AIF

Alternative Investment Funds

LUXEMBOURG STOCK EXCHANGE

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This document is published by the Société de la Bourse de Luxembourg S.A. and the Association of the Luxembourg Fund Industry for information purposes only. The publication contains the Luxembourg laws and regulations regarding alternative investment funds as well as the related circu-lars of the supervisory authority. The only legally binding versions of laws and regulations are those published in the Official Journal of the Grand Duchy of Luxembourg. In the same way, the only legally binding versions of circulars are those published on the supervisory authority's website. English translations have been prepared for information purposes only and may be reviewed and updated from time to time. In case of discrepancies between the French and the English texts, the French text shall prevail.

INTRODUCTION

Eager to respond to the needs of professionals in the financial centre, the Luxembourg Stock Exchange in cooperation with the Association of the Luxembourg Fund Industry (ALFI) proposes two new electronic compilations of texts in French, English and German.

This compilation is dedicated to alternative investment funds (AIFs) established under Luxembourg law and to other investment vehicles which are not UCITS and which may not qualify as AIFs. It contains the amended Law of 12 July 2013 on alternative investment fund managers, the amended Law of 17 December 2010 on undertakings for collective investment, the Law of 23 July 2016 on reserved alternative investment funds, the amended Law of 13 February 2007 on specialised investment funds, the amended Law of 15 June 2004 on the investment company in risk capital (SICAR) as well as the main regulatory texts relating thereto.

A second compilation is dedicated to undertakings for collective investment in transferable securities (UCITS) established under Luxembourg law and contains the amended Law of 17 December 2010 on undertakings for collective investment as well as the main regulatory texts relating thereto.

It should be noted that certain texts included in this compilation continue to refer to the repealed Laws of 20 December 2002 and 30 March 1988 concerning undertakings for collective investment. The references to these laws should be understood as references applying to the amended Law of 17 December 2010.

These two compilations of texts are the fruit of an active cooperation between two reputable local law firms, Arendt & Medernach and Elvinger Hoss Prussen, who have compiled the legal and regulatory texts and prepared the English and German translations.

The Luxembourg Stock Exchange and ALFI welcome this cooperation which enables the financial sector to be provided with updated reference texts. These documents contribute to the continued growth of the undertakings for collective investment, alternative investment funds and other investment vehicle sectors in Luxembourg.

Both the Luxembourg Stock Exchange and ALFI extend their gratitude to all those who have contributed to the release of these updated compilations.

Luxembourg, September 2017

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1.

AMENDED LAW OF 12 JULY 2013 ON ALTERNATIVE INVESTMENT FUND MANAGERS

CONSOLIDATED VERSION AS OF 1 JUNE 2016

AMENDED LAW OF 12 JULY 2013 ON ALTERNATIVE INVESTMENT FUND MANAGERS

Chapter 1. - General provisions

Art. 1 Definitions

For the purpose of this Law, the following definitions shall apply:

(1) "EBA": the European Banking Authority established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council;

(2) "ESMA": the European Securities and Market Authority established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council;

(3) "competent authorities": the national authorities of Member States which are empowered, by law or regulation, to supervise AIFMs. In Luxembourg, the CSSF is the competent authority for the supervision of AIFMs subject to this Law;

(4) "supervisory authorities" in relation to non-EU AIFMs: the national authorities of a third country which are empowered, by law or regulation, to supervise AIFMs;

(5) "competent authorities of an EU AIF": the national authorities of a Member State which are empowered, by law or regulation, to supervise the AIFs. The CSSF is the competent authority for the supervision of AIFs established in Luxembourg;

(6) "supervisory authorities" in relation to non-EU AIFs: the national authorities of a third country which are empowered, by law or regulation, to supervise the AIFs;

(7) "competent authorities" in relation to a depositary:

a) if the depositary is a credit institution authorised under Directive 2006/48/EC, the competent authorities as defined in point 4) of Article 4 thereof;

b) if the depositary is an investment firm authorised under Directive 2004/39/EC, the competent authorities as defined in paragraph (1), point 22) of Article 4 thereof;

c) if the depositary falls within a category of institution referred to in point c) of the first subparagraph of paragraph (3) of Article 21 of Directive 2011/61/EU, the national authorities of its home Member State which are empowered, by law or regulation, to supervise such categories of institution;

d) if the depositary is an entity referred to in paragraph (3), third subparagraph of Article 21 of Directive 2011/61/EU, the national authorities of the Member State in which that entity has its registered office and which are empowered, by law or regulation, to supervise such entity or the official body competent to register or supervise such entity pursuant to the rules of professional conduct applicable thereto;

e) if the depositary is appointed as depositary for a non-EU AIF in accordance with paragraph (5), point b) of Article 21 of Directive 2011/61/EU and does not fall within the scope of points a) to d) of this point, the relevant national authorities of the third country where the depositary has its registered office;

(8) "initial capital": the funds which are referred to in points a) and b) of the first paragraph of Article 57 of Directive 2006/48/EC;

(9) "marketing": a direct or indirect offering or placement, at the initiative of the AIFM or on behalf of the AIFM, of units or shares of an AIF it manages, to or with investors domiciled or with a registered office in the European Union;

(10) "control": control as defined in Article 1 of Directive 83/349/EEC;

(11) "prime broker": a credit institution, a regulated investment firm or another entity subject to prudential regulation and ongoing supervision, offering services to professional investors primarily to finance or execute transactions in financial instruments as counterparty and which may also provide other services such as clearing and settlement of trades, custodial services, securities lending, customised technology and operational support facilities;

(12) "ESRB": the European Systemic Risk Board established by Regulation (EU) No 1092/2010 of the European Parliament and of the Council;

(13) "CSSF": the *Commission de Surveillance du Secteur Financier* (the Commission for the Supervision of the Financial Sector);

(14) "Directive 77/91/EEC": Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies[1] and the maintenance and alteration of their capital, with a view to making such safeguards equivalent;

(15) "Directive 83/349/EEC": Council Directive 83/349/EEC of 13 June 1983 based on Article 54 (3) (g) of the Treaty on consolidated accounts, as amended;

(16) "Directive 95/46/EC": Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;

(17) "Directive 97/9/EC": Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes;

(18) "Directive 98/26/EC": Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems;

(19) "Directive 2002/14/EC": Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community;

(20) "Directive 2003/41/EC": Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision;

(21) "Directive 2003/71/EC": Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC;

(22) "Directive 2004/25/EC": Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids;

(23) "Directive 2004/39/EC": Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments;

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[1] *société anonyme*

(24) "Directive 2004/109/EC": Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC;

(25) "Directive 2006/48/EC": Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions;

(26) "Directive 2006/49/EC": Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions;

(27) "Directive 2006/73/EC": Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive;

(28) "Directive 2009/65/EC": Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS);

(29) "Directive 2011/61/EU": Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on alternative investment fund managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010;

(30) "leverage": any method by which the AIFM increases the exposure of an AIF it manages whether through borrowing of cash or transferable securities, or leverage embedded in derivative positions or by any other means;

(31) "issuer": an issuer within the meaning of paragraph (1), point d) of Article 2 of Directive 2004/109/EC, where that issuer has its registered office in the European Union, and where its shares are admitted to trading on a regulated market within the meaning of paragraph (1), point 14) of Article 4 of Directive 2004/39/EC;

(32) "parent undertaking": a parent undertaking within the meaning of Articles 1 and 2 of Directive 83/349/EEC;

(33) "established":

a) for AIFMs, "having its registered office in";

b) for AIFs, "being authorised or registered in" or, if the AIF is not authorised or registered, "having its registered office in";

c) for depositaries, "having its registered office or branch in";

d) for legal representatives that are legal persons, "having its registered office or branch in";

e) for legal representatives that are natural persons, "domiciled in";

(34) "Member State": a Member State of the European Union. The States that are contracting parties to the Agreement creating the European Economic Area other than the Member States of the European Union, within the limits set forth by this Agreement and related acts, are considered as equivalent to Member States of the European Union.

(35) "home Member State of the AIF":

a) the Member State in which the AIF is authorised or registered under applicable national law, or in case of multiple authorisations or registrations, the Member State in which the AIF has been authorised or registered for the first time; or

b) if the AIF is neither authorised nor registered in a Member State, the Member State in which the AIF has its registered office and/or head office;

(36) "home Member State of the AIFM": the Member State in which the AIFM has its registered office; for non-EU AIFMs, all references to "home Member State of the AIFM" in this Law shall be read as the "Member State of reference", as provided for in Chapter 7;

(37) "host Member State of the AIFM": any of the following:

a) a Member State, other than the home Member State, in which an EU AIFM manages EU AIFs;

b) a Member State, other than the home Member State, in which an EU AIFM markets units or shares of an EU AIF;

c) a Member State, other than the home Member State, in which an EU AIFM markets units or shares of a non-EU AIF;

d) a Member State, other than the Member State of reference, in which a non-EU AIFM manages EU AIFs;

e) a Member State, other than the Member State of reference, in which a non-EU AIFM markets units or shares of an EU AIF;

f) a Member State, other than the Member State of reference, in which a non-EU AIFM markets units or shares of a non-EU AIF;

g) the Member State, other than the home Member State, in which an EU AIFM provides the services referred to in paragraph 4 of Article 6 of Directive 2011/61/EU.

(38) "Member State of reference": the Member State determined in accordance with paragraph (4) of Article 37 of Directive 2011/61/EU;

(39) "Alternative Investment Funds (AIFs)": collective investment undertakings, including investment compartments thereof, which:

a) raise capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and

b) do not require authorisation pursuant to Article 5 of Directive 2009/65/EC;

(40) "EU AIF":

a) an AIF which is authorised or registered in a Member State under the applicable national law; or

b) an AIF which is not authorised or registered in a Member State, but has its registered office and/or head office in a Member State;

(41) "non-EU AIF": an AIF which is not an EU AIF;

(42) "feeder AIF": an AIF which:

a) invests at least 85% of its assets in units or shares of another AIF (hereafter the "master AIF");

b) invests at least 85% of its assets in more than one master AIF where those master AIFs have identical investment strategies; or

c) has otherwise an exposure of at least 85% of its assets to such a master AIF;

(43) "master AIF": an AIF in which another AIF invests or has an exposure in accordance with point (42);

(44) "subsidiary": a subsidiary undertaking as defined in Articles 1 and 2 of Directive 83/349/EEC;

(45) "own funds": own funds as referred to in Articles 56 to 67 of Directive 2006/48/EC. For the purposes of applying this definition, Articles 13 to 16 of Directive 2006/49/EC are applied *mutatis mutandis*;

(46) "Alternative Investment Fund Managers (AIFMs)": legal persons whose regular business is managing one or more AIFs;

(47) "EU AIFM": an AIFM which has its registered office in a Member State;

(48) "non-EU AIFM": an AIFM which is not an EU AIFM;

(49) "external AIFM": an AIFM which is the legal person appointed by the AIF or on behalf of the AIF and which, through this appointment, is responsible for managing the AIF;

(50) "managing AIFs": performing at least investment management functions referred to in point 1a) or b) of Annex I of Directive 2011/61/EU for one or more AIFs;

(51) "financial instrument": an instrument as specified in Section C of Annex I to Directive 2004/39/EC;

(52) "carried interest": a share in the profits of the AIF accrued to the AIFM as compensation for the management of the AIF and excluding any share in the profits of the AIF accrued to the AIFM as a return on any investment by the AIFM into the AIF;

(53) "professional investor": an investor which is considered to be a professional client or may, on request, be treated as a professional client within the meaning of Annex II to Directive 2004/39/EC;

(54) "retail investor": an investor who is not a professional investor;

(55) "close links": a situation in which two or more natural or legal persons are linked by:

a) participation, namely ownership, directly or by way of control, of 20% or more of the voting rights or capital of an undertaking;

b) control, namely the relationship between a parent undertaking and a subsidiary, as referred to in Article 1 of the Seventh Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts, or a similar relationship between a natural or legal person and an undertaking; for the purposes of this point a subsidiary undertaking of a subsidiary undertaking shall also be considered to be a subsidiary of the parent undertaking of those subsidiaries.

A situation in which two or more natural or legal persons are permanently linked to the same person by a control relationship shall also be regarded as constituting a "close link" between such persons;

(56) "UCITS": an undertaking for collective investment in transferable securities authorised in accordance with Article 5 of Directive 2009/65/EC;

(57) "qualifying holding": a direct or indirect holding in an AIFM which represents 10% or more of the capital or of the voting rights, in accordance with Articles 9 and 10 of Directive 2004/109/EC, taking into account the conditions regarding aggregation of the holding laid

down in paragraphs (4) and (5) of Article 12 thereof, or which makes it possible to exercise a significant influence over the management of the AIFM in which that holding subsists;

(58) "third country": a State which is not a Member State;

(59) "legal representative": a natural person domiciled in the European Union or a legal person with its registered office in the European Union, and which, expressly designated by a non-EU AIFM, acts on behalf of such non-EU AIFM *vis-à-vis* the authorities, clients, bodies and counterparties to the non-EU AIFM in the European Union with regard to the non-EU AIFM's obligations under Directive 2011/61/EU;

(60) "employees' representatives": employees' representatives as defined in point e) of Article 2 of Directive 2002/14/EC;

(61) "UCITS management company": a management company authorised pursuant to Chapter 15 of the amended Law of 17 December 2010 on undertakings for collective investment;

(62) "holding company": a company with shareholdings in one or more other companies, the commercial purpose of which is to carry out a business strategy or strategies through its subsidiaries, associated companies or participations in order to contribute to their long-term value, and which is either a company:

a) operating on its own account and whose shares are admitted to trading on a regulated market in the European Union; or

b) not established for the main purpose of generating returns for its investors by means of divestment of its subsidiaries or associated companies, as evidenced in its annual report or other official documents;

(63) "non-listed company": a company which has its registered office in the European Union and the shares of which are not admitted to trading on a regulated market within the meaning of paragraph (1), point 14) of Article 4 of Directive 2004/39/EC;

(64) "securitisation special purpose entities": entities whose sole purpose is to carry on a securitisation or securitisations within the meaning of point 2) of Article 1 of Regulation (EC) No 24/2009 of the European Central Bank of 19 December 2008 concerning statistics on the assets and liabilities of financial vehicle corporations engaged in securitisation transactions and other activities which are appropriate to accomplish that purpose;

(65) "branch": when relating to an AIFM, a place of business which is a part of an AIFM, which has no legal personality and which provides the services for which the AIFM has been authorised; all the places of business established in the same Member State by an AIFM with its registered office in another Member State or in a third country shall be regarded as a single branch.

Art. 2 Subject matter and scope

(1) This Law lays down the rules for the authorisation, ongoing operation and the requirements of transparency of AIFMs established in Luxembourg which manage and/or market AIFs in the European Union.

Subject to paragraph (2) of this Article and to Article 3, this Law shall apply to every legal person governed by Luxembourg law, the regular business of which is to manage one or more AIFs irrespective of whether these AIFs are AIFs established in Luxembourg, AIFs established in another Member State of the European Union or AIFs established in third countries, the AIF belongs to the open-ended or closed-ended type and whatever the legal form of the AIF or the legal structure of the AIFM.

This Law shall also apply to non-EU AIFMs which manage and/or market one or more AIFs established in the European Union or in a third country, where Luxembourg is defined as the Member State of reference of the AIFM within the meaning of Article 38 of this Law.

The AIFMs referred to in this paragraph must comply at all times with the provisions of this Law.

Without prejudice to the provisions relating to monitoring provided by this Law, if they are part of a financial conglomerate within the meaning of Article 2, point 14, of Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council, the managers referred to in this paragraph are also submitted to the supplementary supervision undertaken by the CSSF as per the provisions provided for in Chapter 3*ter* of Part II[2] of the amended Law of 5 April 1993 on the financial sector.

(2) This Law shall not apply to:

a) holding companies;

b) institutions for occupational retirement provision which are covered by Directive 2003/41/EC, including, where applicable, the authorised entities responsible for managing such institutions and acting on their behalf referred to in paragraph (1) of Article 2 of that Directive, or the investment managers appointed pursuant to paragraph (1) of Article 19 of that Directive, in so far as they do not manage AIFs;

c) supranational institutions, such as the European Central Bank, the European Investment Bank, the European Investment Fund, the European Financial Stability Facility S.A., the European Stability Mechanism, the European Development Finance Institutions and bilateral development banks, the International Monetary Fund and other supra-national institutions and other similar international organisations, in the event that such institutions or organisations manage AIFs and in so far as those AIFs act in the public interest;

d) the Central Bank of Luxembourg and other national central banks;

e) national, regional and local governments and bodies or other organisations or institutions which manage funds supporting social security and pension systems;

f) employee participation schemes and employee savings schemes;

g) securitisation special purpose entities.

