Banking - Luxembourg

Protecting Customers of Credit Institutions

Contributed by **NautaDutilh**

January 30 2009

In Luxembourg, customers of credit institutions and investment firms benefit from two guarantee systems: deposit guarantee schemes for customers of credit institutions and compensation schemes for investors in credit institutions and investment firms.

Until the end of 2008, aggregate deposits and investment business - regardless of the number, the currency and the location within the European Union - were each covered to a value of up to €20,000 if a credit institution or an investment firm was unable to meet its obligations under the deposit or investment agreement with the depositor or investor. In practice, the total amount of the guarantee could not exceed €40,000 per customer.

As a result of the current financial crisis, the guaranteed amount of €20,000 had to be increased.

Under the Finance Act 2009, which entered into force on January 1 2009, the deposit guarantee scheme now covers deposits up to the equivalent of €100,000. The act complies with the agreement announced by the Council of the European Union on October 7 2008 that all member states would provide deposit guarantee protection for individuals up to at least €50,000, for an initial period of at least one year, and after the one-year period would increase protection to at least €100,000. The agreement proposed a new directive amending the EU Deposit Guarantee Schemes Directive (94/19/EC) in regard to coverage levels and the pay-out delay. To date, a new directive amending the EU Investor Compensation Schemes Directive (97/9/EC) has not been proposed. That directive introduced the compensation scheme for investors in credit institutions and investment firms, in addition to the guarantee scheme required for deposits set out in the EU Deposit Guarantee Schemes Directive.

In order to restore depositors' confidence, the proposed directive also provides for a reduction of the pay-out period from three months to three days from the date on which the unavailability of due and payable deposits is proven.

The way in which investor compensation schemes are financed has not yet been harmonized across the European Union. In Luxembourg, for instance, credit institutions and investment firms are not obliged to make an annual contribution to an existing guarantee fund. The *Association des Dépôts Luxembourg*, which currently has 243 establishments as members, provides financing only if a member establishment fails.

This raises a more general issue as the introduction of International Accounting Standards no longer allows the inclusion of general provisions in accounts. Therefore, further amendments to the Financial Sector Law (April 5 1993) are needed.

A tax bill submitted in 2008 required credit institutions and investment firms to establish a special reserve fund for the deposit guarantee scheme and another for the investor guarantee scheme in order to cover payments in the event that the credit institution or investment firm could not meet its obligations to its customers. As the financial crisis requires further detailed provisions to be set out, the Luxembourg government intends to submit a new bill during 2009 on this issue.

For further information on this topic please contact Josée Weydert at NautaDutilh by telephone (+352 26 12 29 1) or by fax (+352 26 68 43 31) or by email (josee.weydert@nautadutilh.com).

Author

Josée Weydert