



Association of British and Irish Accountants
in Luxembourg

2017 Professional Practice Update

“Investment Fund Industry”

1 March 2017, Luxembourg

Agenda

- 08:30 – 09:00** *Registration & breakfast*
- 09:00 – 09:05** **Chairperson's opening remarks**
Jason Rea, Chairperson, ABIAL
- 09:05 – 09:30** **State of the Luxembourg Investment Fund Industry**
Anouk Agnès, ALFI
- 09:30 – 10:00** **Fund distribution evolution**
Said Fihri, KPMG
- 10:00 – 10:30** **Legal & regulatory update**
Jérôme Wigny, Avocat, Elvinger Hoss Prussen
- 10:30 – 11:00** *Coffee Break*

Agenda

11:00 – 11:50 *Panel discussion incl. Q&A*

Brexit – practical implications and impact on fund industry

Moderator: Michael Ferguson, EY

*Panel: Johan Terblanche, Dechert
Johan Schreuder, Investec
Revel Wood, FundRock
Sandrine Leclercq, Deloitte*

11:50 – 12:20 **Tax Update**
Keith O'Donnell, ATOZ

12:20 – 12:30 **Chairperson's concluding remarks**
Jason Rea, Chairperson, ABIAL

12:30 – 13:30 *Buffet Lunch*

Legal & regulatory update

SANCTIONS REGIME

How fair is it?

Jérôme Wigny, Avocat, Elvinger Hoss Prussen

1. Context

- International concerns
- UCITS V sanctions regime
- Trends

2. UCITS V Provisions (articles 148 to 149*ter* of 2010 Law)

- Who can be impacted?
 - Legal entities:
 - UCITS and Part II funds
 - Their management companies
 - Their depositaries
 - Individuals
 - Directors
 - Conducting officers
 - Others

2. UCITS V Provisions (articles 148 to 149ter of 2010 Law)

■ Infringements

Authorization requirements	Notification/information requirements	Organisational rules/ rules of conduct	Activities of the UCITS
<ul style="list-style-type: none"> • Omission to obtain a prior authorization when setting up a Chapter 15 Management Company or self managed UCITS • Obtaining an authorization as a ManCo or self managed UCITS through false statement or other irregular means • UCITS pursues activities without authorization 	<ul style="list-style-type: none"> • Omission by shareholders to inform the CSSF of any acquisition/increased or disposal/reduction of a qualifying holding* in a ManCo • Omission by a ManCo to inform the CSSF of any acquisition or disposal of their capital that reach above mentioned holding* • Failure by a ManCo to inform the CSSF on a yearly basis of the names of the shareholder/members possessing a qualifying holding* <p><i>* Direct or indirect holding which represents 10% or more of the capital or of the voting rights or which makes it possible to exercise significant influence.</i></p>	<ul style="list-style-type: none"> • Failure by the ManCo or a self managed UCITS to comply with: <ul style="list-style-type: none"> - The rules governing procedures, arrangements and internal control - the structural and organisational requirements, including requirements on conflicts of interest - the requirements related to delegation of functions to third parties - its rules of conduct • Failure by the ManCo to employ a risk management process and a process for independent assessment of the value of OTC derivatives 	<ul style="list-style-type: none"> • Repeated failure to comply with the UCITS investment policies and restrictions • Repeated failure by the ManCo to comply with obligations concerning information to be provided to investors (in particular prospectus, KIIDS and financial reports) • Failure by the ManCo to comply with notification requirements when marketing units of UCITS on a cross-border basis within the EU • Failure by the Depositary to comply with the depositary regime in the execution of its tasks

2. UCITS V Provisions (articles 148 to 149^{ter} of 2010 Law)

- Sanctions
 - Administrative fines:
 - Legal entities (up to EUR 5 million or 10% of annual turnover)
 - Individuals (up to EUR 5 million)
 - Order to cease conduct
 - Withdrawal of authorisation
 - Full or temporary ban on exercise of functions by individuals
 - Publication of administrative sanctions
 - Other sanctions

2. UCITS V Provisions (articles 148 to 149ter of 2010 Law)

- Publicity
 - Publication on CSSF website
 - Including “at least information on the type and nature of the infringement and on the identity of the persons responsible”
 - Unless deemed disproportionate
 - Appeal?
 - Minimum 5 years, maximum 10 years
 - For legal entities, reporting to ESMA

3. Practical consequences

- Enhanced governance
 - Tighter oversight
 - Best practices
 - Adequate documentation

- Discovery
 - Auditors
 - CSSF investigations and on site visits
 - Whistleblowing

- Fairness?

4. Appeal

- Gracious Appeal
- Appeal to administrative court
- Short timing

Contact details

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