



Lending Activities : Luxembourg regulator (CSSF) clarifies conditions for AIFs

On 9 June 2016, the CSSF has updated its AIFM Law FAQ by inserting guidance in respect of Luxembourg-based authorised AIFMs managing AIFs which are active in loan origination, loan participation and loan acquisition activities in or from Luxembourg.

TO WHOM DOES THIS APPLY?

The scope of application is not perfectly clear and could give rise to certain discussions in certain cases.

These new rules should in our view be relevant in the following cases:

- A Luxembourg based AIFM managing a Luxembourg or foreign AIF
- Foreign authorised or registered AIFMs managing a regulated Luxembourg AIF
- Registered Luxembourg AIFMs managing a regulated Luxembourg AIF

In these cases, the CSSF is the competent authority in respect of the 1) approval of the AIFM or the AIF or 2) ongoing supervisory duties.

These new rules should **in principle not apply to**:

- Luxembourg securitisation vehicles or other Luxembourg vehicles that do not qualify as AIFs or for which the AIFMD or the Luxembourg law on AIFMs provide exemptions from application.
- Luxembourg unregulated AIFs managed by foreign authorised or registered AIFMs
- Luxembourg unregulated AIFs managed by registered Luxembourg AIFMs

In these cases, the CSSF should in our view not be the competent authority to authorise or monitor the lending activity.

LENDING ACTIVITY POSSIBLE AS A MATTER OF PRINCIPLE

The Luxembourg regulator confirms that primary and secondary lending activities by AIFs are possible as a matter of principle, which is a welcomed confirmation, not only for regulated Luxembourg AIFs.

REQUIREMENTS FOR CARRYING OUT LENDING ACTIVITIES

The CSSF has clarified its position relating to certain requirements applicable to AIFMs and, where applicable, AIFs engaging in loan origination, participation and/or acquisition:

- a) The AIFM (or, where applicable, the AIF) should ensure that all aspects and risks of the loan origination/participation/acquisition activity are addressed.
- b) The AIFM (or, where applicable, the AIF) should ensure the proper organisation and governance (processes and procedures) of its structures.
- c) The AIFM (or, where applicable, the AIF) should ensure necessary expertise/experience in origination activity combined with appropriate technical and human resources, with a focus on credit and liquidity risk management (within an overall adequate risk management process), concentration and risk limitation, clear policies regarding assets and investors (e.g. loan and investor categories, avoidance of conflicts of interest), proper disclosure and transparency, amongst other.

RESPONSIBLE ENTITIES, MONITORING BY THE CSSF

The CSSF indicates in this respect that it is the responsibility of the AIFM or, where applicable, of the AIF itself, to ensure the implementation of a robust and appropriate approach for the lending activity.

The CSSF will evaluate in the context of its approval and on-going supervisory process, if applicable, on a case-by-case basis the approaches implemented by the AIFMs or, where applicable, by the AIFs.

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