

Luxembourg

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Michel Molitor Molitor Fisch & Associés Luxembourg

The new AML Directive 2001/97 EC was implemented in Luxembourg by the law of November 12 2004 against money laundering and against the financing of terrorism (the Law).

Because Luxembourg legislation had already integrated parts of the directive in previous laws, the Law has not fundamentally modified the existing regulations.

The most important amendments relate to the extension of the professionals concerned, to the duties of these professionals and to the penalties in case of a violation of the professionals' duties.

General scope

Since the Law came into force, the following are subject to money-laundering avoidance rules: (i) banks and other professionals from the financial sector; (ii) insurance companies; (iii) investments funds; (iv) auditors; (v) domiciliation agents; (vi) notaries; (vii) casinos; (viii) dealers of high-value goods (for payments in cash exceeding €15,000); (ix) independent professionals (external accountants, tax advisors, lawyers with regard to rendering non-judicial services, and economic advisors); (x) real estate agents; (xi) pension funds; (xii) insurance brokers; and (xiii) management companies of investment funds.

The Law has extended the predicate offences for money laundering. Such predicate offences include organized crime, drugs, arms, human traffic, tax fraud, bribery, terrorism, and fraud against the financial interests of the EU.

Professionals' obligations

To ensure an efficient fight against money laundering and against the financing of terrorism, the Law imposes identical duties to all professionals.

(i) Know your client

The identification obligation of the clients remains mostly unchanged by the Law.

Professionals have to identify their clients before entering into any business relationship, and have to obtain documentary evidence to gain an overview of the client's transaction.

A new obligation relates to wire transfers. The bank account

number of the originator of any payment must be included in the wire transfer instructions.

If there is doubt as to whether or not the client acts on their own behalf, professionals should take reasonable measures to obtain information to identify of the beneficial owner of the transaction.

Any occasional clients must be identified for any transaction in excess of €15,000, whether the transaction is carried out in a single operation or in several linked operations.

However, professionals will not be subject to the identification requirements if their client is a credit or financial institution that has to comply with a similar identification obligation.

Furthermore, professionals can delegate the identification task to professionals active in the same business activity, and, subject to equivalent client identification obligations, on the basis of a written agreement, which provides for a procedure of access to the client identification documents.

Beside the identification obligation, the Law provides for a legal obligation to monitor continuously one's clients, and any transactions they are involved in, during the existence of the business relationship. There is also an obligation to keep all documents relating to the identification of their client and the transaction for the entire relationship and for five years after the end of the business relationship.

(ii) Internal organizational obligations

Professionals have to implement internal organizational procedures to prevent and avoid money laundering and the financing of terrorism.

Professionals have to raise their employees' awareness about the provisions of the Law by publishing appropriate internal written guidelines and providing appropriate staff training, enabling each employee to promptly and correctly react when faced with a suspect transaction.

(iii) Cooperation with the public prosecutor

A professional who notices a suspicious transaction that could constitute money laundering or financing terrorism must promptly inform the public prosecutor, and has to refrain from executing the transaction until further instructions from the public prosecutor.

The professional is, however, entitled to execute the transaction or operation if non-execution is not possible or if the exe-

cution of the transaction is essential for the criminal investigations launched against the beneficiaries of the transaction. The professional must inform the public prosecutor of these facts immediately upon execution of the transaction.

The public prosecutor can then issue an order to stop the suspicious transaction. This order can simply be an oral injunction from the prosecutor. In this case, the oral instruction must be confirmed by a written instruction within three days. The instruction will remain valid for a period of three months.

The public prosecutor's order might be followed by criminal seizures ordered by the examining judge, after the opening of an investigation.

To justify the non-execution of the transaction, the professional can inform his client about the order. However, the professional cannot inform the client that data relating to money laundering or terrorism financing was provided to the public prosecutor, or that a criminal investigation relating to money laundering or terrorism financing is in progress.

According to the Law, banking secrecy is not breached when professionals provide confidential client information to judicial authorities to the extent required under the Law.

Penalties in case of a breach of the Law

The new provisions of the Law specify that only violations of the above-mentioned obligations committed with a criminal intent can be fined.

The penalty for participating in money laundering operations with criminal intent is now punishable by imprisonment and/or a fine of up to €125,000.

