

Corporate Governance in 2022: Emerging trends, challenges and opportunities

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Introduction

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Agenda



New approach and rules concerning the audit of IFMs and UCIs, including in particular the AML/CFT external report: what is the impact on the Board responsibilities?



A corporate body under increased scrutiny: how to staff your audit committee



Governance aspects of intra-group relationships: the dos and don'ts



Tax governance today: towards the monitoring of ever more complex rules

I. New approach and rules concerning the audit of IFMs and UCIs, including in particular the AML/CFT external report: what is the impact on the Board responsibilities?

New CSSF circulars reforming the LFR: what is the impact on the Board responsibilities?

Who?

- CSSF Circular 21/788 applicable to all Luxembourg IFMs as defined in Circular 18/698 including registered AIFMs and all Luxembourg investment funds supervised by the CSSF that have not appointed an IFM (Luxembourg or abroad)
- CSSF Circular 21/789 applicable to Luxembourg authorized IFMs
- CSSF Circular 21/790 applicable to all Luxembourg undertakings for collective investment
- SIFs and SICARs are also impacted contrary to the previous regime

When?

- Circulars 21/788 and 21/789 apply for FYE on or after 31 December 2021 for IFMs
- CSSF Circular 21/790 applies for FYE on or after 30 June 2022, except for the provision of the SR for SIF and SICAR (30 June 2023)
- Specific deadlines provided in the CSSF circulars

What?

- Completion of a Self-Assessment Questionnaire (SAQ) by all IFMs and all UCIs to be submitted to the CSSF
- Completion of a Separate Report (SR) by the Réviseur d'Entreprise Agrée (REA) once SAQ has been submitted + filing by the IFMs/UCIs
- Issuance of Management Letter by the REA for each in-scope entity and submission by the IFMs/UCIs to the CSSF
- For AML/CFT, specific external AML/CFT report to be issued by the REA of all IFMs and submitted by the RR or RC of the in-scope entities (21/788)

Impact

- Previous circular 02/81 has been repealed
- Strengthening of the governance, internal controls and AML/CFT requirements as well as expectations from the CSSF
- Harmonisation of the work and approach of the REA

II. A corporate body under increased scrutiny: how to staff your audit committee

A CORPORATE BODY UNDER INCREASED SCRUTINY: HOW TO STAFF YOUR AUDIT COMMITTEE?

“Each public-interest entity shall have an audit committee. (...)”
Art. 52 (1) Audit Law

Exemptions from the obligation to establish an audit committee

Permitted set-ups for an audit committee

- stand-alone committee
- a committee of the administrative body or supervisory body of the audited entity
- the administrative body or supervisory body of the audited entity as a whole (in SMEs and companies with a market capitalisation of less than EUR 200 m)
- body performing equivalent functions to an audit committee in accordance with conditions set by the CSSF

A CORPORATE BODY UNDER INCREASED SCRUTINY: HOW TO STAFF YOUR AUDIT COMMITTEE?

Qualification requirements

- the committee members as a whole shall have competence relevant to the sector in which the audited entity is operating
- at least one member of the audit committee shall have competence in accounting and/or auditing
- a majority of the members of the audit committee incl. the chairperson of the audit committee shall be independent of the audited undertaking;

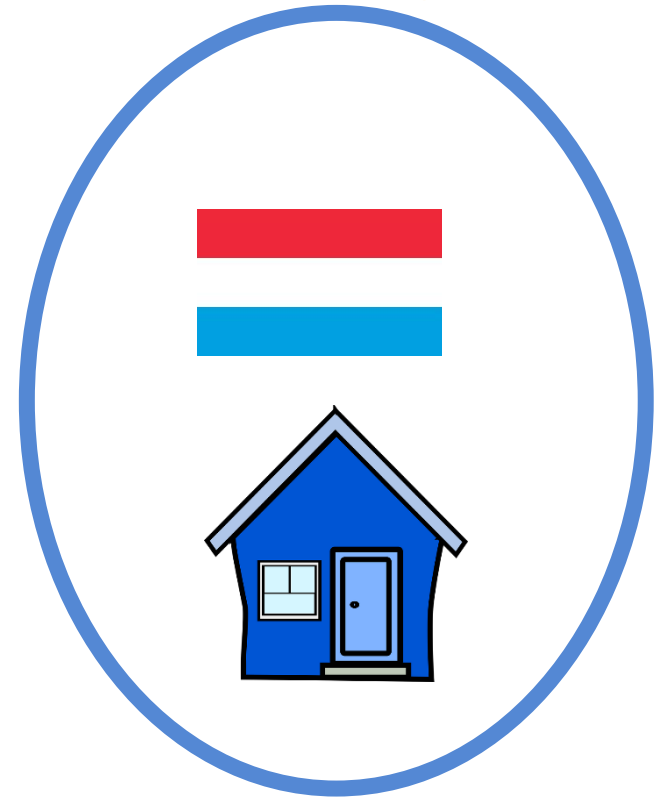
Exemptions from independence conditions available (Art. 52 (4) Audit Law)

