Regulatory News Alert
Transposition of CRD IV in Luxembourg legislation

Law of 23 July 2015 implementing CRD IV

The Basel III framework has been transposed in the European legislation through the Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms. ("CRD IV" hereafter) and the Regulation 575/2013/EU on prudential requirements for credit institutions and investment firms ("CRR" hereafter).

On July 23rd 2015, the Luxembourg Chamber of Representatives has adopted the Law implementing the CRD IV in local legislation. As a reminder, the CRR was directly applicable in all member states and is live since 1 January 2014.

CRD IV and its national discretions is implemented by amendment of the following texts:

- Law of 5 April 1993 on the financial sector ("LFS" hereafter);
- Law of 23 December 1998 establishing a financial sector supervisory commission (CSSF); and
- Law of 12 July 2013 on alternative investment fund managers.
Law of 25 July vs. CRR

The split of requirements between the newly adopted Law and the CRR is as follows:

<table>
<thead>
<tr>
<th>Area</th>
<th>Law of 23 July 2015</th>
<th>CRR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Access to taking-up / pursuit of business</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Exercise of freedom of establishment and free movement of services</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Corporate governance</td>
<td>X</td>
<td></td>
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<tr>
<td>Capital</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Capital buffers</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Large exposures</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Counterparty credit risk</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Liquidity</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Leverage</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Disclosure requirements</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Prudential supervision</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Sanctions</td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>

Key highlights of the Law

While the Law covers several areas ranging from governance and supervisory sanctions (Pillar II) to disclosure requirements (Pillar III), we would like to raise your attention on two specific elements: capital buffers and limitations in directorships for Board members.

Capital buffers

While capital buffers are applicable to all credit institutions, the Law confirms that most of the investment firms are exempted from these requirements. The only exception is for investment firms that are

- authorised to provide the investment services listed in points 3 (Dealing on own account) and/or 6 (Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis.) of Section A of Annex I to Directive 2004/39/EC; and
- cannot be considered as a small or medium-sized company in accordance with Commission Recommendation 2003/361/EC.
The table below summarizes important information on each capital buffer.

<table>
<thead>
<tr>
<th>Buffer</th>
<th>Ref to new LFS articles</th>
<th>Mandatory or discretionary</th>
<th>Level</th>
<th>Applicable as from</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital conservation buffer</td>
<td>LSF art. 59-5</td>
<td>Mandatory</td>
<td>2,5%</td>
<td>01/01/2014</td>
</tr>
<tr>
<td>Countercyclical capital buffer</td>
<td>LSF art. 59-6 and 59-7</td>
<td>Mandatory</td>
<td>0 – 2,5%</td>
<td>01/01/2016</td>
</tr>
<tr>
<td>Buffer applicable to Global Systemically Important Institutions (G-SII) *</td>
<td>LSF art. 59-8 and art 59-3.</td>
<td>Mandatory</td>
<td>1 – 3,5%</td>
<td>01/01/2016, progressive phase-in until 2019</td>
</tr>
<tr>
<td>Buffer applicable to Other Systemically Important Institutions (O-SII) *</td>
<td>LSF art. 59-9</td>
<td>Discretionary</td>
<td>0 – 2%</td>
<td>01/01/2016</td>
</tr>
<tr>
<td>Systemic risk buffer</td>
<td>LSF art. 59-10</td>
<td>Discretionary</td>
<td>No limit</td>
<td>01/01/2014</td>
</tr>
</tbody>
</table>

* The CSSF is in charge of identifying, on a consolidated basis, global systemically important institutions (G-SIIs), and, on an individual, sub-consolidated or consolidated basis, as applicable, other systemically important institutions (O-SIIs), which have been authorised within its jurisdiction.

Limitations in directorships

A much awaited provision of the Law relates to the maximum number of directorships held by members of the Board of Directors in banks. Article 39-2 clarifies the limits and the related criteria, as summarized below:

**Determining board function limits**

- Does the CRR institution fulfills **2 or more significance criteria**?  
  - Yes  
  - Limits existing on number of board membership and functions  
  - Or  
  - 1 executive function and 2 non-executive functions
  - No limits on number of board membership and functions  
  - No

**Criteria determining the significance**

- Institution listed according to article 59-3  
- Total assets > 30 billion or $total assets GDP > 20% and Total assets > 5 billion  
- The CRR institution constitutes the highest consolidated level of the monitored group and is on the list of significant institutions subject to prudential supervision  
- The CRR institution is the parent company of the monitored sub-entities  
- The CRR institution is the parent company of several subsidiaries abroad  
- Stocks of the CRR institution are negotiated on a regulated market

**Board membership counting for 1 function**

- Functions within boards of the same group  
- Functions within CRR institutions which entered in an institutional protection scheme as per Art 113 (7) of CRR  
- Functions within financial and non financial corporates in which the CRR institution owns a qualifying participation
We trust this information is of assistance and remain at your disposal for any further questions.

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