

# Impact of COVID-19 on Luxembourg investment funds: regulatory measures

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## Executive Summary

On 21 March 2020, the Luxembourg Government declared a state of emergency (*état de crise*) for a period of up to three months based on article 32 (4) of the Luxembourg Constitution, enabling it and the CSSF to enact some temporary measures to facilitate the continuance of business of Luxembourg investment funds, management companies and alternative investment fund managers.

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### I. Regulatory reporting

On 25 March 2020 the CSSF published a [press release](#) pursuant to which the CSSF informs that, where necessary, the long form report required pursuant to the CSSF Circular 02/81 may exceptionally be submitted up to four months after the annual general meeting of the audited entity, but excluding any delay for such annual general meetings granted by the government through exceptional measures. Both delays cannot be cumulated.

Pursuant to a [press release of the CSSF published on 23 March 2020](#), supervised entities should perform their regulatory reporting when it is due. However, if for operational reasons the supervised entity faces difficulties to prepare or validate its regulatory reporting, the CSSF should be informed as soon as possible and ahead of any reporting deadline.

### II. Immediate review of current organizational setups

The CSSF published a [press release on 22 March 2020](#) pursuant to which it urges all supervised entities to immediately review their current setup in order to ensure that (i) as few as possible of its staff needs to physically

come to work and (ii) where staff is not equipped with laptops or other mobile devices, the entities implement as soon as possible virtual desktops and other remote access solutions, cloud based or not.

Contrary to the usually applicable substance requirements, the staff members being in the office should be limited to vital functions which are essential to maintain the mission of supervised entities and to remain operational.

### III. Swing pricing mechanism

The CSSF updated its [FAQ on swing pricing mechanism](#) on 20 March 2020 in order to provide Luxembourg regulated investment funds (i.e. UCITS, part II funds and SIFs) on an exceptional and temporary basis with swing pricing/dilution levy factors to be applied beyond the maximum level, even if the fund documentation does not offer such possibility.

The board of directors/managers of the investment fund or, if applicable, the management company can decide to increase the swing factor in accordance with the fund documentation. The decision must be duly justified and take into account the best interest of the investors. This decision must be communicated to the investors through the usual communication channels.

No authorization or notification of the CSSF is required. The CSSF will need to be provided with detailed notification of the resolution (including a specific explanation on the reasons of such resolution). However, in case the fund documentation does not provide for the possibility to exceed the maximum level, the fund documents have to be updated at the earliest convenience in order to formally provide for the possibility to go beyond the maximum level under certain predefined conditions.



#### IV. Meetings of shareholders and management bodies

Notwithstanding any contrary provisions in the articles of incorporation of the concerned entity, the [Grand Ducal Regulation of 20 March 2020](#) introduced measures allowing all Luxembourg companies (including investment funds, management company and alternative investment fund managers) to

- hold meetings of shareholders, partners and management bodies remotely;
- convene annual general meetings until 30 June 2020; and
- opt into the newly introduced methods to meetings that have already been convened.

For more details, please refer to our [website](#).

#### V. Extended deadline for the submission of the survey related to the fight against money laundering and terrorist financing

Derogating from its Circular Letter of 31 January 2020, the CSSF granted an extension of four additional weeks for the submission of the survey related to the fight against money laundering and terrorist financing. The new deadline for the submission will be close of business on 10 April 2020.

More details can be found in the [Circular Letter](#) by the CSSF dated 17 March 2020.

#### VI. Minimum IT security conditions

The CSSF has published a series of [FAQ](#) on its website with the last update being made on 23 March 2020 providing for clarifications on the minimum IT security conditions that are recommended for remote access.

Each supervised entity has the responsibility to define conditions under which remote access is authorized in proportion to risks to which it is exposed. The FAQ summarizes a number of recommendations on the identification of high privileged access.

Supervised entities can opt for cloud-based tools and solutions. In order to facilitate a quick implementation of these solutions, no authorization or prior notification to the CSSF is required. Information by e-mail to the contact person of the CSSF in charge of the supervised entity is considered to be sufficient.

The above is without prejudice to the obligation of the entity to carry out appropriate due diligence and risk assessment of the respective cloud provider.

Entities falling within the scope of CSSF Circular 19/714 are need to register these cloud solutions in the cloud register.

#### VII. European Securities and Markets Authority (ESMA) requires net short position holders to report position of 0.1% and above

Pursuant to a [press release of the CSSF published on 16 March 2020](#), ESMA has issued a decision temporarily requiring the holders of net short positions in shares traded on a regulated market within the European Union to notify the relevant national competent authority if the respective position reaches or exceeds 0.1% of the issued share capital after the entry into force of the decision.

The ESMA decision which entered into force immediately is available on this [link](#).

#### VIII. Operational aspects of the CSSF

The CSSF remains operational, but the offices are closed to external visitors. All communication should be done by way of eDesk or by e-mail instead of or in addition to regular mail. Outgoing communication of the CSSF will be done by e-mail. The CSSF remains available for meetings by telephone or videoconference.



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