

Luxembourg

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in Banking, Finance & Capital Markets

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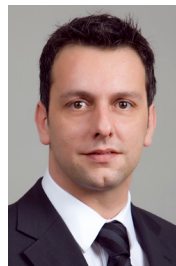
Greetings

It has been another exciting quarter for
Luther Luxembourg.

Firstly, a note of appreciation to our
clients and colleagues who made
from last year a successful year for
Luther Luxembourg. Thank for your
continuing collaboration!

Below, please find current and relevant
legal and regulatory news and updates
at a high level. We hope that you
will find the information beneficial
and will contact us should you need
additional information.

Eric Sublon, Managing Partner



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News on the EMIR Regulation and its implementation

As you might know, the Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (the “**EMIR Regulation**”) entered into force on 16 August 2012. The EMIR Regulation lays down clearing and reporting requirements for over-the-counter (OTC) derivative contracts and uniform requirements for the performance of activities of central counterparties and trade repositories. Although the obligations under EMIR Regulation took effect on the date of its entry into force, the reporting obligations for credit and interest rate derivative contracts were expected to commence from 1 July 2013 at the earliest. The reporting of derivative contracts in all other asset classes was expected to commence from 1 January 2014 at the earliest. In order to guide the counterparties to derivative contracts through the reporting requirements and their content, the ESMA published a new [Q&A on EMIR Regulation dated 20 December 2013](#) and the European Commission an updated version dated 18 December 2013 of “[EMIR: Frequently Asked Questions](#)”. The different notification form for both financial and non-financial counterparties can be found on both ESMA and CSSF websites. To fulfill their trade reporting obligations the counterparties can use trade repositories, which are commercial firm collecting and maintaining the reports on derivative contracts reported to them. In Luxembourg the counterparties may use Regis- TR S.A., a Luxembourg company authorised as trade repository by the ESMA on 7 November 2013. The CSSF has recently published an updated version of the [Circular CSSF 13/557](#) dated 23 January 2013 on the EMIR Regulation, which clarifies the reporting and clearing obligations under EMIR.

New amendment to the Transparency Directive 2004/109/EC and the Prospectus Directive 2003/71/EC: an invitation to small and medium-sized issuers to enter regulated markets

Following the European Commission report dated 27 May 2010 (the “**Report**”) which identified the difficulties that the implementation of the Directive 2004/109/EC (the “**Transparency Directive**”) did trigger, it was decided to correct some of its imperfection. The new European Parliament and Council Directive 2013/50/UE dated 22 October 2013 amending the Transparency Directive (the “**New Directive**”) aims to provide for the simplification of certain issuer’s obligations with a view to making regulated markets more attractive to small and medium-sized issuers raising capital in the European Union as well to provide for the improvement of the existing transparency regime.

The main changes implemented by the New Directive are the following:

- to ensure that competent authorities of the host Member(s) State(s) and of the Member State where the issuer has its registered office are informed about the choice of home Member State by the issuer; all issuers shall now communicate the choice of their home Member State to the competent authorities of all host Member States, of the home Member State and of the Member State where they have their registered office;
- to lighten the administrative burden of the issuers, the New Directive provides that the home Member State may not require issuers to publish additional periodic financial information on a more frequent basis than the annual financial reports and the half-yearly financial reports (see Article 4 and 5 of the Transparency Directive). The home Member State may however require such publication on a more frequent basis than where the additional periodic financial information does not constitute a disproportionate financial burden in the Member State concerned, in particular for small and medium-sized issuers concerned and the content of the additional periodic financial information required is proportionate to the factors that contribute to investment in the Member State concerned. Therefore before taking such decision, the Member States shall assess both whether such additional requirements may lead to an excessive focus on the issuers’ short-term results and performance and whether they may impact negatively on the ability of small and medium-sized issuers to have access to the regulated markets;

■ to ensure an harmonised regime for notification of major holdings of voting rights, especially regarding the aggregation of the holdings of shares with holdings of financial instruments and reduce the administrative burden for cross-border investors but still enhance transparency, the Member States may not adopt more stringent rules than those provided under the Transparency Directive regarding amongst others the aggregation of holdings of voting rights, calculation of notification thresholds and exemptions from notification requirements. However the Member States may set both lower and additional thresholds for notification of holdings of voting rights and to require equivalent notifications in relation to thresholds based on capital holdings.