Art. 3 Exemptions

(1) This Law shall not apply to AIFMs established in Luxembourg in so far as they manage one or more AIFs whose only investors are the AIFM or the parent undertakings or the subsidiaries of the AIFM or other subsidiaries of those parent undertakings, provided that none of those investors is itself an AIF.

(2) Without prejudice to the application of Article 50, only paragraphs (3) and (4) of this Article shall apply to the following AIFMs:

a) AIFMs established in Luxembourg which either directly or indirectly, through a company with which the AIFM is linked by common management or control, or by a

[2] The French version of the Law of 15 March 2016 refers to Part II instead of Part III.

substantive direct or indirect holding, manage portfolios of AIFs whose assets under management, including any assets acquired through use of leverage, in total do not exceed a total threshold of EUR 100,000,000; or

b) AIFMs established in Luxembourg which either directly or indirectly, through a company with which the AIFM is linked by common management or control, or by a substantive direct or indirect holding, manage portfolios of AIFs whose assets under management in total do not exceed a threshold of EUR 500,000,000 when the portfolios of AIFs consist of AIFs that are unleveraged and have no redemption rights exercisable during a period of five years following the date of initial investment in each AIF.

(3) The AIFMs referred to in paragraph (2) must:

a) be registered with the CSSF;

b) identify themselves and the AIFs that they manage to the CSSF at the time of registration;

c) provide information on the investment strategies of the AIFs that they manage to the CSSF at the time of registration;

d) regularly communicate to the CSSF information on the main instruments in which they are trading and on the principal exposures and most important concentrations of the AIFs that they manage in order to enable the CSSF to monitor systemic risk effectively; and

e) inform the CSSF in the event that they no longer meet the conditions referred to in paragraph (2).

Where the conditions set out in paragraph (2) are no longer met, the AIFM concerned must apply for authorisation within 30 calendar days in accordance with the procedures laid down in this Law.

(4) AIFMs referred to in paragraph (2) shall not benefit from any of the rights granted under this Law unless they choose to opt in under this Law. Where AIFMs opt in, this Law shall become applicable in its entirety.

(5) In the event of failure to comply with the provisions of paragraph (3) of this Article, the CSSF may impose the fines provided for in paragraph (2) of Article 51 of this Law.

Art. 4 Determination of the AIFM

(1) Each AIF established in Luxembourg managed within the scope of this Law must have a single AIFM, which shall be responsible for ensuring compliance with the provisions of this Law. The AIFM shall be:

a) either an external AIFM; the external AIFM may be an AIFM established in Luxembourg, in another Member State or in a third country which is duly authorised pursuant to Directive 2011/61/EU;

b) or, where the legal form of the AIF permits an internal management and where the AIF's governing body chooses not to appoint an external AIFM, the AIF itself, which shall then be authorised as AIFM.

(2) In cases where an authorised AIFM established in Luxembourg has been designated as the external AIFM of an AIF, whether the AIF is an AIF established in Luxembourg, an AIF established in another Member State or an AIF established in a third country, and this AIFM is unable to ensure compliance with requirements of this Law for which this AIF or another entity on its behalf is responsible, it shall immediately inform the CSSF and, if applicable, the

competent authorities of the home Member State of the AIF concerned. The CSSF shall require the AIFM to take the necessary steps to remedy the situation.

(3) If, despite the steps referred to in paragraph (2), the non-compliance with the requirements of this Law persists, the CSSF shall require that the AIFM resign as external AIFM of the AIF concerned. In that case, the AIF shall no longer be marketed in the European Union. If it concerns a non-EU AIFM managing a non-EU AIF, the AIF shall no longer be marketed in the European Union. The CSSF, when it is the competent authority of the home Member State of the AIFM shall immediately inform the competent authorities of the host Member States of the AIFM thereof.

Chapter 2. - Authorisation of AIFMs

Art. 5 Conditions for taking up activities as AIFMs

(1) No person referred to in paragraph (1) of Article 2 may exercise in Luxembourg the activity of AIFM responsible for the management of AIF unless it is authorised in accordance with this Chapter.

The persons referred to in this paragraph shall meet the conditions for authorisation set for in this Law at all times.

(2) An external AIFM shall not engage in activities other than those referred to in Annex I to this Law and the additional management of UCITS subject to authorisation under Directive 2009/65/EC.

(3) An internally managed AIF shall not engage in any activities other than the activities of internal management of that AIF as referred to in Annex I of this Law.

(4) By way of derogation from paragraph (2), external AIFMs may, in addition, provide the following services:

a) management of portfolios of investments, including those owned by pension funds and institutions for occupational retirement provision in accordance with paragraph (1) of Article 19 of Directive 2003/41/EC, in accordance with mandates given by investors on a discretionary, client-by-client basis;

b) non-core services comprising:

i) investment advice;

ii) safe-keeping and administration in relation to shares or units of collective investment undertakings;

iii) reception and transmission of orders in relation to financial instruments.

(5) AIFMs shall not be authorised under this Chapter to provide:

a) only the services referred to in paragraph (4);

b) non-core services referred to in point b) of paragraph (4) without also being authorised for the services referred to in point a) of paragraph (4);

c) only the activities referred to in point 2 of Annex I; or

d) the services referred to in point 1 a) of Annex I of this Law without also providing the services referred to in point 1 b) of Annex I of this Law or *vice versa*.

(6) Articles 1-1, 37-1 and 37-3 of the amended Law of 5 April 1993 relating to the financial sector shall also apply to the provision of the services referred to in paragraph (4) of this Article by AIFMs.

In addition, sub-paragraph 2 of paragraph 4 of Article 101 of the amended Law of 17 December 2010 on undertakings for collective investment applies to AIFMs which provide the service referred to in point a) of paragraph (4) of this Article.

(7) AIFMs must provide the CSSF, on request, with all the information necessary to allow the CSSF to monitor compliance with the conditions referred to in this Law at all times.

(8) Credit institutions and investment firms authorised under the amended Law of 5 April 1993 relating to the financial sector shall not be required to obtain an authorisation under this Law in order to provide investment services such as individual portfolio management in respect of AIFs. However, investment firms shall, directly or indirectly, offer units or shares of AIFs to investors in the European Union, or place such units or shares with investors in the European Union, only to the extent that the units or shares can be marketed in accordance with Directive 2011/61/EU.

Art. 6 Application for authorisation

(1) The taking up of the activity of AIFMs established in Luxembourg is subject to an authorisation by the CSSF.

(2) The application for authorisation shall include the following information:

a) information on the persons effectively conducting the business of the AIFM;

b) information on the identities of the AIFM's shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings and on the amounts of those holdings;

c) a programme of activity setting out the organisational structure of the AIFM, including information on how the AIFM intends to comply with its obligations under Chapters 2, 3 and 4 and, where applicable, Chapters 5, 6, 7 and 8 of this Law;

d) information on the remuneration policies and practices pursuant to Article 12;

e) information on arrangements made for the delegation and sub-delegation to third parties of functions as referred to in Article 18.

(3) In addition, the application for authorisation shall include the following information on the AIFs that the AIFM intends to manage:

a) information about the investment strategies including the types of underlying funds if the AIF is a fund of funds, and the AIFM's policy as regards the use of leverage, and the risk profiles and other characteristics of the AIFs it manages or intends to manage, including information about the Member States or third countries in which such AIFs are established or are expected to be established;

b) information on where the master AIF is established if the AIF is a feeder AIF;

c) the management regulations or instruments of incorporation of each AIF the AIFM intends to manage;

d) information on the arrangements made for the appointment of the depositary in accordance with Article 19 for each AIF the AIFM intends to manage;

e) any additional information referred to in paragraph (1) of Article 21 for each AIF the AIFM manages or intends to manage.

(4) Where a UCITS management company, authorised pursuant to Chapter 15 of the amended Law of 17 December 2010 on undertakings for collective investment, or a management company authorised pursuant to paragraph (1) of Article 125 of that Law, applies for authorisation as an AIFM under this Law, the management company concerned shall not be required to provide information or documents which it has already provided to the CSSF when applying for authorisation under the amended Law of 17 December 2010, provided that such information or documents remain up-to-date.

Art. 7 Conditions for granting authorisation

(1) The CSSF shall not grant authorisation to the AIFM established in Luxembourg unless the following conditions are met:

a) the CSSF considers that the AIFM will be able to meet the conditions of this Law;

b) the AIFM has sufficient initial capital and own funds in accordance with Article 8;

c) the persons who effectively conduct the business of the AIFM are of sufficiently good repute and are sufficiently experienced also in relation to the investment strategies pursued by the AIFs managed by the AIFM, the names of those persons and of every person succeeding them in office being communicated forthwith to the CSSF; the conduct of the business of the AIFM must be decided by at least two persons meeting such conditions;

d) the shareholders or partners of the AIFM that have qualifying holdings are suitable taking into account the need to ensure the sound and prudent management of the AIFM; and

e) for each AIFM established in Luxembourg, if the head office and the registered office of each AIFM are located in Luxembourg.

Authorisation granted to an AIFM by the CSSF pursuant to this Chapter shall be valid for all Member States.

Authorised AIFMs shall be entered by the CSSF on a list. That entry shall be tantamount to authorisation and shall be notified by the CSSF to the AIFM concerned. This list and any amendments made thereto will be published by the CSSF in the Mémorial[3].

(2) The relevant competent authorities of the other Member States involved shall be consulted by the CSSF before authorisation is granted to the following AIFMs:

a) a subsidiary of another AIFM, of a UCITS management company, of an investment firm, of a credit institution or of an insurance undertaking authorised in another Member State;

b) a subsidiary of the parent undertaking of another AIFM, of a UCITS management company, of an investment firm, of a credit institution or of an insurance undertaking authorised in another Member State; and

c) a company controlled by the same natural or legal persons as those that control another AIFM, a UCITS management company, an investment firm, a credit institution or an insurance undertaking authorised in another Member State.

(3) Where close links exist between the AIFM and other natural or legal persons, the CSSF shall only grant authorisation if those links do not prevent the effective exercise of its supervisory functions.

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[3] The *Mémorial B, Recueil Administratif et Economique* is the part of the Luxembourg official gazette in which certain administrative publications are made.

The CSSF shall also refuse authorisation if the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the AIFM has close links, or difficulties involved in their enforcement, prevent the effective exercise of its supervisory functions.

(4) The CSSF may restrict the scope of the authorisation, in particular as regards the investment strategies of AIFs the AIFM is allowed to manage.

(5) The AIFM shall be informed in writing, within three months of the submission of a complete application, whether or not authorisation has been granted. The CSSF may prolong this period for up to three additional months, where it considers it necessary due to the specific circumstances of the case and after having notified the AIFM accordingly.

For the purpose of this paragraph an application is deemed complete if the AIFM has at least submitted the information referred to in paragraph (2), points a) to d) of Article 6 and paragraph (3), points a) and b) of Article 6.

The AIFM may start managing AIFs in Luxembourg with investment strategies described in the application for authorisation in accordance with paragraph (3), point a) of Article 6 as soon as the authorisation is granted, but not earlier than one month after having submitted any missing information referred to in paragraph (2), point e) of Article 6 and paragraph (3), points c), d) and e) of Article 6.

(6) No person shall make use of designations or of a description giving the impression that its activities are subject to this Law if it has not obtained the authorisation provided for in this Article.

Art. 7*bis*

(1) Without prejudice to the provisions provided for in Article 7, the authorisation of an AIFM is subject to the condition that the latter entrusts the audit of its annual accounting documents to one or more approved statutory auditors[4] who can prove that they have adequate professional experience.

(2) Any change regarding the approved statutory auditors must be previously approved by the CSSF.

(3) The institution of supervisory auditors[5] provided for by the Law of 10 August 1915 concerning commercial companies, as amended, and by Article 140 of that Law, shall not apply to AIFMs subject to this Chapter.

(4) Every AIFM subject to the supervision of the CSSF whose accounts are audited by an approved statutory auditor, must communicate spontaneously the reports and written comments issued by the approved statutory auditor in the context of its audit of the annual accounting documents to the CSSF.

The CSSF may regulate the scope of the mandate for the audit of annual accounting documents and the content of the reports and written comments of the approved statutory auditor referred to in the preceding sub-paragraph, without prejudice to the legal provisions governing the content of the independent auditor's[6] report.

(5) The approved statutory auditor must report promptly to the CSSF any fact or decision which he has become aware of while carrying out the audit of the accounting information contained in the annual report of an AIFM or any other legal task concerning an AIFM or an AIF, where any such fact or decision is likely to:

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4 *réviseurs d'entreprises agréés*
5 *commissaires aux comptes*
6 *contrôleur légal des comptes*

- constitute a material breach of this Law or the regulations adopted for its execution; or

- impair the continuous functioning of the AIFM, or of an undertaking contributing towards its business activity; or

- lead to a refusal to certify the accounts or to the expression of reservations thereon.

The approved statutory auditor has also a duty to promptly report to the CSSF in the accomplishment of its duties referred to in the preceding sub-paragraph in respect of an AIFM, any fact or decision concerning the AIFM and meeting the criteria listed in the preceding sub-paragraph, of which it has become aware while carrying out the audit of the accounting information contained in its annual report or while carrying out any other legal task related to another undertaking having close links resulting from a control relationship with this AIFM or an undertaking contributing towards its business activity.

If, in the discharge of its duties, the approved statutory auditor becomes aware that the information provided to investors or to the CSSF in the reports or other documents of the AIFM does not truly describe the financial situation and the assets and liabilities of the AIFM, it is obliged to inform the CSSF forthwith.

The approved statutory auditor is also obliged to provide the CSSF with all information or certificates which it may require on any matters of which the approved statutory auditor has or ought to have knowledge in connection with the discharge of its duties.

The disclosure to the CSSF in good faith by the approved statutory auditor of any fact or decision referred to in this paragraph does not constitute a breach of professional secrecy or of any restriction on disclosure of information imposed by contract and shall not result in liability of any kind of the approved statutory auditor.

The CSSF may request an approved statutory auditor to perform a control of one or several particular aspects of the activities and operations of an AIFM. This control shall be carried out at the expense of the AIFM concerned.

(6) Where a UCITS management company, authorised pursuant to Chapter 15 of the amended Law of 17 December 2010 on undertakings for collective investment, or a management company authorised pursuant to Article 125-2 of that Law, applies for authorisation as an AIFM under Chapter 2, the approved statutory auditor of the management company concerned may also be mandated to accomplish the missions referred to in this Article.

Art. 8 Initial capital and own funds

(1) An AIFM which is an internally managed AIF, within the meaning of paragraph (1), point b) of Article 4, must have an initial capital of at least EUR 300,000.

(2) An AIFM which is appointed as external manager of one or more AIFs, within the meaning of paragraph (1), point a) of Article 4, must have an initial capital of at least EUR 125,000 in accordance with the following provisions.

(3) Where the value of the portfolios of AIFs managed by the AIFM exceeds EUR 250,000,000, the AIFM must provide an additional amount of own funds. That additional amount of own funds shall be equal to 0.02% of the amount by which the value of the portfolios of the AIFM exceeds EUR 250,000,000. The required total of the initial capital and the additional amount shall not, however, exceed EUR 10,000,000.

(4) For the purpose of applying paragraph (3), AIFs managed by the AIFM, including AIFs for which the AIFM has delegated functions in accordance with Article 18 but excluding AIF portfolios that the AIFM is managing under delegation, shall be deemed to be the portfolios of the AIFM.

(5) Irrespective of paragraph (3), the own funds of the AIFM shall never be less than the amount required under Article 21 of Directive 2006/49/EC.

(6) AIFMs may not provide up to 50% of the additional amount of own funds referred to in paragraph (3) if they benefit from a guarantee of the same amount given by a credit institution or an insurance undertaking which has its registered office in a Member State, or in a third country where it is subject to prudential rules considered by the CSSF as equivalent to those provided by Union law.

(7) To cover potential professional liability risks resulting from activities AIFMs may carry out pursuant to this Law, both internally managed AIFs and external AIFMs shall either:

a) have additional own funds which are appropriate to cover potential liability risks arising from professional negligence; or

b) hold a professional indemnity insurance against liability arising from professional negligence which is appropriate to the risks covered.

(8) Own funds, including any additional own funds as referred to in point a) of paragraph (7), shall be invested in liquid assets or assets readily convertible to cash in the short term and must not include speculative positions.

(9) With the exception of paragraphs (7) and (8), this Article shall not apply to AIFMs which are also UCITS management companies authorised in accordance with Chapter 15 of the amended Law of 17 December 2010 on undertakings for collective investment.

Art. 9 Changes in the scope of the authorisation

(1) The granting of authorisation implies an obligation for the AIFMs, before implementation, to notify the CSSF of any material changes, in particular to the information provided in accordance with Article 6 upon which the CSSF based itself to grant the authorisation.

