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### AGDL Frequently Asked Questions

Association Pour la Garantie des Dépôts Luxembourg (AGDL)

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## Frequently asked questions

The deposit guarantee and investor compensation is implemented within the limits and subject to the conditions laid out in the **statutes** as **published in the AGDL brochure**. The essential features of the guarantee are as follows:

- In the event of insolvency of a member establishment, the AGDL protects all **cash depositors** by guaranteeing the reimbursement of their deposits up to the **amount of 20,000 euros**.
- In the same instance, the AGDL protects all **investors** by guaranteeing the reimbursement of their claims arising out of investment transactions up to the **amount of 20,000 euros**.
- The **members of the AGDL** are credit institutions (i.e. banks), the Financial Services of the Post Office (Services Financiers de l'Entreprise des Postes et Télécommunications) and investment firms. Investment firms are commission agents, private portfolio managers, professionals acting for their own account, distributors of investment fund shares and underwriters.
- **Depositors** are customers who hold cash deposits with the members.
- **Investors** are customers who hold investment instruments or funds associated with investment transactions with the members.
- **Investment instruments** are transferable securities and investment fund shares, money market instruments, futures, future interest rate contracts (FRA), "SWAPS" and options on currencies and financial instruments.
- All deposits in cash, including funds associated with investment transactions, are eligible for the deposit guarantee. All claims resulting from investment operations qualify for investor compensation. **No claim** can be **covered by both guarantees** simultaneously.
- The guaranteed **values** are those which are held for the **account** of the customer and/or those **managed** on his behalf.
- The total amount of the Guarantee will in no case exceed 20,000 euros (deposit guarantee) + 20,000 euros (investor compensation) = **40,000 euros** per customer.
- **All currencies** are protected without distinction.
- The Guarantee covers both **natural persons and corporate** bodies.

However, only small European corporate bodies are covered. A corporate body is no longer regarded as being small when two of the following three criteria are satisfied:

- the balance sheet total exceeds 3.125 million euros;
- turnover exceeds 6.25 million euros;
- the number of employees is more than 50.

Where several persons have rights in an account in their capacity as partners in a company, members of an association or any other similar grouping, they are entitled to one single compensation under the Guarantee.

- As permitted by the law, Articles 6-1 and 7-1 of the statutes provide for a number of specific **exclusions** from the benefit of the Guarantee.
- The values covered are defined in compliance with the statutory and contractual conditions applicable to them, i.e. the Guarantee is established after **offsetting** the liabilities and claims of the same customer on the relevant AGDL member.
- When **more than one** person is the **holder** of a single account, the share accruing to each such person is taken into account in calculating the amount payable by way of Guarantee. Save where proof to the contrary is given, the shares of all the co-holders are identical<sup>(\*)</sup>. An **attachment to the statutes** which forms an integral part thereof, sets out a table of the rules applicable if more than one joint account is held by two or more customers or co-holders, or if a customer is the holder of one or **more individual** accounts and in addition co-holder of one or more joint accounts with one or more other co-holders.
- Where the **customer is not the beneficiary** of the guaranteed values, it is the beneficiary who qualifies for the compensation, provided that the customer has informed the bank or the investment firm that he is acting for the account of a third party and has notified both the number of beneficiaries and the share accruing to each in the account. The payment of compensation under the Guarantee is conditional on notification of the identity of the beneficiaries.
- If a member establishment of the AGDL is no longer able to reimburse deposits or claims to customers, the latter must in principle be compensated within a **time limit** of three months. The starting point and the duration of this period are defined in more detail in Articles 62-3 and 62-13 of the law of 5 April 1993 on the financial sector.

The purpose of the following explanations is to answer more detailed issues about the system. All further matters are governed by the law and statutes.

