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LAW OF 18 DECEMBER 2009 ON THE AUDIT PROFESSION AND

- transposing Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC,

- organising the audit profession,

- amending certain other legal provisions and

- repealing the amended Law of 28 June 1984 organising the profession of *réviseur d'entreprises*.

We Henri, Grand Duke of Luxembourg, Duke of Nassau,

Having heard Our Council of State;

With the assent of the Chamber of Deputies;

Having regard to the decision of the Chamber of Deputies of 16 December 2009 and to that of the Council of State of 18 December 2009, to the effect that no second vote is required.

Have ordered and do order as follows:

TITLE I

Transposition of Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC, and organising the audit profession.

Chapter I. Definitions

Art. 1. Definitions

For the purposes of this Law, the following terms shall be understood as having the following meanings:

(1) 'key audit partner(s)' means:

(a) the *réviseur(s) d'entreprises agréé(s)* designated by a *cabinet de révision agréé* for a particular audit engagement as being primarily responsible for carrying out the audit on behalf of the *cabinet de révision agréé*; or

(b) in the case of a group audit, at least the *réviseur(s) d'entreprises agréé(s)* designated by a *cabinet de révision agréé* as being primarily responsible for carrying out the audit at the level of the group and the *réviseur(s) d'entreprises agréé(s)* designated as being primarily responsible at the level of material subsidiaries; or

(c) the *réviseur(s) d'entreprises agréé(s)* who sign(s) the audit report.

(2) 'competent authorities' means the authorities or bodies designated by law that are in charge of the regulation and/or oversight of statutory auditors and audit firms or third-country auditors or audit entities or of specific aspects thereof; the reference to 'competent authority' in a specific article means a reference to the authority or body(ies) responsible for the functions referred to in that article;

(3) 'audit firm' means a legal person or any other entity, regardless of its legal form, that is approved in accordance with Directive 2006/43/EC by the competent authorities of another Member State to carry out statutory audits of annual accounts or consolidated accounts;

(4) '*cabinet de révision*' means a legal person or any other entity, regardless of its legal form, fulfilling the requirements set out in Article 3(4);

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- (5) '*cabinet de révision agréé*' means a legal person or any other entity, regardless of its legal form, which is a member of the IRE and has been approved in accordance with Article 5 of this Law;
- (6) 'statutory audit' means an audit of annual accounts or consolidated accounts insofar as required by a law;
- (7) 'third-country auditor' means a natural person who carries out audits of the annual or consolidated accounts of a company having its registered office in a country outside a Member State;
- (8) 'group auditor' means the *réviseur(s) d'entreprises agréé(s)* or *cabinet(s) de révision agréé(s)* carrying out the statutory audit of consolidated accounts;
- (9) 'statutory auditor' means a natural person who is approved in accordance with Directive 2006/43/EC by the competent authorities of another Member State to carry out statutory audits of annual accounts or consolidated accounts;
- (10) 'CSSF' means the *Commission de surveillance du secteur financier* [Luxembourg Supervisory Commission of the Financial Sector];
- (11) 'Directive 78/660/EEC' means the Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies;
- (12) 'Directive 83/349/EEC' means the Seventh Council Directive 83/349/EEC of 13 June 1983 based on Article 54 (3) (g) of the Treaty on consolidated accounts, as amended;
- (13) 'Directive 2003/71/EC' means Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC;
- (14) 'Directive 2004/39/EC' means Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/61/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC;
- (15) 'Directive 2004/109/EC' means Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC;
- (16) 'Directive 2006/43/EC' means Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC;
- (17) 'Directive 2006/48/EC' means Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast);
- (18) 'third-country audit entity' means an entity, regardless of its legal form, which carries out audits of the annual or consolidated accounts of a company having its registered office in a third country;
- (19) 'public-interest entities' means entities governed by Luxembourg law whose transferable securities are admitted to trading on a regulated market of a Member State within the meaning of point 14 of Article 4(1) of Directive 2004/39/EC, credit institutions as defined in point 12 of Article 1 of the amended Law of 5 April 1993 on the financial sector, Luxembourg insurance undertakings as defined in Article 25(1)(h) of the amended Law of 6 December 1991 on the insurance sector, excluding the undertakings and bodies referred to in Article 26(4) of the amended Law of 6 December 1991 on the insurance sector, pension funds referred to in Article 25(1)(hh) of the amended Law of 6 December 1991 on the insurance sector and the Luxembourg reinsurance undertakings referred to in Article 25(1)(nn) of the amended Law of 6 December 1991 on the insurance sector. A Grand-Ducal regulation may designate other entities as public-interest entities, by reason of the nature of their business, their size or the number of their employees;
- (20) 'affiliate of a *cabinet de révision agréé*' means any undertaking, regardless of its legal form, which is connected to a *cabinet de révision agréé* by means of common ownership, control or management;

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(21) 'Member State' means a Member State of the European Union. States party to the Agreement on the European Economic Area ('EEA') other than the Member States of the European Union shall be assimilated to Member States of the European Union within the limits defined in that agreement and the acts relating thereto;

(22) 'IRE' means the *Institut des Réviseurs d'Entreprises*;

(23) 'non-practitioner' means any natural person who, for at least three years before his involvement in the governance of a public oversight system, has not carried out statutory audits, has not held voting rights in a *cabinet de révision agréé*, an audit firm or a third-country audit entity, has not been a member of the administrative or management body of a *cabinet de révision agréé*, an audit firm or a third-country audit entity and has not been employed by, or otherwise associated with, a *cabinet de révision agréé*, an audit firm or a third-country audit entity;

(24) 'international auditing standards' means International Standards on Auditing (ISA) and related Statements and Standards, insofar as relevant to the statutory audit;

(25) 'international accounting standards' means International Accounting Standards (IAS), International Financial Reporting Standards (IFRS) and related Interpretations (SIC-IFRIC interpretations), subsequent amendments to those standards and related interpretations, and future standards and related interpretations issued or adopted by the International Accounting Standards Board (IASB);

(26) 'audit report' means the report referred to in Article 51a of Directive 78/660/EEC and Article 37 of Directive 83/349/EEC issued by the *réviseur d'entreprises agréé* or *cabinet de révision agréé* following the statutory auditing of annual accounts or consolidated accounts;

(27) 'network' means the larger structure:

- which is aimed at cooperation and to which a *réviseur d'entreprises agréé* or a *cabinet de révision agréé* belongs, and

- which is clearly aimed at profit- or cost-sharing or shares common ownership, control or management, common quality-control policies and procedures, a common business strategy, the use of a common brand-name or a significant part of professional resources;

(28) '*réviseur d'entreprises*' means a natural person, who is a member of the IRE, has the professional qualification referred to in Article 3 of this Law and may exercise the activities referred to in point (29) of this article, excluding the activities referred to in (a) and (b);

(29) '*réviseur d'entreprises agréé*' means a *réviseur d'entreprises* who is a member of the IRE and has been approved in accordance with this Law in order to carry out:

(a) the statutory audit of accounts and

(b) all such other tasks as are conferred on him by the law on an exclusive basis.

Without prejudice to the provisions of Articles 18 and 19, the exercise of the functions provided for in (a) and (b) of this point is not incompatible with the exercise of other activities, such as domiciliation, contractual auditing, giving fiscal advice, organising and carrying out accounting, and analysing using accounting techniques the situation and functioning of undertakings from their various economic, legal and technical aspects.

Chapter II. Approval, professional qualification and continuous training

Art. 2. Protection of titles

No one may bear the title of '*réviseur d'entreprises*', '*réviseur d'entreprises agréé*', '*cabinet de révision*' or '*cabinet de révision agréé*' or any similar name and no one may exercise, not even on an ancillary or occasional basis, the activities referred to in Article 1(29) (a) and (b) unless he is authorised to do so on the conditions laid down in Articles 3 and 4 of this Law.

The wrongful use of the title of '*réviseur d'entreprises*', '*réviseur d'entreprises agréé*', '*cabinet de révision*' or '*cabinet de révision agréé*' or any similar name and the unauthorised exercise, even on an ancillary or occasional basis, of the activities referred to in Article 1(29) (a) and (b) shall be liable to the criminal sanctions set out in Article 70 of this Law.

Art. 3. Conditions for obtaining the title of '*réviseur d'entreprises*' or '*cabinet de révision*' and for exercising the activities referred to in Article 1(29)(2)

(1) The titles of '*réviseur d'entreprises*' and '*cabinet de révision*' shall be attributed by the CSSF in accordance with paragraphs (2), (3) and (4) of this article.

(2) In order to obtain the title of '*réviseur d'entreprises*', natural persons must:

(a) provide proof of good repute and professional qualification. The conditions of professional qualification shall be determined by a Grand-Ducal regulation in accordance with Article 8 of this Law;

(b) register as a member of the IRE.

(3) In order to be able to exercise the activities referred to in subparagraph 2 of Article 1(29), the *réviseur d'entreprises* must:

(a) have a professional establishment in Luxembourg; or

(b) exercise the activity as an employee of a *cabinet de révision*.