(2) If the CSSF decides to impose restrictions or reject the changes to the conditions for initial authorisation, the AIFM shall be informed thereof within one month of receipt of the notification referred to in paragraph (1). The CSSF may prolong that period for up to one month where it considers this to be necessary because of the specific circumstances of the case and after having notified the AIFM accordingly. The changes shall be implemented if the CSSF does not oppose the changes within the relevant assessment period.

Art. 10 Withdrawal of the authorisation and liquidation

(1) The CSSF may withdraw the authorisation issued to an AIFM, on the basis of this Chapter, where that AIFM:

a) does not make use of the authorisation within twelve months, expressly renounces the authorisation or has ceased the activity covered by this Law for the preceding six months;

b) obtained the authorisation by making false statements or by any other irregular means;

c) no longer meets the conditions under which authorisation was granted;

d) no longer complies with the provisions of the amended Law of 5 April 1993 relating to the financial sector, resulting from the transposition of Directive 2006/49/EC, if its authorisation also covers the discretionary portfolio management service referred to in paragraph (4), point a) of Article 5 of this Law;

e) has seriously or systematically infringed the provisions of this Law or of its implementing regulations; or

f) falls within any of the cases where Luxembourg law, in respect of matters outside the scope of this Law, provides for withdrawal.

(2) While taking account of the provisions of sector-specific laws, the District Court dealing with commercial matters shall, at the request of the State Prosecutor acting on its own initiative or at the request of the CSSF, pronounce the dissolution and liquidation of the AIFMs established in Luxembourg, whose entry on the list, provided for in paragraph (1) of Article 7, has definitely been refused or withdrawn. The decision of the CSSF regarding the withdrawal from the list provided for in paragraph (1) of Article 7, shall, as from the notification thereof to the AIFM concerned and until the decision has become final, *ipso jure* entail the suspension of any payment by this AIFM and a prohibition, on penalty of nullity, of taking any measures other than protective measures, except with the authorisation of the CSSF.

Chapter 3. - Operating conditions for AIFMs

Section 1 - General requirements

Art. 11 General principles

(1) In the context of their activities, AIFMs must at all times:

a) act honestly, with due skill, care and diligence and fairly in conducting their activities;

b) act in the best interests of the AIFs or the investors of the AIFs they manage and the integrity of the market;

c) have and employ effectively the resources and procedures that are necessary for the proper performance of their business activities;

d) take all reasonable steps to avoid conflicts of interest and, when they cannot be avoided, to identify, manage and monitor and, where applicable, disclose those conflicts of interest in order to prevent them from adversely affecting the interests of the AIFs and their investors and to ensure that the AIFs they manage are fairly treated;

e) comply with all regulatory requirements applicable to the conduct of their business activities so as to promote the best interests of the AIFs or the investors of the AIFs they manage and the integrity of the market;

f) treat all AIF investors fairly.

No investor in an AIF shall obtain preferential treatment, unless such preferential treatment is disclosed in the relevant AIF's management regulations or instruments of incorporation.

(2) Each AIFM the authorisation of which also covers the discretionary portfolio management service referred to in point a) of paragraph (4) of Article 5 of this Law shall:

a) not be permitted to invest all or part of the client's portfolio in units or shares of the AIFs it manages, unless it receives prior general approval from the client;

b) with regard to the services referred to in paragraph (4) of Article 5, be subject to the provisions of the Law of 27 July 2000 transposing Directive 97/9/EC on investor-compensation schemes into the amended Law of 5 April 1993 relating to the financial sector.

Art. 12 Remuneration

AIFMs must have remuneration policies and practices for those categories of staff, including senior management, risk takers, control functions, and any employees receiving total remuneration that takes them into the same remuneration bracket as senior management and risk takers, whose professional

activities have a material impact on the risk profiles of the AIFMs or of the AIFs they manage, that are consistent with and promote sound and effective risk management and do not encourage risk-taking which is inconsistent with the risk profiles, management regulations[7] or instruments of incorporation of the AIFs they manage.

They must determine the remuneration policies and practices in accordance with Annex II of this Law.

Art. 13 Conflicts of interest

(1) AIFMs must take all reasonable steps to identify conflicts of interest that arise in the course of managing AIFs between:

a) the AIFM, including its managers, employees or any person directly or indirectly linked to the AIFM by control, and the AIF managed by the AIFM or the investors in that AIF;

b) the AIF or the investors in that AIF and another AIF or the investors in that AIF;

c) the AIF or the investors in that AIF and another client of the AIFM;

d) the AIF or the investors in that AIF and a UCITS managed by the AIFM or the investors in that UCITS; or

e) two clients of the AIFM.

AIFMs are required to maintain and apply effective organisational and administrative arrangements, with a view to taking all reasonable steps designed to identify, prevent, manage and monitor conflicts of interest in order to prevent them from adversely affecting the interests of the AIFs and their investors.

They must segregate, within their own operating environment, tasks and responsibilities which may be regarded as incompatible with each other or which may potentially generate systematic conflicts of interest. They are required to assess whether their operating conditions may involve any other material conflicts of interest and to disclose them to the investors of the AIFs.

(2) Where organisational arrangements made by the AIFM to identify, prevent, manage and monitor conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to investors' interests will be prevented, the AIFM must clearly disclose the general nature or sources of conflicts of interest to the investors before undertaking business on their behalf, and develop appropriate policies and procedures.

(3) Where the AIFM on behalf of an AIF uses the services of a prime broker, the terms must be set out in a written contract. In particular, any possibility of transfer and reuse of AIF assets must be provided for in that contract and must comply with the AIF management regulations or instruments of incorporation. The contract must provide that the depositary be informed of the contract.

The AIFM must exercise due skill, care and diligence in the selection and appointment of the prime brokers with whom a contract is to be concluded.

Art. 14 Risk management

(1) AIFMs must functionally and hierarchically separate the functions of risk management from the operating units, including from the functions of portfolio management.

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[7] *règlement*

The functional and hierarchical separation of the functions of risk management in accordance with the first subparagraph shall be reviewed by the CSSF in accordance with the principle of proportionality, on the understanding that the AIFM shall, in any event, be able to demonstrate that specific safeguards against conflicts of interest allow for the independent performance of risk management activities and that the risk management process satisfies the requirements of this Article and is consistently effective.

(2) AIFMs are required to implement adequate risk-management systems in order to identify, measure, manage and monitor appropriately all risks relevant to each AIF investment strategy and to which each AIF is or may be exposed. In particular, the AIFMs shall not solely or mechanistically rely on the credit ratings issued by credit rating agencies as defined in Article 3, paragraph 1, point b) of Regulation (EC) No. 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies for assessing the creditworthiness of the AIFs' assets.

AIFMs shall review the risk management systems with appropriate frequency, at least once a year, and adapt them whenever necessary.

(3) AIFMs are required at least to:

a) implement an appropriate, documented and regularly updated due diligence process when investing on behalf of the AIF, according to the investment strategy, the objectives and risk profile of the AIF;

b) ensure that the risks associated with each investment position of the AIF and their overall effect on the AIF's portfolio can be properly identified, measured, managed and monitored on an ongoing basis, including through the use of appropriate stress testing procedures;

c) ensure that the risk profile of the AIF shall correspond to the size, portfolio structure and investment strategies and objectives of the AIF as laid down in the AIF management regulations[8] or instruments of incorporation, prospectuses and offering documents.

(3*bis*) The CSSF shall, taking into account the nature, scale and complexity of the AIFs' activities, monitor the adequacy of the credit assessment processes of the AIFMs, assess the use of references to credit ratings, as referred to in paragraph 2, first subparagraph, in the AIFs' investment policies and encourage where appropriate mitigation of the impact of such references, with a view to reducing sole and mechanistic reliance on such credit ratings.

(4) AIFMs must set a maximum level of leverage which they may employ on behalf of each AIF they manage as well as the extent of the right to reuse collateral or guarantee that could be granted under the leveraging arrangement, taking into account, *inter alia*:

a) the type of AIF;

b) the investment strategy of the AIF;

c) the sources of leverage of the AIF;

d) any other interlinkage or relevant relationships with other financial services institutions which could pose systemic risk;

e) the need to limit the exposure to any single counterparty;

f) the extent to which the leverage is collateralised;

[8] *règlement*

g) the asset-liability ratio;

h) the scale, nature and extent of the activity of the AIFM on the markets concerned.

Art. 15 Liquidity management

(1) AIFMs must, for each AIF that they manage other than for an unleveraged closed-ended AIF, employ an appropriate liquidity management system and adopt procedures which enable them to monitor the liquidity risk of the AIF and to ensure that the liquidity profile of the investments of the AIF complies with its underlying obligations.

They must regularly conduct stress tests, under normal and exceptional liquidity conditions, which enable them to assess the liquidity risk of the AIFs and monitor the liquidity risk of the AIFs accordingly.

(2) AIFMs must ensure that, for each AIF that they manage, the investment strategy, the liquidity profile and the redemption policy are consistent.

Section 2 - Organisational requirements

Art. 16 General principles

AIFMs must use, at all times, adequate and appropriate human and technical resources that are necessary for the proper management of AIFs.

In particular, the CSSF requires, having regard also to the nature of the AIFs managed by the AIFM, that the AIFM has sound administrative and accounting procedures, control and safeguard arrangements for electronic data processing and adequate internal control mechanisms including, in particular, rules for personal transactions by its employees or for the holding or management of investments in order to invest on its own account and ensuring, at least, that each transaction involving the AIFs may be reconstructed according to its origin, the parties to it, its nature, and the time and place at which it was effected and that the assets of the AIFs managed by the AIFM are invested in accordance with the AIF management regulations or instruments of incorporation and the legal provisions in force.

Art. 17 Valuation

(1) AIFMs must ensure that, for each AIF that they manage, appropriate and consistent procedures are established so that a proper and independent valuation of the assets of the AIF can be performed in accordance with this Article, the applicable national law and the AIF management regulations or instruments of incorporation.

(2) The rules applicable to the valuation of assets and the calculation of the net asset value per unit or share of AIFs shall be laid down in the law of the country where the AIF is established and/or in the AIF management regulations or instruments of incorporation.

(3) AIFMs are also required to ensure that the net asset value per unit or share of AIFs is calculated and disclosed to the investors in accordance with this Article, the applicable national law and the AIF management regulations[9] or instruments of incorporation.

The valuation procedures used must guarantee that the assets are valued and the net asset value per unit or share is calculated at least once a year.

If the AIF is of the open-ended type, such valuations and calculations must also be carried out at a frequency which is both appropriate to the assets held by the AIF and its issuance and redemption frequency.

[9] *règlement*

If the AIF is of the closed-ended type, such valuations and calculations must also be carried out in case of an increase or decrease of the capital by the relevant AIF.

The investors shall be informed of the valuations and calculations as set out in the relevant AIF management regulations or instruments of incorporation.

(4) AIFMs must ensure that the valuation function is either performed by:

a) an external valuer, which must be a legal or natural person independent from the AIF, the AIFM and any other persons with close links to the AIF or the AIFM; or

b) the AIFM itself, provided that the valuation task is functionally independent from the portfolio management and the remuneration policy and other measures ensure that conflicts of interest are mitigated and that undue influence upon the employees is prevented.

The appointment of the depositary appointed for an AIF as external valuer of that AIF, is subject to the condition that it has functionally and hierarchically separated the performance of its depositary functions from its tasks as external valuer and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the AIF.

(5) Where an external valuer performs the valuation function, the AIFM must be able to demonstrate that:

a) the external valuer is subject to mandatory professional registration recognised by law or to legal or regulatory provisions or rules of professional conduct;

b) the external valuer can provide sufficient professional guarantees to be able to perform effectively the relevant valuation function in accordance with paragraphs (1), (2) and (3); and

c) the appointment of the external valuer complies with the requirements of paragraphs (1) and (2) of Article 18 of this Law and the delegated acts adopted pursuant to paragraph (7) of Article 20 of Directive 2011/61/EU.

(6) The appointed external valuer shall not be allowed to delegate the valuation function to a third party.

(7) AIFMs are required to notify the appointment of the external valuer to the CSSF. The CSSF shall require that another external valuer be appointed, where the conditions laid down in paragraph (5) are not met.

(8) The valuation must be performed impartially and with all due skill, care and diligence.

(9) Where the valuation function is not performed by an independent external valuer, the CSSF may require the AIFM to have its valuation procedures and/or valuations verified by an external valuer or, where appropriate, by an approved statutory auditor.

(10) AIFMs are responsible for the proper valuation of AIF assets, the calculation of the net asset value and the publication of that net asset value. The AIFM's liability towards the AIF and its investors shall, therefore, not be affected by the fact that the AIFM has appointed an external valuer.

Notwithstanding the first subparagraph and irrespective of any contractual arrangements providing otherwise, the external valuer shall be liable to the AIFM for any losses suffered by the AIFM as a result of the external valuer's negligence or intentional failure to perform its tasks.

Section 3 - Delegation of AIFM functions

Art. 18 Delegation

(1) Where AIFMs intend to delegate to third parties the task of carrying out functions on their behalf, they shall notify the CSSF thereof before the delegation arrangements become effective. The following conditions must be met:

a) the AIFM must be able to justify its entire delegation structure on objective reasons;

b) the delegate must dispose of sufficient resources to perform the respective tasks and the persons who effectively conduct the business of the delegate must be of sufficiently good repute and sufficiently experienced;

c) where the delegation concerns portfolio management or risk management, it must be conferred only on undertakings which are authorised or registered for the purpose of asset management and subject to supervision or, where that condition cannot be met, only subject to prior approval by the CSSF;

d) where the delegation concerns portfolio management or risk management and is conferred on a third-country undertaking, in addition to the requirements in point c), cooperation between the CSSF and the supervisory authority of this undertaking must be ensured;

e) the delegation must not prevent the effectiveness of supervision of the AIFM, and, in particular, must not prevent the AIFM from acting, or the AIF from being managed, in the best interests of its investors;

f) the AIFM must be able to demonstrate that the delegate is qualified and capable of undertaking the functions in question, that it was selected with all due care and that the AIFM is in a position to monitor effectively at any time the delegated activity, to give at any time further instructions to the delegate and to withdraw the delegation with immediate effect when this is in the interest of investors.

The AIFM must review the services provided by each delegate on an ongoing basis.

(2) No delegation of portfolio management or risk management shall be conferred on:

a) the depositary or a delegate of the depositary; or

b) any other entity whose interests may conflict with those of the AIFM or the investors of the AIF, unless such entity has functionally and hierarchically separated the performance of its portfolio management or risk management tasks from its other potentially conflicting tasks, and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the AIF.

(3) The AIFM's liability towards the AIF and its investors shall not be affected by the fact that the AIFM has delegated functions to a third party, or by any further sub-delegation. In addition, the AIFM shall not delegate its functions to the extent that, in essence, it can no longer be considered to be the manager of the AIF and to the extent that it would become a letter-box entity.

(4) The third party may sub-delegate any of the functions delegated to it provided that the following conditions are met:

a) the AIFM consented prior to the sub-delegation;

b) the AIFM notified the CSSF of the terms of the sub-delegation arrangements before they become effective;

c) the conditions set out in paragraph (1) must be fulfilled, on the understanding that all references to the 'delegate' are read as references to the 'sub-delegate'.

(5) No sub-delegation of portfolio management or risk management shall be conferred on:

a) the depositary or a delegate of the depositary; or

b) any other entity whose interests may conflict with those of the AIFM or the investors of the AIF, unless such entity has functionally and hierarchically separated the performance of its portfolio management or risk management tasks from its other potentially conflicting tasks, and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the AIF.

The relevant delegate must control the services provided by each sub-delegate on an ongoing basis.

(6) Where the sub-delegate further delegates any of the functions delegated to it, the conditions set out in paragraph (4) shall apply *mutatis mutandis*.

Section 4 - Depositary

Art. 19 Depositary

(1) For each AIF it manages, the AIFM must ensure that a single depositary is appointed in accordance with the provisions of this Article.

(2) The appointment of the depositary shall be evidenced by written contract. The contract shall, *inter alia*, regulate the flow of information deemed necessary to allow the depositary to perform its functions for the AIF for which it has been appointed as depositary, as set out in this Law and in other relevant laws, regulations or administrative provisions.

(3) i) For AIFs established in Luxembourg, the depositary must be a credit institution or an investment firm within the meaning of the amended Law of 5 April 1993 on the financial sector. An investment firm shall only be eligible as depositary of an AIF if all the following conditions have been fulfilled:

- the authorisation of the investment firm covers the ancillary service of safe-keeping and administration of financial instruments for the account of clients referred to in point 1 of Section C of Annex II of the amended Law of 5 April 1993 on the financial sector;

- the investment firm is a legal person;

- it must have a fully paid-up minimum capital of EUR 730,000;

- it must have internal governance procedures, including an organisational and administrative structure and internal control procedures which are appropriate for the depositary's activity;

- it fulfils the requirements for own funds provided for in point b) of paragraph (3) of Article 21 of Directive 2011/61/EU. These requirements for own funds are clarified by the CSSF.

