



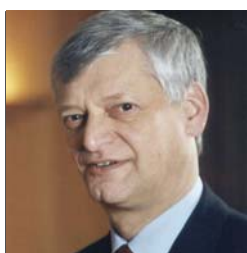
Association Luxembourgeoise
des Compliance Officers
du Secteur Financier

News Bulletin

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Editorial



Dear ALCO members and other readers,

Having interviewed representatives of our supervisory authorities, the *Commission de Surveillance du Secteur Financier* and the *Commissariat aux Assurances*, we now continue the process with Jean-Jacques Rommes, General Manager of the ABBL, an association with which ALCO is in almost constant contact. It is interesting to read what the representative of the credit institutions and other professionals of the financial sector think of the crisis and the role of the Compliance function. While on the one hand, our interviewee thinks that “the perfect company doesn’t need Compliance!” he admits on the other hand that “the role of Compliance must inevitably be extended”. JJ Rommes also highlights the false accusations waged at the Luxembourg market using the financial crisis as a pretext.

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In the second article of the Bulletin, Julie Becker discusses the role of Compliance in the outsourcing of essential activities. Beyond the undeniable instructive nature of our colleague's article, we also note the role of interpreter and supporter in the understanding of regulatory standards assigned to the Compliance function. The author calls on the Luxembourg regulator to extend the supervision of outsourcing beyond the sole scope of IT subcontracting.

In my opinion, this 18th Bulletin is an opportunity to introduce the new team making up the considerably overhauled Board of Directors. I am delighted to set out for you in a brief article the main missions that the Board has set itself – both traditional and new – as well as the division of responsibilities between the directors. The ALCO Bulletin continues to play a vital role as a forum for discussion between its members.

May I wish you all an excellent summer holiday.

With warm regards,

Jean Noël Lequeue
President

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Board of Directors: the new team

ALCO's General Meeting, held on 10 March 2009, and elected directors with a two-year mandate. Of the 12 members now composing the Board, only 6 of them were members of the previous Board. It is extremely encouraging to see that there are still many young candidates willing to work for the Association.

The new team at the helm of ALCO is well balanced – half old and half new – and this balance is echoed in the missions set by the directors and advisors.

The object of the association is to provide a forum for Compliance Officers and to promote communication and discussion between them. It therefore makes sense that ALCO's key traditional missions have been confirmed:

- The organisation of working groups (WG) for in-depth discussions on key regulatory subjects (recent examples being MIFID controls, investment restriction rules for UCIs, the professional obligations of paying agents);
- ALCO's quarterly bulletin, containing feature articles, interviews and other points for official publication;
- Professional training and certification for Compliance Officers in the Luxembourg financial market as well as the validation of more general programmes addressing other professions in the market and even colleagues in other countries.

However, the Board also wanted to deal more closely with the concerns of members by providing more frequent and ample responses to their questions and suggestions. A number of approaches have therefore been initiated or revamped:

- More interactive use of the recently overhauled website to provide information to members, and for events, registrations, discussions within the WG, etc.
- A more professional structure for handling questions posed by members, by setting up a dedicated WG for this purpose,
- Holding round table discussions in which fifteen or so members can meet to share their experience and understanding of common interest issues,
- Setting up of a WG devoted to doctrine and business ethics when the Board requires clarification of a legal, regulatory and pragmatic nature on a particular subject.

The Board of Directors devoted a large part of its meeting on 5 May to translating these major themes into concrete actions and dividing them between its members.

First of all, the Board wanted to pay tribute to its former President, and through him to all those who have devoted their time and energy over the last eight years, by awarding the title of Honorary President to Jean-Marie Legendre.

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It then made the following statutory appointments:

- Patrick Watelet as Vice-President and Secretary,
- Claudine Frutsaert as Vice-President,
- Vincent Salzinger as Vice-President,
- Valérie Alezine as Treasurer.