(4) In order to obtain the title of '*cabinet de révision*', legal persons must satisfy the following conditions:

(a) natural persons exercising the activities referred to in subparagraph 2 of Article 1(29) in the name of the legal person must satisfy the conditions set out in paragraphs (2) and (3) of this article and be empowered to bind the legal person;

(b) a majority of the voting rights in an entity must be held by *réviseurs d'entreprises*, *réviseurs d'entreprises agréés*, *cabinets de révision*, *cabinets de révision agréés*, statutory auditors or audit firms;

(c) a majority of the members of the administrative or management body of the entity must consist of *réviseurs d'entreprises*, *réviseurs d'entreprises agréés* or statutory auditors. Where that body has no more than two members, one of them at least must fulfil the conditions set out in this letter (c);

(d) the legal person shall satisfy the required conditions as to good repute;

(e) have a professional establishment in Luxembourg;

(f) register as a member of the IRE.

(5) The decision of the CSSF granting the title of '*réviseur d'entreprises*' or '*cabinet de révision*' or refusing to grant the title of '*réviseur d'entreprises*' or '*cabinet de révision*' may be the subject of an appeal in accordance with Article 69 of this Law.

Art. 4. Withdrawal of the title of '*réviseur d'entreprises*' or '*cabinet de révision*'

(1) The CSSF shall withdraw the title of '*réviseur d'entreprises*' from a natural person if any one of the conditions referred to in Article 3(2) of this Law ceases to be fulfilled or in the event of non-compliance with Article 3(3).

(2) The CSSF shall withdraw the title of '*cabinet de révision*' from the legal person if any of the conditions set out in Article 3(4) of this Law ceases to be fulfilled.

(3) The CSSF may grant a '*cabinet de révision*' no longer complying with any one of the conditions referred to in Article 3(4)(b) and (c) a period of one year to regularise its situation.

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(4) The decision of the CSSF withdrawing the title of '*réviseur d'entreprises*' or '*cabinet de révision*' may be the subject of an appeal in accordance with Article 69 of this Law.

(5) The CSSF shall inform the President of the IRE of withdrawals pronounced by virtue of this article.

Art. 5. Approval as a '*réviseur d'entreprises agréé*' or '*cabinet de révision agréé*'

(1) In order to be able to exercise the activities referred to in Article 1(29)(a) and (b) of this Law, it is necessary to have the approval granted by the CSSF in accordance with paragraphs (2) and (3) of this article.

(2) In order to obtain the approval referred to in paragraph (1), natural persons must have a professional establishment in Luxembourg and satisfy one of the following conditions:

(a) he must be the holder of the title '*réviseur d'entreprises*' granted in accordance with Article 3 of this Law;

(b) he must be a statutory auditor and pass an aptitude test in one of the administrative languages of Luxembourg relating to an adequate knowledge of a statutory auditor in respect of the laws and regulations of Luxembourg. The Grand-Ducal regulation provided for in Article 3 shall organise the aptitude test;

(c) subject to reciprocity, he must be a third-country auditor provided that he produces evidence of good repute and professional qualifications adjudged equivalent to those required under Article 8 of this Law and passes the aptitude test provided for in letter (b) of this paragraph.

A Grand-Ducal regulation shall lay down the criteria for equivalence, taking account of the minimum duration of higher education, the nature and the extent of the subjects having to be covered by the theoretical and practical education and the conditions for the practical training period and continuous training.

(3) In order to obtain the approval referred to in paragraph (1), legal persons must satisfy the following conditions:

(a) natural persons exercising the activities referred to in Article 1(29)(a) and (b) in the name of a legal person must be *réviseurs d'entreprises agréés*;

(b) a majority of the voting rights in an entity must be held by *réviseurs d'entreprises agréés*, *cabinets de révision agréés*, statutory auditors or audit firms;

(c) a majority of the members of the administrative or management body of the entity must consist of *réviseurs d'entreprises agréés* or statutory auditors. Where that body has no more than two members, one of them at least must fulfil the conditions of this letter (c);

(d) the legal person shall satisfy the required conditions as to good repute;

(e) have a professional establishment in Luxembourg.

(4) Approved natural persons shall be granted the title of '*réviseur d'entreprises agréé*'. Legal persons shall be granted the title of '*cabinet de révision agréé*'.

(5) The decision of the CSSF granting approval or refusing to grant approval may be the subject of an appeal in accordance with Article 69 of this Law.

Art. 6. Withdrawal of approval as '*réviseur d'entreprises agréé*' or '*cabinet de révision agréé*'

(1) The CSSF shall withdraw the approval as *réviseur d'entreprises agréé* if any one of the conditions referred to in Article 5(2) of this Law ceases to be fulfilled.

(2) The CSSF shall withdraw the approval as *cabinet de révision agréé* if any one of the conditions referred to in Article 5(3) of this Law ceases to be fulfilled.

(3) The CSSF may, before proceeding to withdraw approval, grant *cabinets de révision agréés* which no longer satisfy any one of the conditions referred to in Article 5(3)(b) and (c) a period of one year in which to regularise their situation.

(4) Withdrawal of approval shall imply that those persons may not longer use the title of '*réviseur d'entreprises agréé*' or '*cabinet de révision agréé*', respectively.

(5) In the event of the withdrawal of the approval of a *réviseur d'entreprises agréé* or of a *cabinet de révision agréé* for any reason whatsoever which is not susceptible of appeal before the administrative court, the CSSF shall notify the withdrawal and the reasons therefor to the President of the IRE. The CSSF shall also notify the withdrawal and the reasons therefor to the competent authorities concerned of the Member States in which the person concerned is also approved, which competent authorities are mentioned in the public register in accordance with Articles 12(1)(c) and 13(1)(i) of this Law.

Art. 7. Recognition of service providers from other Member States

By way of derogation from Article 5 and pursuant to Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, the activities referred to in Article 1(29)(b) may be performed by a service provider from a Member State by way of the free provision of services, provided that, pursuant to Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, the following provisions are complied with in case of the movement of the service provider for the first time:

(a) he makes a declaration prior to the first provision of services;

(b) he provides, upon the first provision of services, proof of nationality and an attestation certifying that its bearer is legally established in another Member State to exercise the activities in question there and that, at the time when the attestation was issued, he was not subject to any ban on providing services, not even of a temporary nature;

(c) he provides proof of professional qualifications;

(d) and he takes an aptitude test in the event that there is a substantial difference in the professional qualifications required. A Grand-Ducal regulation shall organise the aptitude test.

The CSSF shall ensure that service providers comply with the requirements set out in this article.

Art. 8. Professional qualification

(1) The Grand-Ducal regulation provided for in Article 3(2) of this Law requires a minimum of a Master's degree or equivalent training and a training period of at least three years in the field of the auditing of annual accounts, consolidated accounts or similar financial statements, endorsed by a professional qualification examination.

(2) (a) The diplomas recognised, the arrangements for the training period and the organisation of the aptitude examination shall be specified by a Grand-Ducal regulation. Among the diplomas shall mandatorily appear certificates attesting to the possession of sufficient knowledge in particular of tax law, company law and professional ethics of the audit profession in Luxembourg.

(b) The training period shall take place to the extent of at least two-thirds with a *réviseur d'entreprises agréé*, a *cabinet de révision agréé*, a statutory auditor or an audit firm.

(c) The aptitude examination shall consist of a theoretical part and a practical part and shall cover the subjects knowledge of which is relevant for carrying out a statutory audit.

(d) The practical part shall relate to the candidate's capacity to apply the theoretical knowledge in practice.

(3) A derogation may be made from the provisions of paragraphs (1) and (2) of this article in favour of a person who shows:

(a) either that he has, for fifteen years, engaged in professional activities which have enabled him to acquire sufficient experience in the fields of finance, law and accounting and has passed the professional aptitude examination;

(b) or that he has, for seven years, engaged in professional activities in those fields and has in addition undergone the practical training and passed the professional aptitude examination.

(4) The CSSF shall issue a diploma of professional aptitude attesting that the requirements of this article are satisfied for the person who wishes to accede to the audit profession.

Art. 9. Continuing training

Réviseurs d'entreprises and *réviseurs d'entreprises agréés* are required to take part in appropriate programmes of continuing training in order to maintain their theoretical knowledge, professional skills and values at a sufficiently high level.

A Grand-Ducal regulation shall specify the criteria which the programmes of continuing training must satisfy in order to be taken into account for the purposes of the implementation of this Law.

Failure to respect the continuing training requirements constitutes a disciplinary offence which may give rise to the sanctions mentioned in Articles 47 and 67 of this Law.

Art. 10. Obligation to practise the audit profession under one's own name and limitation periods for actions for civil and professional liability

Réviseurs d'entreprises agréés practising their profession as sole practitioners may do so only under their own name, to the exclusion of any pseudonym or impersonal title.

Actions for civil professional liability brought against a *réviseur d'entreprises agréé* or a *cabinet de révision agréé* shall be time-barred after five years starting from the date of the audit report.

Chapter III. Registration of *Réviseurs d'entreprises agréé* and *cabinets de révision agréés*

Art. 11. Public register

(1) *Réviseurs d'entreprises agréés* and *cabinets de révision agréés* shall be registered in a public register kept by the CSSF in accordance with Articles 12 and 13.