Any investment firm which intends to exercise the functions of depositary for one or more AIFs established in Luxembourg must first notify the CSSF thereof. The CSSF has a maximum period of 2 months from the date of notification to object if the conditions mentioned in this paragraph are not fulfilled. If the CSSF decides to object, the CSSF informs without delay the investment firm thereof in writing indicating the reasons for its decision. In the absence of a decision by the CSSF, the investment firm may start the activity of depositary after expiry of the 2 month period from the date of

the notification. The decision of the CSSF may be referred to the administrative court, which will deal with the substance of the case, within a period of one month, after which it shall be time-barred.

The depositary must either have its registered office in Luxembourg or have a branch there if its registered office is in another Member State.

In relation to AIFs established in Luxembourg, which have no redemption rights exercisable during a period of five years from the date of the initial investments and which, in accordance with their core investment policy, generally do not invest in assets that must be held in custody in accordance with paragraph (8), point a) of Article 19 of this Law or generally invest in issuers or non-listed companies in order to potentially acquire control over such companies in accordance with Article 24 of this Law, the depositary may also be an entity which has the status of a professional depositary of assets other than financial instruments within the meaning of Article 26*bis* of the amended Law of 5 April 1993 on the financial sector.

The provisions referred to under point i) apply, unless otherwise provided by a specific law or a provision of EU law.

ii) For AIFs established in another Member State, the depositary must belong to one of the following categories of institutions mentioned in paragraph (3) of Article 21 of Directive 2011/61/EU, unless otherwise provided by the national law applicable to the AIF concerned or by a provision of EU law:

a) a credit institution having its registered office in the European Union and authorised in accordance with Directive 2006/48/EC;

b) an investment firm having its registered office in the European Union, subject to capital adequacy requirements in accordance with paragraph (1) of Article 20 of Directive 2006/49/EC including capital requirements for operational risks and authorised in accordance with Directive 2004/39/EC and which also provides the ancillary service of safe-keeping and administration of financial instruments for the account of clients in accordance with point (1) of Section B of Annex I to Directive 2004/39/EC; such investment firms shall in any case have own funds not less than the amount of initial capital referred to in Article 9 of Directive 2006/49/EC; or

c) another category of institution that is subject to prudential regulation and ongoing supervision and which, on 21 July 2011, falls within the categories of institution determined by Member States to be eligible to be a depositary under paragraph (3) of Article 23 of Directive 2009/65/EC.

For AIFs established in another Member State which have no redemption rights exercisable during the period of five years from the date of the initial investments and which, in accordance with their core investment policy, generally do not invest in assets that must be held in custody in accordance with paragraph (8), point a) of Article 21 of Directive 2011/61/EU or generally invest in issuers or non-listed companies in order to potentially acquire control over such companies in accordance with Article 26 of the aforementioned Directive, the depositary may be an entity which carries out depositary functions as part of its professional or business activities in respect of which such entity is subject to mandatory professional registration recognised by the national law applicable to the AIF established in another Member State.

iii) For non-EU AIFs only, and without prejudice to point b) of paragraph (5) of this Article, the depositary may also be a credit institution or any other entity of the same nature as the entities referred to in points a) and b) of paragraph (3), first subparagraph of Article 21 of Directive 2011/61/EU provided that the conditions of paragraph (6), point b) of Article 21 of that Directive are met.

(4) In order to avoid conflicts of interest between the depositary, the AIFM and/or the AIF and/or its investors:

a) an AIFM is not allowed to act as depositary;

b) a prime broker acting as counterparty to an AIF is not allowed to act as depositary for that AIF, unless it has functionally and hierarchically separated the performance of its depositary functions from its tasks as prime broker and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the AIF. Delegation by the depositary to such prime broker of its custody tasks in accordance with paragraph (11) is allowed if the relevant conditions are met.

(5) The depositary must be established:

a) for EU AIFs, in the home Member State of the AIF;

b) for non-EU AIFs, in the third country where the AIF is established or in the home Member State of the AIFM managing the AIF or in the Member State of reference of the AIFM managing the AIF.

(6) Without prejudice to the requirements set out in paragraph (3), the appointment of a depositary established in a third country shall, at all times, be subject to the following conditions:

a) the competent authorities of the Member States in which the units or shares of the non-EU AIF are intended to be marketed, and the CSSF, as competent authority of the home Member State of the AIFM, have signed cooperation and exchange of information arrangements with the competent authorities of the depositary;

b) the depositary is subject to effective prudential regulation, including minimum capital requirements, and supervision which have the same effect as European Union law and are effectively enforced;

c) the third country where the depositary is established is not listed as a Non-Cooperative Country and Territory by the Financial Action Task Force (FATF);

d) the Member States in which the units or shares of the non-EU AIF are intended to be marketed and Luxembourg, as the home Member State of the AIFM, have signed an agreement with the third country where the depositary is established which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters including any multilateral tax agreements;

e) the depositary shall by contract be liable to the AIF or to the investors of the AIF, consistently with paragraphs (12) and (13), and shall expressly agree to comply with the provisions of paragraph (11).

(7) The depositary must in general ensure that the AIF's cash flows are properly monitored, and shall in particular ensure that all payments made by or on behalf of investors upon the subscription of units or shares of an AIF have been received and that all cash of the AIF has been booked in cash accounts opened in the name of the AIF or in the name of the AIFM acting on behalf of the AIF or in the name of the depositary acting on behalf of the AIF at an entity referred to in paragraph (1), points a), b) and c) of Article 18 of Directive 2006/73/EC, or another entity of the same nature, in the relevant market where cash accounts are required provided that such entity is subject to effective prudential regulation and supervision which have the same effect as European Union law and are effectively enforced and in accordance with the principles set out in Article 16 of Directive 2006/73/EC.

Where the cash accounts are opened in the name of the depositary acting on behalf of the AIF, no cash of the entity referred to in the first subparagraph and none of the depositary's own cash shall be booked on such accounts.

(8) The assets of the AIF or the AIFM acting on behalf of the AIF must be entrusted to the depositary for safe-keeping, taking into account the following elements:

a) for financial instruments that can be held in custody:

i) the depositary must hold in custody all financial instruments that can be registered in a financial instruments account opened in the depositary's books and all financial instruments that can be physically delivered to the depositary;

ii) for that purpose, the depositary must ensure that all those financial instruments that can be registered in a financial instruments account opened in the depositary's books are registered in the depositary's books within segregated accounts, in accordance with the principles set out in Article 16 of Directive 2006/73/EC, opened in the name of the AIF or the AIFM acting on behalf of the AIF, so that they can be clearly identified as belonging to the AIF in accordance with the applicable law at all times;

b) for other assets:

i) the depositary must verify the ownership of the AIF or the AIFM acting on behalf of the AIF of such assets and shall maintain a record of those assets for which it is satisfied that the AIF or the AIFM acting on behalf of the AIF holds the ownership of such assets;

ii) the assessment whether the AIF or the AIFM acting on behalf of the AIF, holds the ownership shall be based on information or documents provided by the AIF or the AIFM and, where available, on external evidence;

iii) the depositary must keep its record up-to-date.

(9) In addition to the tasks referred to in paragraphs (7) and (8), the depositary must:

a) ensure that the sale, issue, re-purchase, redemption and cancellation of units or shares of the AIF are carried out in accordance with the applicable national law and the AIF management regulations[10] or instruments of incorporation;

b) ensure that the value of the units or shares of the AIF is calculated in accordance with the applicable national law, the AIF management regulations[11] or instruments of incorporation and the procedures laid down in Article 19 of Directive 2011/61/EU;

c) carry out the instructions of the AIFM, unless they conflict with the applicable national law or the AIF management regulations[12] or instruments of incorporation;

d) ensure that in transactions involving the AIF's assets any consideration is remitted to the AIF within the usual time limits;

e) ensure that an AIF's income is applied in accordance with the applicable national law and the AIF management regulations[13] or instruments of incorporation.

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[13] *règlement*

(10) In the context of their respective roles, the AIFM and the depositary must act honestly, fairly, professionally, independently and in the interest of the AIF and the investors of the AIF.

A depositary is not allowed to carry out activities with regard to the AIF or the AIFM on behalf of the AIF that may create conflicts of interest between the AIF, the investors in the AIF, the AIFM and the depositary itself, unless the depositary has functionally and hierarchically separated the performance of its depositary tasks from its other potentially conflicting tasks, and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the AIF.

The depositary is not allowed to reuse assets referred to in paragraph (8) without the prior consent of the AIF or the AIFM acting on behalf of the AIF.

(11) The depositary is not allowed to delegate to third parties the functions as described in this Article, save for those referred to in paragraph (8).

The depositary may delegate to third parties the functions referred to in paragraph (8) provided that the following conditions are fulfilled:

a) the tasks are not delegated with the intention of avoiding the requirements of Directive 2011/61/EU;

b) the depositary can demonstrate that there is an objective reason for the delegation;

c) the depositary has exercised all due skill, care and diligence in the selection and the appointment of any third party to whom it wants to delegate parts of its tasks, and keeps exercising all due skill, care and diligence in the periodic review and ongoing monitoring of any third party to whom it has delegated parts of its tasks and of the arrangements of the third party in respect of the matters delegated to it; and

d) the depositary ensures that the third party meets the following conditions at all times during the performance of the tasks delegated to it:

i) the third party has the structures and the expertise that are adequate and proportionate to the nature and complexity of the assets of the AIF or the AIFM acting on behalf of the AIF which have been entrusted to it;

ii) for custody tasks referred to in point a) of paragraph (8), the third party is subject to effective prudential regulation, including minimum capital requirements, and supervision in the jurisdiction concerned and the third party is subject to an external periodic audit to ensure that the financial instruments are in its possession;

iii) the third party segregates the assets of the depositary's clients from its own assets and from the assets of the depositary in such a way that they can at any time be clearly identified as belonging to clients of a particular depositary;

iv) the third party does not make use of the assets without the prior consent of the AIF or the AIFM acting on behalf of the AIF and without first informing the depositary; and

v) the third party complies with the general obligations and prohibitions set out in paragraphs (8) and (10).

Notwithstanding point d) (ii) of the second subparagraph, where the law of a third country requires that certain financial instruments be held in custody by a local entity and no local entities satisfy the delegation requirements laid down in that point, the depositary may delegate its functions to such a local entity only to the extent required by the law of the third country and only for as long as there are no local entities that satisfy the delegation requirements, subject to the following requirements:

a) the investors of the relevant AIF must be duly informed that such delegation is required due to legal constraints in the law of the third country and of the circumstances justifying the delegation, prior to their investment; and

b) the AIF, or the AIFM on behalf of the AIF, must instruct the depositary to delegate the custody of such financial instruments to such local entity.

The third party may, in turn, sub-delegate those functions, subject to the same requirements. In such a case, paragraph (13) shall apply *mutatis mutandis* to the relevant parties.

For the purposes of this paragraph, the provision of services as specified by Directive 98/26/EC by securities settlement systems as designated for the purposes of that Directive or the provision of similar services by third-country securities settlement systems shall not be considered as a delegation of its custody functions.

(12) The depositary shall be liable to the AIF or to the investors of the AIF, for the loss by the depositary or a third party to whom the custody of financial instruments held in custody in accordance with point a) of paragraph (8) has been delegated.

In the case of such a loss of a financial instrument held in custody, the depositary must return a financial instrument of identical type or the corresponding amount to the AIF or the AIFM acting on behalf of the AIF without undue delay. The depositary shall not be liable if it is able to prove that the loss has arisen as a result of an external event beyond its reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary.

The depositary shall also be liable to the AIF, or to the investors of the AIF, for all other losses suffered by them as a result of the depositary's negligent or intentional failure to properly fulfil its obligations pursuant to Directive 2011/61/EU.

(13) The depositary's liability shall not be affected by any delegation referred to in paragraph (11).

Notwithstanding the first subparagraph of this paragraph, in case of a loss of financial instruments held in custody by a third party pursuant to paragraph (11), the depositary may discharge itself of liability if it can prove that:

a) all requirements for the delegation of its custody tasks set out in the second subparagraph of paragraph (11) are met;

b) a written contract between the depositary and the third party expressly transfers the liability of the depositary to that third party and makes it possible for the AIF or the AIFM acting on behalf of the AIF to make a claim against the third party in respect of the loss of financial instruments or for the depositary to make such a claim on their behalf; and

c) a written contract between the depositary and the AIF or the AIFM acting on behalf of the AIF, expressly allows a discharge of the depositary's liability and establishes the objective reason to contract such a discharge.

(14) Further, where the law of a third country requires that certain financial instruments are held in custody by a local entity and there are no local entities that satisfy the delegation requirements laid down in point d) (ii) of paragraph (11), the depositary can discharge itself of liability provided that the following conditions are met:

a) the management regulations or instruments of incorporation of the AIF concerned expressly allow for such a discharge under the conditions set out in this paragraph;

b) the investors of the relevant AIF have been duly informed of that discharge and of the circumstances justifying the discharge prior to their investment;

c) the AIF or the AIFM on behalf of the AIF instructed the depositary to delegate the custody of such financial instruments to a local entity;

d) there is a written contract between the depositary and the AIF or the AIFM acting on behalf of the AIF, which expressly allows such a discharge; and

e) there is a written contract between the depositary and the third party that expressly transfers the liability of the depositary to that local entity and makes it possible for the AIF or the AIFM acting on behalf of the AIF to make a claim against that local entity in respect of the loss of financial instruments or for the depositary to make such a claim on their behalf.

(15) Liability to the investors of an AIF which has no legal personality may be invoked through the AIFM. Should the AIFM fail to act despite a request from an investor, within a period of three months following such a request, that investor may directly invoke the liability of the depositary.

(16) Where the depositary is established in Luxembourg, it shall make available to the CSSF, on request, all information which it has obtained while performing its tasks and that may be necessary for the supervision of the AIF or the AIFM. If the CSSF is not the competent authority for the supervision of the AIF or the AIFM concerned, it shall communicate the information received to the competent authorities.

Chapter 4. - Transparency requirements

Art. 20 Annual report

(1) An AIFM established in Luxembourg must, for each of the EU AIFs it manages and for each of the AIFs it markets in the European Union, make available an annual report for each financial year no later than six months following the end of the financial year to which the report refers. The annual report must be provided to investors on request. The annual report must be made available to the CSSF, and, where applicable, the home Member State of the AIF.

Where the AIF is required to make public an annual financial report in accordance with Directive 2004/109/EC only such additional information referred to in paragraph (2) hereafter needs to be provided to investors on request, either separately or as an additional part of the annual financial report. In the latter case the annual financial report must be made public no later than four months following the end of the financial year to which it refers.

(2) The annual report must at least contain the following:

a) a balance-sheet or a statement of assets and liabilities;

b) an income and expenditure account for the financial year;

c) a report on the activities of the financial year;

d) any material changes in the information listed in Article 21 during the financial year to which the report refers;

e) the total amount of remuneration for the financial year, split into fixed and variable remuneration, paid by the AIFM to its staff, and number of beneficiaries, and, where relevant, carried interest paid by the AIF;

f) the aggregate amount of remuneration broken down by senior management and members of staff of the AIFM whose actions have a material impact on the risk profile of the AIF.

(3) The accounting information given in the annual report must be prepared in accordance with the accounting standards of the home Member State of the AIF or in accordance with the accounting standards of the third country where the AIF is established and with the accounting rules laid down in the AIF management regulations or instruments of incorporation.

The accounting information given in the annual report must be audited by one or more persons empowered by law to audit accounts in accordance with Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts. The auditor's report, including any qualifications, shall be reproduced in full in the annual report.

By way of derogation from the second subparagraph, AIFMs marketing non-EU AIFs may subject the annual reports of those AIFs to an audit meeting international auditing standards in force in the country where the AIF has its registered office.

