

Luxembourg, 29 July 1999

CIRCULAR CSSF 99/4

Re: Entry into force of the law of 8 June 1999 creating pension funds in the form of pension savings companies with variable capital (sepcav) and pension savings associations (assep)

Ladies and Gentlemen,

We draw your attention to the law of 8 June 1999 published in Mémorial A No. 70 of 11 June 1999 (the "Law") creating pension funds in the form of pension savings companies with variable capital (sepcav) and pension savings associations (assep).

This law introduces two new legal vehicles which shall allow receiving supplementary pension arrangements issued, on a voluntary basis, by Luxembourg, foreign or multinational undertakings for their employees.

The sepcav and assep may, however, also receive the supplementary pension savings constituted by members or associates of groups or associations of persons, for example carrying out liberal professions and who will be both contributors and beneficiaries of the pension fund.

Two approaches may be applied:

- that of a corporate structure whose members and beneficiaries are shareholders who will be entitled to capital payment at the time of retirement (sepcav) and
- that of an associative structure in which the rights of the members and beneficiaries take the form of claims and which provides for, at the time of retirement, either a capital payment or the annuity payment and, where appropriate, ancillary benefits (assep).

The aim of this circular is to give a brief overview of the law and to provide a certain number of information elements essentially concerning the authorisation procedure of pension funds in the form of a sepcav or an assep.

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I. SCOPE

The Law and the provisions of this circular shall exclusively apply to pension funds established in the Grand Duchy of Luxembourg, which

- are incorporated in the legal form of pension savings companies with variable capital (sepcav) or pension savings associations (assep) and
- which, on the basis of pension rules and in the sole interest of the beneficiaries, has as its object the collection of funds from one or several contributors, and the collective investment of assets with a view to spreading the investment risks while conferring on its members the benefit of a capital sum or a temporary annuity allocated at the time of retirement.

The submission to a sepcav scheme or to an assep scheme is thus a condition to take advantage of the scope of application of the law. Moreover, it is possible to organise pension funds in another form.

The following entities are excluded from the scope of application of the Law:

- the undertakings for collective investment regardless of their purpose and the public to whom they are addressed
- all the other contributions whose purpose is that of a pension fund, but which are not organised in the form of a sepcav or an assep.

Any subsequent reference to pension fund in this circular is exclusively directed to pension funds subject to the provisions of the law of 8 June 1999 creating pension funds in the form of pension savings companies with variable capital (sepcav) and pension savings associations (assep).

II. AUTHORISATION REQUIREMENTS AND PROECEDURE

A. Authorisation requirements

In order to carry out their activities, pension funds shall have an authorisation issued by the Commission de surveillance du secteur financier ("CSSF").

Pension funds which are likely to be recognised as supplementary pension scheme under the law of 8 June 1999 on supplementary pension schemes shall, when submitting their application for authorisation to the CSSF, have a certificate of compliance established by the Inspection générale de la sécurité sociale proving the legal compliance of the supplementary pension scheme and the pension rules and the financing plan with the law of 8 June 1999 on supplementary pension schemes.

1. Authorisation of a pension fund

The authorisation by the CSSF includes the approval of the articles of association, including the pension rules, as well as the approval of the choice of the custodian bank and any possible asset managers and liability managers.

Insofar as the pension fund decides to manage by itself the assets and/or liabilities, it shall provide the CSSF with the necessary information in order to prove that it has the necessary resources and infrastructures both in qualitative as well as in quantitative terms to fulfil these tasks.

Similarly, where a pension fund decides not to delegate the administrative and accounting functions, it shall provide the CSSF with the same information aimed to prove that it has the means to take on these tasks.

2. Choosing the asset manager

Pension funds may delegate the asset management to one or several asset managers.

Articles 19(5) and 43(5) of the Law provide that the CSSF shall give its consent to the appointment and the revocation of an asset manager.

The CSSF shall assess the aptitude of the asset manager to take on its tasks according to its size, financial capacity, its organisation and, more generally, the compatibility of its activity with the pension fund's object.

The conditions of admission to the activity of asset manager are set out in item III below.

3. Choosing the liability manager (assep)

Asseps may delegate the liability management to one or several liability managers.

Article 44(5) of the Law provides that the CSSF shall give its consent to the appointment or revocation of a liability manager.