Regarding the amendments to the Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC, 31.12.2003 (the “**Prospectus Directive**”) implemented by the Commission Regulation on Prospectuses (EC No 809/2004) as amended from time to time (the “**Prospectus Regulation**”), the New Directive has the same purpose as stated above. The New Directive amends the Article 2 Point 1 (m) (iii) of the Prospectus Directive relating to the definition of “home Member State” in order to reflect the modification made to the Transparency Directive. The term “home Member State” now means, amongst others, for all issuers of securities incorporated in a third country (other than the Member State where the issuer has its registered office, or where the securities were or are to be admitted to trading on a regulated market or where the securities are offered to the public) the Member State where the securities are intended to be offered to the public for the first time after the date of entry into force of the New Directive or where the first application for admission to trading on a regulated market is made, at the choice of the issuer, the offeror or the person asking for the admission.

New Q&A on the Prospectus Directive 2003/71/EC

The Prospectus Directive (as defined in Section 1.2.) has been implemented in Luxembourg law by the law 10 July 2005 on prospectuses for securities. The Prospectus Directive and Prospectus Regulation (as defined in Section 1.2.) establish a harmonised format for prospectuses in Europe and allow companies to use the same prospectus prepared for admitting securities to trading on their home market to admit securities to any number of further European markets without having to re-apply for approval from the local regulator. In so doing,

the intention is to help companies avoid the inherent delays and cost that any re-application process would involve. This legislation also sought to ensure investors had access to more consistent and standardised information that would enable them to compare more effectively the various securities offers available from a wide number of European companies.

In order to ensure a harmonised implementation of the Prospectus Directive and Prospectus Regulation within the Union, the ESMA published recently an updated version of the [Q&A on Prospectus Directive dated 14 January 2014](#). The newly added items in the Q&A concern principally the individual summary for several securities and the applicable registration document schedule where a listed issuer proposes to issue convertible or exchangeable debt securities where the underlying securities are the issuer’s shares.

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Immobilisation of bearer shares for transparency purposes

Further to the recommendation from the Financial Action Task Force (the “**FATF**”) of 16 February 2012 for ensuring adequate, accurate and timely information on the beneficial ownership and control of legal persons, on 4 October 2013 the draft law n°6625 has been filled in respect to the immobilisation of shares and corporate units issued in bearer form (the “**Bill**”). The Bill shall apply to public limited liability companies (“*sociétés anonymes*”), partnerships limited by shares (“*sociétés en commandite par actions*”) and the management companies of mutual investment funds which are entitled to issue bearer shares or units which are not listed on a regulated market.

Luxembourg has opted for the mechanism of immobilisation of bearer shares which has the advantage to preserve confidentiality towards third parties and other shareholders while complying with the above mentioned recommendations on the beneficial ownership and control of legal persons.

As a consequence, the management of companies which have issued bearer shares (the “**Management**”) will have the obligation to appoint a financial institution or a specific professional established in Luxembourg as custodian to keep their bearer shares and register those in a dedicated register (the “**Register**”).

Such Register shall, at least, indicate (i) the precise designation of each shareholder with the number of shares it holds, (ii) the date of deposit and (iii) any transfer of those shares or any conversion in registered shares, with the relevant date.

Therefore, the ownership over bearer shares will be recognised to the person registered in the Register and transfers will no longer operate by simple transfer of bearer shares but by inscription of such transfer in the Register.

Once the bearer shares are kept by the custodian, the latter is not authorized to transfer the shares back to their holder but may only transfer the certificates to the issuing company in case of redemption, conversion of such shares into registered shares or appointment of a new custodian.

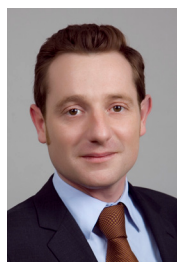
Companies having issued bearer shares before the entry into force of the Bill will benefit from a transitory period for both the Management and the holders of the bearer shares (the “**Holders**”) to comply with the new legal framework.