Art. 21 Disclosure to investors

(1) AIFMs must for each of the EU AIFs that they manage and for each of the AIFs that they market in the European Union make available to AIF investors, before they invest in the AIF, in accordance with the AIF management regulations or instruments of incorporation, the following information, as well as any material changes thereof:

a) a description of the investment strategy and objectives of the AIF, information on where any master AIF is established and where the underlying funds are established if the AIF is a fund of funds, a description of the types of assets in which the AIF may invest, the techniques it may employ and all associated risks, any applicable investment restrictions, the circumstances in which the AIF may use leverage, the types and sources of leverage permitted and the associated risks, any restrictions on the use of leverage and any collateral and asset reuse arrangements, and the maximum level of leverage which the AIFM is entitled to employ on behalf of the AIF;

b) a description of the procedures by which the AIF may change its investment strategy or investment policy, or both;

c) a description of the main legal implications of the contractual relationship entered into for the purpose of investment, including information on jurisdiction, on the applicable law and on the existence or not of any legal instruments providing for the recognition and enforcement of judgments in the territory where the AIF is established;

d) the identity of the AIFM, the AIF's depositary, auditor and any other service providers and a description of their duties and the investors' rights;

e) a description of how the AIFM is complying with the requirements of paragraph (7) of Article 8;

f) a description of any delegated management function as referred to in Annex I by the AIFM and of any safe-keeping function delegated by the depositary, the identification of the delegate and any conflicts of interest that may arise from such delegations;

g) a description of the AIF's valuation procedure and of the pricing methodology for valuing assets, including the methods used in valuing hard-to-value assets in accordance with Article 17;

h) a description of the AIF's liquidity risk management, including the redemption rights both in normal and in exceptional circumstances, and the existing redemption arrangements with investors;

i) a description of all fees, charges and expenses and of the maximum amounts thereof which are directly or indirectly borne by investors;

j) a description of how the AIFM ensures a fair treatment of investors and, whenever an investor obtains preferential treatment or the right to obtain preferential treatment, a description of that preferential treatment, the type of investors who obtain such preferential treatment and, where relevant, their legal or economic links with the AIF or AIFM;

k) the latest annual report referred to in Article 20;

l) the procedure and conditions for the issue and sale of units or shares;

m) the latest net asset value of the AIF or the latest market price of the unit or share of the AIF, established in accordance with Article 17;

n) where available, the historical performance of the AIF;

o) the identity of the prime broker and a description of any material arrangements of the AIF with its prime brokers and the way the conflicts of interest in relation thereto are managed and the provision in the contract with the depositary on the possibility of transfer and reuse of AIF assets, and information about any transfer of liability to the prime broker that may exist;

p) a description of how and when the information required under paragraphs (4) and (5) will be disclosed.

(2) The AIFM shall inform the investors before they invest in the AIF of any arrangement made by the depositary to contractually discharge itself of liability in accordance with paragraph (13) of Article 19. The AIFM shall also inform investors of any changes with respect to depositary liability without delay.

(3) Where the AIF is required to publish a prospectus in accordance with Directive 2003/71/EC or in accordance with national law, only such information referred to in paragraphs (1) and (2) which is in addition to that contained in the prospectus needs to be disclosed separately or as additional information in the prospectus.

(4) AIFMs must, for each of the EU AIFs that they manage and for each of the AIFs that they market in the European Union, periodically disclose to investors:

a) the percentage of the AIF's assets which are subject to special arrangements arising from their illiquid nature;

b) any new arrangements for managing the liquidity of the AIF;

c) the current risk profile of the AIF and the risk management systems employed by the AIFM to manage those risks.

(5) AIFMs managing EU AIFs employing leverage or marketing in the European Union AIFs employing leverage must, for each such AIF disclose, on a regular basis:

a) any changes to the maximum level of leverage which the AIFM may employ on behalf of the AIF as well as any right of the reuse of collateral or any guarantee granted under the leveraging arrangement;

b) the total amount of leverage employed by that AIF.

Art. 22 Reporting obligations to the CSSF

(1) AIFMs must regularly report to the CSSF on the principal instruments in which they trade on behalf of the AIFs they manage, as well as on the principal markets in which they trade.

They must provide information on the main instruments in which they are trading, on markets of which they are a member or where they actively trade, and on the principal exposures and most important concentrations of each of the AIFs they manage.

(2) An AIFM must, for each of the EU AIFs it manages and for each of the AIFs it markets in the European Union, provide the following information to the CSSF:

a) the percentage of the AIF's assets which are subject to special arrangements arising from their illiquid nature;

b) any new arrangements for managing the liquidity of the AIF;

c) the current risk profile of the AIF and the risk management systems employed by the AIFM to manage the market risk, liquidity risk, counterparty risk and other risks including operational risk;

d) information on the main categories of assets in which the AIF invested; and

e) the results of the stress tests performed in accordance with paragraph (3), point b) of Article 14 and paragraph (1), second subparagraph of Article 15.

(3) The AIFM must, on request, provide the following documents to the CSSF:

a) an annual report of each EU AIF managed by the AIFM and of each AIF marketed by it in the European Union, for each financial year, in accordance with paragraph (1) of Article 20;

b) for the end of each quarter a detailed list of all AIFs which the AIFM manages.

(4) An AIFM managing AIFs employing leverage on a substantial basis shall make available to the CSSF information about the overall level of leverage employed by each AIF it manages, a break-down between leverage arising from borrowing of cash or securities and leverage embedded in financial derivatives and the extent to which the AIF's assets have been reused under leveraging arrangements.

That information shall include the identity of the five largest sources of borrowed cash or securities for each of the AIFs managed by the AIFM, and the amounts of leverage received from each of those sources for each of those AIFs.

(5) If the CSSF considers that such communication is necessary for the effective monitoring of systemic risk, it may require the AIFM to communicate information in addition to that described in this Article, on a periodic as well as on an *ad-hoc* basis.

Chapter 5. - AIFMs managing specific types of AIFs

Section 1 - AIFMs managing leveraged AIFs

Art. 23 Use of information by competent authorities, supervisory cooperation and limits to leverage

(1) The CSSF shall use the information to be gathered under Article 22 of this Law for the purposes of identifying the extent to which the use of leverage contributes to the build-up of systemic risk in the financial system, risks of disorderly markets or risks to the long-term growth of the economy.

(2) The CSSF shall ensure that all information gathered under Article 22 of this Law in respect of all AIFMs that it supervises and the information gathered under Article 6 of this Law is made available to competent authorities of other relevant Member States, ESMA and the ESRB by means of the procedures set out in Article 50 of Directive 2011/61/EU on supervisory cooperation. It shall, without delay, also provide information by means of those procedures, and bilaterally to the competent authorities of other Member States directly concerned, if an AIFM under its responsibility, or AIF managed by that AIFM could potentially constitute an important source of counterparty risk to a credit institution or other systemically relevant institutions in other Member States.

(3) The AIFM must provide proof that the leverage limits set by it for each AIF it manages are reasonable and that it complies with those limits at all times. The CSSF shall assess the risks that the use of leverage by an AIFM with respect to the AIFs it manages could entail. If the CSSF deems such action necessary in order to ensure the stability and integrity of the financial system, it shall, after having notified ESMA, the ESRB and, if applicable, the competent authorities of the relevant AIF, impose limits to the level of leverage that an AIFM is entitled to employ or other restrictions on the management of the AIF with respect to the AIFs under its management to limit the extent to which the use of leverage contributes to the build up of systemic risk in the financial system or risks of disorderly markets. The CSSF shall duly inform ESMA, the ESRB and, if applicable, the competent authorities of the AIF, of actions taken in this respect, through the procedures set out in Article 50 of Directive 2011/61/EU.

(4) The notification referred to in paragraph (3) shall be made not less than ten working days before the proposed measure is intended to take effect or to be renewed. The notification shall include details of the proposed measure, the reasons for the measure and when the measure is intended to take effect. In exceptional circumstances, the CSSF may decide that the proposed measure takes effect within the period referred to in the first sentence.

Section 2 - Obligations for AIFMs managing AIFs which acquire control of non-listed companies and issuers

Art. 24 Scope

(1) This Section shall apply to the following:

a) AIFMs managing one or more AIFs, which either individually or jointly, on the basis of an agreement aimed at acquiring control, acquire control of a non-listed company in accordance with paragraph (5);

b) AIFMs cooperating with one or more other AIFMs on the basis of an agreement pursuant to which the AIFs managed by those AIFMs jointly, acquire control of a non-listed company in accordance with paragraph (5).

(2) This Section shall not apply where the non-listed companies concerned are:

a) small and medium-sized enterprises within the meaning of paragraph (1) of Article 2 of the Annex to Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises; or

b) special purpose vehicles with the purpose of purchasing, holding or managing real estate.

(3) Without prejudice to paragraphs (1) and (2) of this Article, paragraph (1) of Article 25 shall also apply to AIFMs managing AIFs that acquire a non-controlling participation in a non-listed company.

(4) Paragraphs (1), (2) and (3) of Article 26 and Article 28 shall apply also to AIFMs managing AIFs that acquire control over issuers. For the purposes of those Articles, paragraphs (1) and (2) of this Article shall apply *mutatis mutandis*.

(5) For the purpose of this Section, for non-listed companies, control shall mean more than 50% of the voting rights of the company.

When calculating the percentage of voting rights held by the relevant AIF, in addition to the voting rights held directly by the relevant AIF, the voting rights of the following entities shall be taken into account, subject to control as referred to in the first subparagraph being established:

a) an undertaking controlled by the AIF; and

b) a natural or legal person acting in its own name but on behalf of the AIF or on behalf of an undertaking controlled by the AIF.

The percentage of voting rights shall be calculated on the basis of all the shares to which voting rights are attached even if the exercise thereof is suspended.

Notwithstanding point 10 of Article 1, for the purpose of paragraphs (1), (2) and (3) of Article 26 and Article 28 in regard to issuers, control shall be determined in accordance with paragraph (3) of Article 5 of Directive 2004/25/EC.

(6) This Section shall apply subject to the conditions and restrictions set out in Article 6 of Directive 2002/14/EC.

(7) This Section shall apply without prejudice to stricter Luxembourg law provisions applying to the acquisition of participations in issuers and in non-listed companies on its territory.

Art. 25 Notification of the acquisition of major holdings and control of non-listed companies

(1) When an AIF acquires, disposes of or holds shares of a non-listed company, the AIFM managing such an AIF is required to notify the CSSF of the proportion of voting rights of the non-listed company held by the AIF any time when that proportion reaches, exceeds or falls below the thresholds of 10%, 20%, 30%, 50% and 75%.

(2) When an AIF acquires, individually or jointly, control over a non-listed company pursuant to paragraph (1) of Article 24, in conjunction with paragraph (5) of that Article, the AIFM managing such an AIF is required to notify the acquisition of control by the AIF:

a) to the non-listed company;

b) to the shareholders of which the identities and addresses are available to the AIFM or can be made available by the non-listed company or through a register to which the AIFM has or can obtain access; and

c) to the CSSF.

(3) The notification required under paragraph (2) must contain the following additional information:

a) the resulting situation in terms of voting rights;

b) the conditions subject to which control was acquired, including information about the identity of the different shareholders involved, any natural person or legal entity entitled to exercise voting rights on their behalf and, if applicable, the chain of undertakings through which voting rights are effectively held;

c) the date on which control was acquired.

(4) In its notification to the non-listed company, the AIFM must request the board of directors of the company to inform the employees' representatives or, where there are none, the employees themselves, without undue delay of the acquisition of control by the AIF managed by the AIFM and of the information referred to in paragraph (3). The AIFM is required to use

its best efforts to ensure that the employees' representatives or, where there are none, the employees themselves, are duly informed by the board of directors in accordance with this Article.

(5) The notifications referred to in paragraphs (1), (2) and (3) shall be made as soon as possible, but no later than ten working days after the date on which the AIF has reached, exceeded or fallen below the relevant threshold or has acquired control over the non-listed company.

Art. 26 Disclosure in case of acquisition of control

(1) When an AIF acquires, individually or jointly, control of a non-listed company or an issuer pursuant to paragraph (1) of Article 24, in conjunction with paragraph (5) of that Article, the AIFM managing such AIF is required to make the information referred to in paragraph (2) below available to:

a) the company concerned;

b) the shareholders of the company of which the identities and addresses are available to the AIFM or can be made available by the company or through a register to which the AIFM has or can obtain access; and

c) the CSSF.

(2) The AIFM must make available in accordance with paragraph (1):

a) the identity of the AIFMs which either individually or in agreement with other AIFMs manage the AIFs that have acquired control;

b) the policy for preventing and managing conflicts of interest, in particular between the AIFM, the AIF and the company, including information about the specific safeguards established to ensure that any agreement between the AIFM and/or the AIF and the company is concluded at arm's length; and

c) the policy for external and internal communication relating to the company in particular as regards employees.

(3) In its notification to the company pursuant to point a) of paragraph (1), the AIFM is required to request the board of directors of the company to inform the employees' representatives or, where there are none, the employees themselves, without undue delay of the information referred to in paragraph (1). The AIFM is required to use its best efforts to ensure that the employees' representatives or, where there are none, the employees themselves, are duly informed by the board of directors in accordance with this Article.

(4) When an AIF acquires, individually or jointly, control of a non-listed company pursuant to paragraph (1) of Article 24, in conjunction with paragraph (5) of that Article, the AIFM managing such AIF must ensure that the AIF, or the AIFM acting on behalf of the AIF, discloses its intentions with regard to the future business of the non-listed company and the likely repercussions on employment, including any material change in the conditions of employment, to:

a) the non-listed company; and

b) the shareholders of the non-listed company of which the identities and addresses are available to the AIFM or can be made available by the non-listed company or through a register to which the AIFM has or can obtain access.

In addition, the AIFM managing the relevant AIF must use its best efforts to ensure that the board of directors of the non-listed company makes available the information set out in the first subparagraph to the employees' representatives or, where there are none, the employees themselves, of the non-listed company.

(5) When an AIF acquires control of a non-listed company pursuant to paragraph (1) of Article 24, in conjunction with paragraph (5) of that Article, the AIFM managing such an AIF must provide the CSSF and the AIF's investors with information on the financing of the acquisition.

Art. 27 Specific provisions regarding the annual report of AIFs exercising control of non-listed companies

(1) When an AIF acquires, individually or jointly, control of a non-listed company pursuant to paragraph (1) of Article 24, in conjunction with paragraph (5) of that Article, the AIFM managing such an AIF must either:

a) request and use its best efforts to ensure that the annual report of the non-listed company drawn up in accordance with paragraph (2) is made available by the board of directors of the company to the employees' representatives or, where there are none, to the employees themselves within the period such annual report has to be drawn up in accordance with the national applicable law; or

b) for each such AIF include in the annual report provided for in Article 20 the information referred to in paragraph (2) relating to the relevant non-listed company.

(2) The additional information to be included in the annual report of the company or the AIF, in accordance with paragraph (1), must include at least a fair review of the development of the company's business representing the situation at the end of the period covered by the annual report. The report must also give an indication of:

a) any important events that have occurred since the end of the financial year;

b) the company's likely future development; and

c) the information concerning acquisitions of own shares prescribed by paragraph (2) of Article 22 of Council Directive 77/91/EEC.

(3) The AIFM managing the relevant AIF must either:

a) request and use its best efforts to ensure that the board of directors of the non-listed company makes available the information referred to in point b) of paragraph (1) relating to the company concerned to the employees' representatives of the company concerned or, where there are none, to the employees themselves within the period referred to in paragraph (1) of Article 20; or

b) make available the information referred to in point a) of paragraph (1) to the investors of the AIF, in so far as already available, within the period referred to in paragraph (1) of Article 20 and, in any event, no later than the date on which the annual report of the non-listed company is drawn up in accordance with the national applicable law.

Art. 28 Asset stripping

(1) When an AIF, individually or jointly, acquires control of a non-listed company or an issuer pursuant to paragraph (1) of Article 24, in conjunction with paragraph (5) of that Article, the AIFM managing such an AIF shall for a period of twenty-four months following the acquisition of control of the company by the AIF:

a) not be allowed to facilitate, support or instruct any distribution, capital reduction, share redemption and/or acquisition of own shares by the company as described in paragraph (2);

b) in so far as the AIFM is authorised to vote on behalf of the AIF at the meetings of the governing bodies of the company, not be allowed to vote in favour of a distribution, capital reduction, share redemption and/or acquisition of own shares by the company as described in paragraph (2); and

c) in any event use its best efforts to prevent distributions, capital reductions, share redemptions and/or the acquisition of own shares by the company as described in paragraph (2).

(2) The obligations imposed on AIFMs pursuant to paragraph (1) shall relate to the following:

a) any distribution to shareholders made when on the closing date of the last financial year the net asset value as set out in the company's annual accounts are, or following such a distribution would become, lower than the amount of the subscribed capital plus those reserves which may be not distributed under the law or the articles of incorporation, on the understanding that where the uncalled part of the subscribed capital is not included in the assets shown in the balance sheet, this amount shall be deducted from the amount of subscribed capital;

b) any distribution to shareholders the amount of which would exceed the amount of the profits at the end of the last financial year, plus any profits brought forward and sums drawn from reserves available for this purpose, less any losses brought forward and sums placed to reserve in accordance with the law or the articles of incorporation;

c) to the extent that acquisitions of own shares are permitted, any acquisition by the company, including shares previously acquired by the company and held by it, and shares acquired by a person acting in his own name but on the company's behalf, that would have the effect of reducing the net assets below the amount mentioned in point a).