(2) Each *réviseur d'entreprises agréé* or *cabinet de révision agréé* shall be identified in the public register by a personal number.

(3) The information required in accordance with Articles 12 and 13 of this Law shall be registered in electronic form and shall be accessible to the public electronically.

(4) The public register shall contain the name and address of the CSSF as the competent authority for the public oversight of the audit profession within the meaning of Chapter VIII of Title I of this Law.

Art. 12. Information to be provided by the *réviseurs d'entreprises agréés*

(1) As far as the *réviseurs d'entreprises agréés* are concerned, the public register shall contain at least the following information that the *réviseurs d'entreprises agréés* must provide to the CSSF:

(a) name, address and registration number;

(b) if applicable, the name, address, website address and registration number of the *cabinet de révision agréé* which employs the *réviseur d'entreprises agréé* or with which the *réviseur d'entreprises agréé* is associated as a partner or otherwise;

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(c) all other registration(s) as statutory auditor with the competent authorities of other Member States and as third-country auditor, including the name(s) of the registration authority (authorities) and, if applicable, the registration number(s).

(2) Third-country auditors registered in accordance with Article 79 shall be clearly indicated in the register as such and not as *réviseurs d'entreprises agréés*.

Art. 13. Information to be provided by the *cabinets de révision agréés*

(1) As far as the *cabinets de révision agréés* are concerned, the public register shall contain at least the following information, which the *cabinets de révision agréés* must provide to the CSSF:

(a) name, address and registration number;

(b) legal form;

(c) contact details of the first person to be contacted and, where applicable, the website address;

(d) address of each office in Luxembourg;

(e) name and registration number of all the *réviseurs d'entreprises agréés* employed by or associated as partners or otherwise with the legal person;

(f) names and business addresses of all the owners or shareholders;

(g) names and business addresses of all the members of the administrative or management body;

(h) if applicable, the membership of a network and a list of the names and addresses of the firms belonging to that network and affiliates or the indication of the place where such information is publicly available;

(i) all other registration(s) as an audit firm with the competent authorities of other Member States and as an audit entity with third countries, including the name(s) of the registration authority (authorities) and, if applicable, the registration number(s).

(2) Third-country audit entities of registered in accordance with Article 79 shall be clearly indicated in the register as such and not as *cabinets de révision agréés*.

Art. 14. Notification of changes

The *réviseurs d'entreprises agréés* and *cabinets de révision agréés* shall notify the CSSF of any change in the data contained in the public register without undue delay as from the change. After this notification, the register shall be updated without undue delay.

Art. 15. Responsibility for the information provided

The information provided to the CSSF in accordance with Articles 12, 13 and 14 shall be signed by the *réviseur d'entreprises agréé* or by the *cabinet de révision agréé* as the case may be. In the case of a *cabinet de révision agréé*, the information provided shall be signed by a *réviseur d'entreprises agréé* who is a member of the *cabinet de révision agréé*.

Art. 16. Authorised languages

The information provided to the CSSF in accordance with Articles 12, 13 and 14 shall be drawn up in Luxembourgish, French, German or English.

In the event of translation of the information provided in one of those languages, the register shall indicate whether the translation is or is not certified.

Chapter IV. Professional ethics, independence, objectivity, professional secrecy and professional obligations

Art. 17. Professional ethics

All *réviseurs d'entreprises*, *réviseurs d'entreprises agréés*, *cabinets de révision* and *cabinets de révision agréés* shall be bound to respect principles of professional ethics, covering their integrity, objectivity, competence, due care and professional independence.

Art. 18. Independence of *réviseurs d'entreprises*, *réviseurs d'entreprises agréés*, *cabinets de révision* and *cabinets de révision agréés*

(1) The exercise of one of the activities referred to in Article 1(29) by the *réviseur d'entreprises*, the *réviseur d'entreprises agréés*, the *cabinet de révision* or the *cabinet de révision agréé* shall be incompatible with any activity liable to detract from the principles of independence of the profession.

(2) Where he exercises the activities referred to in the first paragraph of this article, the *réviseur d'entreprises* or the *réviseur d'entreprises agréé*, respectively, may not take gainful employment unless it is with a *cabinet de révision* or a *cabinet de révision agréé*.

Art. 19. Independence of *réviseurs d'entreprises agréés* and *cabinets de révision agréés* as regards the statutory auditing of accounts

(1) *Réviseurs d'entreprises agréés* and *cabinets de révision agréés* must be independent of the audited entity. They may not be involved in the decision-taking process of the audited entity.

(2) *Réviseurs d'entreprises agréés* and *cabinets de révision agréés* may not carry out a statutory audit if there is a any direct or indirect financial, business, employment or other relationship — including the provision of additional non-audit services — between the *réviseur d'entreprises agréé*, the *cabinet de révision agréé* or network and the audited entity from which an objective, reasonable and informed third party would conclude that the independence of the *réviseur d'entreprises agréé* or the *cabinet de révision agréé* is compromised.

If the *réviseur d'entreprises agréé's* or *cabinet de révision agréé's* independence is affected by threats, such as self-review, self-interest, advocacy, familiarity or trust or intimidation, the *réviseur d'entreprises agréé* or *cabinet de révision agréé* must apply safeguards in order to mitigate those threats. If the significance of the threats compared to the safeguards applied is such that his or its independence is compromised, the *réviseur d'entreprises agréé* or *cabinet de révision agréé* shall not carry out the statutory audit.

In addition, where statutory audits of public-interest entities are concerned and where appropriate to safeguard the *réviseur d'entreprises agréé's* or the *cabinet de révision agréé's* independence, a *réviseur d'entreprises agréé* or a *cabinet de révision agréé* shall not carry out a statutory audit in cases of self-review or self-interest.

(3) The *réviseur d'entreprises agréé* or the *cabinet de révision agréé* shall document in the audit working papers all significant threats to his or its independence as well as the safeguards applied to mitigate those threats.

Art. 20. Independence and objectivity of *réviseurs d'entreprises agréés* who carry out a statutory audit on behalf of a *cabinet de révision agréé*

Neither the owners or shareholders of a *cabinet de révision agréé* nor the members of the administrative, management and supervisory bodies of that *cabinet de révision agréé*, or of an affiliated firm, shall intervene in the execution of a statutory audit in any way which jeopardises the independence and objectivity of the *réviseur d'entreprises agréé* who carries out the statutory audit on behalf of the *cabinet de révision agréé*.

Art. 21. Audit fees

The fees fixed for carrying out statutory audits and any other assignments conferred on the *réviseur d'entreprises agréé* exclusively:

- may not be determined or influenced by the provision of additional services to the audited entity and
- may not be based on any form of contingency.

Art. 22. Professional secrecy

(1) The *réviseurs d'entreprises*, *réviseurs d'entreprises agréés*, *cabinets de révision* and *cabinets de révision agréés* and persons in their service shall be obliged to maintain secret the information entrusted to them in the course of their professional activity. The divulgence of such information shall be punished by the penalties laid down in Article 458 of the Criminal Code. The obligation of secrecy shall cease where the divulgence of information is authorised or required by or by virtue of a legislative provision, even one preceding this Law.

(2) Paragraph (1) shall not impede a *réviseur d'entreprises* or a *cabinet de révision* from communicating information to the CSSF, the IRE or their representatives where they are acting within the confines of the powers conferred on them by this Law.

(3) Paragraph (1) shall not impede a *réviseur d'entreprises agréé* or a *cabinet de révision agréé* from communicating information:

- to the CSSF, the IRE or their representatives where they are acting within the confines of the powers conferred on them by this Law;

-to the *réviseur d'entreprises agréé* or the *cabinet de révision agréé* that is replacing another *réviseur d'entreprises agréé* or *cabinet de révision agréé* in the context of the statutory audit of the entity in question;

- to the auditor of the group responsible for the statutory audit of the consolidated accounts of a group of undertakings.

(4) Any *réviseur d'entreprises agréé* or *cabinet de révision agréé* having ceased to participate in a specific audit assignment and any former *réviseur d'entreprises agréé* or *cabinet de révision agréé* shall remain subject to professional secrecy as far as the said audit assignment is concerned.

(5) Where a measure of civil procedure or of criminal investigation is carried out with or with regard to a *réviseur d'entreprises*, a *réviseur d'entreprises agréé*, a *cabinet de révision* or a *cabinet de révision agréé* in cases provided for by law, it may not be carried out except in the presence of the President of the IRE or his representative or they having duly been notified.

The President of the IRE or his representative may address to the authorities having ordered such measures any observations concerning the safeguarding of professional secrecy. Acts of seizure and records of search shall mention the presence of the President of the IRE or his representative or the fact that they were duly notified, as well as any observations which the President of the IRE or his representative thought fit to make, failing which they shall be null and void.

Art. 23. Cooperation with the authorities

The *réviseurs d'entreprises*, *réviseurs d'entreprises agréés*, *cabinets de révision* and *cabinets de révision agréés* shall be obliged to respond and cooperate as fully as possible with any legal request which the authorities responsible for the application of the laws make to them in the exercise of their powers.

