

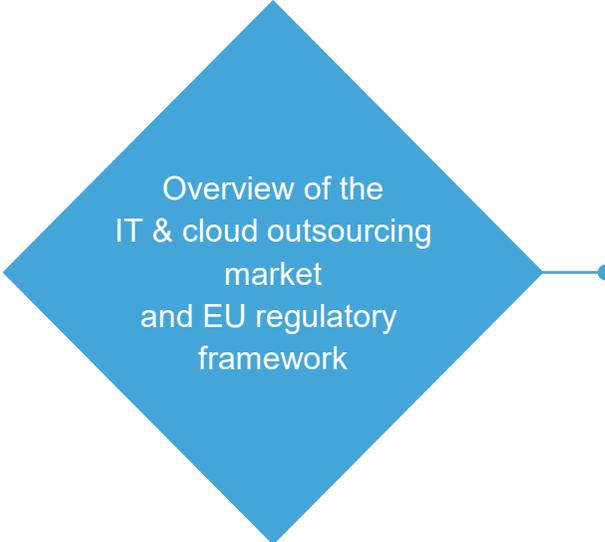
C L I F F O R D
C H A N C E

CLOUD OUTSOURCING BY INSURANCE AND REINSURANCE UNDERTAKINGS

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INTRODUCTION (1)

THE NEW EIOPA GUIDELINES ON OUTSOURCING TO CLOUD SERVICE PROVIDERS BY (RE)INSURANCE UNDERTAKINGS

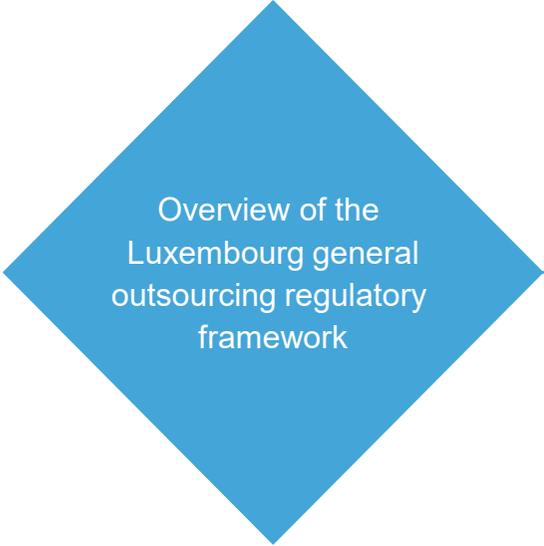


Overview of the
IT & cloud outsourcing
market
and EU regulatory
framework

- Digitalisation of the economy and IT outsourcing market in Luxembourg
- Interest of finance industry in adopting cloud computing solutions and chances
- Risks:
 - Technical
 - Operational
 - Legal and regulatory
 - Systemic
- Legislative and regulators' reactions and approaches:
 - General outsourcing vs. cloud outsourcing specific frameworks

INTRODUCTION (2)

THE NEW EIOPA GUIDELINES ON OUTSOURCING TO CLOUD SERVICE PROVIDERS BY (RE)INSURANCE UNDERTAKINGS



Overview of the
Luxembourg general
outsourcing regulatory
framework

- Law of 7 December 2015 on the insurance sector, as amended (the “ISL”) (notably Articles 65 and 81)
- Delegated Regulation (EU) 2015/35 (as amended) (notably Article 274)
- CAA Circular Letter 15/13 adopting the EIOPA Guidelines on Governance (*inter alia*)
- Insurance secrecy (Article 300 ISL) – outsourcing specific exemption since 2018 – policyholder (*preneur d’assurance*) acceptance (“*in accordance with the law or according to the modalities of information agreed upon between the parties*”)
- General Data Protection Regulation (EU) 2016/679

INTRODUCTION (3)

THE NEW EIOPA GUIDELINES ON OUTSOURCING TO CLOUD SERVICE PROVIDERS BY (RE)INSURANCE UNDERTAKINGS



The new EIOPA
Guidelines
on outsourcing to cloud
service
providers by
(re-)insurance
undertakings