(3) For the purposes of paragraph (2):

a) the term "distribution" referred to in points a) and b) of paragraph (2) shall include, in particular, the payment of dividends and of interest relating to shares;

b) the provisions on capital reductions shall not apply on a reduction in the subscribed capital, the purpose of which is to offset losses incurred or to include sums of money in a non-distributable reserve provided that, following that operation, the amount of such reserve is not more than 10% of the reduced subscribed capital; and

c) the restriction set out in point c) of paragraph (2) shall be subject to points b) to h) of paragraph (1) of Article 20 of Directive 77/91/EEC.

Chapter 6. - Rights of EU AIFMs to market and manage EU AIFs in the European Union

Section 1 - Conditions applicable to the marketing of units or shares in the European Union of EU AIFs managed by EU AIFMs

Art. 29 AIFMs established in Luxembourg marketing in Luxembourg units or shares of EU AIFs they manage

(1) An AIFM established in Luxembourg authorised under this Law which intends to market units or shares of any EU AIF that it manages to professional investors in Luxembourg is required to comply with the provisions laid down in this Article.

Where the EU AIF is a feeder AIF the marketing referred to in the first subparagraph is in addition subject to the condition that the master AIF is also an EU AIF which is managed by an authorised EU AIFM.

Where an AIFM established in Luxembourg intends to market AIFs that it manages to professional investors in Luxembourg and which are subject to authorisation and prudential supervision by an official Luxembourg supervisory authority, the provisions of this Article regarding the obligation of notification do not apply.

(2) The AIFM referred to in this Article which intends to market units or shares of EU AIFs that it manages in Luxembourg shall first submit a notification to the CSSF in respect of each AIF that it intends to market.

That notification must comprise the documentation and information set out in Annex III of this Law.

(3) Within twenty working days at the latest following receipt of a complete notification file pursuant to paragraph (2), the CSSF shall inform the AIFM whether it may start marketing the AIF identified in the notification referred to in paragraph (2). The CSSF shall prevent the marketing of the AIF only when the AIFM's management of the AIF does not or will not comply with the provisions of this Law or the AIFM otherwise does not or will not comply with the provisions of this Law. Should the CSSF agree, the AIFM may start marketing the AIF in Luxembourg from the date of the notification of the decision of the CSSF. Where the AIF concerned is established in a Member State other than Luxembourg, the CSSF shall also inform the competent authorities of the AIF that the AIFM may start marketing units or shares of the AIF in Luxembourg.

(4) In the event of a material change to any of the particulars communicated in accordance with paragraph (2), the AIFM must give written notice of that change to the CSSF at least one month before implementing the change as regards any changes planned by the AIFM, or immediately after an unplanned change has occurred.

If, pursuant to a planned change, the AIFM's management of the AIF would no longer comply with the provisions of this Law or the AIFM would otherwise no longer comply with the provisions of this Law, the CSSF shall inform the AIFM without undue delay that it is not allowed to implement the change.

If a planned change is implemented notwithstanding the first and second subparagraphs or if an unplanned change has taken place pursuant to which the AIFM's management of the AIF no longer complies with the provisions of this Law or the AIFM otherwise no longer complies with the provisions of this Law, the CSSF shall take all due measures in accordance with Article 50, including, if necessary, the express prohibition of marketing of the AIF.

(5) Without prejudice to the provisions of Article 46 of this Law, AIFs managed and marketed by AIFMs referred to in this Article may only be marketed to professional investors.

Art. 30 AIFMs established in Luxembourg marketing in another Member State units or shares of EU AIFs they manage

(1) An AIFM established in Luxembourg authorised under this Law which intends to market units or shares of an EU AIF that it manages to professional investors in another Member State is required to comply with the provisions laid down in this Article.

Where the EU AIF is a feeder AIF, the marketing referred to in the first subparagraph is in addition subject to the condition that the master AIF is also an EU AIF and is managed by an authorised EU AIFM.

(2) The AIFM which intends to market in another Member State units or shares of an EU AIF that it manages shall first submit a notification to the CSSF in respect of each AIF that it intends to market.

That notification must comprise the documentation and information set out in Annex IV.

(3) If it considers that the management of the AIF by the AIFM complies with and will continue to comply with the provisions of this Law and if the AIFM otherwise complies with the provisions of this Law, the CSSF shall, no later than twenty working days after the date of receipt of the complete notification file referred to in paragraph (2), transmit the notification file to the competent authorities of the Member States where it is intended that the AIF be marketed.

The CSSF shall enclose in the notification file a statement confirming that the AIFM concerned is authorised to manage AIFs with a particular investment strategy.

(4) Upon transmission of the notification file, the CSSF shall, without delay, notify the AIFM about the transmission. The AIFM may market the AIF in the host Member State of the AIFM as of the date of that notification.

Where the AIF concerned is an AIF established in a Member State other than Luxembourg, the CSSF shall also inform the competent authorities of the AIF that the AIFM may start marketing the units or shares of the AIF in the host Member State of the AIFM.

(5) Arrangements referred to in point h) of Annex IV are subject to the laws of the host Member State of the AIFM and shall be subject to the supervision of the competent authorities of that Member State.

(6) The notification letter referred to in paragraph (2) and the statement referred to in paragraph (3) are provided in a language customary in the sphere of international finance.

(7) In the event of a material change to any of the particulars communicated in accordance with paragraph (2), the AIFM must give written notice of that change to the CSSF at least one month before implementing a planned change, or immediately after an unplanned change has occurred.

If, pursuant to a planned change, the AIFM's management of the AIF would no longer comply with the provisions of this Law or the AIFM would otherwise no longer comply with the provisions of this Law, the CSSF shall inform the AIFM without undue delay that it is not allowed to implement the change.

If a planned change is implemented notwithstanding the first and second subparagraphs or if an unplanned change has taken place pursuant to which the AIFM's management of the AIF would no longer comply with the provisions of this Law or the AIFM otherwise would no longer comply with the provisions of this Law, the CSSF shall take all due measures in accordance with Article 50, including, if necessary, the express prohibition of marketing of the AIF.

If the changes are acceptable because they do not affect the compliance of the AIFM's management of the AIF with the provisions of this Law, or the compliance by the AIFM with the provisions of this Law otherwise, the CSSF shall, without delay, inform the competent authorities of the host Member State of the AIFM of those changes.

(8) Without prejudice to the provisions of paragraph (1) of Article 43 of Directive 2011/61/EU, the AIFs managed and marketed by the AIFM referred to in this Article may only be marketed to professional investors.

Art. 31 AIFMs established in another Member State marketing in Luxembourg units or shares of EU AIFs they manage

(1) If an AIFM established in another Member State intends to market units or shares of an EU AIF that it manages to professional investors in Luxembourg, the competent authorities of the home Member State of the AIFM shall transmit the notification file as well as the statement referred to in paragraph (3) of Article 32 of Directive 2011/61/EU to the CSSF.

Upon notification to the AIFM of the transmission referred to in this paragraph by the competent authorities of the home Member State of the AIFM to the CSSF, the AIFM may as of the date of that notification market the AIF concerned in Luxembourg.

(2) Without prejudice to the provisions of Article 46 of this Law, the AIFs managed and marketed by the AIFMs referred to in this Article may only be marketed to professional investors.

Section 2 - Conditions applicable to the management of EU AIFs

Art. 32 AIFMs established in Luxembourg managing EU AIFs established in another Member State and/or providing services in another Member State

(1) An AIFM established in Luxembourg authorised under this Law which intends to manage EU AIFs established in another Member State either directly or by establishing a branch, must be authorised to manage that type of AIF.

An AIFM established in Luxembourg authorised under this Law may in addition, either directly or by establishing a branch, provide the services referred to in paragraph 4 of Article 5 for which it has been authorised in another Member State.

(2) The AIFM which intends to provide the activities and services referred to in the first paragraph for the first time is required to communicate the following information to the CSSF:

a) the Member State in whose territory the AIFM intends to manage AIFs directly or establish a branch and/or to provide the services referred to in paragraph 4 of Article 5;

b) a programme of operations stating in particular the services which the AIFM intends to perform and/or identifying the AIFs it intends to manage.

(3) If the AIFM intends to establish a branch, it must provide the following information in addition to that referred to in paragraph (2):

a) the organisational structure of the branch;

b) the address in the home Member State of the AIF from which documents may be obtained;

c) the names and contact details of the persons responsible for the management of the branch.

(4) The CSSF, if it considers that the AIFM's management of the AIF complies and will continue to comply with the provisions of this Law and the AIFM otherwise complies with the provisions of this Law, shall, within one month of receiving the complete documentation in accordance with paragraph (2), or within two months of receiving the complete documentation in accordance with paragraph (3), transmit the complete documentation to the competent authorities of the host Member State of the AIFM.

The CSSF shall enclose a statement confirming that the AIFM is authorised in accordance with the provisions of this Law.

After transmission of the file to the competent authorities of the host Member State of the AIFM, the CSSF shall notify the AIFM about this transmission without delay. Upon receipt of the transmission notification the AIFM may start to provide its services in its host Member State.

(5) In the event of a change to any of the information communicated in accordance with paragraph (2), and, where relevant, paragraph (3), an AIFM must give written notice of that change to the CSSF at least one month before implementing planned changes, or immediately after an unplanned change has occurred.

If, pursuant to a planned change, the AIFM's management of the AIF would no longer comply with the provisions of this Law or the AIFM would otherwise no longer comply with the provisions of this Law, the CSSF shall inform the AIFM without undue delay that it is not authorised to implement the change.

If a planned change is implemented notwithstanding the first and second subparagraphs or if an unplanned change has taken place pursuant to which the AIFM's management of the AIF would no longer comply with the provisions of this Law or the AIFM otherwise would no longer comply with the provisions of this Law, the CSSF shall take all due measures in accordance with Article 50.

If the changes are acceptable because they do not affect the compliance of the AIFM's management of the AIF with the provisions of this Law, or the compliance by the AIFM with the provisions of this Law, the CSSF shall, without undue delay, inform the competent authorities of the host Member States of the AIFM of those changes.

Art. 33 AIFMs established in another Member State managing AIFs established in Luxembourg and/or providing services in Luxembourg

If an authorised AIFM established in another Member State intends to manage AIFs established in Luxembourg either directly or by establishing a branch or by providing the services referred to in paragraph 4 of Article 6 of Directive 2011/61/EU, the CSSF shall receive from the competent authorities of the home Member State of the AIFM, in accordance with Article 33 of Directive 2011/61/EU, the information referred to in paragraphs 2 and 3 respectively of Article 33 as well as the statement referred to in paragraph 4 of Article 33 of that Directive.

Upon notification to the AIFM of the transmission referred to in this paragraph by the competent authorities of the home Member State of the AIFM to the CSSF, the AIFM may start providing the activities and services in Luxembourg as of the date of that notification.

Chapter 7. - Specific rules in relation to third countries

Art. 34 Conditions for AIFMs established in Luxembourg which manage non-EU AIFs which are not marketed in Member States

An AIFM established in Luxembourg authorised under this Law is authorised to manage non-EU AIFs which are not marketed in the European Union provided that:

a) the AIFM complies with all the requirements established in this Law except for Article 19 and 20 in respect of those AIFs; and

b) appropriate cooperation arrangements are in place between the CSSF and the supervisory authorities of the third country where the non-EU AIF is established in order to ensure at least an efficient exchange of information that allows the CSSF to carry out its duties in accordance with this Law.

Art. 35 Conditions for the marketing in Luxembourg or in another Member State with a passport of a non-EU AIF managed by an AIFM established in Luxembourg

(1) An AIFM established in Luxembourg authorised under this Law which intends to market to professional investors in Luxembourg or in another Member State units or shares of non-EU AIFs it manages and of EU feeder AIFs that do not fulfil the requirements referred to in paragraph (1), second subparagraph of Article 31 of Directive 2011/61/EU is required to comply with the provisions laid down in this Article.

(2) AIFMs referred to in paragraph (1) must comply with all the requirements established in this Law, with the exception of Chapter 6. In addition, the following conditions must be met:

a) appropriate cooperation arrangements must be in place between the CSSF and the supervisory authorities of the third country where the AIF is established in order to ensure at least an efficient exchange of information, taking into account paragraph (3) of Article 53, that allows the CSSF to carry out its duties in accordance with this Law;

b) the third country where the AIF is established must not be listed as a Non-Cooperative Country and Territory by FATF;

c) the third country where the AIF is established must have signed an agreement with Luxembourg and with each other Member State in which the units or shares of the AIF are intended to be marketed, which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including any multilateral tax agreements.

(3) The AIFM which intends to market units or shares of non-EU AIFs in Luxembourg must submit a notification to the CSSF in respect of each non-EU AIF that it intends to market.

That notification shall comprise the documentation and information set out in Annex III.

(4) No later than twenty working days after receipt of a complete notification pursuant to paragraph (3), the CSSF shall inform the AIFM whether it may start marketing the AIF identified in the notification referred to in paragraph (3) in the territory of Luxembourg. The CSSF shall prevent the marketing of the AIF only if the AIFM's management of the AIF does not or will not comply with this Law or the AIFM otherwise does not or will not comply with this Law. In the case of a positive decision, the AIFM may start marketing the AIF in Luxembourg as of the date of the notification by the CSSF.

The CSSF shall also inform ESMA that the AIFM may start marketing the units or shares of the AIF in the territory of Luxembourg.

(5) An AIFM which intends to market units or shares of non-EU AIFs in a Member State other than Luxembourg must submit a notification to the CSSF in respect of each non-EU AIF that it intends to market.

That notification shall comprise the documentation and information set out in Annex IV.

(6) The CSSF shall, no later than twenty working days after the date of receipt of the complete notification file referred to in paragraph (5), transmit it to the competent authorities of the Member State where the AIF is intended to be marketed. Such transmission will occur only if the AIFM's management of the AIF complies and will continue to comply with this Law and if the AIFM otherwise complies with this Law.

The CSSF shall enclose in the notification file a statement to the effect that the AIFM concerned is authorised to manage AIFs with a particular investment strategy.

(7) Upon transmission of the notification file, the CSSF shall, without delay, notify the AIFM about the transmission. The AIFM may start marketing the AIF in the relevant host Member States as of the date of that notification by the CSSF.

The CSSF shall also inform ESMA that the AIFM may start marketing the units or shares of the AIF in the relevant host Member States.

(8) Arrangements referred to in point h) of Annex IV shall be subject to the laws of the host Member States of the AIFM and shall be subject to the supervision of the competent authorities of that Member State.

(9) The notification letter referred to in paragraph (5) and the statement referred to in paragraph (6) are provided in a language customary in the sphere of international finance.

(10) In the event of a material change to any of the particulars communicated in accordance with paragraph (3) or (5), the AIFM must give written notice of that change to the CSSF, at least one month before implementing a planned change, or immediately after an unplanned change has occurred.

If pursuant to a planned change, the AIFM's management of the AIF would no longer comply with this Law or the AIFM would no longer comply with this Law, the CSSF shall inform the AIFM without delay that it is not authorised to implement the change.

If a planned change is implemented notwithstanding the first and second subparagraphs, or if an unplanned change has taken place pursuant to which the AIFM's management of the AIF would no longer comply with this Law or the AIFM otherwise would no longer comply with this Law, the CSSF shall take all due measures in accordance with Article 50, including, if necessary, the express prohibition of marketing of the AIF.

If the changes are acceptable because they do not affect the compliance of the AIFM's management of the AIF with this Law, or the compliance by the AIFM with this Law otherwise, the CSSF shall without delay inform ESMA, in so far as the changes concern the termination of the marketing of certain AIFs or additional AIFs marketed and, if applicable, the competent authorities of the host Member States of the AIFM of those changes.

(11) Without prejudice to the provisions of Article 46 of this Law in case of marketing in Luxembourg and of paragraph (1) of Article 43 of Directive 2011/61/EU in case of marketing in a Member State other than Luxembourg, the AIFs managed and marketed by the AIFM referred to in this Article may only be marketed to professional investors.

Art. 36 Conditions for the marketing in Luxembourg with a passport of a non-EU AIF managed by an AIFM established in another Member State

(1) If an AIFM established in another Member State intends to market the shares or units of a non-EU AIF which it manages to professional investors in Luxembourg, the CSSF shall receive from the competent authorities of the home Member State of the AIFM the notification file as well as the statement referred to in paragraph (6) of Article 35 of Directive 2011/61/EU.

The AIFM may start marketing the AIF concerned in Luxembourg as of the date of the notification to the AIFM of the transmission to the CSSF, referred to in this paragraph, by the competent authorities of the home Member State of the AIFM.

(2) Without prejudice to the provisions of Article 46 of this Law, AIFs managed and marketed by the AIFM referred to in this Article may only be marketed to professional investors.

