

# Goodwin Alerts

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### COVID-19 Related Measures: Current State of Play for the Funds Industry in Luxembourg

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A variety of steps have been taken to accommodate managers working during the lockdown. As at 22 June 2020, these measures are as follows:

#### 1. MORE FLEXIBILITY FOR THE GOVERNANCE OF FUNDS

The increased flexibility for the governance of funds during lockdown orders enacted under the emergency legislation of 20 March 2020 can be found [here](#).

#### 2. EXTENSION OR SUSPENSION OF DEADLINES FOR ACCOUNTING OBLIGATIONS

Our analysis of the two new laws which were adopted respectively on 12 and 20 May 2020 to provide headroom to operating businesses and funds can be found [here](#).

In addition, on 21 April 2020, a new bill (n°7566) was adopted and will enter into force on the day of its publication in the *Journal Officiel du Grand-Duché de Luxembourg* to extend these measures to a date occurring after the end of the state of crisis, to the extent notices for meetings were issued at the latest on the date of the end of the state of crisis.

#### 3. EXTENSION OR SUSPENSION OF DEADLINES FOR PRUDENTIAL REPORTINGS

Although the CSSF continues to encourage the submission of documents and reports on time where possible, it has acknowledged that the current circumstances could negatively affect investment funds and investment funds managers in their capacity to fulfil their legal and regulatory obligations.

In this context, the CSSF has accepted to grant, upon written request, exceptional extension/suspension of the deadline for the submission of the below listed type of reporting

Type of Reporting	Deadline extension/suspension which may be granted
<b>UCIs, SIFs, SICARs, Investment fund managers, pension funds and securitization undertakings</b>	
The annual reporting 0.4.1./0.4.2. (UCI) on the basis of Circular IML 97/136 to be submitted to the CSSF within 4 months (for UCITS) / 6 months (for non-UCITS) as from the reference date.	Extension until 30 June 2020.
The monthly reporting 0.1.2. (UCIs with formal guarantee) to be submitted to the CSSF within 10 days following the end of the months.	Extension until 30 June 2020.
The quarterly reporting G.2.1. (SIAG/FIAAG) on the basis of Circular CSSF 18/698 to be submitted to the CSSF within 20 calendar days following the end of the preceding months.	Extension until 31 August 2020.

The quarterly reporting G.2.1. (management companies subject to Chapter 15 and 16, AIFMs) on the basis of Circular CSSF 15/633 to be submitted to the CSSF within 20 calendar days following the end of the preceding months.	Extension until 40 calendar days following the end of the preceding month.
The management letter on the basis of Circular 02/81 to be submitted to the CSSF within 4 months (for UCITS)/ 6 months (for non-UCITS) as from the reference date.	Extension of an additional period of 3 months.
The UCI long form reports to be communicated to the CSSF on the basis of Circular CSSF 02/81 within four months (for UCITS)/ six months (for non-UCITS)	Extension of 4 months after the ordinary general meeting for SICAVs.  Extension of 4 months after the regulatory deadline for FCPs.
The semi-annual reporting K3.1 (SICAR) on the basis of Circular 08/376 to be submitted within 45 calendar days following the reference date.	Suspension until further notice.
The semiannual reporting URR (UCITS Risk Reporting) to be submitted 45 calendar days following the reference date.	The CSSF will notify of a possible postponement in due time.
The closing documents to be provided annually investment fund managers pursuant to sub-points (3) to (15) of point (3) of Annex 2 to Circular CSSF 18/698 to be submitted within 5 months following the closing date of the investment fund manager's financial year.	For the investment fund managers which closed their financial year on 31/12/2019: an extension until 31 August 2020.  For the investment fund managers which closed their financial year after 31/12/2019: a possible extension by 3 months.
The management letter to be submitted by investment fund managers within the month following the ordinary general meeting that approved the annual accounts and at the latest seven months after the closing date of the investment fund manager's financial year.	Extension of an additional period of 1 month.
The quarterly reporting of authorised AIFMs with the list of managed AIFs.	Extension until 30 June 2020.
The quarterly reporting to be submitted by pension funds within 20 calendar days following the end of the preceding quarter.	Extension until 20 July 2020.
The management letter to be submitted by pension funds within 6 months following the closing date of the financial year.	Extension until 31 August 2020.
The actuarial report to be submitted by pension funds within 6 months following the closing date of the financial year.	Extension until 30 September 2020