Art. 24. Professional obligations

The *réviseurs d'entreprises*, *réviseurs d'entreprises agréés*, *cabinets de révision* and *cabinets de révision agréés* shall be subject to the following professional obligations as defined by the amended Law of 12 November 2004 on combating money laundering and the financing of terrorism:

- the obligations of vigilance with regard to clients in accordance with Articles 3, 3-1, 3-2 and 3-3 of that law;
- the obligations of adequate internal organisation in accordance with Article 4 of that law; and
- the obligations of cooperation with the authorities in accordance with Article 5 of that law.

Chapter V. Appointment, dismissal and resignation of *réviseurs d'entreprises agréés* or *cabinets de révision agréés*

Art. 25. Appointment of *réviseurs d'entreprises agréés* or *cabinets de révision agréés*

The *réviseurs d'entreprises agréés* and *cabinets de révision agréés* shall be appointed by the general meeting of shareholders or the members of the audited entity, without prejudice to the provisions laid down in other laws.

Art. 26. Dismissal and resignation of *réviseurs d'entreprises agréés* or *cabinets de révision agréés*

The *réviseurs d'entreprises agréés* and *cabinets de révision agréés* may be dismissed only on proper grounds. A divergence of opinion as to an accounting treatment or an auditing procedure may not constitute a proper ground for dismissal.

The audited entity and the *réviseur d'entreprises agréé* or the *cabinet de révision agréé* shall inform the CSSF of the dismissal or resignation of the *réviseur d'entreprises agréé* or the *cabinet de révision agréé* during the term of appointment and shall provide an adequate explanation.

Chapter VI. Auditing standards and audit report

Art. 27. Auditing standards and audit report

Statutory audits of accounts shall be carried out in accordance with the international auditing standards as adopted by the European Commission.

The CSSF may issue standards in the field of the statutory auditing of accounts for matters not covered by the auditing standards referred to in the first paragraph.

Art. 28. Statutory audits of consolidated accounts

In the event of the statutory audit of the consolidated accounts of a group of undertakings:

(1) the group auditor shall bear the full responsibility for the audit report as regards the consolidated accounts;

(2) the group auditor shall carry out a review and document his review of the audit work performed by a *réviseur d'entreprises agréé*, a *cabinet de révision agréé*, a statutory auditor, an audit firm, a third-country auditor or third-country audit entity for the purposes of the group audit. The documents retained by the group auditor must enable the CSSF to review the work of the group auditor properly;

(3) where a component of a group of undertakings is audited by an auditor or an audit entity from a third country in which there are no agreements on the working methods referred to in paragraph 1, point (d), of Article 82, the group auditor shall be responsible for ensuring that the audit documents drawn up by the auditor or audit entity of the third country, including the working documents relating to the auditing of the group, are duly provided to the CSSF on request.

To this end, the group auditor shall retain a copy of the documents or shall agree with the auditor or audit entity of the third country that he shall have access thereto or shall take every other appropriate measure to obtain them without restriction upon request.

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If legal or other impediments prevent the transmission of the audit documents of a third country to the group auditor, the documents retained by the group auditor shall include evidence that he has followed the appropriate procedures for obtaining access to the audit documents and that, in the case of impediments other than legal impediments resulting from the legislation of the country concerned, evidence supporting such an impediment.

Art. 29. Audit report

Where a *cabinet de révision agréé* is charged with the statutory audit of accounts, the audit report shall be signed at least by the *réviseurs d'entreprises agréé(s)* carrying out the statutory audit on behalf of that *cabinet*.

Chapter VII. Institut des Réviseurs d'Entreprises

Art. 30. IRE

The IRE shall have legal personality.

The IRE shall consist of *réviseurs d'entreprises*, *réviseurs d'entreprises agréés*, *cabinets de révision* and *cabinets de révision agréés*.

Art. 31. Competences of the IRE

The IRE shall have the following competences:

- (a) to defend the rights and interests of the profession;
- (b) to issue standards for the fields of activity referred to in Article 1(29), subparagraph 2;
- (c) to ensure respect for professional standards and duties with the exception of those applicable to the activities referred to in Article 1(29)(a) and (b);
- (d) to ensure that its members respect their professional obligations arising out of the legislation relating to combating money laundering and combating the financing of terrorism;
- (e) to forestall and conciliate any disputes between its members, on the one hand, and between its members and third parties, on the other;
- (f) to perform certain tasks entrusted to it by the CSSF;
- (g) to make any proposals in the interest of the profession to the CSSF.

Art. 32. Powers of the IRE

The IRE shall have the power to carry out checks and to require any such information as it shall deem necessary from its members in the fields attributed to it by this Law.

The checks shall be carried out in accordance with procedures decided upon by the general assembly on a proposal from the Council of the IRE.

Art. 33. Bodies of the IRE

The bodies of the IRE shall be the Council, the general assembly and the Disciplinary Council.

Art. 34. Council of the IRE

(1) The Council of the IRE is composed of seven members elected by the general assembly from among the members who are natural persons. A majority must consist of *réviseurs d'entreprises agréés*.

The election takes place by secret ballot by a relative majority of the votes unless there are as many candidates as there are posts to fill. In such case, the candidates shall be declared elected and there will be no need to hold a vote.

The Council of the IRE shall have all the powers that are not reserved to the general assembly or to the Disciplinary Council.

(2) The members of the Council are elected for a term of three years. However, their term of office shall not come to end until a new Council has been elected. All terms of office shall expire on the same day, that is to say every three years, at the annual general assembly. Terms of office are renewable.

In the event of a vacancy of a post on the Council, the remaining members shall ensure a replacement until the next general assembly.

In the event of three posts falling vacant simultaneously, the remaining members or, failing them, the President of the Disciplinary Council shall convene a general assembly in order to fill the vacant posts.

The members so designated or elected shall complete the term of office of the members whom they replace.

Art. 35. Election of a President, a secretary and a treasurer

The members of the Council elect from amongst them a President, a secretary and a treasurer at their first meeting.

Art. 36. Rights and obligations of the President, the secretary and the treasurer

The President represents the IRE in judicial and extra-judicial proceedings. He has a casting vote in the event of a tied vote on the Council. He convenes the Council when he considers it necessary or at the request of two other members of the Council made at least eight days in advance, except in cases of urgency.

In the event that the President is absent or prevented from acting, his function shall be assumed by a representative designated in accordance with the rules defined by the Council.

The secretary draws up the minutes of the Council, which shall be countersigned by the President of the meeting.

The minutes shall mention the names of the members present or represented at the meeting.

The treasurer sees to the receipts and disbursements authorised by the Council; he presents his accounts at the end of each year to the Council, which shall adopt them and submit them to the annual general assembly together with the budget.

Art. 37. Conditions for decision-making on the Council of the IRE

The Council may take decisions validly only if the majority of its members are present or represented. A member may cause himself to be represented at meetings of the Council by another member. A member may represent only one other member at meetings of the Council. The Council shall decide by an absolute majority of the votes of the members present and represented.

Art. 38. Investigation of cases by the President of the IRE

(1) The President of the IRE investigates cases referred to him by the State Prosecutor or the CSSF or by complaint or taken up of his own motion. If he considers that he is in the presence of one of the situations referred to in Article 46, he may:

- on the advice of the Council of the IRE, issue an injunction in accordance with Article 39 of this Law or effect a call to order in accordance with Article 40 of this Law.
- refer the case to the Disciplinary Council. He shall be bound to refer to the Disciplinary Council all cases referred to him on the application of the State Prosecutor or the CSSF.

The President of the IRE may enlist the help of experts in order to carry out his disciplinary investigations.

He may delegate his powers of investigation and referral to another member of the Council of the IRE who is not a member of the Disciplinary Council on the grounds set out in Article 45, first paragraph. The Council of the IRE shall assess those grounds without the President having the right to vote.

Without prejudice to the provisions of this Law, the Disciplinary Council shall comply with the forms laid down for the courts.

(2) Before referring a case to the Disciplinary Council, the President of the IRE shall draw up a record of the facts underlying the investigation. To this end, he may address himself to the General State Prosecutor with a view to having officers of the judicial police carry out an investigation.

Art. 39. Power of injunction of the President of the IRE

(1) Where a member of the IRE does not respect the provisions of this Law coming under the competences of the IRE, the President of the IRE may, pursuant to Article 38(1), first indent, having heard the opinion of the Council of the IRE, enjoin a member by registered letter to rectify the situation found within such time as is determined in the letter.

(2) If upon the expiry of the time fixed pursuant to the preceding paragraph, the member has not complied with or has not sufficiently complied with the injunction referred to in the first paragraph, the President may, having heard the opinion of the Council of the IRE, deliver a call to order or refer the case to the Disciplinary Council.

Art. 40. Call to order by the President of the IRE

Pursuant to Article 38(1), first indent, the President of the IRE, having heard the opinion of the Council of the IRE, may call a member to order where he has found that the matters complained of, while being made out, constitute a failure to comply with the provisions of this Law which fall within the competences of the IRE while not warranting any of the sanctions provided for in Article 47 of this Law.

Art. 41. General assembly

All natural persons shall be called on to hold a general assembly at least once a year at the latest during the month of June. Extraordinary general assemblies shall be held each time that the Council of the IRE deems it necessary or upon the written, reasoned request of at least one-fifth of the members who are natural persons.

