

# **The newly amended CSSF Regulation 12-02: what are the key takeaways?**

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## **Part 1**

## The speakers



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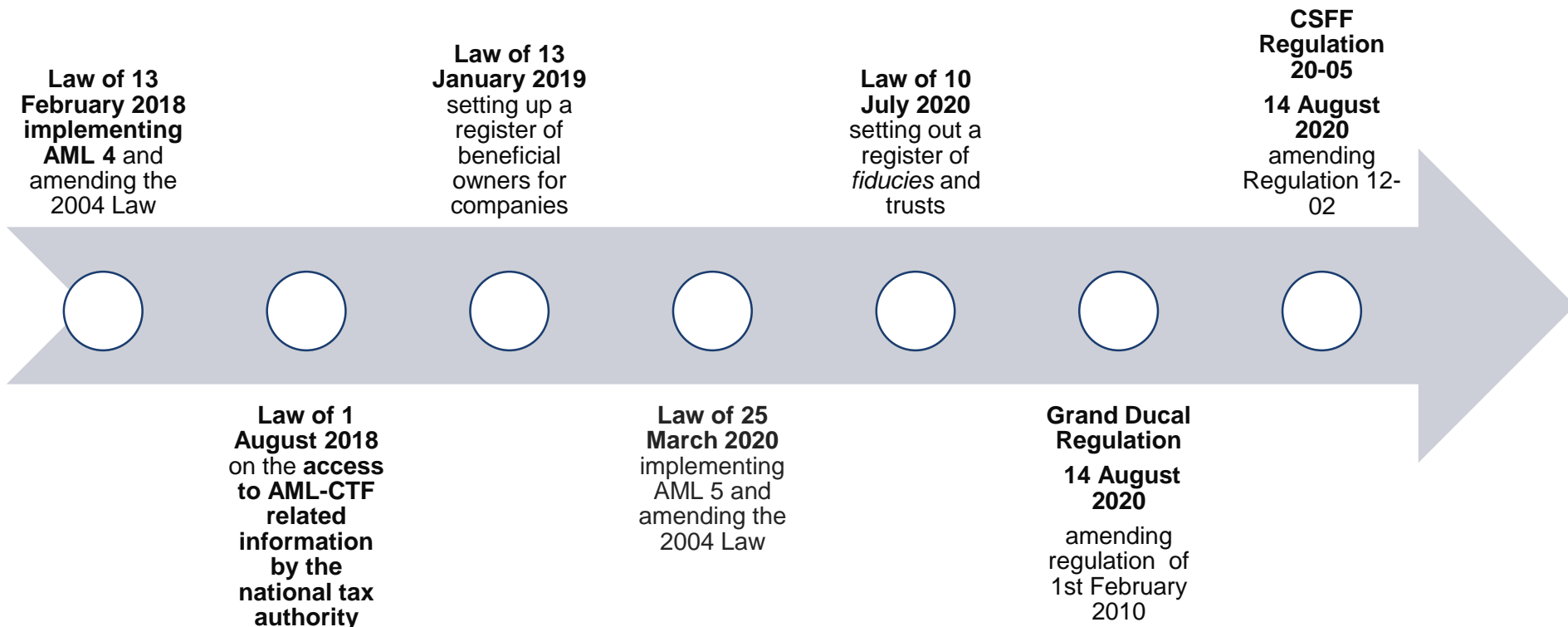


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# Introduction

## ■ Context and recent evolutions



# Introduction

- Main changes brought by the CSSF Regulation 20-05 (the “**Regulation**”)
  - Specifications relating to the framework around customer due diligence (“**CDD**”) measures
  - Clarifications relating to the risk based approach
  - Specifications relating to the use of outsourcing arrangements
  - Specifications relating to the use of internal systems for supervision of business relationships and transactions
  - Specifications of cooperation requirements between the CSSF and CRF

# Introduction

- Structure of the seminar
- Assessment of the impact of the Regulation on
  - The risk based approach
  - CDD measures
    - General considerations
    - Focus on the impact on the investment funds industry
  - Cooperation with authorities
  - Internal organisation arrangements
    - Compliance function
    - Outsourcing (next session)
    - Implementation of adequate and effective supervisory systems (next session)
    - Three lines of defense model (next session)
- Focus on digital client onboarding (next session)

# I. The risk based approach

- Risk assessment at the level of professionals
  - Article 2-2 of the 2004 Law
    - Assessment of the level of risk taking into account customers, countries or geographic areas, products and services that they provide
  - The assessment must be based on ML-TF risk appetite
    - To be put into place by authorised management and approved by the board of directors
  - All sources to be taken into account
    - E.g. supranational risk assessment, national risk assessment, subsector risk assessment
  - Questionnaire to be completed annually and returned to the CSSF

# I. The risk based approach

## ■ Risk assessment in relation to customers

- Article 3(2bis) of the 2004 Law
  - Professionals are required on the basis of their understanding of the nature and type of business relationship to evaluate the ML-TF risk presented by their customer and classify their customers
- Reference to Annexes III and IV, and all other risk factors that professionals deem relevant
- Where professionals deem a business relationship to present a low risk of ML-TF and apply SDD measures, they must be able to justify and demonstrate this to competent authorities
- Risk assessment does not enable professionals to waive the EDD measures prescribed by law (PEP, high risk countries, correspondent banking relationships, etc.)