- 6 February 2020 - EIOPA Guidelines on outsourcing to cloud service providers (“CSP”) by (re-)insurance undertakings, applicable as from 1 January 2021 (the “Guidelines”)
- 24 June 2020 – Adoption of the Guidelines in Luxembourg by CAA Circular Letter 20/13
- Purpose of the Guidelines and the Circular:
 - Provide cloud outsourcing specific framework adding on the general outsourcing regime
- “Milestones” of the Guidelines:
 - 1 January 2021:
 - Application of Guidelines to all cloud outsourcing arrangements entered into or amended on or after that date
 - Updates of undertakings' policies and internal processes should be done until that date
 - By 31 December 2022:
 - Review and amendment of pre-existing cloud outsourcing arrangements related to CIFA to ensure Guidelines compliance
- Future developments outlook :
 - Solvency II review?
 - Proposal for an EU Regulation on digital operational resilience for the financial sector (“DORA”) on the horizon

PRE-OUTSOURCING ANALYSIS (1)

GUIDELINES 1 AND 6

Determination of the existence of a cloud outsourcing arrangement:

- 'Outsourcing' as defined in Solvency II / the ISL?
- "Cloud outsourcing" for the purposes of the Guidelines, i.e. outsourcing to a CSP?
 - Definitions (para. 9 of the Guidelines) of
 - "service provider"
 - "cloud service provider"
 - "cloud services"
 - Public, private, hybrid and community clouds as possible infrastructures and deployment models
 - CSSF Circular 17/654 on IT outsourcing relying on a cloud computing infrastructure (as amended) as source of further guidance?
- Performance of the outsourced task or function on a recurrent / on-going basis?
- Would/could the outsourced task or function be performed by the undertaking itself in the course of its regular business activities, even if it has not performed them in the past?
- Does the service provider "rely significantly" on cloud infrastructures in order to deliver its services (including when the cloud services are not provided directly to the (re)insurance undertaking)?

PRE-OUTSOURCING ANALYSIS (2)

GUIDELINE 7



Outsourcing relating to critical or important operational functions or activities (“CIFA”)

- Does the planned outsourcing concern a critical or important operational function or activity?
- The (re)insurance undertaking should take into account:
 - whether it may become a CIFA in the future
 - the potential impact of any material disruption / failure of the service provider to meet agreed service levels
 - the aggregated exposure to the same CSP
 - the substitutability of the arrangement
 - the protection of personal and non-personal data and the potential impact of a failure to do so
 - the size and complexity of the business areas covered

PRE-OUTSOURCING ANALYSIS (3)