General assemblies are convened by the President of the IRE at least two weeks before the date fixed for the assembly. Convening notices, to be sent out by registered letter or an equivalent procedure, shall mention the place, the date, the time and the agenda of the general assembly.

Art. 42. Conditions for deliberation of the general assembly

(1) The general assembly may validly deliberate only if at least half of the members who are natural members are present or represented.

If a first assembly does not meet the required quorum, a second assembly, convened within the month with the same agenda shall deliberate validly whatever the number of members who are natural persons present or represented.

Each member who is a natural person has one vote; he may cause himself to be represented by virtue of a written proxy given to another member.

(2) The general assembly shall decide by a two-thirds majority of the votes cast on the dismissal of one or more members of the Council of the IRE and on the conferral of the title of Honorary President.

In all other cases, it shall decide by an absolute majority of the votes cast, without prejudice to the provisions of Article 34 of this Law.

Art. 43. Agenda of the general assembly

The agenda of the annual general assembly shall include in particular the presentation of the activity report and the annual accounts for the past financial year, the vote on the approval of the annual accounts, the vote on the discharge of the members of the Council of the IRE, the vote on the budget for the next financial year and on the annual membership fee as well as, where appropriate, the election of the Council of the IRE.

Art. 44. Disciplinary Council

A Disciplinary Council shall be set up consisting of the President of the *Tribunal d'Arrondissement de Luxembourg* [District Court of Luxembourg] or such judge as replaces him, as President, and four members of the Council of the IRE.

The full members of the Disciplinary Council shall have as their alternates the other members of the Council of the IRE.

In case the full and alternate members are prevented from acting, the President of the Disciplinary Council shall appoint *réviseurs d'entreprises* or *réviseurs d'entreprises agréés* from outside the members of the Council of the IRE.

Art. 45. Requirements for the independence of the members of the Disciplinary Council

The following may not sit on the Disciplinary Council: the President of the IRE or the person to whom he has delegated his powers within the meaning of Article 38(1), third subparagraph, persons associated with the person prosecuted or blood relations or relations by marriage of that person or his spouse up to and including the sixth degree and persons associated with the complainant or blood relations or relations by marriage of the complainant up to and including the sixth degree.

Members of the Disciplinary Council wishing to abstain for other reasons shall be bound to declare this in writing to the President of the Disciplinary Council within eight days of their convocation. The President of the Disciplinary Council shall decide whether or not they should abstain.

Art. 46. Power to adopt sanctions of the Disciplinary Council

Within the framework of the competences of the IRE as provided for in Article 31 of this Law, the Disciplinary Council shall exercise the power to impose sanctions in respect of any of its members on account of:

- (a) infringement of the legal and regulatory requirements;
- (b) professional misconduct and negligence;
- (c) acts contrary to professional scrupulousness and dignity and in breach of honour and integrity;

- (d) refusal to provide documents or other information requested;
 - (e) provision of documents or other information which prove to be incomplete, inaccurate or false;
 - (f) obstruction of the exercise of the IRE's powers of inspection;
 - (g) refusal to comply with injunctions or calls to order of the President of the IRE;
- the whole without prejudice to the administrative or judicial action which may result from the same facts.

Art. 47. Disciplinary sanctions

The disciplinary sanctions in the order of their seriousness shall be as follows:

- (a) a warning;
- (b) a reprimand;
- (c) a fine of from EUR 1,250 to 125,000;
- (d) removal of the right to vote in the general assembly with a prohibition on being a member of the Council of the IRE for a maximum of six years;
- (e) suspension from exercising one of the activities referred to in Article 1(29), subparagraph 2, of this Law for a term not exceeding five years;
- (f) a definitive prohibition on exercising one of the activities referred to in Article 1(29), subparagraph 2, of this Law;
- (g) suspension of the right to practise the profession for a term not exceeding five years;
- (h) a definitive prohibition on the right to practise the profession.

The CSSF shall withdraw temporarily or definitively the title of '*réviseur d'entreprises*' or '*cabinet de révision*' from a person who has had imposed on him the sanctions described in (g) and (h) where they have become *res judicata*.

In the event that a sanction is imposed, the costs of the disciplinary proceedings shall be borne by the member against whom the sanction is pronounced. If no sanction is imposed, the costs shall be borne by the IRE.

The costs and, where appropriate, the fine shall be made enforceable by the President of the *Tribunal d'Arrondissement* [District Court] of the district of the person against whom the sanction is imposed. The fine shall be collected by the *Administration de l'Enregistrement* for the benefit of the State.

Art. 48. Information of the CSSF

The IRE is under a duty to inform the CSSF without undue delay of any breach of professional standards and duties and of the professional obligations referred to in Article 31(c) and (d) by a *réviseur d'entreprises agréé* or by a *cabinet de révision agréé* and of any measure imposed by the IRE against a *réviseur d'entreprises agréé* or a *cabinet de révision agréé* by virtue of Articles 39, 40 and 47 of this Law.

Art. 49. Summons before the Disciplinary Council

The member charged shall be summoned before the Disciplinary Council by the President of the IRE at least fifteen days before the session. The summons shall contain the complaints made against him. The member charged may inspect the file, without moving it, at the secretariat of the IRE. He may, at his expense, have copies issued to him.

The member charged shall appear in person. He may be assisted by a lawyer. If the person charged does not appear, a decision shall be taken in default of appearance against which no appeal will be possible.

Art. 50. Session of the Disciplinary Council

(1) At the opening of the session of the Disciplinary Council, the President of the IRE shall set out the case and read out the documents. The President of the IRE may be represented by a lawyer at the session of the Disciplinary Council.

The Council shall then hear successively the complainant, if any, the witnesses, the experts, who shall withdraw after testifying, the member charged and the findings of the President of the IRE.

The member charged shall speak last.

The minutes of the session shall be drawn up by a member of the Council appointed for that purpose by the President of the Disciplinary Council.

(2) The sessions of the Disciplinary Council shall be public. However, it may be ordered to sit in camera at the request of the person charged or if facts affecting vital interests of third parties must be raised in the debates. The deliberations shall be secret. The decisions shall be taken by an absolute majority of the votes; they shall be signed by all the members of the Disciplinary Council.

Art. 51. Power of investigation and expert assessment of the Disciplinary Council

The Disciplinary Council may order investigations and expert reports. Investigations shall be carried out by the Council, by two of its members delegated for that purpose, by experts or by officers of the judicial police.

Witnesses and experts appearing before the Council or its delegates shall be heard under oath.

Witnesses summoned who refuse to appear or to testify shall be liable to the penalties provided for in Articles 157 and 158 of the Code of Criminal Investigation. Those penalties shall be pronounced by the *tribunal correctionnel* [criminal court] on application by the public prosecutor. The *tribunal correctionnel* may further order the defaulting witness to be compelled subject to detention to testify.

Perjury and the subornation of witnesses and experts shall be punishable by the penalties laid down in Articles 220, 223 and 224 of the Criminal Code.

Art. 52. Signature and sending of letters, writs of summons, certified copies and notifications

Letters and writs of summons to the person charged, witnesses and experts shall be signed by the President of the IRE. Certified copies of decisions of the Disciplinary Council shall be signed by the President of the Disciplinary Council.

Writs of summons and notifications shall be sent by registered letter or served by process-server.

Art. 53. Notification and enforcement of decisions of the Disciplinary Council

Without prejudice to the provisions of the last paragraph of Article 47, decisions of the Disciplinary Council shall be notified to the member against whom the proceedings were brought and enforced at the instance of the President of the IRE. A certified copy thereof shall be forwarded to the General State Prosecutor. The minutes of the decisions shall be lodged and kept at the secretariat of the IRE. A copy thereof may be issued only with the authorisation of the President of the IRE.

Art. 54. Appeals

Decisions of the Disciplinary Council may be contested by way of appeal both by the member found guilty and by the General State Prosecutor. The appeal shall be brought before the civil chamber of the Court of Appeal, which rules by definitive judgment. The appeal shall be notified to the registry of the Court within one month or it will be time-barred. Time shall start to run for the member found guilty on the day on which the decision was notified to him and for the General State Prosecutor on the day on which he received the

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certified copy of the decision. The case shall be treated as urgent and the debates shall take place at a public hearing. However, a hearing in camera may be ordered at the request of the person charged or if facts affecting the vital interests of third parties must be raised in the debates. The appeal and the time-limit for appealing against the decision shall have suspensive effect.

Art. 55. Publication of the sanctions

The sanctions referred to in Article 47(e) to (h) shall be brought to the attention of the public at the instance of the President of the Disciplinary Council through publication of a notice in the *Mémorial* [Official Gazette] as soon as the decisions pronounced become *res judicata*.

Art. 56. Funding of the IRE

The expenses of the IRE shall be covered by the contributions paid by the *réviseurs d'entreprises*, the *réviseurs d'entreprises agréés*, the *cabinets de révision* and the *cabinets de révision agréés* as well as by trainees carrying out the practical training provided for in Article 8.

Those contributions shall be fixed annually by the general assembly on a proposal from the Council of the IRE.