Monitoring

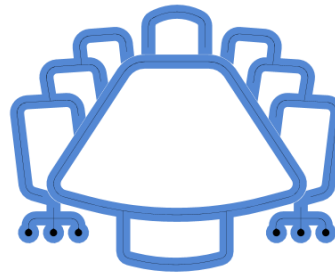
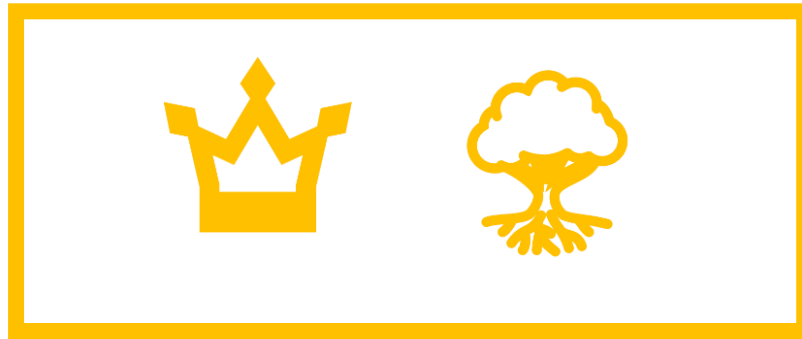
- CSSF assessment of the performance of audit committees (i.a. right to request information and right to carry out vérifications, incl. by external experts)
- Review of qualification requirements of audit committee by external auditor