The CSSF shall assess the aptitude of the liability manager to take on its tasks according to its size, financial capacity, its organisation and, more generally, the compatibility of its activity with the assep's object.

The conditions of admission to the activity of liability manager are set out in item IV below.

4. Authorisation of the pension fund's executives

The executives of the pension fund shall be of sufficiently good repute and have sufficient experience in view of their tasks.

The pension fund shall provide the CSSF with the names of the persons who represent the pension fund or effectively determine the business direction.

The name of the executives and of every person succeeding them in

office, shall be notified forthwith to the CSSF.

5. Choosing the custodian of a pension fund

The admission to the activity of custodian of a pension fund subject to the Law is exclusively limited to banks incorporated under Luxembourg law or Luxembourg branches of banks established in a Member State of the European Community or the European Economic Area.

The CSSF shall assess the aptitude of the custodian to take on its tasks according to its size, its financial capacity, its organisation and, more generally, its business consistency with the pension fund's object.

6. Auditing by a réviseur d'entreprises (statutory auditor)

The pension funds shall have their accounting information in the annual report verified by a *réviseur d'entreprises agréé* (approved statutory auditor). The pension funds shall notify forthwith to the CSSF without being specifically requested to do so, the statements, reports and written observations made by the *réviseur d'entreprises* within the scope of the controls which s/he shall carry out pursuant to Article 68 of the Law. The documents to be transmitted shall, *inter alia*, include the written observations issued by the *réviseur* (auditor) which generally take the form of a management letter.

B. Documents to be included in the pension fund's approval file
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The application for authorisation shall be accompanied by all the information necessary to its scrutiny; it shall include at least the following elements:

1. Draft articles of association of the pension fund;
2. Draft pension rules, including at least:
 - the definition of the groups of persons eligible to become beneficiaries;
 - the definition of the contributors;
 - all the obligations of the contributor(s);
 - the beneficiaries' benefits upon retirement;
 - the terms and conditions for leaving and, where applicable, an indication of the vesting period;
 - the obligation to appoint an asset manager, where applicable;
 - the obligation to appoint a liability manager, where applicable;
 - the fees and expenses that the asset managers and liability managers are authorised to debit to the pension fund and the method used to

- calculate such income;
 - the definition of the investment policy;
 - the asset valuation rules and the frequency of calculation of the net asset value;
 - the financing plan;
 - the rules for valuing the liabilities and the frequency of calculation of the beneficiaries' benefits and rules relating to the provision of the information on those benefits;
 - the closing date for the annual accounts of the pension fund;
 - the method of appointment of the external auditor;
 - the duration of the pension fund;
 - circumstances giving rise to dissolution, without prejudice to the legal causes;
 - the measures taken in the event of the contributor no longer being able to meet its obligations;
 - the method of amendment of the pension rules;
 - the conditions for portability of the rights of members;
3. Composition of the board of directors of the pension fund and identity of the other executives of the pension fund;
 4. Identity of the founding associates (Assep);
 5. Information relating to the depositary;
 6. Identity of the asset manager and the liability manager;
 7. Information relating to administrative and accounting organisation;
 8. Draft agreement of the custodian bank as well as the agreements to be concluded with any other service providers;
 9. Identity of the *réviseur d'entreprises* (statutory auditor) and copy of the given mandate.

The CSSF reserves the right to request any other information it deems necessary to review the authorisation file.

III. ADMISSION TO THE ACTIVITY OF ASSET MANAGER

A. Authorisation requirements

1. Legal persons governed by Luxembourg law

The following are eligible as asset manager in accordance with Articles 19(1) and 43(1) of the Law:

- the legal persons governed by Luxembourg law carrying out, on a professional basis, the activity of portfolio manager within the meaning of Article 24(3) of the amended law of 5 April 1993 on the financial sector. The following professionals of the financial sector regulated by the amended law of 5 April 1993 are targeted: credit institutions, portfolio managers as well as professionals acting for their own account;
- the legal persons governed by Luxembourg law having an authorisation issued by the Commissariat aux assurances as insurance undertaking within the meaning of the law of 15 February 1995 on the insurance sector.

