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International sanctions: a dedicated regime for financial sanction in Luxembourg

On December 23, 2020 the Luxembourg legislator has published the Law of 19 December 2020 implementing financial restrictive measures (“Law of 19 December 2020”). This Law has repealed the Law of 27 October 2010 enhancing the anti-money laundering and counter terrorist financing legal framework.

With its entry into force on December 27, 2020, the Law of 19 December 2020 provides Luxembourg with a dedicated legislative arsenal for the implementation of financial restrictive measures adopted by the United Nations and the European Union.

Which financial restrictive measures?

The scope of application of the Law of December 2020 encompasses financial restrictive measures adopted by the United Nations and the European Union against certain States, natural and legal persons, entities and groups which take the form of:

- the prohibition or restriction of financial activities of any kind;
- the prohibition or restriction of the provision of financial services, technical assistance, training or advice in relation to a State, a natural or legal person, entity or group covered by this law; or
- the freezing of funds, assets or other economic resources owned or controlled, directly, indirectly or jointly, with or by a person, entity or group referred to in this law or by a person acting on their behalf or at their direction.

The lists of restrictive measures will be established by virtue of a Grand-ducal decree.

Who is concerned?

Respect of financial restrictive measures is mandatory for

- Luxembourg nationals, who reside or operate in or from the territory of the Grand Duchy of Luxembourg or from abroad;

- legal persons having their registered office, a permanent establishment or their centre of main interests on the territory of the Grand Duchy of Luxembourg and which operate in or from the territory of the Grand Duchy of Luxembourg or abroad
- branches of Luxembourg legal persons established abroad as well as branches in the Grand Duchy of Luxembourg of foreign legal persons; and
- all other natural and legal persons operating on the territory of the Grand Duchy of Luxembourg.

Authorities in charge of the supervision

Financial regulators (1) and self-regulatory bodies (2) are made responsible for the supervision of persons under their jurisdiction for the purpose of the implementation of the Law of 19 December 2020. As such, these regulators and bodies have increased supervisory and sanctioning powers.

Powers of supervision

To ensure effective implementation of financial restrictive measures, financial regulators and self-regulatory bodies have broad supervisory and investigatory powers.

They can notably:

- have access to any document in any form whatsoever, and to receive or take a copy of it;
- request information from any person and, where applicable, summon any person subject their respective supervisory powers and hear that person to obtain information;
- carry out on-site inspections or investigations, including seize any document, electronic file or other things that seem useful to ascertaining the truth, of the persons subject to their respective supervisory powers;
- require the communication of recordings of telephone conversations or electronic communications held by the persons subject to their respective supervisory powers;
- enjoin from the persons subject to their respective supervisory powers to cease, within such period as they may prescribe, any practice and to desist from repetition of that practice;
- request the freezing or sequestration of assets with the President of the *Tribunal d'arrondissement* (District Court) of Luxembourg deciding on request;
- impose prohibition of professional activities against the persons subject to their respective supervisory powers, as well as against members of the management body, their effective directors, employees and tied agent;
- require *réviseurs d'entreprises* (statutory auditors) and *réviseurs d'entreprises agréés* (approved statutory auditors) of the persons subject to their respective supervisory powers;
- refer information to the State Prosecutor for criminal prosecution;
- require *réviseurs d'entreprises* (statutory auditors), *réviseurs d'entreprises agréés* (approved statutory auditors) or experts to carry out on-site verifications or investigations of persons subject to their respective supervisory.

They may also impose administrative sanctions:

- a warning;
- a reprimand;
- a public statement which identifies the natural or legal person and the nature of the breach;
- a temporary suspension;
- a temporary (3) ban
 - to exercise professional activities
 - to exercise managerial functions within the professionals subject to their respective supervisory powers with respect to any person discharging managerial responsibilities within such professionals or any other natural person held liable for the breach;
- administrative fines
 - maximum administrative fines of twice the amount of the benefit derived from the breach, where that benefit can be determined, or EUR 1,000,000 at the most

- o exception: Where the professionals concerned are credit institutions or financial institutions, the maximum administrative fine shall amount to:
 - in the case of legal persons, EUR 5,000,000 or 10 % of the total annual turnover according to the latest available accounts approved by the management body; where the professionals are parent undertakings or subsidiaries of a parent undertaking required to prepare consolidated financial accounts, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income;
 - in the case of natural persons, EUR 5,000,000.

Criminal sanctions for disrespect of the financial restrictive measures

Without prejudice to the application of the more severe penalties provided for, where applicable, by other legal provisions, failure to comply with the restrictive measures adopted pursuant to the Law of 19 December 2020 shall be punishable by imprisonment for a term of eight days to five years and a fine of EUR 12,500 to EUR 5,000,000 or one of these penalties only. Where the offence has resulted in substantial financial gain, the fine may be increased to four times the amount of the offence.

Based on common principles in criminal law which allow cumulation of sanctions, this implies that a legal entity and natural persons (for example directors) may face penalties for the same offense.

(1) Commission de Surveillance du Secteur Financier (« CSSF »), le Commissariat aux assurances (« CAA ») et l'Administration de l'enregistrement, des domaines et de la TVA (« AED »).

(2) L'Institut des réviseurs d'entreprises, l'Ordre des experts-comptables, la Chambre des notaires, les ordres des avocats, la Chambre des huissiers.

(3) In the case of professionals subject to the supervision of self-regulatory bodies, the sanction could also be a lifetime ban.

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