Association des Banques et Banquiers, Luxembourg
The Luxembourg Bankers' Association
Luxemburger Bankenvereinigung

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ABBL guidance note

on a diligent application of the standards of integrity, transparency and professionalism in the provision of financial services to clients

In order to keep up with political, economic and legal developments in the field of banking, individuals working in the financial market-place are called upon to adopt ever stricter rules with a view to avoiding situations in which their clients make improper use of the financial system. The requirements in this regard are set out, in particular, in the FATF recommendations issued in February 2012 and in the G20 declarations of April 2013.

Luxembourg is proposing, with effect from 1 January 2015, to introduce a system for the automatic exchange of information across the board, in accordance with the detailed rules laid down in Directive 2003/48/EC of 3 June 2003, known as the Savings Directive. Furthermore, the OECD has published in February 2014 an international standard for automatic exchange of information between tax authorities worldwide, to be adopted by the G20 in September 2014. In the meantime, the Law of 31 March 2010 approving tax conventions and prescribing the procedure applicable thereto with regard to the exchange of information on request lays down the detailed arrangements for international cooperation aimed at combating tax evasion and fiscal fraud[1].

In that context, the ABBL is taking this opportunity to reiterate, and to clarify more precisely, certain principles which are firmly enshrined in the practices followed by financial sector professionals in the Grand Duchy.

The ABBL Code of Conduct adopted in 2005 provides: *"In compliance with the provisions of laws and regulations and the rules laid down by the supervisory authority, and without prejudice to such other professional standards as may be applicable, financial sector professionals adopt rules of conduct designed in particular to safeguard the good reputation of the institutions and of the Luxembourg financial centre. With that aim in mind, they support the efforts made by the authorities to develop the centre on a foundation of reliability, strength, professionalism and proficiency."*

In October 2012 the ABBL signed up to the *ICMA Private Wealth Management Charter of Quality*, which is aimed at the private banking sector and which seeks to promote adherence to the highest standards of integrity, transparency and professionalism. Those standards include the provision by credit institutions of assistance to their clients with a view to enabling the latter properly to fulfil their legal obligations, especially the tax obligations imposed by their State of residence.

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[1] In that connection, Circular ECHA No 1 of 31 December 2013, issued by the Director of Taxation, lays down guidelines designed to clarify certain points concerning the international standard established by the Global Forum on Transparency and Exchange of Information for Tax Purposes.
http://www.impotsdirects.public.lu/archive/newsletter/2013/nl_31122013/index.html

Further to the signature of that Charter, the *Commission de Surveillance du Secteur Financier* (Commission for Supervision of the Financial Sector – CSSF), by letter dated 3 December 2012, requested all credit institutions and investment firms established in Luxembourg to let it know whether they had signed up to the Charter and had thus voluntarily submitted to the commitments described therein, and to confirm to the CSSF that those rules had been properly put in place and were being complied with or, if not, to state the reasons for not signing up to the Charter.

The CSSF recalls that, under the Charter, professionals must avoid actively, systematically or knowingly contributing to tax evasion. This means, according to the CSSF, that each institution must make it clear to its clients that it will in no circumstances make itself a party to tax evasion by assisting a client to that end. The CSSF further states that both new clients and existing clients must be made fully aware that institutions will not contravene the law on their behalf.

Although the Charter is principally designed to apply in relation to clients of private banks, all clients are entitled to expect the same quality of service and thus the application of the highest standards of service quality.

Moreover, the ABBL's *Vade mecum of the professional obligations relating to money laundering and terrorist financing* provides: *"clients must comply with the legislation, rules and regulations (especially in tax matters) to which they are subject on account of their nationality and/or place of residence or the location of their assets".*

Following this line of thought, the institutions in the Luxembourg financial center have agreed on a conscientious application of the standards of integrity, transparency and professionalism in the context of the provision of financial services to their clients:

1. Knowing the client

The identification of clients by bankers is a well-established obligation. It has been enshrined in Luxembourg law ever since the Law of 16 May 1891[2], followed by the regulations on anti-money laundering.[3]

Under the Law of 12 November 2004 on combating money laundering and terrorist financing, the obligation to know the people one deals with (clients, attorneys, legal representatives, beneficial owners, etc.) is not limited to identifying them but also entails gathering any relevant information making it possible to know and understand the types of services and transactions which the client may ask for and the aims of the business relationship.

That information must be such as to enable professionals to remain constantly vigilant, to satisfy themselves as to the consistency with the client's profile of the operations carried out, and to spot operations which are complex or which involve an unusually large amount of money. Professionals must obtain sufficient information regarding any operation for which there appears to be no economic justification or lawful purpose, in particular by verifying the origin and destination of funds, the economic grounds for and legitimacy of the operation.