The Management shall have a period of 6 months to appoint a custodian, while the Holders shall have a period of 18 months to deposit their bearer shares from the entry into force of the Bill.

In the absence of deposit within this 18 months period, economic and voting rights attached to such shares shall be automatically suspended until their immobilisation. In the absence of such immobilisation within a period of 8 years, bearer shares shall be cancelled and the share capital of the company shall be reduced accordingly.

Criminal sanctions for the Management and the custodian have been introduced in order to ensure the implementation of the provision of the Bill.

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New Luxembourg Government – Prospects for the financial sector

After early elections on 20 October 2013, forced by a scandal over abuses of power by the secret service, it is the first time since 1974 that a Luxembourg prime minister has not been chosen from the ranks of former prime minister Juncker's Christian Social People's Party (CSV), which has ruled the country for all but five years of the post-war era.

On 2 December 2013, the new Luxembourg Government (the "**Government**"), formed by a coalition of the Liberal Democratic Party (DP), the centre-left LSAP and the Greens, released their coalition programme (the "**Programme**") and on 10 December 2013, the new Prime Minister, Xavier Bettel, the previous mayor of the city of Luxembourg, from the DP, announced his declaration on the governmental programme (the "**Declaration**").

The most salient features of the Programme and the Declaration

Public Finance and Budget

In order to tackle the structural deficit of the public finance, the two predominant goals of the Government are to have by the end of the legislative period a structural balance of +0,5% of the gross domestic product (the "**GDP**") and in any circumstances a public debt of less than 30% of GDP.

Fiscal Policy

The fiscal policy of the Government aims at achieving consolidation through a reduction of public expenses. An increase of tax rates is not anticipated; however an increase of the value added tax (the "**VAT**") is contemplated in order to compensate anticipated losses in revenue due to the change in the taxation of digital services. The future VAT rate shall nonetheless remain the lowest in the European Union and the super-reduced VAT rate of 3% shall be maintained.

A homogeneous fiscal reform is envisaged, to restore the confidence of the people and the investors by way of a predictable fiscal policy. This fiscal reform shall include, inter alia, a tax reform for companies (key word: foster innovative

investments for example by a tax-exempt reserve for investment, a mechanism of notional interest) and individuals (keyword: individualisation of the tax system). This would mean for:

■ Companies

Measures to attract the location of headquarters of multinational groups to Luxembourg which would include a modernised tax regime for intellectual property and the participation exemption rules and the introduction of a functional currency for tax purposes. Further, a uniform procedure with regard to advance tax agreements to provide transparency, coherence and legal certainty shall be implemented and the creation of a tax advisory committee formed by experts from the public and the private sector to advise on the development of the tax administration and legislation.

■ Individuals

Review of the income tax, notably with a view to the progressivity and the rate due to the phenomenon of the middle-class hump in order to ensure social fairness and to assess the possibility for an individual taxation. No net wealth tax and inheritance duties will be introduced for individuals.

Financial Centre

The Government identified the following three priorities (not exhaustive) in order to maintain and further develop the financial centre in Luxembourg.

Maintenance and development

Encourage the private banking sector for high net worth individuals and review of the banking secrecy to take the international level into account.

■ **In the UCITS sector**, Luxembourg's position as the EU's leading hub shall be consolidated by way of consistent improvements in the legal and regulatory framework. In this context, any increase of the subscription tax shall be prevented. In the framework of the UCITS V adoption, the responsibility of the depositary shall be of particular interest for the fund industry to keep a competitive advantage position.

■ **In the alternative investment funds sector**, the objective of the Government is that Luxembourg becomes the

leading centre in Europe in this sector and it plans to lead a promotional programme to attract leading private equity funds. Beyond the domiciliation and administration of funds, the “front offices” along the private equity value chain shall be attracted, in particular through the reform of the “carried interest” taxation regime (without condition with regard to duration for new funds).

- **EU and non-EU life insurance and reinsurance sector,** promotion of Luxembourg as leading centre for the
- **International financial structuring place,** the Government puts the emphasis on the importance of Luxembourg as such place and wishes to expand Luxembourg’s double taxation treaty network.