## II. Customer due diligence measures

- Timeline for carrying out CDD measures
  - Professionals must review and update the information on the customer
    - At a frequency and to an extent consistent with the risk-assessment
  - Annually for high risk relationships
  - Every 7 years at the least



## II. Customer due diligence measures

- Triggering of CDD measures for virtual asset service providers
  - Virtual asset service providers included in the scope of the 2004 Law
  - CDD to be applied for occasional transactions exceeding a thresholds of EUR 1,000
    - Other occasional transactions: EUR 15,000

## II. Customer due diligence measures

### ■ Automated acceptance process

- Acceptance on the basis of an automated acceptance process which does not involve the intervention of a natural person at the level of the professional
- Conditions
  - Process configured and tested
  - Reviewed on a regular basis
  - In line with the professional's AML-CTF policies and procedures
  - Complies with « further instructions » by the CSSF

## II. Customer due diligence measures

- Identification and verification of identity in non-face to face relationships/electronic identification
  - Non-face to face relationship to be considered as higher risk where adequate guarantees are not taken to mitigate the fact that the professional will not be meeting the customer in person
    - Verification of documents by a public authority
    - Attestation from a credit institution
  - Article 3(2)(a) of the 2004 Law
  - Type of electronic means authorised
    - Electronic identification means
    - Regulation (EU) 910/2014
    - Any other secure, remote or electronic identification process that is regulated, recognised, approved or accepted by the relevant national authorities

## II. Customer due diligence measures

- Obligation to verify the identity of the BO on the basis of central registers
  - Article 3(4) of the 2004 Law
  - Register of beneficial owners & register of trusts and *fiducies*
  - Obligation to obtain the extract of the register or proof of registration
  - Sole use of such central registers is not sufficient to comply with the obligation to take reasonable measures to verify the identity of the beneficial owners
  - Additional measures to be taken by professionals in accordance with the ML-TF risk

## II. Customer due diligence measures

### ■ Information on the source of funds of the customer

- Article 3(2)(c) of the 2004 Law
- Obligation to obtain information on the source of funds but not necessarily supporting documentation, depending on the risk assessment
- Supporting documentation may be required in relation to transactions requiring EDD measures (unusual and complex transactions)

## II. Customer due diligence measures

- Clarifications regarding the concept of proxyholder
  - Article 3(2)2nd indent of the 2004 Law
  - Concept of person « *purporting to act on behalf of the customer* »
  - Not all proxyholders/authorised signatories to be identified
    - Only the person in contact with the professional in the business relationship

## II. Customer due diligence measures

### ■ Guidance as regards to SDD and EDD measures

#### □ SDD

- List of concrete examples of measures which may be applied
- Obligation to verify annually whether a customer still meets the requirements for SDD measures
- Examples of sources of information to be used for updating and the documentation collected

#### □ EDD

- Concrete examples of measures to be applied
- Measures in relation to PEPs to be carried every 6 months at least

## II. Customer due diligence measures

- Clarifications in the investment funds industry
  - Definition of customer
  - Natural or legal person with whom a business relationship exists or for whom an occasional transaction is carried out, including persons purporting to act on behalf of a customer
  - For investment funds, this includes investors registered in the fund register



## II. Customer due diligence measures

- Clarifications in the investment funds industry
  - Measures to be taken in relation to an intermediary acting on behalf of a customer
  - EDD measures are to be applied on the intermediary
    - The intermediary, the person purporting to act on behalf of the intermediary and the beneficial owner of the intermediary must be identified, and their identity verified
    - EDD measures to be applied to relationships similar to correspondent banking relationships

## II. Customer due diligence measures

### ■ Clarifications in the investment funds industry

- CDD measures applicable to investments (*know your investment*)
- Professionals are required to perform an analysis of the ML-TF risk relating to a given investment
  - To be duly formalised
  - To be reviewed annually
- Customer due diligence measures to be implemented in accordance with the risk based approach
- Obligation to identify the countries, persons, entities and groups subject to financial restrictive measures in relation to the assets managed
  - Obligation to ensure that no funds are made available to them
- AML-CFT audit for all investment funds managers and all investment funds subject to CSSF AML-CFT supervision

## III. Cooperation with authorities

- Reporting to the CRF and the CSSF
  - Article 5 of the 2004 Law
  - Reminder of the obligation to report to the CRF without delay
  - Reminder that professionals are required to register with GoAML
  - Obligation to notify the CSSF where a suspicious activities report may have a wider impact on the financial sector as a whole
    - Suspect is a professional of the financial sector subject to the supervision of the CSSF
    - Suspect is an employee/member of the management of such a professional

## IV. Internal organisation : compliance function

- Split of competence between a person responsible for compliance (“*RR*”) and compliance officer (“*RC*”)
  - Article 4(1) of the 2004 Law
  - Appointment of a person responsible for compliance with AML-CTF professional obligations at the level of the authorised management or board of directors
  - Appointment of a compliance officer in charge of the control of compliance with AML-CTF professional obligations
  - Delegation of functions is possible

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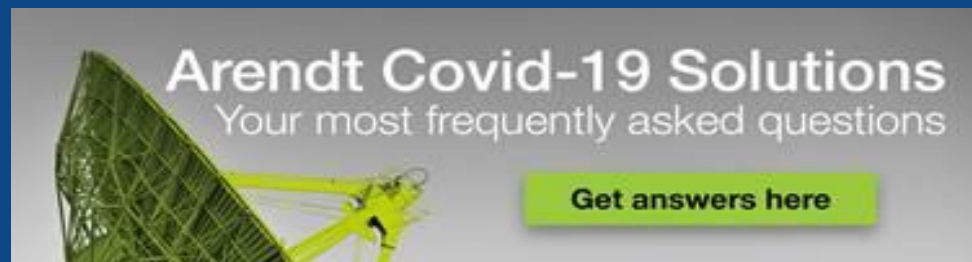
## What's next?

Part 2 on Wednesday, 18 November 2020 at 11:15 am

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