[2] The Law of 16 May 1891 on the loss of bearer securities already required stockbrokers, bankers and other intermediaries in the sale of moveable assets to register "the names, places of residence and professions" of clients on whose behalf they were acting in transactions for the sale or purchase of moveable assets.

[3] IML Circular 89/57, Law of 7 July 1989 against laundering of drug trafficking proceeds, Law of 5 April 1993 on the financial sector.

Professionals are entitled to rely on the information provided by their existing or potential clients, unless they know, or should have known, that the information in question is manifestly out of date, erroneous or incomplete.

Where any doubt exists, the professional must ask the client to provide supporting evidence. A refusal by the client to provide information or documentation relating to his situation or justifying a given operation may well give rise to suspicion as to the basis in fact of any verbal information communicated by the client and as to his real motives and intentions. Similarly, any client who provides incomplete, incorrect or false information must be regarded as suspect.

When weighing up the risks to which they are exposed, professionals must take into account the international nature of the clientele of the Luxembourg financial center.

The corollary of the obligation to identify one's clients is the ban on opening anonymous accounts. The opening and maintenance of anonymous accounts or anonymous savings accounts has been prohibited in Luxembourg since the entry into force of the *Abgabenordnung*[4] (Tax Code) in 1940.

Although, as a matter of principle, any account opened in the name of a natural person must bear as its title the patronymic surname of the client, professionals may arrange in certain specific circumstances for clients' names to be kept confidential by means of numbered or pseudonymous accounts, on grounds which must be entirely legal and clearly justified in writing in accordance with grand-ducal regulation of 1 February 2010 and CSSF Regulation No 12-02.

The only purpose for which a numbered or pseudonymous account may be opened or maintained is to limit the number of bank employees able to access the client's personal details. Such an account is of interest only for those clients who attach special importance to the protection of their privacy (in particular, public figures, renowned artist or sports celebrities, etc.). Professionals are required to administer such accounts in a way which fully complies with the obligations incumbent on them under the Law of 12 November 2004. In all cases, the real identity of the account-holder must be known and must appear in the account-opening documents, containing exactly the same information as for any bank account.

Notwithstanding the existence of numbered or pseudonymous accounts, information on the payer accompanying transfers of funds should in every case be known in accordance with regulation (EC) No1781/2006.

2. Compliance with fiscal obligations

It should be noted at the outset that "tax crime" should become a predicate offence to money laundering within the scope of the 4th EU Anti-Money Laundering Directive (which is currently in the process of being adopted).

Although tax evasion is not currently one of the predicate offences to money laundering, Luxembourg law contains numerous instances of offences constituting predicate offences to money laundering, including misuse of corporate funds and assets, forgery and making use of forged documents with intent to defraud, with the latter frequently constituting underlying offences of tax evasion. Given that tax evasion is considered in certain neighbouring countries to constitute a predicate offence to money laundering, professionals must take care not to become actively or knowingly involved in acts which could be punishable by criminal sanctions in Luxembourg or

[4] § 163 of the *Abgabenordnung*.

abroad. They must refrain from accepting assets the existence of which they know to have been concealed from the tax authorities.

2.1 Compliance by the client with his or her tax obligations

For a long time now, professionals have been required to exercise vigilance in relation to their clients, in particular by obtaining information about the origin of funds "and any adequate information allowing the determination of the purpose of the business relationship"[5].

Each institution is required to adopt a policy, both for its existing clients and for new ones, designed to enable it to obtain a reasonable assurance that the client respects the fiscal obligations applicable to him or her. Such assurance may take the form, in particular, of an undertaking on the part of the client and may appear, at the option of the bank, in the account-opening form, or in the general terms and conditions, or in a specific document.

In line with the arrangements decided upon by each institution, the client must also be informed that the professional concerned will refrain from carrying out operations for the client's account or offering any services aimed at enabling the client to circumvent or evade his or her tax obligations.

In any event, professionals must take care to avoid any situation in which they could be used for unlawful ends relating to liability to tax.

2.2 Provision of information and assistance to the client

Professionals make available to their clients all information enabling the latter to justify the content of their accounts and to fulfil their tax obligations, in particular by providing them with statements of account and portfolio valuations which will enable them to declare the investment income made (capital gains, interest income, dividends, etc.). Professionals must make sure that all documents that they issue to their clients give a true and faithful picture of the client's financial situation as shown in their books.

Providing assistance to clients, where necessary with a view to sorting out irregularities, forms part of the quality of service to be offered by professionals under the ICMA Charter.