Enforcement of actions for the whole financial sector

- In order to maintain the high quality of supervision, significant increase of the budget of the *Commission de Surveillance du Secteur Financier* (the “**CSSF**”) to ensure an optimal supervision and an efficient, pragmatic and personalised treatment of the applications lodged with the CSSF. The Government continues to refuse the introduction of the financial transaction tax (the “**FTT**”); however, should the FTT be introduced worldwide, a support by Luxembourg is conceivable. It will further modernise and reform the liquidation regime applicable to collective investment undertakings and the securitisation vehicles and also envisage to reform the company and trust laws and to build-up a working group to analyse the question on the supervision of the “shadow banking” topic. Project to strengthen the *Haut Comité de la Place Financière* as a think-tank to develop innovative and attractive legislation.

Diversification of activities and new markets

- **China:** The Government plans to promote the establishment of banks and financial actors from China in Luxembourg and to launch initiatives to make Luxembourg the first investment place for cross-border investments with China and the first off-shore centre in Europe for Renminbi.
- **Gulf countries:** Further efforts to strengthen business relations with Gulf countries and to promote Luxembourg as the first financial centre for Islamic Finance in a non-Islamic country are on the Government’s agenda.

- **Coordination and cash pooling centres:** a dedicated legal and fiscal framework shall be implemented.
- **Socially responsible investments:** the Government plans an initiative to launch an activity programme in this area, which shall cover inter alia microfinance, including the creation of a platform to foster legislative initiatives.
- **Environment and renewable energy sector:** Further promotion regarding the set-up of funds in risk capital with a focus on this sector.

Economy

The Government also announced its intention to pursue a development and diversification policy to go for a “multi-specialisation” strategy based on innovation and research, development of property rights, access to international markets and capacity to raise capital in capital markets in order to reduce the dependence from the financial sector.

The diversification focus will be, *inter alia*, on the following sectors:

- Eco technologies;
- Logistics;
- Healthcare;
- Information and communication technologies.

The conditions for start-ups shall be improved, notably by launching the “Luxemburg Future Fund” together with the European Investment Fund.

To further attract new companies, the Government intends to create an agency for financing and investment. This agency shall put in contact potential companies with potential investors and to analyse and accompany the respective project and ensure contact between the potential investors, in collaboration with “Luxinnovation”.

The Government intends to establish a central unit “State Aid” which shall coordinate and assist the initiatives of the different Government departments to ensure that the public subsidies are in conformity with applicable EU legislation.

Justice

The Government engages to modernise the justice and the consolidation of its independence to make it efficient and clearly understandable for the citizens.

It promotes the mediation to offer the Luxembourg citizens alternatives to solve a conflict and it evokes the possibility for a class action aiming at a better protection of consumers.

The Luxembourg company law will be modernised and existing legislation consolidated in a single act. This notably entails the:

- simplification of the Luxembourg limited liability company (*société à responsabilité limitée*);
- introduction of provisions on bankruptcy to facilitate certain type of restructurings;
- introduction of a warning system to improve the prevention of bankruptcy; and
- continuously protection of data privacy and the development of cloud computing, electronic commerce and archiving.

In its Declaration, the Government announced to hold a referendum in 2015, which shall cover *inter alia*:

- political rights of non-Luxembourgers;
- participation in the votes for young people from the age of 16; and
- time limits on ministerial mandates to be judged by voters.

Next steps

On 16 January 2014, the Government Council met and decided *inter alia* on the following issues:

- set-up of a task force to initiate an administrative simplification process in order to better legislate and to better draft the legal and regulatory texts during the preparation phase. In this context, the task force shall review the entire authorisation procedures at all levels involved to maintain the useful and necessary procedures, abolish the useless or redundant procedures and to improve the procedures as a whole;

- the Minister for the Public Service (*Ministre de la Fonction publique*) and the Minister for Interior (*Ministre de l'Intérieur*) shall draft a law “omnibus” in the framework of the simplification of the administrative process.
- approval of the draft bill amending Article 4 of the amended law of 19 March 1988 on land registration with regard to co-ownership which shall include the systematic cadastral description of lots of co-ownership built.

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