

TCSP GUIDELINES

Definition of TCSPs according to Article 1(8) and registration requirement under Article 7-2 (1) of the Law of 12 November 2004 on the fight against money laundering and terrorist financing

National Prevention Committee

For professionals under the AML/CFT supervision of
the *Administration de l'enregistrement, des domaines et de la TVA*, the *Institut des réviseurs d'entreprises*,
the *Ordre des experts-comptables*, the *Ordres des avocats de Luxembourg* and the *Ordres des avocats de Diekirch*.

October 2021

EN

v..3.0 – March 2026

GUIDELINES ¹

The activities of a trust and company service provider (hereafter "TCSP") referred to in article 1 (8) of the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended (hereafter the "2004 AML/CFT Law") may be carried out in Luxembourg by different types of professionals (banks, specialised PFS, investment firms, insurance sector professionals (*professionnels du secteur des assurances*, hereafter "PSA"), statutory auditors, chartered professional accountants, lawyers, etc.). These different types of professionals must all be licensed or registered, as well as supervised, by different AML/CFT supervisors (competent authorities or self-regulatory bodies).

The purpose of these guidelines is to clarify certain concepts (section I) to harmonise the understanding of professionals required to register with the supervisory authority or self-regulatory body to which they belong pursuant to article 7-2 (1) of the AML/CFT Law (section II). In addition, the drafting of these guidelines was necessary considering the number of situations and circumstances in which the service listed in article 1(8), letter b), of the AML/CFT Law may be provided (Section III).

These guidelines are intended for professionals subject to AML/CFT supervision:

- of the Registration Duties, Estates and VAT Authority (*Administration de l'enregistrement, des domaines et de la TVA*), i.e. business centres and in some cases directors;
- of the Institute of Statutory Auditors (*Institut des réviseurs d'entreprises*);
- of the Order of Chartered Professional Accountants (*Ordre des experts-comptables*);
- of the Luxembourg Bar Association (*Barreau de Luxembourg*) and the Diekirch Bar Association (*Barreau de Diekirch*).

They are not intended for professionals with a licence under the Law of 5 April 1993 on the financial sector as amended or the Law of 7 December 2015 on the insurance sector as amended. These professionals, bound by specific regulations, are supervised by the Financial Supervisory Authority (*Commission de surveillance du secteur financier*) or by the Insurance Supervisory Authority (*Commissariat aux assurances*).

The document was drafted by members of the TCSP Working Group of the National Prevention Committee drawing on European and international AML/CFT standards, as well as the publications and developments of the Financial Action Task Force (hereafter "FATF") level. The working group was composed of representatives of AML/CFT supervisors (supervisory authorities and self-regulatory bodies) for TCSPs, including the Registration Duties, Estates and VAT Authority, the Luxembourg and Diekirch Bar Associations, the Order of Chartered Professional Accountants and the Institute of Statutory Auditors, assisted by the National Prevention Committee Executive Secretariat. This cooperation between the supervisory authorities and the self-regulatory bodies also fulfils the cooperation obligation set out in article 7-2 (3) of the AML/CFT Law, in order to enable the establishment and maintenance of an up-to-date list of at the national level. Finally, the Luxembourg Institute of Directors (*Institut Luxembourgeois des Administrateurs*, hereafter "ILA") was consulted during the drafting of these guidelines.

¹ The interpretation of relevant laws being the exclusive competence of the courts, these guidelines do not alter the scope or meaning of the provisions of the 2004 AML/CFT Law.

Tracking of versions of documents:

Versions	Dates of publication	
1.0	October 2021	First publication of the document
2.0	September 2022	Document updated based on the entry into force of the Law of 29 July 2022 ² amending the AML/CFT Law (Article 1 (8) letter b) of the law of 12 November 2004 on the fight against money laundering and terrorist financing as amended (AML/CFT Law).
3.0	March 2026	Document update: Clarification of the effective scope of Article 1(8), letter b) of the law of 12 November 2004 on the fight against money laundering and terrorist financing as amended (AML/CFT Law).

² Law of 29 July 2022 amending: 1° the Code of Criminal Procedure; 2° the Law of 8 August 2000 on international mutual legal assistance in criminal matters, as amended; 3° the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended; 4° the Law of 10 July 2020 establishing a Register of Fiducies and Trusts, as amended.