Lastly, it spread its responsibilities and workload by allocating the following functions among its members:

- Jean Noël Lequeue: general supervision, coordination of the working groups, external relations
- Vincent Salzinger: banks supervision
- Claudine Frutsaert: insurance supervision, quarterly bulletin
- Patrick Watelet: general secretary, investment funds supervision
- Valérie Alezine: treasurer
- Jean-Marie Legendre: presidency missions
- Guillaume Bègue: doctrine, business ethics
- Sundhevy Giot: communications, events, new members
- Custodio Portasio: training assistant, relations with IFBL
- Rob Sonnenschein: training, relations with IFBL
- Vincent Willem: member questions
- Patrick Chillet: advisor
- Karine Vilret-Huot: advisor (legal status of the ASBL)
- Tim Winfield: advisor
- Olivier Gilson: advisor (website)

ALCO is keener than ever to ensure that it is not operating in a void. The President has therefore embarked on a mission to meet the authorities who supervise and regulate us as well as our sister and cousin associations who are also ultimately concerned by the Compliance field (this will be developed in a future communication).

Jean Noël Lequeue
President

Interview

Interview with Mr Jean-Jacques Rommes General Manager of the ABBL

THE FINANCIAL CRISIS AND COMPLIANCE

Below is an interview with Jean-Jacques Rommes, General Manager of the ABBL, who agreed to talk to ALCO representatives on the subject of “The Financial Crisis and Compliance”.

- 1. We have just been through a very serious global financial crisis. What is your analysis of the factors triggering the crisis? Should the financial sector take full responsibility for it?*

Obviously this crisis was triggered by a combination of complex factors and in order to try and explain its genesis, we need to place it within a broader macroeconomic context, characterised principally by serious imbalances, particularly between the policies followed by the world’s major powers. For example, the United States pursued an extremely relaxed and high-spending monetary and economic policy, with consumption substantially exceeding production, whereas the opposite was true of China which produced much more than it consumed. This resulted in a huge global imbalance from which certain parties, particularly the US financial sector, tried to take advantage of.

The US investment banks – a kind of “tyrannosaurus rex” and now, post-crisis, heading for extinction – tried to find some escape routes to deal with the credit

situation. They used hedge funds and other mechanisms to finance companies, exploiting differences between countries, products and regulations.

In these circumstances, to say that the “bankers had to be totally blamed” would seem unrealistic. While mistakes were certainly made and excesses should be corrected, the current crisis is better explained by imbalances on a global scale and a multitude of other reasons to which the United States are no strangers.

- 2. Could the deterioration in the behaviour of the financial players have been curbed by the various control functions, particularly Compliance?*

Doubling the numbers of staff in Compliance is not a cure-all and would certainly not have been able to prevent the current crisis. To answer this question, you also have to refer to the actual definition of the Compliance function, which essentially consists in verifying whether, the reality observed in relation to a given issue complies with the requirements of the regulatory or legal text governing it. Although obviously, Compliance Officers benefit from having a good understanding of “financial products”, they should not necessarily be an integral part of the production process. On the other hand, one thing is certain like rules such as those relating to MIFID will be considerably strengthened in the international context – both the ABBL and the European Banking Federation have called for a firm framework and at this level, the intervention role for Compliance is bound to be extended.

3. Some people have claimed that Compliance Officers failed in their duty in the Madoff case: what do you think and what advice would you give to Compliance Officers in this context?

Frankly, this other indirect consequence of the crisis cannot be blamed on Compliance Officers, banks or other agents – how could they have found out what was going on when the SEC, despite warnings received, found nothing out of place? More interesting than the scandal itself are the discussions which the “case” continues to give rise to, especially regarding the precise obligations of the custodian bank. Albeit simple in theory, the system becomes highly complex when you examine detailed aspects such as the establishment of sub-custodians, broker-dealers, etc.

In the discussions surrounding the establishment of the UCITS directives, many forces pushed for a differentiation between the jurisdiction of the fund and the custodian bank. We must however recognise that, in order to be able to accept differentiation between the applicable jurisdictions, a “worldwide consensus” is needed on the role and obligations of the custodian bank – whether or not this is to the liking of our French friends, who are rather playing the role of a “pyromaniac firefighter” in this context. The “custodian bank” issue exists in France too and goes beyond the French and even the European framework.

4. Can we expect the Compliance function to be strengthened? In particular, can we expect its sphere of activity to be extended?

Quantitatively speaking, yes, we should expect that Compliance will have more “on its plate” because the first consequence to be expected from the crisis is bound to be a strengthening of regulations. There will be more rules, which means more work for those responsible for ensuring compliance with the rules. This is all the more necessary because, more than ever, we need a secure framework for investors.

This development is highly likely.

On the other hand, can we anticipate changes in the very nature of the role of Compliance? It is undoubtedly too soon to say. I would not totally exclude such a development, but I do not foresee it, and perhaps I do not even desire it. The fact is that Compliance needs to retain its independence and to do so a certain distance is required. It must not “meddle” too much in the operational side.

