

Questions & Answers – goAML guidance for the investment sector Online training 29/04/2021

29 April 2021 by Anouk DUMONT

Here is a summary of the questions raised during this presentation:

Does the *responsable du contrôle* (“RC”) have to register with goAML? Yes, because the RC acts as compliance officer pursuant to article 4(1) of the law of 12 November 2004 on the fight against money laundering and terrorist financing (the “2004 AMLCFT Law”).

The role of a compliance officer includes i.a. the filing of reports with the CRF. As pointed out in the CSSF FAQ¹, “*every Luxembourg investment fund and Investment Fund Manager subject to AML/CFT supervision is legally required to appoint, **both** an RR and RC*”.

What about the *responsable du respect* (“RR”)?

It is not compulsory for the RR to register with goAML.

For goAML purposes, registering the RC is sufficient.

However, a reporting entity may have more than one user and may decide to register both the RC and RR.

In addition, each goAML user’s rights may be set up according to each reporting entity’s needs and hierarchical structure (such as admin rights and edit/draft rights etc).

If the RR is the whole board, do all board members have to register with goAML or just one of them?

Given that it is optional to register the RR with goAML, this point is up to the reporting entity to decide.

Is there a limitation of RC mandates?

¹ https://www.cssf.lu/wp-content/uploads/FAQ_Persons_involved-in-AML_CFT_for_a_Luxembourg_Investment_Fund_or_Investment_Fund_Manager.pdf

From an IT/goAML point of view, the answer to this question is no, but from a legal/regulatory point of view, the answer may be yes and should therefore be taken up with the CSSF by the concerned reporting entity.

Does each RC of a fund need his own access token/registration with goAML or is it possible that the RC of the investment fund manager (“IFM”) delegates tasks to the RC of the various funds?

The various funds may use the goAML DELEGATION feature.

As explained in the presentation, please register the IFM first, then get a delegation for each of the funds you manage.

This way, the RC of the IFM may file reports with the CRF, in the name and on behalf of the various funds he/she manages (and which gave him a delegation in goAML to that end). In addition, the RC may also file reports with the CRF for the IFM itself. As a result, the RC of the IFM only needs 1 token for filing reports with the CRF, for the IFM as well as for all the funds which he acts as delegate for.

Do both entities, fund and IFM have to file separate reports?

Yes, because both are professionals that fall within the scope of article 2 of the 2004 AML/CFT law (cf article 2, paragraphs 5, 6a and 7 of the 2004 AMLCFT Law and article 1(1)(3bis) of the 2004 AMLCFT Law) and both have to comply with their respective obligation to cooperate with the CRF, including filing reports. For pragmatic reasons, the body and content of both these reports (such as the “reasons for suspicion” etc) may be the same.

Where the AIFM's RC is one and the same as the Fund RC (fund has appointed the AIFM's RC), is it necessary to file 2 SARs/STRs, one on behalf of the AIFM and a second on behalf of the Fund?

Yes, from a strictly legal point of view. As explained, both are professionals that fall within the scope of article 2 of the 2004 AML/CFT Law (cf article 2, paragraphs 5, 6a and 7 of the 2004 AMLCFT Law and article 1(1)(3bis) of the 2004 AMLCFT Law) and both have to comply with their respective obligation to cooperate with the CRF, including filing reports.

For pragmatic reasons, the body and content of both these reports (such as the “reasons for suspicion” etc) may be the same.

If I am RC of the AIFM and also of the fund, do I have to register the fund first in order to delegate reporting to the RC? Or is it also possible the other way round?

From a technical point of view, both options work.

However, we strongly recommend that you register first the AIFM as mandatee and thereafter the various funds as mandators (as explained in the presentation).

If I am an AIFM managing AIFs - some not regulated and some regulated, performing the AML for all of these AIFs, should I create a goAML account for each managed fund or only on ManCo level?

Please create a goAML account at the Manco level. From there, use the delegation feature to register the regulated and unregulated AIFs.

If my luxtrust is linked to the ManCo, I can't create an account for the FIS - how do I create a new goAML account for our managed AIFs?

You don't need to create a new goAML account for your managed AIFs, you just need to add delegations (from your managed AIFs) to your ManCo account.

Do *Fonds commun de placement* ("FCP") have to be registered ?

Yes, FCPs are referred to in article 2(1)4 of the 2004 AMLCFT Law as undertakings for collective investment and therefore fall within the scope of article 2 of the 2004 AMLCFT Law.