The supervisory authority of the financial sector, the Commission de surveillance du secteur financier (the CSSF), can also issue injunctions to banks and other professionals under its supervision, and can even suspend the business licence of professionals, if required.

The CSSF regularly issues circulars to banks explaining their understanding of applicable legislation.

Today, despite these circulars and the new Law, several aspects of the know-your-client rule remain unclear. A new CSSF circular is expected, which should elaborate on the procedure in the event of money transfers by clients from other banks being themselves subject to client identification obligations.

Banking

Recommended firms

Tier 1

Allen & Overy Luxembourg

Arendt & Medernach

Elvinger Hoss & Prussen

Linklaters Loesch

Tier 2

Bonn Schmitt Steichen

Kremer Associés & Clifford Chance

Wildgen & Partners

Tier 3

Baden & Baden

Kleyr Collarini Grasso

Allen & Overy Luxembourg

The Luxembourg office of Allen & Overy is one of the largest law offices in the country. With over 40 lawyers, the firm is considered "one of the big finance players" by its competitors in the legal market. Henri Wagner, head of the banking group, is highly rated by his peers. The firm's fund management team is well resourced, and a trusted adviser for prestigious clients looking to benefit from registration in Luxembourg.

In this area, Allen & Overy advised JP Morgan Fleming Asset Management on setting up its European property fund as a Luxembourg regulated *fonds commun de placement*. The fund is delicately structured, and comprises three separate sub-funds fed by several special purpose vehicles, which provides potential investors around the world with a tax-efficient offering. The fund is JP Morgan's flagship property fund, headlining its European property asset management business. The bank aims to have €5 billion (\$6 billion) under management in five years' time.

The firm also represented JP Morgan and Deutsche Bank in relation to the financing of Apax Partners' and Texas Pacific Group's leveraged buyout of a controlling stake in Tim Hellas Communications, a leading Greek mobile telecommunications operator. Partners Tim Polglase and Yannis Manuelides led the team from London, with Henri Wagner supporting from the firm's Luxembourg office.

Leading lawyer

Henri Wagner

Key contact partners

Marc Feider

André Marc

Henri Wagner

Arendt & Medernach

Arendt & Medernach is a distinguished local firm with more than 130 fee earners, making the firm one of the biggest in Luxembourg. The firm's banking practice group boasts 15 professionals led by Phillippe Dupont and Paul Mousel, and both partners come highly recommended by clients and rivals alike.

The firm has a comprehensive list of clients in this area, including international and local banks, investment managers and insurance companies.

Arendt & Medernach has its headquarters in Luxembourg, and also has offices in Amsterdam and Brussels. Further European coverage is provided by a strategic alliance with Irish firm Dillon Eustace, whose lawyers are specialist advisors in investment management matters.

Leading lawyers

Philippe Dupont
Paul Mousel

Key contact partners

Philippe Dupont
Paul Mousel

Elvinger Hoss & Prussen

Elvinger Hoss & Prussen is one of the most prestigious local firms in Luxembourg, and has over 40 years' experience advising clients on financial, banking and fund management matters. The firm has seven partners at its disposal in this area, led by experienced name partner Yves Prussen. The banking and funds practice has developed an excellent reputation in the Luxembourg market, and has a wealth of experience providing in-depth technical advice to large financial institutions, regulatory bodies and fund managers.

Despite its lack of offices worldwide, Elvinger Hoss & Prussen can draw on its special relationships with other independent firms, such as Slaughter and May in London.

Leading lawyer

Yves Prussen

Key contact partner

Yves Prussen

Linklaters Loesch

Freddie Brausch leads Linklaters' Luxembourg office, which houses 11 partners and 59 fee-earners. The banking and finance practice wins particular plaudits for work at the cutting edge of fund structuring. For example, in 2004 Linklaters led the development of the Sicar, a European private equity fund vehicle recognized as a genuine alternative to the standard limited partnership structure for pan-European funds.

The highlights for the firm's banking practice include structuring a number of innovative sub-funds in Deutsche Bank's Xavex fund, setting up the €4 billion (\$4.9 billion) N-Luxembourg fund for the Bank of Tokyo-Mitsubishi, and setting up the Hines property fund. The firm also completed the final tranche of Morgan Stanley's Eurozone Office Fund, and structured both the Pradera property fund and Henderson's Outlet Mall Fund, which included financing the acquisition of a property portfolio from McArthurGlenn.