Moreover, it is desirable to avoid a situation where the system can no longer function without the intervention of Compliance. Let’s not involve it excessively. After all, in theory, the perfect company doesn’t need Compliance!

5. Regarding Luxembourg, do you see a change in the role of the ABBL? Should its power to make

recommendations be supplemented by a power to impose sanctions?

On this point, I would first like to counter the simplistic view that says there can be no rule without a sanction! I do not share this opinion. Although the reverse is true – that is, there can be no sanction without a rule – it is perfectly normal for certain rules to exist without necessarily being accompanied by the corresponding sanctions.

In particular, for a given professional sector, the business ethical rules must be based on its role in society and the economy. This notion of duty does not necessarily have to be backed by a mechanism of sanctions.

Nevertheless, in its code of business rules, the ABBL foresees the possibility of excluding a member whose conduct is not ethically satisfactory. However, it is neither possible nor desirable for our Association to go further. It does not have the ambition of becoming a British-style self-regulated organisation.

The political world and the general public are not always conversant with the role of professional associations, which, unlike the associations of liberal professions perhaps, does not involve a leadership role in an economic sector.

The ABBL expresses itself in terms of recommendations rather than obligations (cf. its *vade-mecum* on the prevention of money-laundering, which is intended to be practical rather than producing a surfeit of constraints).

This is the role of the ABBL. I do not anticipate any changes in this role.

6. If we may talk about another aspect, could you tell us what you think about the link that has been established by the G20 between the financial crisis and bank secrecy? Could the “unscrupulousness” that countries like Switzerland and Luxembourg are often accused of have contributed to the explosion of the crisis?

There is a lot to say on this subject. I shall limit myself to the fundamentals.

The notion of bank secrecy is completely misunderstood by the general public. It is roundly confused with tax evasion! In reality, tax evasion is rare among the side-effects of bank secrecy.

Nevertheless, it is right to try and combat this form of fraud. The G20 wants to protect countries’ public finances. Naturally that is their duty. But what is completely wrong is the misguided lumping together of tax evasion and the catalyst for the crisis. That link has entirely no ground.

Admittedly, in Luxembourg, bank secrecy may have helped, to some extent, to protect tax evaders. But those days are over!

Continuing to protect privacy and property is the fundamental purpose of banking secrecy. This provision must not be used to protect tax evaders and the change underway will show it.

It is unacceptable that statements such as “Luxembourg and Switzerland are the financial world’s black holes that caused the crisis” were spread in the press of bordering countries and even in the periphery of certain official declarations.

Luxembourg is a member of the OECD, the European Union and various bodies of the IMF that are fighting money laundering. It is a cooperative country and has an extremely stringent legal and regulatory framework in the fight against money laundering and terrorist financing.

Luxembourg submits to international organisations reviews. Banking secrecy does not prevent cooperation in matters of tax fraud, and this has been the case for many years.

In fact, we are suffering from a confusion of ideas: in the past, wealthy people fled their home country following declarations or measures that frightened them. For example,

- I am thinking of the kind of statements that were prevalent when François Mitterrand was elected in France.
- I am also thinking of the rather abrupt creation of a withholding tax in Germany in 1982.

These developments were profitable to Luxembourg's financial industry without its voluntary intervention.

Admittedly, this is a very touchy issue as certain neighbouring countries imagine that hundreds of billions of euro will suddenly descend on them from the tax havens, but nothing could be as far from the reality; these hundreds of billions do not exist. Nevertheless, we can expect to be under immense pressure in the near future.

Interview with Jean-Marie Legendre and Patrick Schott on 12 June 2009.

* * *

Doctrine

The role of Compliance in the context of outsourcing an “essential” business activity by a Luxembourg financial institution

In the current economic downturn, financial institutions are increasingly outsourcing some of their activities, not only as a cost-cutting and profit-boosting measure but also to achieve strategic development objectives. In addition to customer-service activities (call centres, wealth management, etc.) and administrative functions (accounting, cheque processing in France, printing of account statements, etc.), this also includes specialized activities (IT, data management, etc.).

However, despite Luxembourg’s unique legal framework for IT sub-contracting, it must be noted that outsourcing IT services remains a managerial practice that is not widely employed in the Luxembourg banking sector. Could the reason be the non-negligible impact that outsourcing might have on the capacity of financial institutions to manage risks and monitor compliance with the applicable regulatory requirements?

