

## Regulatory News Alert

### CSSF Q&A on Financial Sector Professionals

7 July 2017

#### **CSSF added two more questions**

On 1 June 2017, the Commission de Surveillance du Secteur Financier (CSSF) published an updated version of its [Q&As on how to obtain authorisation as Financial Sector Professionals \(FSPs\)](#).

Two additional clarifications were inserted in the Q&A regarding the conditions underpinning reliance on the free provision of services versus the establishment of a branch for cross border activities, and categories of FSPs that are subject to an obligation to set up an investor's compensation scheme.

#### **1. Free provision of services versus the establishment of a branch**

In answer 25 of the Q&A, the CSSF specifies the list of service categories that FSPs are entitled to passport.

While referring to the possible frameworks available for FSPs operating on a cross-border basis, i.e., Free Provision of Services and Freedom of Establishment, the CSSF also clarifies the circumstances under which the establishment of a branch will have to be considered.

In line with CSSF circulars 10/442 and 13/568, the CSSF reminds us that according to Article 57 of the Treaty on the Functioning of the European Union (TFUE), Financial Sector Professionals have the possibility to temporarily pursue their activity in another member state. The nature of the provision of services shall be assessed on the basis of its duration, frequency, periodicity, and continuity.

Financial Sector Professionals carrying out their activities on an ongoing, frequent, regular, or continuous basis must in return establish a branch in the host member state as it is deemed to have a permanent presence in that member state.

#### **2. FSPs subject to the obligation to subscribe to an investor compensation scheme**

In answer 22, the CSSF also clarifies the categories of FSPs that are subject to an obligation to set up an investor's compensation scheme according to Art. 22-1 of the LFS.

Only Financial Sector Professionals that are MiFID firms (art. 4(1) Directive 2014/65/EU) are subject to this additional requirement. Investor compensation schemes must be subscribed with a Luxembourg entity duly acknowledged by the CSSF.

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