### **1. Are securities held by the institution in the name of the customer (off-balance sheet) covered by the guarantee?**

Yes, these securities are guaranteed by the investor compensation scheme. However, these securities will not form part of the bankruptcy assets because they are the property of the customer and are kept off-balance sheet. In practice, the customer should be able to recover them if the company defaults.

### **2. What cover is provided for the "omnibus accounts" held by private portfolio managers at the credit institutions?**

Banks may either keep individual customer accounts or assets managed e.g. by a private portfolio manager collectively for a set of customers grouped together on an "omnibus account" held in the name of the manager.

The principle is that when the customer of the bank (in this case the manager) is not the beneficiary of the guaranteed assets, it is the beneficial owner who is entitled to the compensation, provided that the customer has informed the bank that he is acting for the account of third parties and has notified to it the number of beneficial owners and the share of the account accruing to each of them. However, he does not have to disclose the identity of the beneficial owners.

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<sup>(\*)</sup> Example: Two spouses together hold an account whose balance represents the equivalent of 45,000 euros. If their bank or investment firm becomes insolvent, the AGDL will pay 20,000 euros to each of them.

In the event of default, payment by the AGDL of compensation under the guarantee is subject to notification of the identity of the beneficial owners (see Article 62-12 (6) of the law of 5 April 1993 on the financial sector). Failing this, the assets of the beneficial owners grouped together on the "omnibus account" of the manager are not covered against an insolvency of the bank. No reimbursement is due because the manager's accounts are excluded from the guarantee (Articles 6-1 and 7-1 of the statutes).

### **3. What cover is provided for attorneys and notaries?**

The accounts held by attorneys and notaries for third parties are governed by the general rules applicable to "omnibus accounts" explained above. The principle is that when the attorney or the notary is not the beneficial owner of the guaranteed assets, it is the beneficial owner who is entitled to the compensation, provided that the attorney or notary has informed the bank that he is acting for the account of third parties and has notified to it the number of beneficial owners and the share accruing to each of them in respect of the account.

In the event of default, payment by the AGDL of compensation under the guarantee is conditional on notification of the identity of the beneficial owners. Failing that, the assets of the beneficial owners grouped together on the "omnibus account" of the attorney or notary are not protected against an insolvency of the bank.

### **4. Are amounts deposited by investment fund management companies with the credit institutions covered by the guarantee?**

Yes, if it is an SME within the meaning of Article 6(2) of the statutes. Investment funds themselves are not guaranteed.

### **5. Are the assets managed by investment fund management companies guaranteed?**

Yes, investment fund management companies are treated by the law in the same way as investment companies.

### **6. What cover is provided for fiduciary contracts?**

In this particular case, the AGDL member acts as a trustee. The trustor is not covered by the guarantee because he is a preferential creditor who is not part of the general body of creditors.

### **7. What cover is provided for inter-bank deposits with a fiduciary character?**

When a defaulting Luxembourg credit institution has received deposits from another credit institution acting as a trustee, the customers depositing funds with that institution are covered only on condition that the Luxembourg credit institution has been informed of the number of depositing customers and the share of the depositing sum accruing to each of them.

**8. Are trusts included in the guarantee?**

Since a trust does not have a legal personality, the trustee is regarded as the owner of the right. He is therefore entitled to a single compensation unless he has declared the number of beneficial owners and their respective shares of the trust (see cover for "omnibus accounts").

**9. Are swaps covered by investor compensation?**

Yes, swaps are covered by investor compensation. The market value of the instrument concerned as at 31.12. must be declared to the CSSF and this value will be guaranteed. In the event of default, the instrument will be reimbursed at its value at the time of the default subject, however, to a maximum of 20,000 EUR.

**10. Is special treatment stipulated for deposits/claims whose beneficial owners are the statutory auditor of the member institution covered by the guarantee or staff of that statutory auditor?**

No special treatment for deposits/claims whose beneficial owners are the statutory auditors of the defaulting establishment (or its employees) is stipulated either in the statutes or in the Internal Rules of Procedure.

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