Outsourcing an activity does not eliminate the need to monitor it – quite the opposite. But outsourcing must also be considered as an opportunity requiring the implementation of support and supervision mechanisms by both the Compliance function and the regulator.

1/ Sub-contracting / outsourcing: what scope of application?

a. The legal texts

The first question is to define what “outsourcing” an activity means. This is the first difficulty faced by financial institutions. In the context of the research conducted by the Henri Tudor public research centre (1) and the situation described in relation to outsourcing practices in Luxembourg, a distinction has been made between “outsourcing” (in French, *externalisation*) and “sub-contracting” (in French, *sous-traitance*), both terms are often used indiscriminately but correspond to different managerial practices though. Outsourcing is defined as an operation that consists in entrusting a third party with the management and execution of activities necessary to its functioning. Furthermore, it often involves transferring human resources and/or equipment.

However, there is no commonly-understood definition of “outsourcing”. The two CSSF circulars (2) on IT outsourcing do not provide any definition. The report on “Outsourcing in Financial Services”, the international reference on the subject produced by the Basel Committee on Banking Supervision in February 2005 (3), defines it thus: “Outsourcing can be the initial transfer of an activity (or a part of that activity) from a regulated entity to a third party or the further transfer of an activity (or a part thereof) from one third-party service provider to another, sometimes referred to as ‘subcontracting’.” (4).

The Belgian supervisory authority, the “Commission Bancaire et Financière et des Assurances” (CBFA) (6), gives a more precise definition: “outsourcing is understood as “any recourse to third parties to perform activities or processes particular to the financial institution”, specifying at the same time that compliance with the principles it has defined is required “each time that an outsourced activity could have a significant influence on its functioning”. It is therefore important to distinguish outsourcing an “ancillary” activity from outsourcing an “essential” activity – in other words, one which could have a “significant influence on the functioning of the institution concerned” and for which the regulatory principles must be complied with. By contrast, the outsourcing of an “ancillary” activity by a Belgian financial institution is not subjected to the regulatory principles defined by the CBFA. In order to evaluate whether an activity has a “significant influence” on the functioning of the institution, the Belgian regulator provides the following guidelines: “an appropriate measurement in this respect is the influence that a malfunctioning or absence of functioning of the outsourced activity could have on compliance with the conditions of authorisation to which the institution is subject, on its financial situation, on its continuity or on its reputation.”

Very recently, the Swiss financial markets regulator FINMA put forward another definition (5) of regulated outsourcing, specifying that the “essential” nature of the activity must be assessed in view of its impact on risk management (liquidity, operational, legal and reputation risks).

Faced with these various theoretical definitions, how can the financial institution that wants to outsource an activity apply them in concrete terms? What criteria should

the financial institution use to qualify the relevant activity as “essential” and subject its outsourcing to compliance with regulatory principles?

b. Their interpretation

We believe that the Compliance function is the best positioned to interpret regulatory standards and provide support for the assessment and evaluation of these elements used to measure the “essential” activity. In order to help the business functions concerned to assess whether the activity they wish to outsource should be classified as “essential” or not and, if so, subject to the applicable general principles, three evaluation criteria can be used:

1/ Strategic nature of the activity: is the activity inherent to the status of the entity concerned or related to the institution’s licence conditions?

2/ Impact on risk control: does the performance of the tasks related to the relevant activity involve significant financial, operational or other risks? Does the activity directly affect risk control?

3/ Impact of the activity on the financial results: does the performance of the tasks related to the relevant activity represent a significant cost or generate a significant financial result?

Let’s also remember that some functions may not be outsourced under any circumstances. This is notably the case for Compliance.

These three evaluation criteria are not cumulative; only one needs to be met for an activity to qualify as “essential”.

Even though they have the merit to exist, these criteria are not always sufficiently clear for the business functions that have to establish the “essential” character of the activity to be outsourced. For this reason, we believe it would be useful to create a specialised tool – such as a decision tree – that would enable an activity to be classified

as “essential” through the responses to precise, concrete questions relating to the nature of the activity concerned. The Compliance function could be involved in the creation of such a tool.

