

# ATOZ ALERT

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## New measures in the context of COVID-19 Accounting obligations and reports: Regulatory and corporate aspects

31 March 2020

### Regulatory aspects

On 26 March 2020, a draft law n°7540 was submitted to the *Chambre des Députés of Luxembourg* (**Draft Law n°7540**)<sup>1</sup>, which relates to the extension of certain deadlines relating to accounting obligations of entities of the financial sector, including *inter alia* the SICARs<sup>2</sup>, SIFs<sup>3</sup>, UCIs Part II<sup>4</sup> and RAIFs<sup>5</sup>, in order to take into account the exceptional circumstances caused by COVID-19.

Within this scope, the Draft Law n°7540 intends to extend the following:

- SICARs – The deadline so as to make the **annual reports together with the report of the *réviseur d'entreprises* (statutory auditor)** available to the investors<sup>6</sup> is extended from 6 months to **9 months**, as from the end of the period to which these reports relate;
- SIFs – The deadline so as to make the **annual report** available to investors<sup>7</sup> is extended from 6 months to **9 months**, as from the end of the period to which the report relates;

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<sup>1</sup> Available on the following website (French version only):

<https://chd.lu/wps/portal/public/Accueil/TravailALaChambre/Recherche/RoleDesAffaires?action=doDocpaDetails&id=7540>

<sup>2</sup> Article 4 of the Draft Law n°7540

<sup>3</sup> Article 6 of the Draft Law n°7540

<sup>4</sup> Article 7 of the Draft Law n°7540

<sup>5</sup> Article 8 of the Draft Law n°7540

<sup>6</sup> Cf. article 23(2) of the law of 15 June 2004 relating to the Investment company in risk capital, as amended

<sup>7</sup> Cf. article 52(2) of the law of 13 February 2007 relating to specialised investment funds, as amended

- UCIs Part II – The deadlines so as to publish<sup>8</sup> (i) the **annual report** is extended from 6 months to **9 months**, as from the end of the period to which it relates; and (ii) the **half-yearly report** is extended from 3 months to **6 months**, as from the end of the period to which the report relates; and
- RAIFs – The deadline so as to make the **annual report** available to investors<sup>9</sup> is extended from 6 months to **9 months**, as from the end of the period to which the report relates.

However, such extensions are only applicable to reports whose deadlines have not been reached as at 18 March 2020 and which relate to a period ended as at the date of end of the state of crisis declared on 18 March 2020. Such measures introduced by the Draft Law n°7540 are also applicable to the deadlines falling between 18 March 2020 and the entry into force of the Draft Law<sup>10</sup>.

Furthermore, the CSSF may, during the state of crisis, extend the deadlines applicable in respect of the establishment and publication of periodical reports that are not set out in the Draft Law, and that are set out in the laws that the CSSF ensures the enforcement<sup>11</sup> up to 3 months.

In this context, on 26 March 2020, the CSSF amended its FAQ relating to COVID-19<sup>12</sup>, in order to precise that deadlines for, inter alia, the following documents relating to SICARs, SIFs, UCI Part II and AIFM, may be extended provided that the CSSF is informed thereof:

- the **annual reporting 0 4.1./ 0.4.2** (UCI) on the basis of Circular IML 97/136 to be submitted to the CSSF within 6 months (for non-UCITS) as from the reference date – this deadline may be extended until **30 June 2020**;
- the **monthly reporting 0 1.2.** (UCIs with formal guarantee) to be submitted to the CSSF within 10 days following the end of the month – this deadline may be extended until **30 June 2020**;
- the **quarterly reporting G.2.1.** (SIAG/FIAAG) on the basis of Circular CSSF 18/698 to be submitted to the CSSF within 20 calendar days following the end of the preceding month – this deadline may be extended until **31 August 2020**;
- the **quarterly reporting G.2.1.** (AIFMs) on the basis of Circular CSSF 15/633 to be submitted to the CSSF within 20 calendar days following the end of the preceding month – this deadline may be **extended to 40 calendar days following the end of the preceding month**;
- the **management letter on the basis of Circular CSSF 02/81** to be submitted to the CSSF within 6 months (for non-UCITS) as from the reference date – an **additional period of 3 months** may be granted;
- the **semi-annual reporting K3.1** (SICAR) on the basis of Circular CSSF 08/376 to be submitted within 45 calendar days following the reference date – this reporting may be **suspended until further notice**;

<sup>8</sup> Cf. article 150(2), paragraph 2, of the law of 17 December 2010 relating to undertakings for collective investment, as amended

<sup>9</sup> Cf. article 38(2) of the law of 23 July 2016 on reserved alternative investment funds, as amended

<sup>10</sup> Article 9 of the Draft Law n°7540

<sup>11</sup> Article 10 of the Draft Law n°7540

<sup>12</sup> [https://www.cssf.lu/fileadmin/files/FAQ/FAQ\\_Covid\\_19\\_260320\\_eng.pdf](https://www.cssf.lu/fileadmin/files/FAQ/FAQ_Covid_19_260320_eng.pdf)