2. Legal persons governed by foreign law

Pursuant to Articles 19(1) and 43(1), the asset management may also be delegated to foreign professionals specifically authorised by the Commission de surveillance du secteur financier on the basis of criteria of competence, integrity and financial soundness, the terms of which are set out in a grand-ducal regulation.

B. Authorisation file

Given that the CSSF is the supervisory authority of the Luxembourg professionals carrying out, on a professional basis, the activity of private portfolio manager within the meaning of Article 24B of the law of 5 April 1993 on the financial sector, as amended, the CSSF has, with this activity, the necessary information and no specific file shall be submitted.

The application for authorisation of the Luxembourg insurance undertakings and foreign professionals shall be accompanied by all such information as may be needed for the assessment thereof and an activities schedule indicating the type and volume of business envisaged and the administrative structure chosen. It shall at least include the following elements:

1. Description of the type of business pursued, specifying what are the activities currently carried out in the field of pension funds;
2. The articles of association of the asset manager;
3. Composition of its shareholding and its administrative, management and

supervisory structures;

4. Name of the supervisory authority of the asset manager and activities covered by its authorisation;
5. Balance sheets and profit and loss accounts of the last three closures as well as the reports of the *réviseur d'entreprises* (statutory auditor);
6. An activities schedule indicating the type and volume of transactions which are planned to be dealt with for the Luxembourg pension funds.

The CSSF reserves the right to request any additional information deemed essential for the assessment of the application for authorisation as an asset manager within the meaning of the Law.

IV. ADMISSION TO THE ACTIVITY OF LIABILITY MANAGER OF AN ASSEP

A. Authorisation requirements

Pursuant to Article 45(1) of the Law, the liability management may be delegated to one or several Luxembourg or foreign liability managers authorised by the supervisory authority on the basis of criteria of competence, integrity and financial soundness, the terms of which are set out in a grand-ducal regulation.

To obtain authorisation, the liability managers and, where appropriate, the members of the administrative, management and supervisory structures, and likewise the shareholders or associates shall substantiate their professional integrity. Professional integrity shall be assessed on the basis of the legal history and all elements likely to establish that the persons concerned are of good repute and can thus provide all the assurances associated with irreproachable business conduct.

The persons responsible for the management shall have the necessary technical qualifications as well as appropriate professional experience gained through having already performed similar tasks.

Authorisation shall be contingent on the supervisory authority being notified of the identity of the direct or indirect shareholders or associates, whether legal or natural persons, who hold a qualified participation in the establishment seeking authorisation or a holding which enables them to exercise significant influence over the conduct of the business. The status of the said shareholders or associates must be satisfactory, in view of the need to guarantee healthy and prudent management of the undertaking.

Authorisation shall be contingent on there being sufficient credit available relative to the activities schedule and the liabilities incurred.

Any change affecting the persons required to meet the legal conditions of integrity or professional experience shall be authorised in advance by the supervisory authority. To this end, the supervisory authority may request any necessary information on the persons required to meet the legal conditions.

B. Authorisation file

The application for authorisation shall be accompanied by all the information required to assess it, including actuarial questions, and an activities schedule indicating the type and volume of business envisaged and the administrative structure chosen. It shall include, to the extent applicable, the following elements:

1. Description of the activities carried out, specifying what are the activities currently carried out or envisaged in the specific field of pension funds;
2. Articles of association of the liability manager;
3. Composition of its shareholding and its administrative, management and supervisory structures;
4. Where appropriate, the name of the supervisory authority of the manager and/or that of the supervisory authorities which issued its authorisation or an approval in view of the liability management in the field of pension funds as well as the activities covered by this authorisation;
5. A description of the structure, administration and organisation of the institution; a description of staff resources available to the undertaking and in particular their qualifications in the fields involving the actuarial knowledge;
6. Balance sheets and profit and loss accounts of the last three closings as well as the reports of the *réviseur d'entreprises*;
7. Activities schedule indicating the type and volume of transactions which are planned to be dealt with for the Luxembourg pension funds;
8. Sufficient financial resources according to the activities schedule and responsibilities incurred.

The CSSF reserves the right to request any additional information deemed essential for the assessment of the application for authorisation as a liability manager within the meaning of Article 45 of Law.

Yours faithfully,

The Executive Board Committee

Charles KIEFFER
Director

Arthur PHILIPPE
Director

Jean-Nicolas SCHAUS
Director General