III. Governance aspects of intra-group relationships: the dos and don'ts

III. Governance aspects of intra-group relationships: the dos and don'ts (1)



III. Governance aspects of intra-group relationships: the dos and don'ts (2)



Rationalization of intra-group relationships

IMPORTANCE OF THE SUBSIDIARY

**LEVEL OF INVESTMENT IN THE
SUBSIDIARY**

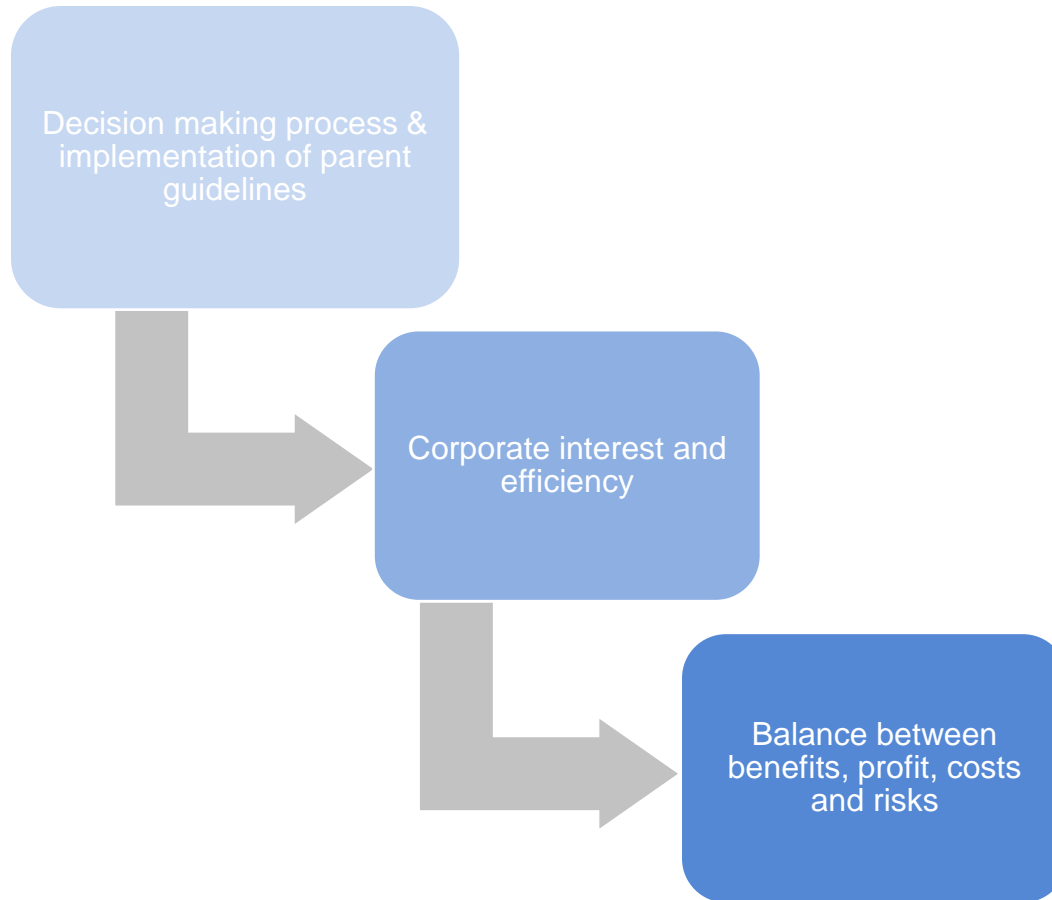
STRATEGIC VALUE

**EXISTENCE OF A RISK FOR THE
GROUP**

**EXISTENCE OF SUBSIDIARY'S
GOVERNANCE PRACTICES**

**LOCALISATION OF THE
SUBSIDIARY**

OBJECTIVE: INTRA-GROUP COHESION



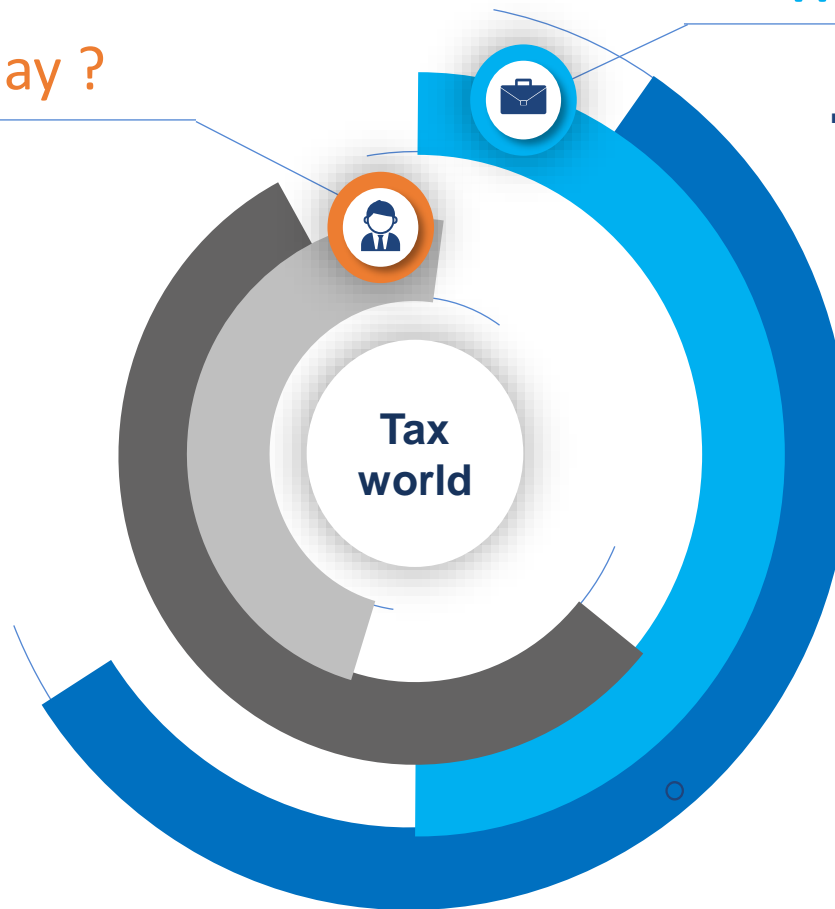
IV. Tax governance today: towards the monitoring of ever more complex rules

Overview of a fast-changing tax environment

What is coming next ...

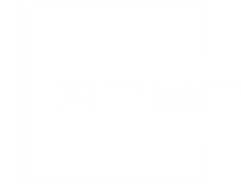
Where are we today ?

- FATCA
- DAC 1-6
- ATAD I & II
- AML directive & amendments
 - CBCR
 - Updated EU list of non-cooperative jurisdictions
- Multilateral instrument (MLI, PPT)
 - ECJ (Danish) cases & interpretations in local jurisdictions
- Transfer pricing guidance
- Case law (Luxembourg, EU)
 - ...



- DAC 7-...
- Unshell proposal (EU + non-EU)
 - Pillar I & 2 proposals
 - Public CBCR
 - Publication of ETR
 - DEBRA
 - BEFIT
 - ...

What should you do?



An icon representing a question and answer session, consisting of two overlapping speech bubbles, one white and one light blue.

Q&A

A white lightbulb icon representing an idea or key take away.

Key take away

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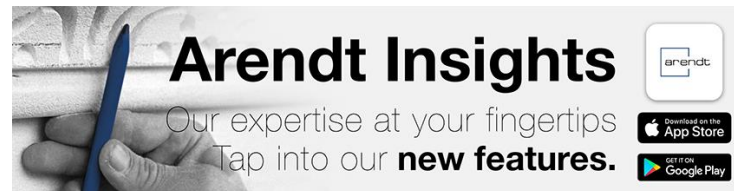
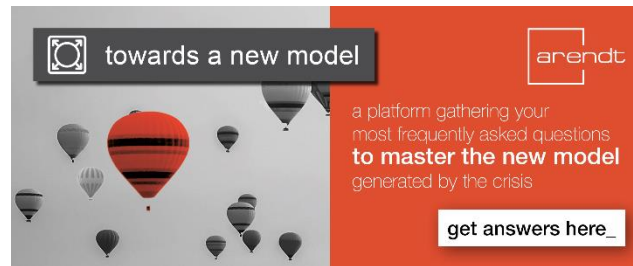
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