

Deloitte regulatory news alert

Law of 18 December 2015 implementing BRRD and DGSD

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Summary

The [Law of 18 December 2015 on resolution, recovery and liquidation measures of credit institutions and some investment firms, on deposit guarantee schemes and indemnification of investors](#) (“the Law” hereafter), has been published on 24 December 2015 on Luxembourg official journal.

This Law implements two European directives in Luxembourg Law:

- Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms (BRRD)
- Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (DGSD)

The Law already entered into force and is structured as follow:

- Part I – Resolution
- Part II - Reorganisation and winding up
- Part III - Protection of depositors and investors
- Part IV - Amending, transitional and final provisions, introducing notably the recovery provisions

Part I – Resolution

The resolution procedure would be enforced in Luxembourg by the Resolution Committee. It aims to restructure credit institutions encountering serious financial difficulties in order to allow the continuity of their core activities and avoid any systemic impact.

Scope

These provisions are notably applicable to:

- Luxembourg credit institutions
- Luxembourg investment firms
- Financial institutions which are subsidiary of a credit institution or an investment firm supervised on a consolidated basis
- Some financial holding companies
- Branches of credit institutions or investment firms from third countries.

Resolution tools

The Law foresees the following resolution tools:

- Disposal of activities (part or all)
- Set-up of a bridge bank (identification of good assets or essential functions and segregation to create a new bank. Doubtful assets or non-core functions are liquidated)
- Segregation of assets (transfer to a management structure ("bad bank") of doubtful assets).
- Bail-in (recapitalize by cancelling or diluting shares and reducing debts by converting into shares)

Minimum requirement for own funds and eligible liabilities (MREL)

Institutions are required to comply at any times with a minimum eligible own funds and liabilities requirement. MREL provisions are applicable on consolidated basis.

Fonds de Résolution Luxembourg (FRL)

The Luxembourg Resolution Fund FRL is set-up to finance the implementation of resolution tools. The FRL target level is at least 1 percent of guaranteed deposits, and shall be reached no later than 31 December 2024.

The contribution of each credit institutions is proportional to the ratio of:

- Amount of liabilities of each institution (excluding equity), less guaranteed deposits; and
- Cumulated liabilities (excluding own funds) of all authorised institutions contributing to the FRL, less cumulated guaranteed deposits.

The annual ex-ante contributions is adjusted in proportion to the risk profile of credit institutions.

The [CSSF Circular 15/628](#) specifies that aggregate amount of up to 10% of the target level should be raised in 2015. Based on the sum of covered deposits as reported further to circular CSSF 15/619, the aggregate amount to be raised from the Luxembourg credit institutions in 2015 is EUR 28.550.229.

The CSSF requires that contributions to FRL for 2015 has to be paid directly in cash (no commitment), according to individual notices sent in December.

Part II - Reorganisation and winding up

This part of the Law aims to abrogate part IV of the Law of 5 April 1993 on the financial sector and to comply with the provisions of BRRD. It is applicable notably to credit institutions, investment firms and other FSPs managing third parties funds. The covered topics are:

- Payments reprieve
- Voluntary liquidation
- Bankruptcy
- Information to creditors
- Withdrawal of authorisation
- Effects on contracts
- Compensation

Part III - Protection of depositors and investors

Part III of the Law implements notably the provisions of DGSD in Luxembourg Law, with the objective to improve the protection and shorten the delay for compensation of depositors.

Fonds de Garantie des Dépôts Luxembourg (FGDL)

Luxembourg credit institutions and Luxembourg branches of credit institutions having their head office in a third country are required to adhere to the new Luxembourg deposit guarantee scheme, *Fonds de Garantie des Dépôts Luxembourg* (FGDL).

- Covered deposits

The FGDL covers all eligible deposits for each depositor up to a total amount of EUR 100,000. Deposits are covered per depositor per bank, the limit of EUR 100 000 applies to all aggregated accounts at the same bank. A higher protection is foreseen in certain situations. The Law specifies the exclusions of some deposits, such as interbank deposits, UCI's deposits, insurances deposits, etc.

- Target levels of the FGDL and financing

A first target level of 0.8% of covered deposits is set-up by the Law which shall be reached no later than 31 December 2018.

When the first target level is reached, the institutions will contribute to an additional buffer of 0.8% of covered deposits within 8 years.

The FGDL is financed by ex-ante contributions. These contributions are calculated based on the amount of covered deposits and the risk profile of the institution.

The [ESMA opinion on accounting for cash contributions to the Deposit Guarantee Schemes](#) under IFRS specifies that as soon as the obligating event of a non-refundable cash contribution to a DGS is identified, the contribution must be recognised as an expense in full.

- Repayment deadlines

On 1st June 2016, the repayment deadlines will be reduced from 20 working days to 7 working days.

Système d'indemnisation des investisseurs Luxembourg (SIIL)

The set-up of a new compensation scheme for investors, *Système d'indemnisation des investisseurs Luxembourg* (SIIL) is also foreseen by the Law. The SIIL protects investors (natural or legal entities) in Luxembourg credit institutions and investment firms, Luxembourg branches of credit institutions and investment firms having their head office in a third country. The SIIL will be financed by ex-post contributions.

- Covered investments

The SIIL covers all investment transactions for each investor up to a total amount of EUR 20.000. The Law specifies a list of assets excluded from the protection.

- Repayment deadlines

The repayment shall be done no later than 3 months after the agreement on the eligibility and the amount of the debt.

Part IV - Amending, transitional and final provisions

Part IV of the Law amends notably the Law of 5 April 1993 on financial sector in order to introduce the BRRD provisions on recovery. These provisions are applicable to credit institutions, some investment firms and some financial holding companies. The Law foresees exemptions and simplified obligations in some cases.

Each institution in scope, which is not a subsidiary of a group subject to supervision on a consolidated basis, establishes a recovery plan for the measures it would take to restore its financial position after significant turmoil. Contents of the plan is are detailed in Article 206 8° “*Art. 59-18. Plans de redressement*”. The recovery plan shall be updated annually (except under simplified obligations).

These provisions should not be seen as new for credit institutions as all covered institutions had to prepare their recovery plan for the first time in 2014 or 2015.

We trust this information is of assistance and remain at your disposal for any further questions.

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