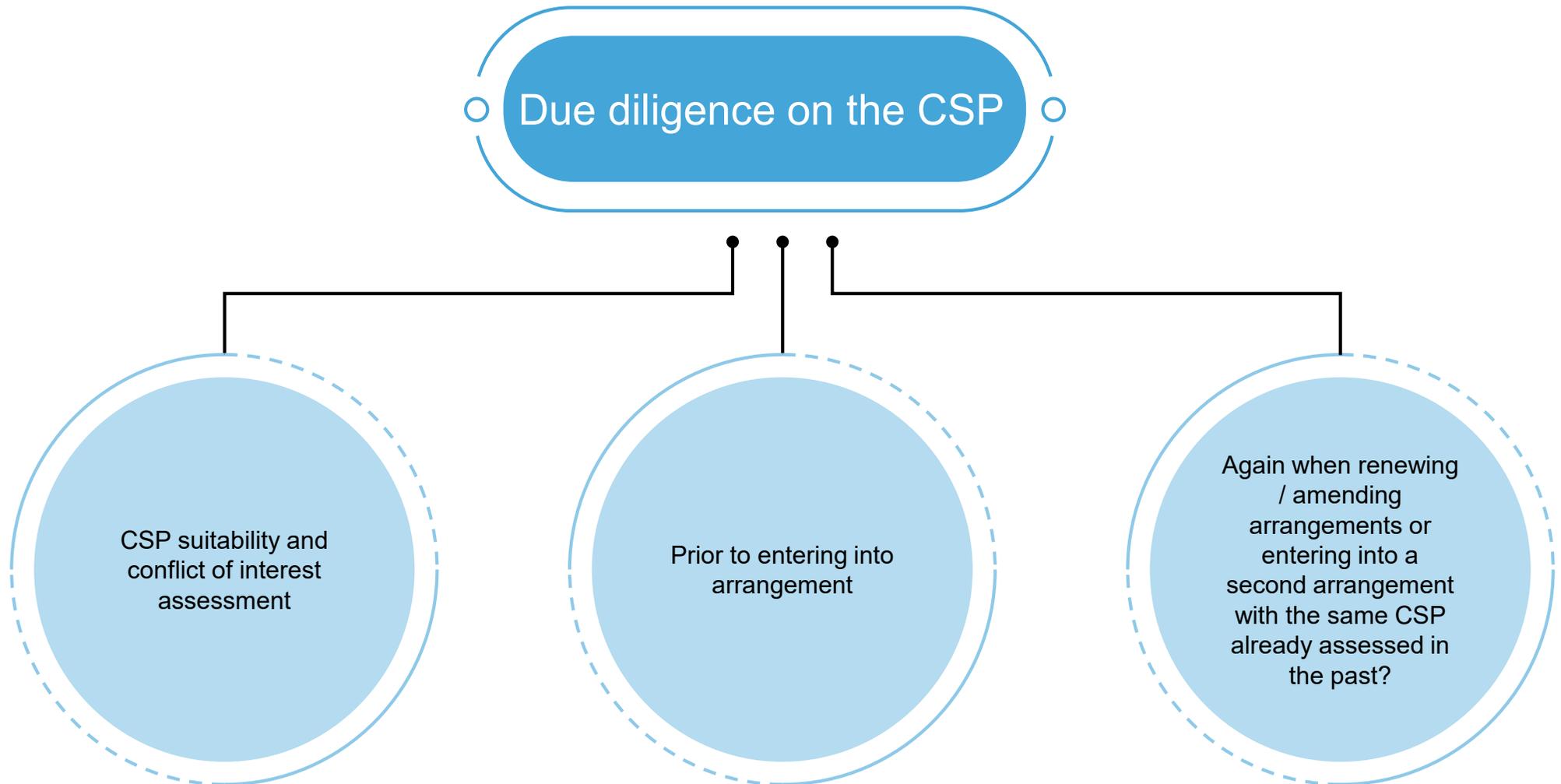
GUIDELINE 8 AND ART. 274 OF THE DELEGATED REGULATION

Risk assessment of cloud outsourcing

- Distinct from the assessment carried out in order to determine whether the function is a CIFA
- Re-performance promptly each time the undertaking becomes aware of:
 - significant deficiencies or changes to the services provided
 - the CSP situation
 - the arrangement is proposed to be renewed or amended in scope or content
- Thorough and taking into consideration all relevant risks pertaining to the arrangement
- Taking into consideration the laws and law enforcement provisions in the relevant countries of the CSP
- If an outsourcing of a CIFA is concerned, the assessment shall comprise:
 - the inherent risks, including ICT risks, legal and compliance risks, business continuity and other operational risks, reputational risks, as well as any oversight limitations risks
 - a cost-benefit analysis (balancing of risks)

PRE-OUTSOURCING ANALYSIS (4)