In the event of non-payment, the President of the IRE may seek enforcement of the contribution by the President of the *Tribunal d'Arrondissement de et à Luxembourg* [District Court of and at Luxembourg].

Chapter VIII. Public oversight of the audit profession

Art. 57. Competences of the CSSF as public oversight authority of the audit profession

(1) All *réviseurs d'entreprises agréés* and *cabinets de révision agréés* shall be subject to the public oversight of the audit profession.

(2) The CSSF shall be the competent authority for the public oversight of the audit profession.

(3) The CSSF shall assume responsibility:

(a) for the grant of the title of '*réviseur d'entreprises*' and '*cabinet de révision*' in accordance with Article 3 of this Law;

(b) for the approval and registration of *réviseurs d'entreprises agréés* and *cabinets de révision agréés* in accordance with Articles 5 and 11 of this Law;

(c) for the registration and public oversight of third-country auditors and third-country audit entities in accordance with Articles 79 and 80 of this Law;

(d) for the adoption of auditing standards in the area of the activities referred to in Article 1(29)(a) in accordance with Article 27, second paragraph, of this Law;

(e) for the adoption of standards of professional ethics and standards relating to the internal quality control of *cabinets de révision agréés*;

(f) for the adoption of standards in the field of the activities referred to in Article 1(29)(b) of this Law;

(g) for continuous training, quality assurance and in regard to investigations, injunctions, calls to order and sanctions;

(h) for the keeping and the publication of the public register in accordance with Article 11 of this Law;

(i) for cooperation with the competent authorities of the other Member States in accordance with Article 78 of this Law;

(j) for cooperation with the competent authorities of third countries in accordance with Article 82 of this Law.

(4) The CSSF may ask the IRE or experts acting under its supervision to assist it in the exercise of its functions.

Art. 58. Powers of the CSSF

For the purposes of the application of this Law, the CSSF shall be invested with such powers of inspection, investigation, injunction, call to order and sanction as are necessary for the performance of its functions, as specified in Articles 59, 61, 62, 63, 66 and 67 of this Law. The CSSF may require all such information as is necessary for the accomplishment of its tasks.

Art. 59. Quality assurance

(1) *Réviseurs d'entreprises agréés* and *cabinets de révision agréés* shall be subject to a system of quality assurance for the assignments which they carry out in connection with the fields referred to in Article 1(29)(a) and (b) of this Law.

(2) The CSSF shall be responsible for the implementation of a quality assurance system governed by the following conditions:

(a) the persons who carry out quality assurance reviews shall have appropriate professional training and experience in statutory audit and financial reporting and in the field of the assignments referred to in Article 1(29)(b) combined with specific training on quality assurance reviews;

(b) the selection of reviewers for specific quality assurance review assignments shall be effected in accordance with an objective procedure designed to ensure that there are no conflicts of interest between the reviewers and the *réviseur d'entreprises agréé* or *cabinet de révision agréé* under review;

(c) the scope of the quality assurance review, supported by adequate testing of selected audit files, shall include an assessment of compliance with the standards referred to in Article 27 of this Law and of respect for the rules of professional ethics, in particular of independence, referred to in Chapter IV of Title I of this Law, of the quantity and quality of resources spent, of the audit fees charged in connection with the assignments referred to in Article 1(29)(a) of this Law and of the internal quality control system of the *cabinet de révision agréé* for assignments carried out in connection with the fields referred to in Article 1(29)(a) of this Law;

(d) the scope of the quality assurance review shall also be based on a check of the files produced in connection with the activities referred to in Article 1(29)(b) and shall include an evaluation of conformity with the standards referred to in Article 57(3)(f) of this Law and of compliance with the rules of professional ethics, in particular of independence, referred to in Chapter IV of Title I of this Law, of the quantity and quality of resources spent and of the audit fees charged;

(e) the quality assurance review shall be the subject of a report which shall contain the main conclusions of the said review;

(f) quality assurance reviews shall take place at least every six years.

Art. 60. Implementation of the recommendations made by the CSSF at the end of the quality assurance review

The *réviseur d'entreprises agréé* or *cabinet de révision agréé* shall implement the recommendations made by the CSSF at the end of the quality assurance review within a reasonable period as from the date of notification of the findings.

If the recommendations provided for in the preceding paragraph are not implemented or if the quality assurance review discloses failures to meet the standards referred to in Articles 17, 27 and 57(d) to (g) of this Law, the *réviseur d'entreprises agréé* or *cabinet de révision agréé* may, depending on the seriousness, be the subject of an injunction in accordance with Article 62, a call to order in accordance with Article 63 or a disciplinary procedure which may give rise to the appropriate administrative sanctions as mentioned in Article 67 of this Law.

Art. 61. Power of investigation of the CSSF

The CSSF may order investigations and expert reports. The investigations shall be carried out either by staff of the CSSF or by experts.

The CSSF's power of investigation shall include the right:

- (a) to have access to any document in any form whatsoever and to receive a copy thereof;
- (b) to ask for information from any person and, if necessary, to summon a person and hear him in order to obtain information;
- (c) to carry out investigations by way of inspection *in situ* of the persons subject to its oversight;
- (d) to instruct experts to carry out checks *in situ* or investigations with persons subject to its oversight;
- (e) to adopt any measure necessary to ensure that the persons subject to its oversight continue to comply with the requirements of this Law and measures taken in implementation thereof.

Art. 62. Power of injunction of the CSSF

(a) Where a *réviseur d'entreprises agréé* or *cabinet de révision agréé* subject to the oversight of the CSSF does not comply with the provisions of this Law coming under its competences, the CSSF may, pursuant to Article 57(g), enjoin, by registered letter, the person in question to rectify the situation found within such time as it shall determine.

(b) If, at the expiry of the time-limit laid down by the CSSF pursuant to the preceding paragraph, the situation found has not been rectified, the CSSF may issue a call to order in accordance with Article 63 of this Law or adopt administrative sanctions in accordance with Article 67 of this Law.

Art. 63. Call to order by the CSSF

Where the CSSF has found that a *réviseur d'entreprises agréé* or *cabinet de révision agréé* has committed a proven infringement of the provisions of this Law falling within its competences which does not warrant any of the sanctions provided for in Article 67 of this Law, the CSSF may, pursuant to Article 57(g), call the *réviseur d'entreprises agréé* or *cabinet de révision agréé* to order.

Art. 64. Funding of the system for the public oversight of the audit profession

The funding of the system of public oversight shall be secure and free from any undue influence by *réviseurs d'entreprises agréés* or *cabinets de révision agréés* subject to it. A Grand-Ducal regulation shall lay down the bases for the funding of the public oversight of the audit profession.

Art. 65. Publication of work programmes and annual activity reports

(1) In order to ensure the transparency of the public oversight of the audit profession, the CSSF shall publish its work programmes and annual activity reports relating to the exercise of its functions with regard to the public oversight of the audit profession.

(2) The CSSF shall publish its global findings of the quality assurance reviews annually.

Art. 66. Power of the CSSF to impose sanctions

Within the framework of its competences, the CSSF shall exercise the power to impose sanctions on *réviseurs d'entreprises agréés* and *cabinets de révision agréés* where an investigation has established that such persons:

- (a) have committed an infringement of the legal and regulatory requirements;
- (b) have committed professional misconduct and negligence;
- (c) have conducted themselves contrary to professional scrupulousness and dignity and in breach of honour and integrity;
- (d) have refused to provide documents or other information requested;
- (e) have provided documents or other information which prove to be incomplete, inaccurate or false;
- (f) have impeded the exercise of the CSSF's powers of inspection and investigation;
- (g) have not published on their website within three months of the end of each accounting year the transparency report prescribed by Article 73 of this Law;
- (h) have not complied with the injunctions or calls to order of the CSSF.

Art. 67. Administrative sanctions

The CSSF shall impose administrative sanctions. In the order of their seriousness, these are:

- (a) a warning;
- (b) a reprimand;
- (c) an administrative fine of EUR 125 to 125,000;
- (d) suspension of the approval referred to in Article 5 and of the inscription in the public register for a period of no more than five years;
- (e) definitive withdrawal of the approval referred to in Article 5 and definitive striking out of the inscription in the public register;
- (f) suspension of the title of *réviseur d'entreprises* or *cabinet de révision* for a period of no more than five years;
- (g) definitive withdrawal of the title of *réviseur d'entreprises* or *cabinet de révision*.

In the event that a sanction is imposed, the costs occasioned by the disciplinary procedure shall be charged to the *réviseur d'entreprises agréé* or *cabinet de révision agréé* upon whom or which the sanction is imposed. Otherwise, they shall be borne by the CSSF.

Art. 68. Information of the President of the IRE

The CSSF shall inform the President of the IRE of any measure taken with regard to a *réviseur d'entreprises agréé* or *cabinet de révision agréé* by virtue of Articles 62, 63 and 67 of this Law.

Art. 69. Appeals

An appeal subject to the court's unlimited jurisdiction shall be available before the administrative court against decisions of the CSSF taken in the context of this Law.

