investment companies when establishing and applying a remuneration policy for key staff. The purpose is two-fold: to ensure a convergent application of these provisions and to provide guidance on the governance of remuneration, risk alignment requirements, and appropriate disclosures.

- **AIFMD Remuneration Guidelines:** ESMA introduces an amendment to the first set of AIFMD Remuneration Guidelines issued in July 2013 (Ref. ESMA/2013/232) concerning the application of remuneration rules in a group context. More specifically, Section VIII of the AIFMD Remuneration Guidelines has been rephrased to provide that there should be no exception to the application of AIFMD remuneration rules to AIFMs which are subsidiaries of a credit institution. Furthermore, ESMA clarifies that in a group context, non-AIFMD sectoral prudential rules applying to group entities may lead certain staff of the AIFM which is part of that group to qualify as "identified staff" for the purpose of these sectoral remuneration rules.

The UCITS Remuneration Guidelines and the AIFMD Remuneration Guidelines are available on ESMA's website.

https://www.esma.europa.eu/sites/default/files/library/2016-575_ucits_remuneration_guidelines.pdf [1]

https://www.esma.europa.eu/sites/default/files/library/2016-579_aifmd_remuneration_guidelines_0.pdf [1]

Hervé Leclercq
Avocat à la Cour
Partner
Luther S.A.
Luxembourg
Phone +352 27484 663
herve.leclercq@luther-lawfirm.com

Julie Thai
Avocat à la Cour
Counsel
Luther S.A.
Luxembourg
Phone +352 27 484 667
julie.thai@luther-lawfirm.com

Imprint

Luther Rechtsanwaltsgesellschaft mbH, Anna-Schneider-Steig 22,
50678 Cologne, Phone +49 221 9937 0, Fax +49 221 9937 110,
contact@luther-lawfirm.com
Editor: Eric Sublon, Luther, Aerogolf Center, 1B, Heienhaff,
L-1736 Senningerberg, Phone +352 27484 1, Fax +352 27484 690,
eric.sublon@luther-lawfirm.com

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