The group was also appointed counsel to Morgan Stanley Investment Management's pan-European Ucits flagship Sicav,

which has \$13 billion-worth of assets under management, with 36 sub-funds sold in 20 countries.

Headed up by Janine Biver, the practice has two partners and 10 lawyers overall. Over the past year, Bivar and her team also advised clients such as Credit Suisse First Boston, Merrill Lynch and Bank of Leumi Le-Israel.

Leading lawyer

Janine Biver

Key contact partner

Janine Bivar

Bonn Schmitt Steichen

Independent local law firm Bonn Schmitt Steichen is a "major player" in the areas of banking and finance. Alex Schmitt leads both the office and the practice, and is consistently highly recommended by the legal market in Luxembourg. He is a member of Coduju, the body that advises the prime minister on any improvements that can be made to the financial legislative framework, and frequently gives lectures at universities in France, Belgium and Luxembourg.

The banking and financial law group at the firm has advised banks on drafting model agreements on banking secrecy, bad debt transfers and Luxembourg contract law. Clients are attracted by the firm's expertise in sale and lease-back arrangements, and transactions involving Luxembourg banks as arrangers, paying agents and fiduciary issuers. Bonn Schmitt Steichen is also a specialist advisor to mortgage banks, or *banques d'émission de lettres de gage*.

The firm handles client work in six European languages, and has lawyers qualified to practise in Luxembourg, Belgium, France, Italy and New York.

Leading lawyer

Alex Schmitt

Key contact partner

Alex Schmitt

Kremer Associés & Clifford Chance

Clients praise Clifford Chance's Luxembourg office for its "considerable expertise and commitment," and find added value in the offices located across the globe. The Luxembourg office has four partners dedicated to the private funds sector, and advises private equity and real estate funds.

Clifford Chance has an excellent reputation for advice on financing leveraged buyouts. Among the year's highlights, the firm advised Candover Partners, the 3i Group, JP Morgan Partners and AlpInvest Private Equity on the Luxembourg aspects of financing the \$975 million acquisition of ABB's petrochemicals business, and partner Steve Jacoby represented International Power in relation to financing its acquisition of various power assets of Edison Mission Energy for \$2.3 billion.

The firm also set up Société Générale's two captive private equity funds, and acted on the sale of the funds to Goldman

Sachs Vintage Funds for €220 million (\$265 million). Clifford Chance also advised fund manager SG Capital Europe on the establishment of a new fund, and a vendor financing facility. New clients for the firm this year included the Axcel Group, Barclays Private Equity and Deutsche Bank.

Leading lawyer

Christian Kremer

Other notable firms

Kleyr Collarini Grasso expanded this year, hiring a number of associates from **Wildgen & Partners**. The firm has a respectable corporate practice, and often advises companies on their refinancing, restructuring and insolvency arrangements with banks. Managing partner Marc Kleyr is a court-appointed liquidator of BCCI, and his firm can frequently be found advising large US funds on their business interests in Luxembourg.

Capital markets

Recommended firms

Tier 1

Allen & Overy Luxembourg

Arendt & Medernach

Elvinger Hoss & Prussen

Linklaters Loesch

Tier 2

Bonn Schmitt Steichen

Kremer Associés & Clifford Chance

Allen & Overy Luxembourg

Allen & Overy is a respected brand for capital markets advice, and known throughout the world as a market leader in many areas of capital markets law. The firm's Luxembourg team contributes greatly to this reputation, and boasts an extensive list of mandates and clients as a result. Marc Feider is recommended as a star lawyer in capital markets.

The new Luxembourg Securitization Act, passed in 2004, has made securitization a more attractive prospect in Luxembourg because it has stripped away many of the previous regulatory requirements. Allen & Overy advised Deutsche Bank on an innovative synthetic asset-backed debt share programme based on the new law, which is the first programme to feature both debt and fund financial products issued out of the same vehicle. It gives Deutsche Bank more flexibility to issue tailored products to investors.