Article 1 (8) of the AML/CFT Law:

“(8) “Trust and company service providers” shall, in accordance with this law, mean any natural or legal person which by way of “a business relationship” provides any of the following services to third parties:

- (a) forming companies or other legal persons;
- (b) acting as or arranging for another person to act as a “director” “, manager, member of the board of directors, member of the Executive Board”³ or secretary of a company, a partner of a partnership, or a similar position in relation to other “types of” legal persons;
- (c) providing a registered office, business address, correspondence or administrative address “or business premises” and “, where applicable,” other related services for a company, a partnership or any other legal person or arrangement;
- (d) “acting as, or arranging for another person to act as, a fiduciaire in a fiducie, a trustee of an express trust or an equivalent function in a similar legal arrangement;”
- (e) “acting as, or arranging for another person to act as, a nominee shareholder for another person [...]”

For the record, the publications of the FATF first provided, in the glossary of the Recommendations⁴ in French, and subsequently in English in its guidance dedicated to TCSPs⁵, the following definition:

« [...] Les prestataires de services aux trusts et aux sociétés, à savoir les personnes et entreprises qui ne relèvent pas d'autres catégories visées dans les présentes recommandations et qui, à titre commercial, fournissent à des tiers l'un des services suivants :

- agir en qualité d'agent pour la constitution de personnes morales ;
- agir (ou prendre des mesures afin qu'une autre personne agisse) en qualité de dirigeant ou de secrétaire général (secretary) d'une société de capitaux, d'associé d'une société de personnes ou de titulaire d'une fonction similaire pour d'autres types de personnes morales ;
- fournir un siège social, une adresse commerciale ou des locaux, une adresse administrative ou postale à une société de capitaux, une société de personnes ou toute autre personne morale ou construction juridique ;
- agir (ou prendre des mesures afin qu'une autre personne agisse) en qualité de trustee d'un trust exprès ou exercer une fonction équivalente pour une autre forme de construction juridique ;
- agir (ou prendre des mesures afin qu'une autre personne agisse) en qualité d'actionnaire agissant pour le compte d'une autre personne (nominee shareholder). »

“[...] Trust and Company Service Providers refers to all persons or businesses that are not covered elsewhere under the Recommendations, and which as a business, provide any of the following services to third parties:

- Acting as a formation agent of legal persons;
- Acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
- Providing a registered office; business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;
- Acting as (or arranging for another person to act as) a trustee of an express trust or performing the equivalent function for another form of legal arrangement;
- Acting as (or arranging for another person to act as) a nominee shareholder for another person.”

³ Law of 29 July 2022.

⁴ 2012 Recommendations, updated October 2018, p. 124.

⁵ FATF Guidance for a risk-based approach, Trust and company service providers (June 2019), Glossary, DNFBCPs, p.59.

General glossary of the FATF Recommendations⁶.

As per the FATF:

- **Nominator** is an individual (or group of individuals) or legal person that issues instructions (directly or indirectly) to a nominee to act on their behalf in the capacity of a director or a shareholder, also sometimes referred to as a “shadow director” or “silent partner”.

- **Nominee** is an individual or legal person instructed by another individual or legal person (“the nominator”) to act on their behalf in a certain capacity regarding a legal person.

- A **Nominee Director** (also known as a “resident director”) is an individual or legal entity that routinely exercises the functions of the director in the company on behalf of and subject to the direct or indirect instructions of the nominator. A Nominee Director is never the beneficial owner of a legal person.

- A **Nominee Shareholder** exercises the associated voting rights according to the instructions of the nominator and/or receives dividends on behalf of the nominator. A nominee shareholder is never the beneficial owner of a legal person based on the shares it holds as a nominee.

⁶ FATF, The FATF Recommendations, updated October 2025, English version, General glossary: definitions of ‘nominator’, ‘nominee’, ‘nominee shareholder’ and ‘nominee director’.

I – Concepts mentioned in Article 1(8).

Professionals falling within the definition set out in Article 1(8) of the AML/CFT Law are subject to all the obligations of that Law and must, inter alia, carry out a risk assessment, identify and verify the identity of the customer and the beneficial owner, conduct ongoing monitoring of the business relationship, and cooperate with the supervisory authorities or self-regulatory bodies to which they are subject, as well as with the Financial Intelligence Unit (*Cellule de renseignement financier*, hereinafter the “CRF-FIU”), to which any suspicion of money laundering or terrorist financing must be reported.

The objective is to reduce ML/TF risk through the ‘gatekeeper’ role assigned to the obliged professionals, who must perform all required due diligence measures, enabling, where appropriate, the spontaneous or requested exchange of information relating to the customer, the beneficial owner or the business relationship, notably, the CRF-FIU and the investigation and prosecutorial authorities.

Furthermore, the fact that other obliged professionals subject to the same obligations under the AML/CFT Law are involved with the customer does not exempt the TCSP from applying the AML/CFT obligations incumbent upon it.