Given the definition of what constitutes an “essential” activity, it goes without saying that IT services are not the only “essential” activity that can be outsourced by Luxembourg financial institutions. However, they are the only activity whose outsourcing has been subjected to regulations, and the involvement of the regulator in the context of the outsourcing of other activities would help to strengthen the control of risks inherent in them. We should of course acknowledge that the principle of maintaining the responsibility of the outsourcing company is regularly raised by the Luxembourg regulator, not only through various circulars but also in its activity reports (2) (6b). The Luxembourg legislator has also enshrined this principle in the law of 13 July 2007 on markets in financial instruments transposing the MiFID Directive (7). Article 136 of this law indeed imposes new organisational requirements on credit institutions and investment companies, including the guarantee of continuity and regularity in the supply of their services and in carrying out their activities, in particular when they entrust third parties with the execution of “essential” or “important” operational functions (8).

In conclusion, it is therefore not only a question of implementing the tools needed to qualify an outsourcing operation but also of establishing procedures to ensure that any outsourcing initiative of any kind across the organisation is captured (from the standard provision of services contract signed with a supplier to the SLA relating to the outsourcing of an activity in its entirety) and to ensure that it is subject to appropriate supervision. While outsourcing in fact

presents numerous risks, adherence to certain principles can ensure these are under control.

2/ The management of risks linked to the outsourcing of an “essential” activity

a. Outsourcing presents numerous risks

Although outsourcing enables strategic objectives to be reached, we should not lose sight of the considerable risks inherent in these strategies.

The main risk cited by both the European (9) and Luxembourg (1) banks and even by the European supervisory authorities (9) is the risk of loss of control over the outsourced activity. This risk is traditionally associated with the aspects of price control, service quality and the disclosure of confidential information: the risk of loss of confidentiality and the increased difficulty for supervisors with regard to accessing relevant information in the course of their supervisory mission must be emphasised. The risk of loss of in-house competence and expertise must also be highlighted, notably when the outsourcing is accompanied by a transfer of human resources and/or equipment to the service provider, as this inevitably leads to a loss of competence at an individual and organisational level. The risk of excessive dependence on the service provider is also a major concern. This is particularly true when the outsourced activity is strategic as the balance of power between the entity concerned and the service provider may be altered while, over a period of time, the service provider will acquire a very good knowledge of its client’s organisation and systems. Furthermore, this dependence can be reinforced when the service provider market is highly concentrated. In addition to the risk of

excessive dependence on the service provider, the risk of irreversibility of the outsourcing process should also be noted: while the outsourcing operation can always be reversed in theory, in practice this can pose considerable problems, particularly when a sufficient level of expertise has not been retained internally.

The second major risk is the increase in the operational risk. Certainly, this risk exists even without recourse to outsourcing, but the likelihood of its occurrence is amplified when activities are transferred to third-party service providers.

Outsourcing can also have an impact on human resources and corporate culture since the company is exposed to the less visible “human” risk, in particular in cases where the external service provider is located overseas, in a country with a different culture, working methods and lifestyle. In addition, in the case of outsourcing to another country (offshore outsourcing or “offshoring”), the country risk should also be taken into account since the economic, social or political instability of the country in which the external service provider is located could indeed have a non-negligible influence on the continuity of services provided or on the financial situation of the service provider.

The majority of these risks have also been identified by the Basel Committee’s Joint Forum. In February 2005, in order to address these risks, it declared eight fundamental principles for outsourcing (3) aimed not only at financial institutions but also at their supervisory authorities.

b. The principles to be respected to ensure risk control

The Committee of European Banking Supervisors (CEBS) established the first eight principles of outsourcing in April 2004.

The CBFA in Belgium used these as a basis to develop ten principles for “sound management of outsourcing activities and operating processes” in its Circular PPB (6) 2004/5 dated 22 June 2004.

These are undoubtedly very similar to the principles developed by the Joint Forum in February 2005 (3), general principles aimed equally at the banking, insurance and financial services sectors. They are intended to provide a reference framework on the basis of which any financial institution can measure the pertinence of its approach in terms of outsourcing.

FINMA in turn enshrined them in its Circular 2008/7 (5) on “Outsourcing of business areas within the banking sector”.

Even more recently, the Technical Committee of IOSCO (International Organisation of Securities Commissions) referred to these principles in its consultation paper named “Principles on outsourcing by markets” (11).

Finally, given these principles, it is clear that prior to the outsourcing of any activity, any institution must define a policy approved by its management bodies that clearly lays down the necessary measures to support an outsourced project.

