

New approval regime for Luxembourg financial holding companies

What's new? The Law of 20 May 2021 (**Law** – available in French) transposes the requirement introduced by Directive (EU) 2019/878 ("**CRD5**") that financial holding companies and mixed financial holding companies (together "**(M)FHCs**") must be approved by their consolidating supervisor.

Parent (M)FHCs in a Member State, EU parent (M)FHCs and other certain parent (M)FHCs established in Member States participating in the Single Supervisory Mechanism and which are part of a significant or less significant supervised group are subject to approval (or exemption) by the European Central Bank ("ECB") or the national competent authority, whichever is the consolidating supervisor.

In Luxembourg, the competent authority is the *Commission de Surveillance du Secteur Financier (CSSF)*. The Law adds a new Chapter to the Law of 5 April 1993 on the Financial Sector ("**LFS**"), specifying in which cases and under which conditions approval must be sought as well as in which cases approval is not required.

Why is it important? When (M)FHCs are parent undertakings of a supervised group, prudential requirements must be applied throughout the supervised group based on the consolidated situation of these holding companies. Since the (credit) institution controlled by these holding companies cannot always ensure compliance with prudential requirements on a consolidated basis throughout the supervised group, the specific approval procedure and direct supervisory powers over (M)FHCs is introduced. Hence, (M)FHCs can be held directly responsible for ensuring compliance with consolidated prudential requirements without being subject to additional prudential requirements on an individual basis.

What does it mean? If the CSSF or the ECB considers that an entity qualifies as a financial holding company or mixed financial holding company, such entity must formally apply for either approval or exemption. Transitional arrangements require (M)FHCs in existence on 27 June 2019 to apply for approval by 28 June 2021.

Seeking approval requires the submission to the CSSF or the ECB of a set of information regarding the structural and internal organisation, the management and compliance with criteria set out in the LFS. In addition, (M)FHCs have to comply with various conditions

mainly related to the internal arrangement and distribution of tasks within the group and the structural organisation of the group.

In exceptional circumstances, approval may not be required depending on the activity of (M)FHCs and their role within the group. An exemption must then be requested.

If the CSSF or the ECB considers that the conditions required to benefit from an exemption are not met, the (M)FHCs has to seek approval. Failure to apply for approval or exemption may result in the imposition of monitoring and administrative sanctions or other administrative measures.

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