GUIDELINE 9 AND ART. 274 OF THE DELEGATED REGULATION

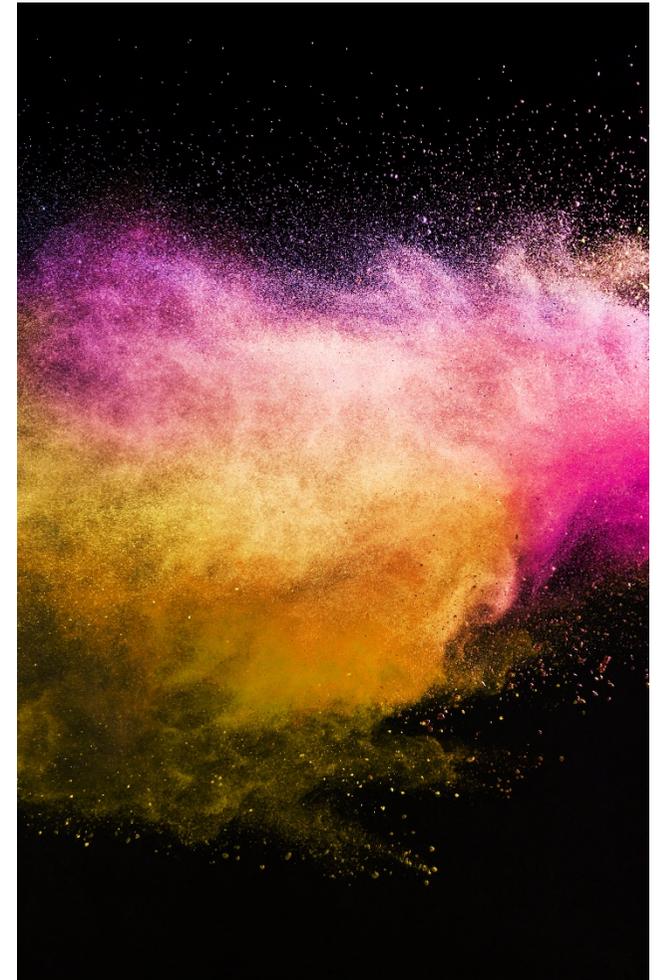


CONTRACTUAL REQUIREMENTS (1)

GUIDELINE 10 AND ART. 274 OF THE DELEGATED REGULATION

General rules

- Contract:
 - in written form
 - with clear allocation of the respective rights and obligations of the undertaking and of the CSP
- Numerous content requirements, including requirements in four areas more specifically addressed in the Guidelines:
 - access and audit rights
 - data and system security
 - sub-outsourcing
 - termination rights and exit strategies



CONTRACTUAL REQUIREMENTS (2)

GUIDELINES 11 AND 12

Access and audit rights

- Undertaking, auditors and supervisory authority (*cf.* also Art. 65 ISL)
- No limitation of effective exercise by arrangement
- Exercise following risk-based approach
- On-site visits in principle with reasonable prior notice
- Where exercise of such rights or audit techniques creates risk in CSP environment or to its clients, alternative ways to be agreed
- Possibility of use of third party certifications and audit reports in relation to the CSP
- If CIFA, requirement for such certifications / audit reports to comply with Guideline 11 conditions

Data and systems security

- Obligation for undertakings to ensure, including by appropriate contractual provisions, that CSPs comply with European and national regulations as well as appropriate ICT security standards
- If CIFA, requirement for undertakings to additionally define specific information security requirements in the outsourcing agreement and provide for regular monitoring

CONTRACTUAL REQUIREMENTS (3)

GUIDELINES 13 AND 15

Sub-outsourcing

- If the cloud outsourcing agreement allows for the sub-outsourcing of CIFA (or a part thereof), requirement for the cloud outsourcing agreement to specify:
 - the activities that are excluded from sub-outsourcing
 - the conditions of sub-outsourcing
 - that the initial CSP retains full accountability and oversight for the sub-outsourced services
 - obligation for the CSP to inform the undertaking sufficiently in advance of any significant changes to the sub-contractors or the sub-outsourced services
 - the undertaking's right to object to changes (if adverse effect on risk in relation to the agreed services) and/or to terminate and exit the contract

Termination rights and exit strategies

- If the cloud outsourcing agreement concerns a CIFA:
 - requirement for a clearly defined exit strategy clause ensuring that the undertaking would be able to terminate the arrangement where necessary without affecting insurance service quality
 - obligation of undertaking to develop, document and sufficiently test comprehensive exit plans for each service concerned
 - adequate support by CSP of the undertaking to be ensured (incl. contractually)

ON-GOING REQUIREMENTS IN RELATION TO CLOUD OUTSOURCING ARRANGEMENTS

GUIDELINES 2, 3, 5, 12 AND 14



On-going requirements

- Consistency with the undertaking's strategies and internal policies and processes (e.g. as regards outsourcing, ICT or information security)
 - to be adapted / updated where needed
- Continuous monitoring and oversight
- Register and record keeping

INVOLVEMENT OF SUPERVISORY AUTHORITIES

GUIDELINES 4 AND 16 AND ART. 49(3) OF SOLVENCY II (ART. 81(3) ISL)

Notification of the competent national supervisory authority

- CAA notification obligation prior to cloud outsourcing concerning a CIFA
- Notification minimum content requirements
- Additional CAA notification obligation
 - subsequent material development concerning an outsourced CIFA
 - outsourced function or activity initially classified as non-CIFA becoming a CIFA