Art. 37 Conditions for the marketing in Luxembourg without a passport of non-EU AIFs managed by an authorised AIFM established in Luxembourg or in another Member State

Without prejudice to Article 35 of Directive 2011/61/EU, an authorised AIFM established in Luxembourg or in another Member State is allowed to market to professional investors, in the territory of Luxembourg only, units or shares of non-EU AIFs it manages and of EU feeder AIFs that do not fulfil the requirements referred to in paragraph (1), second subparagraph of Article 31 of Directive 2011/61/EU, provided that:

a) the AIFM complies with all the requirements established in Directive 2011/61/EU with the exception of Article 21. That AIFM must however ensure that one or more entities are appointed to carry out the duties referred to in paragraphs (7), (8) and (9) of Artide 21. The AIFM shall not perform those functions. The AIFM is required to provide its supervisory authorities with information about the identity of those entities responsible for carrying out the duties referred to in paragraphs (7), (8) and (9) of Artide 21; when the marketing is performed by an authorised AIFM established in Luxembourg, the aforementioned information is to be provided to the CSSF;

b) appropriate cooperation arrangements for the purpose of systemic risk oversight and in line with international standards are in place between the competent authorities of the home Member State of the AIFM and the supervisory authorities of the third country where the AIF is established in order to ensure an efficient exchange of information that allows the competent authorities of the home Member State of the AIFM to carry out their duties in accordance with Directive 2011/61/EU; for the purpose of applying this paragraph, the CSSF is the competent authority of the home Member State of the AIFM, when the marketing is performed by an AIFM authorised and established in Luxembourg.

c) the third country where the AIF is established is not listed as a Non-Cooperative Country and Territory by FATF.

Art. 38 Authorisation of non-EU AIFMs intending to manage EU AIFs and/or market AIFs managed by them in the European Union in accordance with Articles 39 and 40 of Directive 2011/61/EU, where Luxembourg is defined as the home Member State of reference of the AIFM

(1) Non-EU AIFMs intending to manage EU AIFs and/or to market AIFs managed by them in the European Union in accordance with Article 39 or Article 40 of Directive 2011/61/EU must acquire prior authorisation by the CSSF in accordance with this Article, in the case where Luxembourg is the Member State of reference of the AIFM as defined in accordance with the rules set out in paragraph (4) hereafter.

(2) A non-EU AIFM which intends to obtain prior authorisation as referred to in paragraph (1) must comply with the provisions of this Law, with the exception of Chapter 6. If and to the extent that compliance with a provision of this Law is incompatible with compliance with the law to which the non-EU AIFM and/or the non-EU AIF marketed in the European Union is subject, there shall be no obligation on the AIFM to comply with that provision if it can demonstrate that:

a) it is impossible to combine such compliance with compliance with a mandatory provision in the law to which the non-EU AIFM and/or the non-EU AIF marketed in the European Union is subject;

b) the law to which the non-EU AIFM and/or the non-EU AIF is subject provides for an equivalent rule having the same regulatory purpose and offering the same level of protection to the investors of the relevant AIF; and

c) the non-EU AIFM and/or the non-EU AIF complies with the equivalent rule referred to in point b).

(3) A non-EU AIFM which intends to obtain prior authorisation as referred to in paragraph (1) must have a legal representative established in Luxembourg. The legal representative shall be the contact point of the AIFM in the European Union. Any official correspondence between the competent authorities and the AIFM and between the investors in the European Union of the relevant AIF and the AIFM as set out in Directive 2011/61/EU must take place through that legal representative. The legal representative must perform the compliance function relating to the management and marketing activities performed by the AIFM under Directive 2011/61/EU together with the AIFM.

(4) The Member State of reference of a non-EU AIFM shall be determined as follows:

a) if the non-EU AIFM intends to manage only one EU AIF, or several EU AIFs established in the same Member State, and does not intend to market any AIF in accordance with Article 39 or Article 40 of Directive 2011/61/EU in the European Union, the home Member State of that or those AIFs is deemed to be the Member State of reference and the competent authorities of this Member State will be competent for the authorisation procedure and for the supervision of the AIFM;

b) if the non-EU AIFM intends to manage several EU AIFs established in different Member States and does not intend to market any AIF in accordance with Article 39 or Article 40 of Directive 2011/61/EU in the European Union, the Member State of reference is either:

i) the Member State where most of the AIFs are established; or

ii) the Member State where the largest amount of assets is being managed;

c) if the non-EU AIFM intends to market only one EU AIF in only one Member State, the Member State of reference is determined as follows:

   i) if the AIF is authorised or registered in a Member State, the home Member State of the AIF or the Member State where the AIFM intends to market the AIF;

   ii) if the AIF is not authorised or registered in a Member State, the Member State where the AIFM intends to market the AIF;

d) if the non-EU AIFM intends to market only one non-EU AIF in only one Member State, the Member State of reference is that Member State;

e) if the non-EU AIFM intends to market only one EU AIF, but in different Member States, the Member State of reference is determined as follows:

   i) if the AIF is authorised or registered in a Member State, the home Member State of the AIF or one of the Member States where the AIFM intends to develop effective marketing; or

   ii) if the AIF is not authorised or registered in a Member State, one of the Member States where the AIFM intends to develop effective marketing;

f) if the non-EU AIFM intends to market only one non-EU AIF, but in different Member States, the Member State of reference is one of those Member States;

g) if the non-EU AIFM intends to market several EU AIFs in the European Union, the Member State of reference is determined as follows:

   i) in so far as those AIFs are all registered or authorised in the same Member State, the home Member State of those AIFs or the Member State where the AIFM intends to develop effective marketing for most of those AIFs;

   ii) in so far as those AIFs are not all registered or authorised in the same Member State, the Member State where the AIFM intends to develop effective marketing for most of those AIFs;

h) if the non-EU AIFM intends to market several EU and non-EU AIFs, or several non-EU AIFs in the European Union, the Member State of reference is the Member State where it intends to develop effective marketing for most of those AIFs.

In the cases where, in accordance with the criteria set out in points (b), (c) i), (e), (f) and (g) i) of the first subparagraph, more than one Member State of reference is possible, Member States shall require that the non-EU AIFM intending to manage EU AIFs without marketing them and/or market AIFs managed by it in the European Union in accordance with Article 39 or Article 40 of Directive 2011/61/EU submit a request to the competent authorities of all of the Member States that are possible Member States of reference in accordance with the criteria set out in those points, to determine its Member State of reference from among them. Those competent authorities shall jointly decide the Member State of reference for the non-EU AIFM, within one month of receipt of such request. The competent authorities of the Member State that is appointed as Member State of reference shall, without delay, inform the non-EU AIFM of that appointment. If the non-EU AIFM is not duly informed of the decision made by the relevant competent authorities within seven days of the decision or if the relevant competent authorities have not made a decision within the one-month period, the non-EU AIFM may itself choose its Member State of reference based on the criteria set out in this paragraph.

The AIFM must be able to prove its intention to develop effective marketing in a particular Member State by disclosure of its marketing strategy to the competent authorities of the Member State indicated by it.

(5) A non-EU AIFM intending to manage EU AIFs without marketing them and/or to market AIFs managed by it in the European Union in accordance with Article 39 or Article 40 of Directive 2011/61/EU must submit a request for authorisation to the CSSF, in the case where Luxembourg is the Member State of reference of the AIFM as defined in accordance with the rules set out in paragraph (4) of this Article.

After receiving the application for authorisation, the CSSF assesses whether the determination by the AIFM of Luxembourg as Member State of reference complies with the criteria laid down in paragraph (4). If the CSSF considers that this is not the case, it refuses the authorisation request of the AIFM concerned explaining the reasons for its refusal. If the CSSF considers that the criteria of paragraph (4) have been complied with, it notifies ESMA, requesting advice on this assessment. In its notification to ESMA, the CSSF provides ESMA with the justification by the AIFM of its assessment regarding the determination of the Member State of reference and with information on the marketing strategy of the AIFM.

Within one month of having received the notification referred to in the second subparagraph, ESMA shall issue advice to the CSSF about the assessment of the CSSF relating to the determination of the Member State of reference in accordance with the criteria set out in paragraph (4).

The term referred to in paragraph (5) of Article 7 of this Law is suspended during ESMA's deliberation in accordance with this paragraph.

If the CSSF proposes to grant authorisation contrary to ESMA's advice referred to in the third subparagraph it informs ESMA, stating its reasons.

If the CSSF proposes to grant authorisation contrary to ESMA's advice referred to in the third subparagraph and the AIFM intends to market units or shares of AIFs managed by it in Member States other than Luxembourg, determined as being the Member State of reference, the CSSF also informs the competent authorities of those Member States thereof, stating its reasons. Where applicable, the CSSF also informs the competent authorities of the home Member States of the AIFs managed by the AIFM thereof, stating its reasons.

(6) Without prejudice to paragraph (7), the CSSF only grants the authorisation referred to in paragraph (1) where the following additional conditions are met:

a) Luxembourg is designated as the Member State of reference by the AIFM in accordance with the criteria set out in paragraph (4) of this Article. Such designation must moreover be supported by the disclosure of the marketing strategy, and the procedure set out in paragraph (5) must have been followed;

b) the AIFM has appointed a legal representative established in Luxembourg;

c) the legal representative is, together with the AIFM, the contact person of the non-EU AIFM for the investors of the relevant AIFs, for ESMA and for the competent authorities as regards the activities for which the AIFM is authorised in the European Union; the legal representative must be sufficiently equipped to perform the compliance function pursuant to this Law;

d) appropriate cooperation arrangements are in place between the CSSF, the competent authorities of the home Member State of the EU AIFs concerned and the supervisory authorities of the third country where the non-EU AIFM is established in order to ensure at least an efficient exchange of information that allows the respective competent authorities to carry out their duties in accordance with Directive 2011/61/EU;

e) the third country where the non-EU AIFM is established is not listed as a Non-Cooperative Country and Territory by FATF;

f) the third country where the non-EU AIFM is established has signed an agreement with Luxembourg, which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including any multilateral tax agreements;

g) the effective exercise by the respective competent authorities of their supervisory functions under Directive 2011/61/EU is neither prevented by the laws, regulations or administrative provisions of a third country governing the AIFM, nor by limitations in the supervisory and investigatory powers of that third country's supervisory authorities.

(7) The authorisation referred to in paragraph (1) is granted by the CSSF in accordance with the provisions of Chapter 2 of this Law which shall apply *mutatis mutandis*, subject to the following provisions:

a) the information referred to in paragraph (2) of Article 6 shall be supplemented by:

i) a justification by the AIFM of its assessment regarding the Member State of reference in accordance with the criteria set out in paragraph (4) with information on the marketing strategy;

ii) a list of the provisions of this Law for which compliance by the AIFM is impossible as compliance by the AIFM with those provisions is, in accordance with point b) of paragraph (2), incompatible with compliance with a mandatory provision in the law to which the non-EU AIFM or the non-EU AIF marketed in the European Union is subject;

iii) written evidence based on the regulatory technical standards developed by ESMA that the relevant third country law provides for a rule equivalent to the provisions for which compliance is impossible, which has the same regulatory purpose and offers the same level of protection to the investors of the relevant AIFs and that the AIFM complies with that equivalent rule; such written evidence being supported by a legal opinion on the existence of the relevant incompatible mandatory provision in the law of the third country and including a description of the regulatory purpose and the nature of the investor protection pursued by it; and

iv) the name of the legal representative of the AIFM and the place where it is established;

b) the information referred to in paragraph (3) of Article 6 may be limited to the EU AIFs the AIFM intends to manage and to those AIFs managed by the AIFM that it intends to market in the European Union with a passport;

c) paragraph (1), point a) of Article 7 shall be without prejudice to paragraph (2) of this Article;

d) paragraph (1), point e) of Article 7 shall not apply;

e) paragraph (5), second subparagraph of Article 7 shall be read as including a reference to 'the information referred to in paragraph (7), point a) of Article 38'.

(8) In case the CSSF considers that the AIFM may rely on paragraph (2) to be exempted from compliance with certain provisions of this Law, it shall notify ESMA without delay. The CSSF shall support this assessment by the information provided by the AIFM in accordance with points a) ii) and a) iii) of paragraph (7).

Within one month of receipt of the notification referred to in the first subparagraph, ESMA shall issue advice to the CSSF about the application of the exemption for compliance with certain provisions of this Law caused by the incompatibility in accordance with paragraph (2). The

term referred to in paragraph (5) of Article 7 shall be suspended during the ESMA review in accordance with this paragraph.

If the CSSF proposes to grant authorisation contrary to ESMA's advice referred to in the second subparagraph it shall inform ESMA, stating its reasons.

If the CSSF proposes to grant authorisation contrary to the ESMA advice referred to in the second subparagraph and the AIFM intends to market units or shares of AIFs managed by it in Member States other than Luxembourg, determined as being the Member State of reference, the CSSF shall also inform the competent authorities of those Member States thereof, stating its reasons.

(9) The CSSF, as the competent authority of the Member State of reference, shall, without delay, inform ESMA of the outcome of the initial authorisation process, about any changes in the authorisation of the AIFM and any withdrawal of authorisation.

The CSSF shall moreover inform ESMA about the applications for authorisation that it has rejected, providing data about the AIFM having asked for authorisation and the reasons for the rejection.

(10) If an AIFM authorised by the CSSF by reason of this Article changes its marketing strategy within two years of its initial authorisation, and under the hypothesis that such change would have affected the determination of the Member State of reference if the modified marketing strategy had been the initial marketing strategy, the AIFM is required to inform the CSSF, as the competent authority of the original Member State of reference, of the change before implementing it. The AIFM concerned indicates its Member State of reference in accordance with the criteria set out in paragraph (4) and based on the new marketing strategy. The AIFM shall justify its assessment by disclosing its new marketing strategy to the CSSF as the competent authority of the original Member State of reference. At the same time, the AIFM shall provide information on its legal representative, including its name and the place where it is established. The legal representative shall be established in the new Member State of reference.

The CSSF shall assess whether the determination of the Member State of reference by the AIFM in accordance with the first subparagraph, is correct and shall notify ESMA thereof. In the notification to ESMA, the CSSF discloses the AIFM's justification of its assessment regarding the determination of the Member State of reference and information on the AIFM's new marketing strategy.

Within one month of receipt of the notification referred to in the second subparagraph, ESMA shall issue advice to the CSSF about its assessment.

After receipt of ESMA's advice in accordance with the third subparagraph, the CSSF shall inform the non-EU AIFM, its original legal representative and ESMA of its decision.

Where the CSSF agrees with the assessment made by the AIFM, it shall also inform the competent authorities of the new Member State of reference of the change. The CSSF shall, without delay, transfer a copy of the authorisation and the supervision file relating to the AIFM to the competent authorities of the new Member State of reference. From the date of transmission of the authorisation and supervision file, the competent authorities of the new Member State of reference shall be competent for authorising and supervising the AIFM.

Where the CSSF's final assessment is contrary to ESMA's advice referred to in the third subparagraph:

a) the CSSF informs ESMA thereof, stating its reasons;

b) where the AIFM markets units or shares of AIFs managed by it in Member States other than Luxembourg, as the original Member State of reference, the CSSF shall inform the competent authorities of those other Member States thereof, stating its

reasons. Where applicable, the CSSF also informs the competent authorities of the home Member States of the AIFs managed by the AIFM thereof, stating its reasons.

(11) Where it appears from the actual course of the business development of the AIFM in the European Union within two years after its authorisation by reason of this Article that the marketing strategy as presented by the AIFM at the time of its authorisation was not followed, the AIFM made false statements in relation thereto or the AIFM has failed to comply with paragraph (10) when changing its marketing strategy, the CSSF, as the competent authority of the original Member State of reference, shall request the AIFM to indicate the Member State of reference based on its actual marketing strategy. The procedure set out in paragraph (10) shall apply *mutatis mutandis*. If the AIFM does not comply with the CSSF's request, the latter shall proceed to the withdrawal of its authorisation.

Where the AIFM changes its marketing strategy after the period referred to in paragraph (10) and intends to change its Member State of reference on the basis of its new marketing strategy, it may submit a request to change its Member State of reference to the CSSF as the competent authority of the original Member State of reference. The procedure referred to in paragraph (10) shall apply *mutatis mutandis*.

(12) Any disputes arising between the CSSF, as the competent authority of the Member State of reference of the AIFM, and the AIFM shall be settled in accordance with Luxembourg law and subject to the Luxembourg courts.

Any disputes between the AIFM or the AIF and EU investors of the relevant AIF shall be settled in accordance with the law of and subject to the jurisdiction of a Member State.

Art. 39 Conditions for the marketing in the European Union with a passport of EU AIFs managed by a non-EU AIFM, where Luxembourg is defined as the Member State of reference of the AIFM

(1) A duly authorised non-EU AIFM which intends to market the units or shares of an EU AIF it manages to professional investors in the European Union with a passport, is required to comply with the provisions of this Article, where Luxembourg is defined as the Member State of reference of the AIFM in accordance with the rules set out in paragraph (4) of Article 38.