Art. 70. Criminal sanctions

The wrongful use of the title of *réviseur d'entreprises*, *réviseur d'entreprises agréé*, *cabinet de révision* or *cabinet de révision agréé* or any similar title shall be punishable by a term of imprisonment ranging from eight days to three years and a fine of EUR 500 to 100,000 or only one of these penalties.

A person who, without being a *réviseur d'entreprises agréé* or a *cabinet de révision agréé*, carries out, even in an ancillary or occasional manner, in his own name and under his responsibility, directly or through an intermediary, work reserved to *réviseurs d'entreprises agréés* or *cabinets de révision agréés* in accordance with Article 5(1) or carries out an audit of accounts while referring to international auditing standards shall be punishable by a term of imprisonment ranging from eight days to three years and a fine of EUR 500 to 100,000 or one only of these penalties.

The fact that a *réviseur d'entreprises* carries out even in an ancillary or occasional manner, in his own name and under his responsibility, directly or through an intermediary, work reserved to *réviseurs d'entreprises agréés* in accordance with Article 5(1) or carries out an audit of accounts while referring to international auditing standards shall constitute professional misconduct and negligence within the meaning of Article 46 of this Law.

The provisions of the first book of the Criminal Code and Articles 130-1 to 132-1 of the Code of Criminal Investigation shall be applicable.

Art. 71. Publication of sanctions

Sanctions imposed in accordance with Article 67 of this Law shall be brought to the knowledge of the public through publication of a notice in the *Mémorial* [Official Gazette].

Chapter IX. Special provisions relating to the statutory audit of public-interest entities

Art. 72. Application of special provisions to public-interest entities

(1) Public-interest entities and *réviseurs d'entreprises agréés* mandated with the statutory audit of public-interest entities shall be subject to special provisions relating to the statutory audit set out in Articles 73 to 76 of this Law.

(2) Public-interest entities which have not issued transferable securities admitted to trading on a regulated market within the meaning of point 14 of Article 4(1) of Directive 2004/39/EC and their *réviseur(s) d'entreprises agréé(s)* or *cabinets de révision agréés* shall be exempt from the requirements set out in Articles 74, 75 and 76 of this Law.

(3) The exemptions referred to in paragraph (2) of this article may be amended by Grand-Ducal regulation.

Art. 73. Transparency report

The *réviseurs d'entreprises agréés* and *cabinets de révision agréés* that carry out the statutory audit of public-interest entities shall publish on their websites, within three months of the end of each financial year, an annual transparency report that includes at least the following information:

- (a) a description of the legal structure and ownership;
- (b) where the *cabinet de révision agréé* belongs to a network, a description of the network and the legal and structural arrangements in the network;
- (c) a description of the governance structure of the *cabinet de révision agréé*;
- (d) a description of the internal quality control system and a statement by the administrative or management body on the effectiveness of its functioning;
- (e) the date of the last quality assurance review referred to in Article 59;

- (f) a list of public-interest entities for which the *réviseur d'entreprises agréé* or *cabinet de révision agréé* has carried out statutory audits during the preceding financial year;
- (g) a statement concerning the *cabinet de révision agréé's* independence practices which also confirms that an internal review of independence compliance has been conducted;
- (h) a statement on the policy followed by the *cabinet de révision agréé* concerning the continuing training of statutory auditors referred to in Article 9;
- (i) financial information showing the importance of the *cabinet de révision agréé*, such as the total turnover divided into fees from the statutory audit of annual and consolidated accounts, and fees charged for other assurance services, tax advisory services and other non-audit services;
- (j) information concerning the basis for the partners' remuneration.

The transparency report shall be signed by the *réviseur d'entreprises agréé* or *cabinet de révision agréé*, as the case may be. In the case of a *cabinet de révision agréé*, the transparency report shall be signed by a *réviseur d'entreprises agréé* who is a member of the *cabinet de révision agréé*.

Art. 74. Audit committee

(1) Each public-interest entity shall have an audit committee. At least one member of the audit committee shall be independent and shall have competence in accounting and/or auditing. The CSSF may specify the detailed rules relating to the composition of audit committees.

In public-interest entities which meet the criteria of Article 2(1), point (f) of Directive 2003/71/EC, the functions assigned to the audit committee may be performed by the administrative or supervisory body as a whole, provided at least that when the chairman of such a body is an executive member, he is not the chairman of the audit committee.

(2) Without prejudice to the responsibilities of the members of the administrative, management or supervisory bodies, or of other members who are appointed by the general meeting of shareholders of the audited entity, the audit committee shall, inter alia:

- (a) monitor the financial reporting process;
- (b) monitor the effectiveness of the company's internal control, internal audit and, where applicable, risk management systems;
- (c) monitor the statutory audit of the annual and consolidated accounts;
- (d) review and monitor the independence of the *réviseur d'entreprises agréé* or *cabinet de révision agréé* and in particular the provision of additional services to the audited entity.

The CSSF may specify the detailed rules pertaining to points (a) to (d) of this paragraph.

(3) The proposal of the administrative or supervisory body of a public-interest entity for the appointment of a *réviseur d'entreprises agréé* or *cabinet de révision agréé* shall be based on a recommendation made by the audit committee.

(4) The *réviseur d'entreprises agréé* or *cabinet de révision agréé* shall report to the audit committee on key matters arising from the statutory audit, and in particular on material weaknesses in internal control in relation to the financial reporting process.

(5) A public-interest entity that has a body performing equivalent functions to an audit committee may derogate from paragraphs (1) to (4) on the conditions laid down by the CSSF.

(6) The following shall be exempt from the obligation to have an audit committee:

(a) any public-interest entity which is a subsidiary undertaking within the meaning of Article 1 of Directive 83/349/EEC if the entity complies with the requirements in paragraphs (1) to (4) of this article at group level;

(b) any public-interest entity which is a Luxembourg collective investment undertaking as defined in Article 2(2) of the amended Law of 20 December 2002 concerning collective investment undertakings. Public-interest entities the sole object of which is the collective investment of capital provided by the public, which operate on the principle of risk spreading and which do not seek to take legal or management control over any of the issuers of its underlying investments shall also be exempted, provided that those collective investment undertakings are authorised and subject to supervision by the CSSF and that they have a depositary exercising functions equivalent to those under the amended Law of 20 December 2002 concerning collective investment undertakings;

(c) public-interest entities the sole business of which is to act as issuer of asset-backed securities as defined in Article 2(5) of Regulation (EC) No 809/2004. In such instances, the entity shall explain the reasons for which it considers it not appropriate to have either an audit committee or an administrative or supervisory body entrusted to carry out the functions of an audit committee;

(d) Luxembourg credit institutions within the meaning of Article 1(12) of the amended Law of 5 April 1993 on the financial sector whose shares are not admitted to trading on a regulated market of any Member State within the meaning of point 14 of Article 4(1) of Directive 2004/39/EC and which have, in a continuous or repeated manner, issued only debt securities, provided that the total nominal amount of all such debt securities remains below EUR 100,000,000 and that it has not published a prospectus under Directive 2003/71/EC.

Art. 75. Independence

(1) In addition to the provisions laid down in Articles 18, 19 and 20, *réviseurs d'entreprises agréés* or *cabinets de révision agréés* of public-interest entities shall:

(a) confirm annually in writing to the audit committee their independence from the audited public-interest entity;

(b) disclose annually to the audit committee any additional services provided to the audited entity;

and

(c) discuss with the audit committee the threats to their independence and the safeguards applied to mitigate those threats as documented by them pursuant to Article 19(3) of this Law.

(2) The key audit partner(s) responsible for carrying out a statutory audit shall rotate from the audit engagement within a maximum period of seven years from the date of appointment and shall not be authorised to participate in the audit of the audited entity again until after a period of at least two years.

(3) The *réviseur d'entreprises agréé* or the key audit partner who carries out a statutory audit on behalf of a *cabinet de révision agréé* shall not be allowed to take up a key management position in the audited entity before a period of at least two years has elapsed since he resigned as a *réviseur d'entreprises agréé* or key audit partner from the audit engagement.

Art. 76. Periodicity of the quality assurance review

The quality assurance review referred to in Chapter VIII of Title I of this Law shall be carried out at least every three years for *réviseurs d'entreprises agréés* or *cabinets de révision agréés* that carry out statutory audits of public-interest entities.

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Chapter X. Mutual recognition of regulatory provisions and cooperation with the competent authorities of the other Member States

Art. 77. Principle of the competence of the home Member State

In the matter of regulatory arrangements and public oversight, statutory auditors and audit firms shall be subject to the competence of the home Member State in which they are approved and in which the audited entity has its registered office.

In the case of a statutory audit of the consolidated accounts of a company which has its registered office in Luxembourg, the statutory auditor or audit firm carrying out the statutory audit of the accounts of a subsidiary which has its registered office in another Member State shall be subject to the law of that Member State as regards registration, quality assurance review, auditing standards, professional ethics and independence.

Where the securities of a company having its registered office in another Member State are traded on a regulated market in Luxembourg, the statutory auditor or the audit firm carrying out the statutory audit of the annual or consolidated accounts of that company shall be subject to the law of the Member State of the registered office of the company as regards registration, quality assurance review, auditing standards, professional ethics and independence.