Do Reserved Alternative Investment Funds ("RAIFs") have to be registered ?

Yes, RAIFs are considered as persons carrying out a professional activity mentioned in annex I of the law (as per, article 2(l)7 and article 1(1)(3bis) of the 2004 AMLCFT law and therefore fall within the scope of article 2 of the 2004 AMLCFT Law.

Do *société en commandite spéciale* ("SCSps") have to be registered ?

Yes, SCSps are considered as persons carrying out a professional activity mentioned in annex I of the law (as per, article 2(l)7 and article 1(1)(3bis) of the 2004 AMLCFT law and therefore fall within the scope of article 2 of the 2004 AMLCFT Law.

Would structures with a General Partner (i.e. SCA), which may not necessarily be the AIFM, need to register the Funds and also the GP ?

Your legal team/lawyer will need to assess your contractual situation and decide who needs to register (see slide number eight of the presentation : Person carrying out a professional activity mentioned in annex I of the law (as per, article 2(l)7 + article 1(1)(3bis) of the 2004 AMLCFT law).

Does it work the same when another member of the IFM's compliance team is RC of the fund, while only the RC of the IFM can technically set-up the delegation in the tool. Can then the RC of the fund file on behalf of the fund without passing through the RC of IFM?

Yes but the RC of the IFM will see the SAR/STR (please refer to the slides).

The drop down list for creating a new reporting entity only gives FIS and SICAR funds, but not unregulated AIFs such as RAIFs etc.

The CRF will extend the list of entity types shortly, in the meantime, please select the most approximate.

Does an AIFM based in another EU country that manages Luxembourg based funds or other investment formats also need to register with goAML ?

There is no legal obligation to do so, but if the desired outcome is setting up a delegation in goAML for the foreign AIFM to file reports with the FIU on behalf the managed funds, then the answer is yes.

In the case of a fund incorporated in a different jurisdiction within the EEA, governed by the laws of this jurisdiction and supervised by the local regulatory authority, but for which a Luxembourg IFM acts as management company, should this fund also be registered on goAML?

Yes, but only at the delegation level. In this scenario, it would be best to first register the Luxembourg IFM and then create a delegation for this IFM by adding the foreign based fund. This way, the fund does not need a separate Luxtrust token and all filing with the CRF for the fund can be done by the Luxembourg IFM, in the name and on behalf of the foreign fund.

What is the difference between BestBank and BestBank organization? These are fictional reporting entity names in our training environment.

When submitting the delegation requests for a number of funds where the contact details of the GP are always the same, how can the technical limitation of an email being already registered in the system, be overcome?

In the case of a delegation, you should not need to use a different e-mail for each mandator.

In case of a delegation to a fund, what should I do if the contact details of a fund representative are already used?

Please contact the goAML helpdesk with more detail.

If I change my job and de-register from goAML as reporting person for the former company, can I re-use my token for the new company I'm working for?

No, unfortunately not. You will need a new token.

As an independent Director (and RC), can I use my personal token for all funds where I am RC?

Yes, by using the delegation function as explained. However, we strongly recommend the use of a professional Luxtrust token.

As a third-party independent RC having several mandates in different funds, I understand I could use my professional token and get a delegation, but does it mean that the fund needs to be registered first with its own token? No. You can set up an account as a reporting entity in your name and register the funds from that account

What should I do if there is no information on underlying investors, for example when using intermediaries or pooled accounts?

Please provide all information that you have (by filling in the "report parties" called "account" "entity" "person"). If some information is missing, please explain in the "reasons for suspicion" field.

The re-use of data can be done only in the context on the same STR?

Yes, for data protection reasons.

Who is the "client" for the CRF when there is an intermediary in the fund register ? The intermediary of the underlying customer on whose behalf a transaction is performed ?

The answer to this question depends on the legal structure of your contractual funds set-up and must be assessed on a case-by-case basis by your legal team/lawyer.

Is there a tipping-off issue if confirmed suspicious activity or transaction is communicated from a transfer agent to a Manco?

The answer to this question also depends on the legal structure of your contractual funds set-up and must be assessed on a case-by-case basis by your legal team/lawyer

When do I need to file a report form (SAR/STR) with goAML?

Please refer to our website www.crf.lu for further guidance on SARs/STRs. In particular, please see our guideline below on STRs:

<https://justice.public.lu/content/dam/justice/fr/legislation/circulaires/declarations/2021-04-01-suspicious-operations-report-version-2-1.pdf>