- the **closing documents to be provided annually by AIFM pursuant to sub-points (3) to (15) of point (3) of Annex 2 to Circular CSSF 18/698** to be submitted within 5 months following the closing date of the AIFM's financial year – for the AIFMs which closed their financial year on 31 December 2019, this deadline may be extended until **31 August 2020**; for the AIFMs whose financial year closed after 31 December 2019, this deadline may also be **extended by 3 months**;
- the **management letter to be submitted by AIFMs** within the month following the ordinary general meeting that approved the annual accounts and at the latest seven months after the closing date of the AIFM's financial year – an **additional period of 1 month** may be granted;
- the **quarterly reporting of authorised AIFMs** with the list of managed AIFs – this deadline is extended until **30 June 2020**;

## Corporate aspects

On 27 March 2020, a draft law n°7541 has been submitted to the *Chambre des Députés of Luxembourg* (**Draft Law n°7541**)<sup>13</sup>, which relates to the extension of the deadlines relating to the filling and publication of annual accounts, consolidated accounts and related reports during the state of crisis.

Within this scope, the Draft Law n°7541 intends to:

- **extend** the following deadlines<sup>14</sup> as set out in the Luxembourg law of 19 December 2002 relating to the trade and companies register ("**RCS**") as well as the accounting and the annual accounts of enterprises, as amended ("**2002 Law**"), for a period of **3 months**:
  - the deadline for the filling with the RCS of the annual accounts and the balance of accounts referred to in the Luxembourg standardised chart of accounts<sup>15</sup>;
  - the deadline for the publication with the *Recueil électronique des sociétés et associations* of the annual accounts as well as the related reports<sup>16</sup>;
  - the deadline for the publication of the non-financial statement in the form of a separate report, or so as to make such statement publicly available on the enterprise's website<sup>17</sup>;
  - the deadline for the publication of the statement relating to the corporate governance in the form of a separate report, or so as to make such statement publicly available on the enterprise's website<sup>18</sup>;

<sup>13</sup> Available on the following website (French version only):

[https://www.chd.lu/wps/portal/public/Accueil/TravailALaChambre/Recherche/RoleDesAffaires?action=doDocpaDetails&id=7541&backto=p0/I27\\_28HHANET20F2A0A91N6LOMOCE3=CZ6\\_D2DVRI420G7Q402JEJ7USN3851=M/#Z7\\_28HHANET20F2A0A91N6LOMOCE3/%3E](https://www.chd.lu/wps/portal/public/Accueil/TravailALaChambre/Recherche/RoleDesAffaires?action=doDocpaDetails&id=7541&backto=p0/I27_28HHANET20F2A0A91N6LOMOCE3=CZ6_D2DVRI420G7Q402JEJ7USN3851=M/#Z7_28HHANET20F2A0A91N6LOMOCE3/%3E)

<sup>14</sup> Article 1 of the Draft Law N°7541

<sup>15</sup> Cf. article 75, paragraph 1, of the 2002 Law

<sup>16</sup> Cf. article 79, paragraph 1, of the 2002 Law

<sup>17</sup> Cf. article 68 bis, paragraph 5, of the 2002 Law

<sup>18</sup> Cf. article 68 ter, paragraph 2, of the 2002 Law

- the deadline for the publication with the *Recueil électronique des sociétés et associations* of the report relating to payments made to the benefit of governments<sup>19</sup>;
- **extend** the following deadlines<sup>20</sup> as set out in the Luxembourg law of 10 August 1915 on commercial companies, as amended (“**1915 Law**”), for a period of **3 months**:
  - the deadline for the publication of the consolidated accounts and the related reports<sup>21</sup>;
  - the deadline for the publication of the consolidated non-financial statement in the form of a separate report, or so as to make such statement publicly available on the parent enterprise’s website<sup>22</sup>;
  - the deadline for the publication with the *Recueil électronique des sociétés et associations* of the report relating to payments made to the benefit of governments<sup>23</sup>;
- **suspend**, for a period of **3 months**, the deadlines<sup>24</sup> relating to the failure by the managers and directors so as to (i) submit to the general meeting within 6 months after the end of the financial year, the annual accounts, the consolidated accounts, the management report, the certificate of the person entrusted with the audit and (ii) publish such documents in violation of the requirements of articles 461-8, 710-23, 813-4 and 1770-1 of the 1915 Law and article 79 of the 2002 Law.

As a result, any business having its financial exercise closing as at 31 December 2019 and that shall in principle file its annual accounts with the RCS at the latest on 31 July 2020 will be granted an additional period of 3 months. Therefore, such company will benefit from an extended deadline until 31 October 2020.

However, the Draft Law n°7541 only applies to annual accounts, consolidated accounts as well as related reports which relate to a period ended as at the date of end of the state of crisis declared on 18 March 2020 and whose deadlines for the filling and publication have not been reached as at 18 March 2020<sup>25</sup>.

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<sup>19</sup> Cf. article 72 septies of the 2002 Law

<sup>20</sup> Article 2 of the Draft Law N°7541

<sup>21</sup> Cf. article 1770-1, paragraph 1, of the 1915 Law

<sup>22</sup> Cf. article 1730-1, paragraph 5, of the 1915 Law

<sup>23</sup> Cf. article 1760-4 of the 1915 Law

<sup>24</sup> Article 3 of the Draft Law n°7541

<sup>25</sup> Article 4 of the Draft Law n°7541

## Do you have further questions?



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