The firm also represented the managers in relation to the Republic of Argentina's \$85 billion global exchange offer, comprising public offers in Italy, Germany and Luxembourg as well as Switzerland and the UK. The capital markets team in the Luxembourg office has also acted as counsel to dealers, managers and corporate issuers on issues by, among others, Ericsson, KPN, Schlumberger, Stora Enso and the Elisa Corporation.

Leading lawyers

Marc Feider

Henri Wagner

Key contact partners

Marc Feider

André Marc

Henri Wagner

Arendt & Medernach

Arendt & Medernach's five-partner capital markets group has had a triumphant year. The firm worked on the €1.3 billion (\$1.57 billion) Seat-Pagine high-yield deal, acting for the arrangers as to Luxembourg law. The transaction – which narrowly missed out winning on the *IFLR* debt and equity-linked award this year – was the first high-yield issue involving an Italian listed guarantor, and proved to be extremely popular among European investors.

Another complicated deal saw the capital markets group give advice to BCP Caylux Holdings in Luxembourg on the bridge facilities and high-yield offering to finance Blackstone's tender offer for Celanese. The three high-yield bonds were worth \$1 billion, €200 million and \$225 million.

From among the strong capital markets team, Philippe Dupont is considered by most to be a star capital markets lawyer, and his colleague Paul Mousel also comes in for praise.

Leading lawyers

Philippe Dupont

Paul Mousel

Key contact partners

Philippe Dupont

Paul Mousel

Elvinger Hoss & Prussen

Elvinger Hoss & Prussen has a top-tier capital markets practice, and is often found opposite Arendt & Medernach on large international deals, advising either the arrangers or issuers on the Luxembourg aspects of the deal.

On the *IFLR* award-nominated Seat-Pagine high-yield issue, Elvinger Hoss advised the issuer on Luxembourg law. The deal was groundbreaking, and it speaks volumes for the firm's advanced capital markets practice that it was chosen to handle the delicately structured deal for the issuer. Arendt & Medernach and Elvinger Hoss & Prussen swapped roles on the BCP Caylux high-yield issues. For this transaction, Elvinger Hoss & Prussen advised the joint initial purchasers Morgan Stanley, Deutsche Bank Securities and Bank of America Securities.

Leading lawyer

Philippe Hoss

Linklaters Loesch

Linklaters is building a commanding presence in Luxembourg for capital markets and is often found advising clients on cutting-edge transactions.

In a similar way to its international rival, Allen & Overy, Linklaters has been quick to exploit developments in securitization regulation in Luxembourg for its clients. The firm advised Koch Industries on a combined \$1.9 billion multi-tranche credit facility and \$225 million securitization to finance the acquisition of Invista from DuPont. The securitization vehicle was one of the first set up in the market under the new Luxembourg law passed in March 2004. Star partners Tom Loesch and Janine Biver worked on the deal.

The practice consistently advises on groundbreaking debt deals. Linklaters advised ING Bank on the establishment of its €40 billion (\$49 billion) global issuance programme, which consolidated all of ING Bank's previous programmes and was structured to comply with the EU Prospectus Directive, effective from July 2005. The programme now allows ING to issue a variety of securities, including medium-term notes, share-linked notes, index-linked notes, exchangeables, inflation-linked notes, fund-linked notes, credit-linked notes and warrants. The flexibility of the scheme, and the fact that it was approved in a short space of time, makes the deal unique. Capital markets teams from the firm's Amsterdam, London, Brussels, New York and Luxembourg offices worked together on the project.

As well as this, Linklaters advised clients ABN Amro, Merrill Lynch International and Morgan Stanley on Gazprom's \$3.6 billion structured note programme, which involved setting up a Luxembourg SPV to issue notes and on-lend the proceeds to Gazprom. And on the equity side, the practice advised on the Oriflame's initial public offering, acted on the issuing and listing of new shares by Thiel Logistik, and won a role on the \$100 million private equity placement by Nasdaq-listed issuer Stolt Offshore.

Leading lawyers

Janine Bivar
Tom Loesch

Key contact partner

Janine Biver

Kremer Associés & Clifford Chance

Clifford Chance has a long and varied track record of capital markets activity in Luxembourg. Among recent highlights, the firm advised the Islamic Development Bank on setting up a \$1 billion *Shariah*-compliant trust certificate programme, as well as on the debut issue of \$500 million under that programme.