The management letter to be submitted by authorized securitization undertakings within 6 months following the closing date of the financial year.	An extension additional period of 2 months.
The quarterly reporting VaR & Leverage (UCITS)	Suspension until further notice.
The monthly reporting Money Market Funds (UCITS/AIF).	Suspension until further notice.
The reporting Early Warning on large redemptions (UCITS).	Suspension until further notice.
Quarterly reporting for Q1 and Q2 2020 for managers of Luxembourg domiciled Money Market Funds	Extension until September 2020.
<b>Investment Firms</b>	
Long form reports.	Up to 4 months following the initial date of the ordinary general meeting.
The audit report and the audited annual accounts to be submitted one month after the ordinary general meeting.	To be determined by the usual contact person at the CSSF.
The minutes and the attendance list of the ordinary general meeting to be submitted one month after the ordinary general meeting.	To be determined by the usual contact person at the CSSF.
The management report to be submitted one month after the ordinary general meeting.	To be determined by the usual contact person at the CSSF.
The statement of compliance with Circular CSSF 12/552 to be submitted one month after the ordinary general meeting.	To be determined by the usual contact person at the CSSF.
The reports of the internal control functions to be submitted one month after the ordinary general meeting.	To be determined by the usual contact person at the CSSF.
The ICAAP report to be submitted one month after the ordinary general meeting.	To be determined by the usual contact person at the CSSF.
The compliance report on the assessment of knowledge and competence in accordance with the ESMA guidelines to be submitted one month after the ordinary general meeting.	To be determined by the usual contact person at the CSSF.
The annual reports or the audited financial statements of the direct and indirect shareholders to be submitted one month after the ordinary general meeting.	To be determined by the usual contact person at the CSSF.
The annual reports on the activities and business volumes of the representative offices to be submitted one month after the ordinary general meeting.	To be determined by the usual contact person at the CSSF.
The report of the statutory auditor on compliance with the professional obligations as regards the fight against money laundering and terrorist financing (concerns only Luxembourg branches of investment firms	To be determined by the usual contact person at the CSSF.

having their registered office in or outside the European Union) to be submitted six months after the closing date.	
The report of the statutory auditor on the conduct of business under MiFID II (concerns only Luxembourg branches of investment firms having their registered office in or outside the European Union) to be submitted six months after the closing date.	To be determined by the usual contact person at the CSSF.
The recovery plans for which the submission dates are set individually in feedback letters.	To be determined by the usual contact person at the CSSF.

#### 4. FISCAL SUPPORT

The Luxembourg tax administration has taken the following support measures for Luxembourg companies experiencing liquidity issues :

- cancellation of their quarterly advance tax payments for corporate income tax and municipal business tax (net worth tax is excluded)
- a delay on payments for corporate income tax, municipal business tax, and net worth tax
- the deadline for filing corporate tax returns has been extended until 30 June 2020

#### 5. CLOUD OUTSOURCING

In order to facilitate working during the lockdown, the CSSF temporarily replaced the prior authorisation / notification for cloud-based outsourcing required by Circular CSSF 17/654 (as amended) by a simple communication by email to the CSSF contact agent of the concerned entity. This exceptional measure does not limit due diligence and risk assessment obligations and the recording of such outsourcing in the cloud register.

#### 6. TELEWORKING & IT

The CSSF recommended to all entities under its prudential supervision to authorise their employees to work from home, subject to the following minimum recommendations:

- they should identify the user profiles with the highest risks (such as IT administrators, employees in charge of transactions/payments, etc.). At least for these higher risk profiles and, where possible, more broadly, proper security measures should be implemented: strong authentication, access from a secure laptop which is managed by them, logging and ex post review of the sensitive actions carried out;
- connections should be secured by encrypting the communication channel (e.g., use of VPN solution with AES-256, RSA-2048 encryption);
- they should have controls in place which ensure, at least, that the remote connections are consistent with the recourse to teleworking. Thus, remote access should be disabled outside office hours, the originating IP address connecting remotely should come from Luxembourg or the neighboring countries; and
- they should define activation/triggering conditions to authorize the remote access and they should ensure that it is disabled once this exceptional situation is over.

#### 7. WEEKLY UPDATES FOR THE CSSF

The CSSF closely monitors the outbreak, its business impact and how it may affect the governance and performance of Luxembourg funds. As a result, the CSSF requested any manager (whether or not located within the European Union) to report, on a weekly basis, updates on financial data (total net assets,

subscriptions and redemptions) and the governance of all the Luxembourg funds they manage. Information on this new reporting requirement applicable managers of Luxembourg funds can be found [here](#).

## 8. FLEXIBILITY IN THE USE OF SWING PRICING

On 7 April 2020, the CSSF updated its FAQ on Swing Pricing Mechanism by UCITS, UCI Part II & SIFs: UCIs can, without prior notification to the CSSF, increase the swing factor to be applied on the NAV up to the maximum level laid down in the prospectus.