What provisions must such a policy contain in order to satisfy the general principles applicable in this respect?

- Regarding the principle of maintaining responsibility, it should be reminded that the outsourcing of an activity does not alter the responsibility of the institution’s administrative and management bodies.

This means that the management and administrative bodies will remain fully responsible for determining the policy and the control framework applicable to all outsourced activities. It could be useful to appoint a manager responsible for the outsourced activity as to ensure the proper application of the policy thus defined as well as the controls, to define what can be outsourced, the necessary in-house resources and the interfaces between the parties, and finally to perform an assessment of the outsourced function which that will be conveyed to the management bodies. The organisation in place should allow for an adequate and permanent supervision of the service provider. A reporting procedure between the institution concerned and the service provider should be established, notably specifying the service provider's obligation to disclose every operational incident and emergency and report on its financial situation.

- Regarding the decision to outsource, the policy must provide for this decision to be based on an in-depth analysis containing a description of the scope and content of the outsourcing, an assessment of the expected impact of the outsourcing, including in particular a cost-benefit analysis, and an analysis of the guarantees especially in terms of continuity, security and reversibility. An analysis of the risks linked to the proposed outsourcing project must be carried out. In this respect, Compliance will be required to express an opinion on the reputation risk, the risk of non-compliance with the regulations in force (not only in the countries in which the institution is established but also in the country of origin of the service provider) and the country risk, where applicable.
- The choice of service provider must be made according to criteria previously defined in the outsourcing policy, in particular taking account of the service provider's financial health, reputation and technical and management capacities, as well as any potential conflicts of interest and capacities relating to continuity plans. Involving Compliance in the selection of the service provider can therefore be useful for the aspects that are within its sphere of responsibility (reputation risk, country risk, conflicts of interest).
- It is also wise to avoid excessive concentration or dependence on a single service provider for a prolonged period and to reserve the possibility, if necessary, to change service provider or take back some or all of the outsourced activities into internal management. This implies that the service provider uses sufficiently well-known and standard technologies, systems and applications, that clear functional documentation is drafted and updated, that it is possible at any time to recover all proprietary data in an operable form and that sufficiently flexible adaptation and termination clauses are stipulated in the contract.
- All outsourcing must be subject to a written contract or service level agreement, notably in the case of intra-group outsourcing. Particular attention must be paid to the aspects of continuity, the revocability of the outsourcing and the access by the Audit and Compliance functions, the external auditor and the supervisory body to the outsourced activities. A clear description of the roles and responsibilities of each party involved in the outsourcing must also be defined in the contract.
- The contract must also include specific provisions defining the end of the contract and the exit of the service provider so as to be able to verify the

reality, completeness and quality of the services. A specific point should provide clarification on reversibility and knowledge transfer. Lastly, in the event that the contract is renewed, we recommend carrying out a fresh analysis of the service provider in order to guarantee the independence, competitiveness and durability of the service provider and the service.

- Regarding contractual and financial supervision, it is advisable in practice to appoint a person or committee to oversee the supervision and monitoring of the project and to be responsible for coordinating the functioning and management modalities of the outsourcing, in particular based on the risk analysis and the implementation of management and performance indicators. This person or committee would also oversee the contractual and financial monitoring of the agreement.
- Regarding data protection, it is advisable to examine to what extent the external service provider's provisions for continuity and protection are adapted to the nature and magnitude of the outsourced activities. The confidentiality and integrity of the data, particularly banking data and data concerning clients, must be guaranteed. It is also advisable to decide whether or not third parties concerned by this outsourcing, particularly clients, should be informed. We can only stress the importance of paying particular attention to data transfer in order to reduce the risk of loss or disclosure of information.
- Regarding "cascade" outsourcing, which means the service provider itself having recourse to outsourcing some or all of the outsourced activity, it is advisable to stipulate in the entity's outsourcing

policy that the institution must carry out a precise and exhaustive analysis in order to evaluate the associated impacts and risks, and to stipulate in the contract binding it to the service provider the conditions to which the latter would be possibly subject in such a situation. Particular attention should be paid to maintaining the integrity of internal and external control.