Key contact partner

Christian Kremer

Mergers and acquisitions

Recommended firms

Tier 1

Allen & Overy Luxembourg

Arendt & Medernach

Bonn Schmitt Steichen

Elvinger Hoss & Prussen

Linklaters Loesch

Tier 2

Kremer Associés & Clifford Chance

Tier 3

Baden & Baden

Kleyr Collarini Grasso

Molitor Fisch & Associés

Oostvogels Pfister Roemers

Wagener & Rukavina

Wildgen & Partners

Tier 4

Di Stefano Avocats

Dupong & Spielmann

Jim Penning & Associés

Allen & Overy Luxembourg

Allen & Overy's M&A practice in Luxembourg has grown both in size and in reputation over the past year. Since mid-2004, the corporate side of the firm has hired five lawyers; two partners and 15 associates now focus their attentions on M&A matters. Corporate high-flyer Marc Feider heads up the practice.

Over the past year, Allen & Overy advised the WPP Group on the Luxembourg law aspects of its merger with the Grey Global Group, a US company focused on communication services. The Luxembourg office of Allen & Overy also represented General Atlantic Partners in relation to its purchase of an outsourcing business from General Electric for €850 million (\$1 billion), acted for Compass Partners International in respect of its purchase of Eco and Coiltech, and represented Fundamentum Asset Management when it was sold to Banque Générale du Luxembourg.

Other corporate clients include the Tyco International Group, Banque Invik and GMT Communications Partners.

Leading lawyer

Marc Feider

Key contact partner

Marc Feider

Arendt & Medernach

Guy Harles leads Arendt & Medernach's M&A practice, which is one of the largest and most active in the country.

The firm has excellent access to group holding companies and finance companies, which is a real asset considering Luxembourg's push to establish itself as a hub for tax planning and group structuring purposes. As a result, Arendt &

Medernach has a great deal of experience in structuring joint ventures, mergers and acquisitions and company reorganizations and liquidations.

The firm's M&A track record includes cross-border acquisitions, private equity acquisitions, tender offers and leveraged and management buyouts.

Leading lawyer

Guy Harles

Key contact partner

Guy Harles

Bonn Schmitt Steichen

Bonn Schmitt Steichen has a top-tier corporate practice that is, according to one client, "the biggest M&A house in Luxembourg." One of the firm's largest clients is international medical group Pfizer – Bonn Schmitt has handled \$100 billion-worth of corporate work for the company over recent years. The six-partner corporate team forms the backbone of the firm, and often advises corporate clients on shareholder meetings, joint venture agreements, company reorganizations, mergers and acquisitions and liquidations.

Key contact partner

Alex Schmitt

Elvinger Hoss & Prussen

Pit Reckinger leads the well-regarded corporate team at Elvinger Hoss & Prussen. The group is 10 lawyers strong, and is highly rated by competitors in the M&A market.

In recent times the group has accepted instructions from clients such as Doughty Hansen and Arcelor, and often advises large international companies, financial institutions, private equity houses and employers' organizations on the full range of corporate matters. One of the firm's most important deals involved the \$3 billion merger of steel companies Aceralia, Arbed and Usinor.

Leading lawyer

Pit Reckinger

Key contact partner

Pit Reckinger

Linklaters Loesch

Tom Loesch, the name partner of Linklaters' Luxembourg operation, is the firm's most prominent corporate lawyer. He leads a corporate team that boasts a tremendous amount of experience in large, complex, cross-border transactions.

Over the past year, the Luxembourg M&A group advised Montagu Private Equity its sale of the Actaris Group to LBO France, and on its purchase of German targets Stabilus and Kalle for a combined value of €83 million (\$100.1 million). Linklaters also advised Hutton Collins on the €115 million acquisition of IEE International Electronics & Engineering, a

leading company in the field of automotive occupant sensing. This landmark deal was one of the first leveraged buyouts involving a Luxembourg operating company.

In another standout instruction, Jean-Paul Spang and Manfred Müller were part of the Luxembourg corporate team that advised the Fortress Investment Group on its acquisition of Nileg Immobilien Holding from Norddeutsche Landesbank. Fortress was the successful bidder, among almost 50 other suitors who took part in the auction.

Leading lawyer

Tom Loesch

Key contact partner

Tom Loesch