The CSSF clarified the conditions applying to the following two scenarios:

- In case the prospectus does not specifically provide for the possibility for the indicated maximum percentage to be exceeded in exceptional market circumstances:
  - the decision of board of directors of the UCI or, if applicable, the management company, must be duly justified and take into account the best interest of the investors;
  - the prospectus should be updated, as soon as possible to provide for the possibility to the Board of director of the UCI or, if applicable the management company to go beyond the maximum level under certain predefined conditions;
  - the decision must be communicated to current as well as new investors through the usual communication channels, such as the ordinary notice to investors, the UCI's internet website or other way as laid down in the prospectus, before applying the increased swing factor;
  - the UCI has to provide the CSSF with detailed notification of the resolution, including a specific explanation on the reason for such resolution; and
  - the revised swing factors are the result of a robust internal governance process and are based on a robust methodology that provides for an accurate NAV which is representative of prevailing market conditions.
  
- In case the prospectus does specifically provide for the possibility for the indicated maximum percentage to be exceeded in exceptional market circumstances:
  - the decision of board of directors of the UCI or, if applicable, the management company, must be duly justified and take into account the best interest of the investors;
  - the decision must be communicated to current as well as new investors through the usual communication channels, such as the ordinary notice to investors, the UCI's internet website or other way as laid down in the prospectus;
  - the UCI has to provide the CSSF with detailed notification of the resolution, including a specific explanation; and
  - the revised swing factors are the result of a robust internal governance process and are based on a robust methodology that provides for an accurate NAV which is representative of prevailing market conditions.

The CSSF reserves the right to request on an ex-post basis the UCI to justify the swing factor applied and to provide documentary evidences that such factor was at any time representative of the prevailing market conditions.

## 9. SUSPENSION OF LEASE ENFORCEMENTS

Subject to certain exceptions, the Grand-Ducal Regulation of 25 March 2020, as amended on 1 April 2020, suspends the enforcement of evictions for commercial leases and other leases the duration of the three-month state of crisis.

## 10. RELIEFS BANKRUPTCY FILINGS

As part of the measures taken under the Grand Ducal Regulation of 25 March 2020 (and amended on 1 April 2020) relating to the suspension of procedural deadlines, the obligation for directors or managers of Luxembourg companies to file for bankruptcy (faillite) within 30 days of the cessation of payments is relaxed, but this suspension of the deadline to file for bankruptcy does not exempt management of its other obligations towards stakeholders generally.

In response to further support the continuation of the operations of businesses and investment funds in Luxembourg, a new bill has been submitted (n°7552) on 6 April 2020 pursuant to which a moratoria is put into place, so that any petition by a creditor to declare the bankruptcy of its debtor be declared prohibited by being declared inadmissible and the deadline for the obligation to file for an admission of bankruptcy by the bankrupt entity itself is suspended.

Further information can be found [here](#).

In addition, a draft bill (n°7587) was adopted and will enter into force on the day of its publication in the *Journal Officiel du Grand-Duché de Luxembourg* to extend by 6 months as from the end of the state of crisis the time limit relating to the filing for cessation of payment in connection with bankruptcy proceedings.

## 11. AML/CFT SUPERVISION

Circular 20/740 of 10 April 2020 provides guidance to all professionals subject to anti-money laundering and counter-terrorism financing who are supervised by the CSSF in relation to money laundering and terrorism financing risks amid the COVID-19 pandemic.

This new circular highlights several new and emerging threats and vulnerabilities resulting from the COVID-19 pandemic with mitigating actions which require specific attention by supervised professionals (e.g., customer due diligence and transactions monitoring).

Published 4 May 2020, a guide from the CSSF, including clarifications and additional information, is available to help supervised professionals tackle the risks identified in Circular 20/740.

This guide can be found [here](#).

## 12. RECOMMENDED MEASURES FOR OFFICES RE-OPENINGS

Following the declaration of the Grand Duchy of Luxembourg to ease the lockdown restrictions, the CSSF recommended to all the supervised entities to take the following measures:

- identification of vulnerable staff, or staff members who are part of a household with vulnerable person(s), and definition of protection measures for these employees;
- definition of organisational rules with respect to internal and external meetings and regarding the reception of visitors;
- implementation of procedures regarding restaurant, coffee and meeting areas;
- implementation of rules to avoid that people infected by or suspecting of being infected by Covid-19 return to the office;
- specific cleaning or disinfection of office areas and equipment; and
- display of barrier gestures, such as published by the Luxembourg government (version of 12 May 2020): [https://msan.gouvernement.lu/dam-assets/covid-19/fiches\\_information/en/Fiche-GB-EN.pdf](https://msan.gouvernement.lu/dam-assets/covid-19/fiches_information/en/Fiche-GB-EN.pdf)

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Please visit Goodwin's [Coronavirus Knowledge Center](#), where lawyers from across Goodwin are issuing new guidance and insights to help clients fully understand and assess the ramifications of COVID-19 and navigate the potential effects of the outbreak on their businesses.

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