What is meant by “by way of a business relationship”?

This means that the services are provided, in accordance with Article 1(13) of the AML/CFT Law, within the framework of the professional activities of the obliged institutions and persons, and that the relationship is established for a certain duration.

Certain factors, such as the solicitation of potential customers (via a website or any other means of communication) or the existence of remuneration, constitute indicators that the services are being provided within the framework of professional or commercial activities.

Services provided by an obliged professional outside the scope of their professional activities are not covered.

What is meant by “to third parties”?

A third party is any natural or legal person, or legal arrangement, on whose behalf the professional provides one or more of the services mentioned in Article 1(8)(a) to (e). The concept of a third party excludes the professional themselves, which cannot be the beneficiary of the service provided.

Within the meaning of Article 1(8)(b) of the AML/CFT Law, it also excludes the legal person within which the function (of director, manager, board member, member of the management board, secretary or partner, or a similar function) is exercised. The professional acts in the name and on behalf of this third party, who has the power to give them instructions regarding the performance of the service(s) provided.

What is meant by “legal persons”?

The concept of ‘legal persons’ covers all types of legal entities referred to in the Law of 10 August 1915 on commercial companies, civil companies as defined by Articles 1832 et seq. of the Civil Code, non-profit associations and foundations within the meaning of the Law of 21 April 1928 on non-profit organisations, as well as legal persons governed by foreign law.

What is meant by “legal arrangement”?

This refers to a *fiducie* (fiduciary arrangement) within the meaning of the Law of 27 July 2003⁷, a trust within the meaning of the Convention on the Law Applicable to Trusts and on their Recognition, signed at The Hague on 1 July 1985 and approved by the amended Law of 27 July 2003, or a legal arrangement having a structure or functions similar to those of a *fiducie* or a trust, as defined in Article 1(2) of the Law of 10 July 2020 transposing Article 31 of Directive (EU) 2015/849:

“A legal arrangement is considered to have a structure or functions similar to those of a *fiducie* and a trust when it enables a person to create legal relationships that place assets under the control of a third party for the benefit of a beneficiary or for a specified purpose and when it has the following characteristics:

1. the property placed under the control of the third party constitutes a separate estate and does not form part of the estate of the third party;
2. the title to the property placed under the control of the third party is established in the name of the third party or of another person on behalf of the third party;
3. the third party is vested with the power and charged with the obligation, for which he or she is accountable, to administer, manage or dispose of the property placed under his or her control in accordance with the terms of the legal arrangement and the special rules imposed on the third party by law.”

Amendments to Article 1(8)(b) of the AML/CFT Law introduced by the Law of 29 July 2022

Version 2.0 of these guidelines stated that “the term ‘director’ is to be understood as referring to members of statutory governing bodies⁸, such as managers, directors or members of the management board.”

The Law of 29 July 2022 formalised this guidance by expressly adding these members of statutory governing bodies to Article 1(8)(b), namely: “manager, director, member of the management board.”

Any natural or legal person falls within the definition of a ‘trust and company service provider’ within the meaning of Article 1(8)(b) of the AML/CFT Law where the following cumulative conditions are met:

- they hold one of the positions listed in Article 1(8)(b), or arrange for another person to hold such a position; and
- they provide this service in the context of a business relationship; and
- they act in the name of and on behalf of another natural person, legal person or legal arrangement, that provides them with instructions in this context.

⁷ Law of 27 July 2003

- approving the Hague Convention of 1 July 1985 on the law applicable to trusts and on their recognition;
- on the new regulation of fiduciary contracts, and
- amending the Law of 25 September 1905 on the transcription of rights in immovable property.

⁸ The audit committee, whether or not constituted pursuant to article 52 of the Law of 23 July 2016 on the audit profession, is not to be understood as a management body. It follows from the above that a member of the audit committee is not considered to be a TCSP.

II - Who must register as a TCSP under article 7-2 (1) of the AML/CFT Law?

A natural or legal person must register as a TCSP with the supervisory authority or self-regulatory body to which it is subject pursuant to Article 7-2(1) of the AML/CFT Law when they⁹:

- provide one or more of the services listed in Article 1(8), letters (a) to (e); and
- perform such service in the context of a business relationship; and
- act in the name and on behalf of another natural person, legal person or legal arrangement, which provides them with instructions in this context.

Exceptions:

Natural persons are not required to register when the services listed in Article 1(8), letters (a) to (e), are:

- outperformed within the context of that person's private life and not in the context of a business relationship;
- rendered as an employee of a TCSP and on behalf of that TCSP;
- rendered on behalf of a public authority.