- Regarding the Internal Audit and Compliance functions, these must be comprehensively fulfilled by the outsourcing institution for each outsourced activity. As outsourcing must not violate the laws and regulations to which the institution concerned is subject, it is advisable to stipulate that compliance with these laws and regulations be subject to a preliminary review, a sufficient guarantee from the service provider and appropriate follow-up. Outsourcing must not infringe this supervision and must foresee it. The Audit and Compliance functions must be guaranteed access to the outsourced activities in the contract.
- At the same time, the external auditor and the supervisory body must also have unrestricted access at all times to information on the outsourced activities and be able to carry out their controls on them.

Lastly, we should of course remember that all outsourcing initiatives must as a minimum be notified to the institution's prudential supervisory authority. In the case of cross-border outsourcing, and particularly when the external service provider is not itself subject to any prudential supervision, the institution concerned should first inform the supervisory body and confer with it. In any case, this is what is stipulated by the CBFA for Belgian institutions.

In conclusion, while the majority of these principles are set out in the Luxembourg prudential regulations, albeit not in precise detail, we can only regret that they are limited to the specific context of IT outsourcing. Luxembourg has in fact created a unique PFS status called “*PSF connexe*” to “promote Luxembourg as a competence centre for regulated *sourcing*” (11). The legislator’s idea was to subject IT service providers to the same obligations as their banking clients in terms of prudential supervision and data protection, with the service provider specifically having to guarantee a physical and logical segregation of data originating from its financial clients. In all cases, and following the example of similar regulations already in place in some European countries, the intervention of the Luxembourg regulator in the supervision of outsourcing initiatives by Luxembourg financial institutions would strengthen the control of the risks in the financial sector in a process to which financial institutions are likely to have ever increasing recourse.

Julie Becker
Compliance Officer
Dexia SA

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- (2) CSSF circulars 05/178 and 06/240 on IT outsourcing in particular
- (3) Joint Forum: “Outsourcing in Financial Services”, Basel Committee on Banking Supervision, BIS, February 2005
- (4) “Outsourcing can be the initial transfer of an activity (or a part of that activity) from a regulated entity to a third party or the further transfer of an activity (or a part thereof) from one third-party service provider to another, sometimes referred to as subcontracting.”
- (5) Circular 2008/7 Outsourcing-Banks, “Outsourcing of business areas within the banking sector”
- (6) Circular PPB 2004/5 of 22 June 2004 on “sound management practices in outsourcing by credit institutions and investment companies” (“*saines pratiques de gestion en matière de sous-traitance par des établissements de crédit et des entreprises d’investissement*”)
- (6b) CSSF circular 08/350 on the status of PFS designated as “support PFS”; CSSF activity report 2005 chap.8, pp. 1-8; chap.4, pp. 1-8
- (7) Law of 13 July 2007 on markets in financial instruments
- (8) Article 136 of the abovementioned law of 13 July 2007
- (9) Case: “Concurrence des pays émergents, délocalisations et emploi” – “Délocalisation et externalisation dans le secteur financier” (“*Competition of emerging countries, offshoring and employment*” – “*Offshoring and outsourcing in the financial sector*”) by Georges Pujals, OFCE Review 2005-3 (No. 94)
- (10) “La crise financière, une opportunité pour les PSF de support !” (“*The financial crisis, an opportunity for the support PFS!*”) published in Soluxions on 01.03.2009
- (11) International Organisation of Securities Commissions (IOSCO) is an international organisation created in 1983 that brings together the regulators of the world’s major stock markets. IOSCO has a number of committees, one of the main ones being the Technical Committee. This committee has 15 members and its role is to conduct analysis on the most developed and most sophisticated markets.