Art. 78. Cooperation with the competent authorities of other Member States

(1) The CSSF may exchange confidential information with the authorities of other Member States responsible for approval, registration, quality assurance and inspection and in the matters of investigations and sanctions. The information so exchanged shall be covered by professional secrecy.

(2) The communication of information by the CSSF to an authority of another Member State shall be subject to the following requirements:

(a) the information communicated must be necessary for the performance of the function of the authorities receiving it;

(b) the information communicated must be covered by the professional secrecy of the authorities, bodies and persons receiving it and the professional secrecy of those authorities, bodies and persons must afford guarantees at least equivalent to the professional secrecy to which persons exercising or having exercised an activity for the CSSF are subject:

(c) the authorities, bodies and persons receiving information from the CSSF may not use it for purposes other than those for which it was communicated and must be in a position to ensure that no other use is made of it.

(3) The CSSF may disclose information received from competent authorities of Member States only with the express agreement of those authorities and, where appropriate, solely for the purposes for which those authorities have signified their agreement, unless the circumstances justify it.

(4) The CSSF may refuse to grant a request for information where:

(a) its communication might adversely affect the sovereignty, security or public order of Luxembourg or breach Luxembourg security rules; or

(b) judicial proceedings have already been initiated in respect of the same actions and against the same *réviseurs d'entreprises agréés* or *cabinets de révision agréés* in Luxembourg; or

(c) final judgment has already been given in Luxembourg in respect of the same actions and against the same *réviseurs d'entreprises agréés* or *cabinets de révision agréés*.

(5) Without prejudice to the obligations to which it is subject in judicial proceedings, the CSSF which receives confidential information pursuant to this article may use it only for the exercise of its functions as defined in this Law and in the context of administrative or judicial proceedings specifically related to the exercise of those functions.

(6) Information requested pursuant to this article shall be provided without delay. Where appropriate, the CSSF shall take without undue delay such measures as are required to collect the information requested. If the CSSF is unable to supply the information requested without delay, it shall notify the reasons for this inability to the authority making the request.

(7) Where the CSSF concludes that activities contrary to the provisions of this Law are being or have been carried out on the territory of another Member State, it shall notify the competent authority of the other Member State of that conclusion in as specific a manner as possible.

(8) Where the competent authority of another Member State notifies the CSSF of its conclusions that activities contrary to the provisions of Directive 2006/43/EC are being or have been carried out in Luxembourg, the CSSF shall take appropriate action. It shall inform the notifying authority of the outcome and, to the extent possible, of significant interim developments.

(9) The CSSF may request that an investigation be carried out by the competent authority of another Member State on the latter's territory. It may request that some of its own personnel be allowed to accompany the personnel of the competent authority of that other Member State in the course of the investigation.

A competent authority of another Member State may likewise request the CSSF to carry out an investigation in Luxembourg. It may also request that some of its own personnel be allowed to accompany the personnel of the CSSF in the course of the investigation. The investigation shall be subject throughout to the overall control of the CSSF.

(10) The CSSF may refuse to act on a request for an investigation to be carried out or on a request for its personnel to be accompanied where:

- (a) such an investigation might adversely affect the sovereignty, security or public order of Luxembourg; or
- (b) judicial proceedings have already been initiated in respect of the same actions and against the same *réviseurs d'entreprises agréés* or *cabinets de révision agréés* before the Luxembourg authorities; or
- (c) final judgment has already been given in respect of the same actions against the same *réviseurs d'entreprises agréés* or *cabinets de révision agréés* by the Luxembourg authorities.

Chapter XI. Registration and public oversight of third-country auditors and audit entities and cooperation with the competent authorities of third countries

Art. 79. Registration of third-country auditors and audit entities

(1) The CSSF shall, in accordance with Articles 11 to 13, register every third-country auditor and audit entity that provides an audit report concerning the annual or consolidated accounts of a company incorporated outside a Member State whose transferable securities are admitted to trading on a regulated market in Luxembourg within the meaning of Article 1(11) of the Law on markets in financial instruments, except when the company is an issuer exclusively of debt securities admitted to trading on a regulated market within the meaning of Article 2(1)(b) of Directive 2004/109/EC, the denomination per unit of which is at least EUR 50,000 or, in case of debt securities denominated in a currency other than the euro, equivalent, at the date of issue, to at least EUR 50,000.

(2) Articles 14 and 15 of this Law shall apply.

(3) A third-country audit entity may be registered only in so far as:

- (a) it satisfies requirements of good repute and professional qualification equivalent to those required by virtue of Article 5(3) of this Law;
- (b) the majority of the members of the administrative or management body of the third-country audit entity satisfy requirements of good repute and professional qualification equivalent to those required by virtue of Article 5(3) of this Law;

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(c) the third-country auditor who carries out the audit in the name of the third-country audit entity satisfies requirements of good repute and professional qualification equivalent to those required by virtue of Article 5(2)(c) of this Law;

(d) the audit of the annual accounts or consolidated accounts referred to in paragraph (1) of Article 79 is carried out in accordance with the international auditing standards referred to in Article 27 and with the requirements set out in Chapter IV of Title I of this Law;

(e) it publishes on its website an annual transparency report which includes the information provided for in Article 73 or complies with equivalent disclosure requirements.

(4) The audit reports relating to annual accounts or consolidated accounts as referred to in paragraph (1) of Article 79 which are issued by third-country auditors or audit entities which have not been registered in Luxembourg shall have no legal value there.

Art. 80. Public oversight of third-country auditors and audit entities

Registered third-country auditors and audit entities shall be subject to the provisions of Chapter VIII of Title I of this Law.

Third-country auditors and audit entities registered in accordance with paragraph (1) of Article 79 may, on a basis of reciprocity, be exempted from the obligation to submit themselves to the system of quality assurance referred to in Article 59 if another Member State, or a system of quality assurance of a third country deemed to be equivalent in accordance with Article 46 of Directive 2006/43/EC, has subjected the third-country auditor or audit entity concerned to a quality review during the preceding three years.

Art. 81. Equivalence of third countries

The CSSF may, on a basis of reciprocity, modify or not apply the provisions of Article 79(1) and Article 80 to auditors and audit entities of a third country deemed to be equivalent in accordance with Article 46 of Directive 2006/43/EC.

Art. 82. Cooperation with competent authorities of third countries

(1) Transfer to the competent authorities of a third country of audit working papers or other documents held by *réviseurs d'entreprises agréés* or *cabinets de révision agréés* shall be authorised only in so far as:

(a) those audit working papers or other documents relate to audits of companies which have issued securities on the capital markets of that third country or which form part of a group issuing statutory consolidated accounts in that third country;

(b) the transfer takes place via the CSSF to the competent authorities of that third country and at their request;

(c) the competent authorities of the third country concerned meet the requirements of Article 78 of this Law and, where appropriate, the European Commission's criteria as to adequacy in this matter;

(d) there are working arrangements on the basis of reciprocity agreed between the CSSF and the competent authorities of the third country ensuring that:

i. justification as to the purpose of the request for audit working papers and other documents is provided by the competent authorities;

ii. the persons employed or formerly employed by the competent authorities of the third country that receive the information are subject to obligations of professional secrecy;

iii. the competent authorities of the third country, bodies and persons receiving information from the CSSF may use it only for the exercise of their functions of public oversight, quality assurance and investigation that meet requirements equivalent to those of Articles 29, 30 and 32 of Directive 2006/43/EC;

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iv. the request from a competent authority of a third country for audit working papers or other documents held by *réviseurs d'entreprises agréés* or *cabinets de révision agréés* can be refused:

- where the provision of those working papers or documents would adversely affect the sovereignty, security or public order of the European Community or of Luxembourg, or

- where judicial proceedings have already been initiated in respect of the same actions and against the same persons before the Luxembourg authorities;

- where a final judgment has already been given against the same *réviseurs d'entreprises agréés* or *cabinets de révision agréés* for the same actions by the Luxembourg authorities.

(e) the transfer of personal data to the third country shall be made in accordance with Chapter IV of the Law of 2 August 2002 on the protection of individuals with regard to the processing of personal data, as amended.

(2) In exceptional cases and by way of derogation from paragraph (1), the CSSF may authorise a *réviseur d'entreprises agréé* or a *cabinet de révision agréé* to transfer audit working papers and other documents directly to the competent authorities of a third country, provided that:

(a) investigations have been initiated by the competent authorities in that third country;

(b) the transfer of documents does not conflict with the obligations with which *réviseurs d'entreprises agréés* and *cabinets de révision agréés* are required to comply in relation to the transfer of audit working papers and other documents to their home competent authority;

(c) there are working arrangements with the competent authorities of that third country that allow the CSSF reciprocal direct access to audit working papers and other documents of that third-country's auditors and audit entities;

(d) the requesting competent authority of the third country informs in advance the CSSF of the each direct request for information, indicating the reasons therefor;

(e) the conditions referred to in paragraph (1)(d), points i to iv, are respected.

(3) These provisions are without prejudice to the application of other legal texts providing for supplementary restrictions on the transmission of information covered by professional secrecy.

TITLE II

Amending, transitional, repeals and sundry provisions

Chapter I to III

Please refer to the original text in French.

End