Furthermore, employee representatives acting as members of the administrative body of the company in which they represent the staff are not subject to the registration obligation.

⁹ Cumulative conditions.

III - Practical examples concerning Article 1(8)(b)

Considering the explanations provided in this document, and in order to achieve the objectives set out by the law in compliance with international standards, the following table lists the most typical cases encountered in the Luxembourg market without being exhaustive or addressing every possible case that may arise.

These examples do not relate to services rendered to companies subject to the supervision of the CSSF or the CAA, for which specific rules have been established by the legislator or the supervisory authority.

Natural persons serving on the Board¹⁰ of a company ¹¹

Typical case	Description	Practical explanations	Is it a TCSP?
1	A natural person serving on the Board of a company in their own name and on their own behalf.	<i>The natural person acts in their own name. The condition of acting “in the name and on behalf of a third-party giving instructions” is not met.</i>	The natural person is not a TCSP.
2	A natural person serving on the Board of a company in their own name on behalf of a customer	<i>The natural person serves on the board of the company in the name and on behalf of a third-party giving instructions.</i>	The natural person is a TCSP.
3	A natural person representing the Luxembourg State on the Board of a company.	<i>Reference is made to the Law of 25 July 1990 concerning the status of directors representing the State or a legal person governed by public law in a société anonyme (public limited company), as amended.</i>	The natural person is not a TCSP.
4	A natural person representing staff on the Board of a company.	<i>Reference is made to Articles L-426-1 et seq. of the Labour Code.</i>	The natural person is not a TCSP.

Typical cases 1 and 2 apply in the same way where the natural person serving on the board of a company has set up a single-member company to receive remuneration, in which they (1) hold 100% of the share capital, (2) act as the sole manager, and (3) are the sole beneficial owner.

¹⁰ The term “Board” refers to the legal administrative body, such as the *conseil d’administration* or *directoire* of a *société anonyme* or the *gérants* or *conseil de gérance* of a *société à responsabilité limitée*, or any equivalent body in other types of companies.

¹¹ The term “company” refers to the company on whose board the director sits. This table does not specifically address *asbls* and *fondations*, but the principles that emerge from this table should apply *mutatis mutandis*.

Natural persons made available through a legal person to serve on the Board of a company

Typical case	Description	Practical explanations	Is it a TCSP?
5	A legal person that makes one or more of its employees available to a client company to serve on the Board of said client company.	<i>Directors¹² made available to a client company by the legal person are employees of the legal person. It is possible that the agreement between the legal person and the company for which the service is provided may provide that in the event of the termination of the directorship mandate, another director is/may be offered by the legal person. The director may receive remuneration directly from the client company or via the legal person.</i>	Considering the services offered, the legal person is a TCSP. > Employees of the legal person made available to serve on the Board of the client company act in the name of and on behalf of a third-party instructor. Employees of the legal person are not themselves TCSPs.
6	A legal person whose activity consists in providing assistance to directors, such as acting as an intermediary between directors (who are not employees of said legal person) and companies intending to appoint a director to their Board	<i>The directors introduced by the legal person are not employees of the legal person. There may be various other contractual arrangements (e.g. a business introducer agreement). It is conceivable that the contract between the legal person and the company for which the service is provided provides that in the event of the termination of a directorship mandate, another director is/may be proposed by the legal person. The director may receive remuneration directly from the client company or via the legal person.</i>	Considering the services offered, the legal person is a TCSP. > It facilitates the provision of directors and may receive remuneration from the client company or from the directors. Directors introduced by the legal person to the client company on whose Board they serve are TCSPs. They act in the name of and on behalf of a third-party instructor.

¹² By “director”, reference is made to members of the statutory administrative bodies, such as persons holding the functions of manager, administrator, or member of the management board.

Legal persons serving on the Board of a company

Typical case	Description	Practical explanations	Is it a TCSP?
7	<p>A legal person serving as a member of the board of a client company must appoint a permanent representative who is a natural person acting on behalf of and for the account of the legal person. In this context, the permanent representative is an employee of, an executive of, or otherwise authorised to represent the legal person.</p> <p>In the event of the permanent representative ceasing to hold office, the legal person shall appoint another permanent representative.</p>	<p><i>Everything depends on whether (a) the legal person is acting on its own behalf and for its own account, or (b) on behalf of and for the account of a third-party instructing entity.</i></p>	<p>In case (a), the legal person is not a TCSP. In case (b), it is a TCSP.</p> <p>The permanent representative of the legal person is not a TCSP.</p>