Association activities

VIE ASSOCIATIVE

Responsable Internet / Internet responsible

Olivier Gilson

Tel +352 48 48 80 51 08

olivier.gilson@efa.eu

GROUPES DE TRAVAIL ACTUELS

Groupe de travail 16

Commission permanente juridique et relations publiques

Responsables Claudine FRUTSAERT

Téléphone +352 44 24 24 43 15

claudine.frutsaert@axa.lu

Patrick SCHOTT
Téléphone +352 46 71 71 400
pschott@pictet.com

Groupe de travail 21

Interprétation pratique des restrictions d'investissements de fonds

Responsable Tim WINFIELD

Téléphone +352 34 10 23 85

tim.winfield@jpmorganfleming.com

Groupe de travail 27

Formations IFBL

Coordinateur Rob SONNENSCHNEIN

Téléphone +352 31 99 11 313

r.sonnenschein@vanlanschot.lu

Groupe de travail 29

Abus de marché

Coordinateur Cyril MATHIEU

Téléphone +352 40 46 46 400

cyrilmathieu@lu.hsbc.com

Groupe de travail 33

Réponses aux questions des membres

Coordinateur Vincent WILLEM

Téléphone +352 49 924 3956

vincent.willem@bdl.lu

Groupe de travail 34

Tables rondes

Coordinateur Charles VAN DOORSLAER

Téléphone +352 47 97 39 09

charles.van-doorslaer@kbl-bank.com

Groupe de travail 35

Doctrine

Coordinateur Guillaume BEGUE

Téléphone +352 26 96 22 31

guillaume.begue@bnpparibas.com

ASSOCIATION ACTIVITIES

Coordinateur des groupes de travail / GT coordinator

Jean-Noël lequeue

Tel +352 621 194 941

icesa@pt.lu

CURRENT WORKING GROUPS

Working group 16

Legal and public relations

Owners Claudine FRUTSAERT

Phone +352 44 24 24 43 15

claudine.frutsaert@axa.lu

Patrick SCHOTT
Phone +352 46 71 71 400
pschott@pictet.com

Working group 21

Practical interpretation of fund investment restrictions

Owner Tim WINFIELD

Phone +352 34 10 23 85

tim.winfield@jpmorganfleming.com

Working group 27

Training IFBL

Coordinator Rob SONNENSCHNEIN

Phone +352 31 99 11 313

r.sonnenschein@vanlanschot.lu

Working group 29

Market abuse

Coordinator Cyril MATHIEU

Phone +352 40 46 46 400

cyrilmathieu@lu.hsbc.com

Working group 33

Answers to questions of members

Coordinator Vincent WILLEM

Phone +352 49 924 3956

vincent.willem@bdl.lu

Working group 34

Round tables

Coordinator Charles VAN DOORSLAER

Phone +352 47 97 39 09

charles.van-doorslaer@kbl-bank.com

Working group 35

Doctrine

Coordinator Guillaume BEGUE

Phone +352 26 96 22 31

guillaume.begue@bnpparibas.com

MEMBRES ET VIE ASSOCIATIVE

MEMBERS AND ASSOCIATION ACTIVITIES

Nombre de membres (au 01/07/2009):

Banques	200
Fonds	92
Fonds / Banques	32
Assurances	52
Consultants / Réviseurs	33
Admin. et domiciliation de sociétés	19
Avocats	7
PSF	43
Gestion de fortune	8
Autres	2

Effectif total: 488

Membres effectifs	403
Membres d'honneur	85

Effectif total: 488

Number of members (as per 01/07/2009):

Banking sector	200
Funds sector	92
Funds / Banking sector	32
Insurance sector	52
Consultants / Auditors	33
Admin. and company domiciliation	19
Law firms	7
SFP	43
Asset management	8
Other	2

Total number: 488

Active members	403
Honorary members	85

Total number: 488

Réunions et activités:

Mensuellement	Réunions du conseil d'administration
1 / 2 x par an	Réunions plénières
2 / 3 x par an	Rencontres informelles autour d'un thème

Meetings and activities:

Monthly	Board meetings
1 / 2 x per year	Plenary assemblies
2 / 3 x per year	Informal meetings on a subject

– **Board:**

Jean-Noël LEQUEUE	President
Claudine FRUTSAERT	Vice-President, insurance
Patrick WATELET	Vice-Président, funds
Vincent SALZINGER	Vice-Président, banks
Valerie ALEZINE	Treasurer
Guillaume BEGUE	Administrator
Sundhevy GOÏOT	Administrator
Jean-Marie LEGENDRE	Administrator, honorary President
Custodio PORTASIO	Administrator
Rob SONNENSCHNEIN	Administrator
Vincent WILLEM	Administrator
Patrick CHILLET	Advisor
Olivier GILSON	Advisor
Karine VILRET-HUOT	Advisor
Tim WINFIELD	Advisor

– **ALCO Secretary:**

Laurence THILMANY-INCOURT
secretariat@alco.lu
B.P. 13 L-2010 Luxembourg

– **Bulletin Secretary:**

Laurence THILMANY-INCOURT
secretariat@alco.lu
B.P. 13 L-2010 Luxembourg

– **Editorial staff:**

Claudine FRUTSAERT (responsible), Patrick SCHOTT, Jean-Marie LEGENDRE, , Julie BECKER, Leen BOM, Bob Moris, Jean-François PEMMERS

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