Assessment by the supervisory authority

- Impact assessment (inter alia as regards risks involved, appropriateness of governance and processes, adequacy of monitoring resources arising from cloud outsourcing arrangements, thoroughness of risk identification and management by undertaking)

Supervisory measures and sanction powers

Application to groups and group supervision

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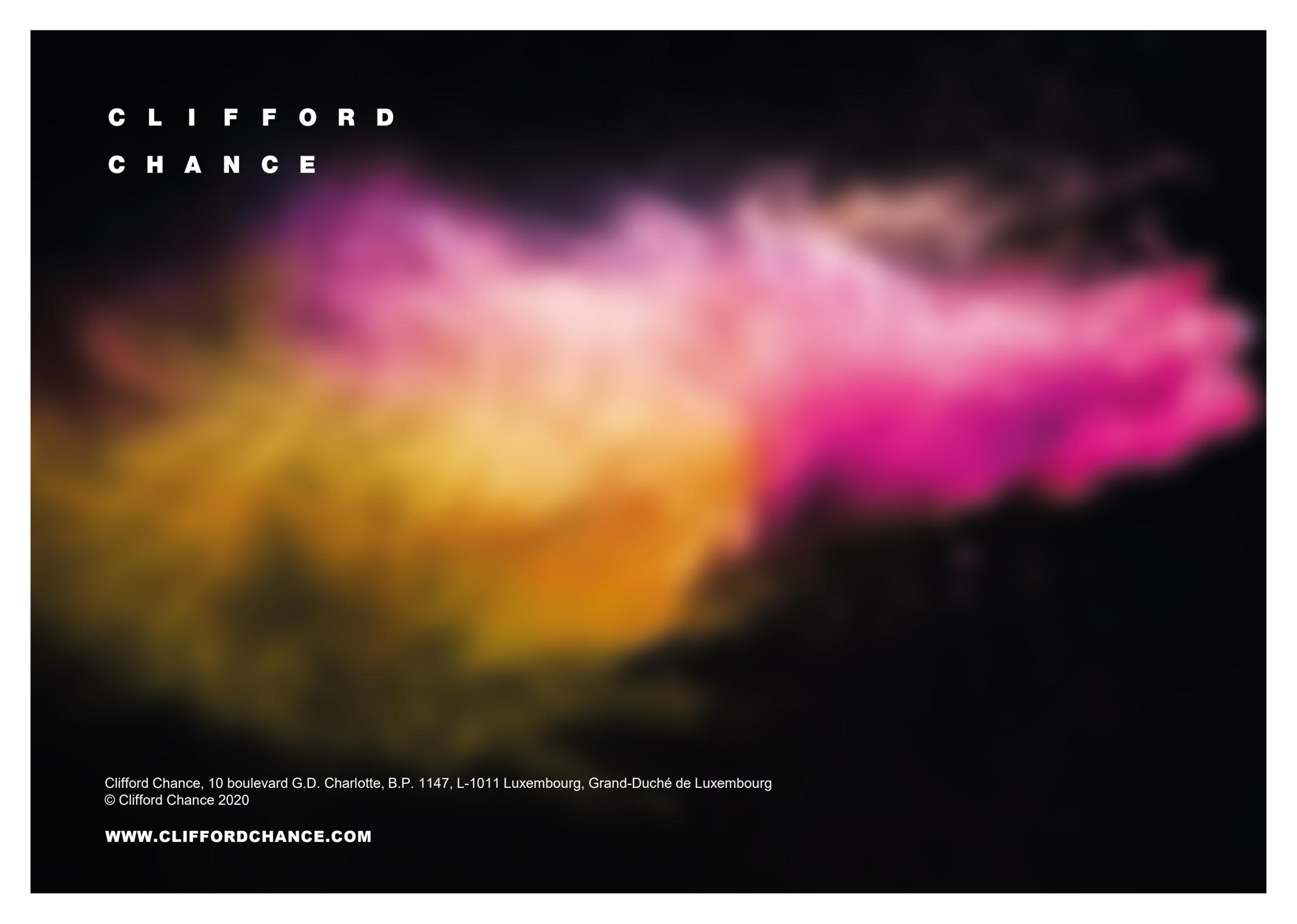


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