Lastly, it should be borne in mind, as regards savings income in the form of interest payments, that clients resident in the European Union can choose between various options[6]: either the withholding of tax at source at the rate of 35%, or the signature of an express mandate authorising the bank to communicate to the Luxembourg Ministry of Finance, periodically and automatically (for onward transmission to the tax authority of State where the client resides), information relating to his identity and the accounts held by him into which interest or similar income is paid, or the handing over by the client to his bank of an exemption certificate issued by the tax authority of the country in which he resides. In order to make it easier for clients of Luxembourg banks to obtain an exemption certificate from their country of residence, the ABBL has requested all the Member States to provide it with all the certificates and forms that are available in the matter[7].

[5] Article 24 of CSSF Circular No 12-02 and point (d) of Article 3(2) of the Law of 12 November 2004.
[6] http://www.abbl.lu/dossiers/taxation-savings
[7] http://www.abbl.lu/dossiers/legal-tax/european-withholding-tax-certificate

3. Risks attaching to certain operations

Each professional is under a duty, when entering into business relations with the client and thereafter as that relationship progresses, to assess the origin of the funds and the lawfulness of the client's operations, in particular regarding the deposit or withdrawal of funds.

Unless otherwise agreed, the handing-over of sums in cash constitutes in law one of the means by which assets and/or property deposited with the bank by the client can be restored to him[8]. However, for reasons of fact or law, restrictions may be applied.

For any withdrawal in cash of a value of EUR 10 000 or more (including bearer negotiable instruments), the bank must inform the client that a declaration is required to be lodged with the *Administration des douanes et accises* [Luxembourg customs and excise authorities] where the sums in question are destined to leave the European Union, in accordance with Regulation (EC) No 1889/2005 of 26 October 2005 on controls of cash entering or leaving the Community. Where those sums are destined to leave the Grand-Duchy of Luxembourg, the declaration shall be made upon request by the agents of the *Administration des douanes et accises*, in accordance with the Law of 27 October 2010 on the organisation of controls on the physical transportation of liquid cash entering, transiting or leaving the Grand Duchy of Luxembourg

For security reasons, credit institutions must put their clients on their guard against physical attacks, theft or fraudulent abuse of weakness of which they might be the victims. On that account, it is recommended that the size of cash withdrawals be limited in the clients' interest.

Clients must be clearly informed in advance of the conditions attaching to drawings in cash, the costs of which charged to the client must remain proportionate to the expenses to which the service in question actually gives rise.

In view of the risks for banks, including those of a penal nature, professionals refuse to execute transactions consisting in simultaneously withdrawing and placing funds with the sole aim of concealing the flows of funds and making it more difficult to trace such flows[9].

Where a professional does not have a reasonable assurance that his client is complying with the fiscal rules, he may restrict the services that he provides to clients. Depending on the circumstances, the professional may reserve the right to refuse to carry out certain operations relating to withdrawals of substantial sums in cash unless good reasons are given for the withdrawal in question. A substantial outflow of funds may be regarded, where there are other indications for a suspicion, as an unusual operation prompting – if need be, and depending on the professional's assessment of the individual case in hand – a declaration to the *Cellule de renseignements financiers* [Financial Intelligence Unit].

When the institution reserves the right to refuse any withdrawal of a substantial amount in cash, the institution may propose the issue of a bank draft or the remittance of the sum or sums in question by bank transfer.

[8] Article 1932 of the Civil Code.
[9] See the judgment of the *Cour d'appel (correctionnel)* [Court of Appeal (Criminal Division)] of 2 June 2010 in *Pasicrisie*, No 4/2012, Vol. 35, p. 829. Such operations have been characterised as forgery by the court.

Where the client refuses to comply with his legal obligations, in such a way that the professional is no longer prepared to keep an account open in the client's name, the professional may always give the client notice of termination of the business relationship.

Professionals are reminded that any institution may unilaterally close the account of a client and hand over the assets contained therein to the *Caisse de consignation* [Deposit and Consignment Office] in accordance with the Law of 29 April 1999 on the consignment of funds with the State, in particular where it is unable safely to divest itself of all liability for reasons relating to the creditor.

4. Professional intermediaries operating in Luxembourg

In the context of the relationship which a credit institution maintains with a client, other professional interveners may become involved, particularly pursuant to a delegation. Credit institutions must ensure that they make such intermediaries fully aware of the principles and rules set out in the ICMA Charter and in these guidelines; in particular, they are obliged to:

- put in place, apply and follow procedures, and carry out regular, comprehensive checks, relating to knowing one's client and combating money laundering and terrorist financing at all levels, including with regard to the beneficial owner;
- put in place, apply and follow procedures, and carry out regular, comprehensive checks, as regards monitoring and understanding unusual activities and transactions on the part of the client;
- regularly make available to clients all information and correspondence intended for them;
- continuously monitor their client base.

Lastly, intermediaries are bound to inform the credit institution of any change that may come to their knowledge which may affect the application of the desired quality standards, such as any change of registered office or any change of directors.

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