(2) In case the AIFM intends to market units or shares of the EU AIF in Luxembourg, defined as the Member State of reference of the AIFM, the AIFM must submit to the CSSF a notification in respect of each EU AIF that it intends to market.

That notification shall comprise the documentation and information set out in Annex III.

(3) No later than twenty working days after receipt of a complete notification pursuant to paragraph (2), the CSSF shall inform the AIFM whether it may start marketing the AIF identified in the notification referred to in paragraph (2) in the territory of Luxembourg. The CSSF may oppose the marketing of the AIF only if the AIFM's management of the AIF does not or will not comply with this Law or if the AIFM otherwise does not or will not comply with this Law. In the case of a positive decision, the AIFM may start marketing the AIF in Luxembourg as of the date of the notification by the CSSF to that effect.

The CSSF shall also inform ESMA and the competent authorities of the AIF that the AIFM may start marketing units or shares of the AIF in Luxembourg defined as the Member State of reference of the AIFM.

(4) In case the AIFM intends to market units or shares of the EU AIF in Member States other than Luxembourg, defined as the Member State of reference of the AIFM, the AIFM must submit a notification to the CSSF in respect of each EU AIF that it intends to market.

That notification shall comprise the documentation and information set out in Annex IV.

(5) No later than twenty working days after the date of receipt of the complete notification file referred to in paragraph (4), the CSSF shall transmit the complete notification file to the competent authorities of the Member States where the units or shares of the AIF are intended to be marketed. Such transmission shall be effected only if the AIFM's management of the AIF complies and will continue to comply with this Law and if the AIFM otherwise complies with this Law.

The CSSF shall enclose a statement to the effect that the AIFM concerned is authorised to manage AIFs with a particular investment strategy.

(6) Upon transmission of the notification file, the CSSF shall, without delay, notify the AIFM about the transmission. The AIFM may start marketing the AIF in the relevant host Member States as of the date of that notification.

The CSSF shall also inform ESMA and the competent authorities of the AIF that the AIFM may start marketing the units or shares of the AIF in the host Member States of the AIFM.

(7) The arrangements referred to in point h) of Annex IV are subject to the laws of the host Member States of the AIFM and are subject to supervision by the competent authorities of this Member State.

(8) The notification letter by the AIFM referred to in paragraph (4) and the statement referred to in paragraph (5) are provided in a language customary in the sphere of international finance.

(9) In the event of a material change to any of the particulars communicated in accordance with paragraph (2) and/or (4), the AIFM must give written notice of that change to the CSSF at least one month before implementing a planned change, or immediately after an unplanned change has occurred.

If, pursuant to a planned change, the AIFM's management of the AIF would no longer comply with this Law or the AIFM would otherwise no longer comply with this Law, the CSSF shall inform the AIFM, without delay, that it is not authorised to implement the change.

If a planned change is implemented notwithstanding the first and second subparagraphs or if an unplanned change has taken place pursuant to which the AIFM's management of the AIF no longer complies with this Law or the AIFM otherwise no longer complies with this Law, the CSSF shall take all due measures in accordance with Article 50, including, if necessary, the express prohibition of marketing of the AIF.

If the changes are acceptable because they do not affect compliance of the AIFM's management of the AIF with this Law, or compliance by the AIFM with this Law otherwise, the CSSF shall, without delay, inform ESMA in so far as the changes concern the termination of the marketing of certain AIFs or additional AIFs being marketed and, in so far as applicable, the competent authorities of the host Member States of those changes.

(10) Without prejudice to the provisions of Article 46 of this Law in case of marketing in Luxembourg and of paragraph (1) of Article 43 of Directive 2011/61/EU in case of marketing in a Member State other than Luxembourg, the AIFs managed and marketed by the AIFMs referred to in this Article may only be marketed to professional investors.

Art. 40 Conditions for the marketing in Luxembourg with a passport of EU AIFs managed by a non-EU AIFM, where Luxembourg is not the Member State of reference of the AIFM

(1) If a duly authorised non-EU AIFM intends to market with a passport to professional investors, in Luxembourg, units or shares of an EU AIF that it manages, the competent authorities of the Member State of reference of the AIFM shall transmit to the CSSF the notification file as well as the statement referred to in paragraph (5) of Article 39 of Directive 2011/61/EU.

Upon notification to the AIFM of the transmission to the CSSF, referred to in this paragraph, by the competent authorities of the AIFM's Member State of reference, the AIFM may market the AIF concerned in Luxembourg from the date of this notification.

(2) Without prejudice to the provisions of Article 46 of this Law, AIFs managed and marketed by the AIFMs referred to in this Article may be marketed only to professional investors.

Art. 41 Conditions for the marketing in the European Union with a passport of non-EU AIFs managed by a non-EU AIFM, where Luxembourg is defined as the Member State of reference of the AIFM

(1) A duly authorised non-EU AIFM which intends to market units or shares of a non-EU AIF it manages to professional investors in the European Union with a passport is required to comply with the provisions of this Article, where Luxembourg is defined as the Member State of reference of the AIFM pursuant to the rules set out in paragraph (4) of Article 38 of this Law.

(2) AIFMs referred to in paragraph (1) shall satisfy all requirements contained in this Law relating to AIFMs established in the European Union. In addition, the following conditions must be fulfilled:

a) appropriate cooperation arrangements are in place between the CSSF and the supervisory authority of the third country where the non-EU AIF is established in order to ensure at least an efficient exchange of information that allows the CSSF to carry out its duties in accordance with this Law;

b) the third country where the non-EU AIF is established is not listed as a Non-Cooperative Country and Territory by FATF;

c) the third country where the non-EU AIF is established has signed an agreement with Luxembourg and with each other Member State in which the units or shares of the non-EU AIF are intended to be marketed which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters including any multilateral tax agreements.

(3) If the AIFM intends to market the units or shares of non-EU AIFs in Luxembourg, defined as the Member State of reference of the AIFM, the AIFM must submit a notification to the CSSF in respect of each non-EU AIF that it intends to market.

That notification shall comprise the documentation and information set out in Annex III.

(4) No later than twenty working days after receipt of a complete notification pursuant to paragraph (3), the CSSF shall inform the AIFM whether it may start marketing the AIF identified in the notification referred to in paragraph (3) in the territory of Luxembourg. The CSSF may prevent the marketing of the AIF only if the AIFM's management of the AIF does not or will not comply with this Law or the AIFM otherwise does not or will not comply with this Law. In the case of a positive decision, the AIFM may start marketing the AIF in Luxembourg from the date of the notification by the CSSF to that effect.

The CSSF shall also inform ESMA that the AIFM may start marketing units or shares of the AIF in Luxembourg defined as the Member State of reference of the AIFM.

(5) If the AIFM intends to market the units or shares of a non-EU AIF also in Member States other than Luxembourg, defined as the Member State of reference of the AIFM, the AIFM shall submit a notification to the CSSF in respect of each non-EU AIF that it intends to market.

That notification shall comprise the documentation and information set out in Annex IV.

(6) No later than twenty working days after the date of receipt of the complete notification file referred to in paragraph (5), the CSSF shall transmit it to the competent authorities of the Member States where the units or shares of the AIF are intended to be marketed. Such transmission shall occur only if the AIFM's management of the AIF complies and will continue to comply with this Law and that in general the AIFM complies with this Law.

The CSSF shall enclose a statement to the effect that the AIFM concerned is authorised to manage AIFs with a particular investment strategy.

(7) Upon transmission of the notification file, the CSSF shall, without delay, notify the AIFM of the transmission. The AIFM may start marketing the AIF in the relevant host Member States of the AIFM as of the date of that notification.

The CSSF shall also inform ESMA that the AIFM may start marketing the units or shares of the AIF in the host Member States of the AIFM.

(8) Arrangements referred to in point (h) of Annex IV shall be subject to the laws of the host Member States of the AIFM, and shall be subject to the supervision of the competent authorities of this Member State.

(9) The notification letter by the AIFM referred to in paragraph (5) and the statement referred to in paragraph (6) are provided in a language customary in the sphere of international finance.

(10) In the event of a material change to any of the particulars communicated in accordance with paragraph (3) or (5), the AIFM must give written notice of that change to the CSSF at least one month before implementing a planned change, or immediately after an unplanned change has occurred.

If, pursuant to a planned change, the AIFM's management of the AIF would no longer comply with this Law, or the AIFM would otherwise no longer comply with this Law, the CSSF shall inform the AIFM, without delay, that it is not authorised to implement the change.

If the planned change is implemented notwithstanding the first and second subparagraphs, or if an unplanned change has taken place pursuant to which the AIFM's management of the AIF no longer complies with this Law or the AIFM otherwise no longer complies with this Law, the CSSF shall take all due measures in accordance with Article 50, including, if necessary, the express prohibition of marketing of the AIF.

If the changes are acceptable because they do not affect the compliance of the AIFM's management of the AIF with this Law or the compliance by the AIFM with this Law otherwise, the CSSF shall, without delay, inform ESMA in so far as the changes concern the termination of the marketing of certain AIFs or additional AIFs being marketed and, in so far as applicable, the competent authorities of the host Member States of the AIFM of those changes.

(11) Without prejudice to the provisions of Article 46 of this Law in case of marketing in Luxembourg and of paragraph (1) of Article 43 of Directive 2011/61/EU in case of marketing in a Member State other than Luxembourg, the AIFs managed and marketed by the AIFMs referred to in this Article may only be marketed to professional investors.

Art. 42 Conditions for the marketing in Luxembourg with a passport of non-EU AIFs managed by a non-EU AIFM, where Luxembourg is not the Member State of reference of the AIFM

(1) If a duly authorised non-EU AIFM intends to market with a passport to professional investors in Luxembourg, units or shares of a non-EU AIF that it manages, the competent authorities of the Member State of reference of the AIFM shall transmit to the CSSF the notification file as well as the statement referred to in paragraph (4) of Article 40 of Directive 2011/61/EU.

Upon notification to the AIFM of the transmission to the CSSF, referred to in this paragraph, by the competent authorities of the AIFM's Member State of reference, the AIFM may market the AIF concerned in Luxembourg from the date of this notification.

(2) Without prejudice to the provisions of Article 46 of this Law, AIFs managed and marketed by the AIFMs referred to in this Article may be marketed only to professional investors.

Art. 43 Conditions for managing AIFs established in Member States other than the Member State of reference by non-EU AIFMs, where Luxembourg is defined as the Member State of reference of the AIFM

(1) An authorised non-EU AIFM which intends to manage EU AIFs established in a Member State other than Luxembourg, defined as the Member State of reference of the AIFM, either directly or via the establishment of a branch, must be authorised to manage that type of AIF.

(2) Any AIFM referred to in paragraph (1) which intends to manage EU AIFs established in another Member State than Luxembourg, defined as the Member State of reference of the AIFM, for the first time, is required to communicate the following information to the CSSF:

a) the Member State in which it intends to manage AIFs directly or establish a branch;

b) a programme of operations stating in particular the services which it intends to perform and identifying the AIFs it intends to manage.

(3) If the non-EU AIFM intends to establish a branch, it must provide, in addition to the information requested in paragraph (2), the following information:

a) the organisational structure of the branch;

b) the address in the home Member State of the AIF from which documents may be obtained;

c) the names and contact details of persons responsible for the management of the branch.

(4) The CSSF, if it considers that the AIFM's management of the AIF complies and will continue to comply with the provisions of this Law and the AIFM otherwise complies with the provisions of this Law, shall transmit, within one month of receiving the complete documentation in accordance with paragraph (2) or within two months of receiving the complete documentation in accordance with paragraph (3), that documentation to the competent authorities of the host Member States of the AIFM.

The CSSF shall enclose with the file a statement confirming having authorised the AIFM in accordance with the provisions of this Law.

After transmission of the file to the competent authorities of the host Member State of the AIFM, this transmission shall be notified without delay by the CSSF to the AIFM. Upon receipt of the transmission notification the AIFM may start to provide its services in the host Member States.

The CSSF shall also inform ESMA that the AIFM may start managing the AIF in the host Member States of the AIFM.

(5) In the event of a change to any of the information communicated in accordance with paragraph (2) and, if relevant, paragraph (3), the AIFM must give written notice of that change to the CSSF at least one month before implementing a planned change, or immediately after an unplanned change has occurred.

If, pursuant to a planned change, the AIFM's management of the AIF would no longer comply with the provisions of this Law or the AIFM would otherwise no longer comply with the provisions of this Law, the CSSF shall inform the AIFM without delay that it is not authorised to implement the change.

If a planned change is implemented notwithstanding the first and second subparagraphs or if an unplanned change has taken place pursuant to which the AIFM's management of the AIF no longer complies with the provisions of this Law or the AIFM otherwise no longer complies with the provisions of this Law, the CSSF shall take all due measures in accordance with Article 50, including the express prohibition of marketing of the AIF.

If the changes are acceptable because they do not affect the compliance of the AIFM's management of the AIF with the provisions of this Law or the compliance by the AIFM with the provisions of this Law, the CSSF shall without delay inform the competent authorities of the host Member States of the AIFM of those changes.

Art. 44 Conditions for managing AIFs established in Luxembourg by non-EU AIFMs, where Luxembourg is not the Member State of reference of the AIFM

If an authorised non-EU AIFM intends to manage AIFs established in Luxembourg, either directly or via the establishment of a branch, the competent authorities of the Member State of reference of the AIFM shall transmit to the CSSF the information referred to in paragraphs (2) and (3), respectively, of Article 41 of Directive 2011/61/EU.

Upon notification to the AIFM of the transmission to the CSSF, as referred in this Article, by the competent authorities of the Member State of reference of the AIFM, the latter may start providing its services in Luxembourg from the date of this notification.

Art. 45 Conditions for the marketing in Luxembourg without a passport of AIFs managed by a non-EU AIFM

Without prejudice to Articles 37, 39 and 40 of Directive 2011/61/EU, non-EU AIFMs are authorised to market to professional investors, in the territory of Luxembourg, units or shares of AIFs they manage, subject at least to complying with the following conditions:

a) the non-EU AIFM complies with Articles 22, 23 and 24 of Directive 2011/61/EU in respect of each AIF marketed by it pursuant to this Article and with Articles 26 to 30 of Directive 2011/61/EU where an AIF marketed by it pursuant to this Article falls within the scope of paragraph (1) of Article 26 of that Directive;

b) appropriate cooperation arrangements for the purpose of systemic risk oversight and in line with international standards are in place between the competent authorities of the Member States where the AIFs are marketed, in so far as applicable, the competent authorities of the EU AIFs concerned and the supervisory authorities of the third country where the non-EU AIFM is established and, in so far as applicable, the supervisory authorities of the third country where the non-EU AIF is established in order to ensure an efficient exchange of information that allows competent authorities of the relevant Member States to carry out their duties in accordance with Directive 2011/61/EU;

c) the third country where the non-EU AIFM or the non-EU AIF is established is not listed as a Non-Cooperative Country and Territory by FATF.

Chapter 8. - Marketing to retail investors

Art. 46 Marketing of AIFs by AIFMs to retail investors

(1) Authorised AIFMs established in Luxembourg, in another Member State or in a third country are authorised to market to retail investors in the territory of Luxembourg units or shares of AIFs they manage in accordance with Directive 2011/61/EU, irrespective of whether such AIFs are marketed on a cross-border basis or not, or whether they are EU or non-EU AIFs. In such case, the following preliminary conditions must be fulfilled:

a) the AIFs must be subject in their home State to a permanent supervision performed by a supervisory authority set up by law in order to ensure the protection of investors. For

AIFs established in Luxembourg, this condition shall be deemed fulfilled by AIFs subject to part II of the amended Law of 17 December 2010 on undertakings for collective investment.

This paragraph is without prejudice to conditions of eligibility applicable to investors in AIFs which are subject to regulation by a law of the financial sector in Luxembourg.

b) AIFs established in a Member State other than Luxembourg or in a third country must be subject in their home State to regulation providing investors guarantees of protection at least equivalent to those provided by Luxembourg laws governing AIFs authorised to be marketed to retail investors in Luxembourg. These AIFs must also be subject in their home State to supervision considered by the CSSF to be equivalent to that provided in Luxembourg laws governing AIFs authorised to be marketed to retail investors in Luxembourg.

In such case, cooperation between the CSSF and the supervisory authority of the AIF must also be ensured.

(2) The means of implementation of this Article are laid down by way of a CSSF regulation.

Chapter 9. - Organisation of supervision

Section 1 - Competent authority, supervisory and sanctioning powers

Art. 47 Competent authority

(1) The CSSF is the authority in charge of carrying out the duties provided for in this Law.

(2) The CSSF carries out these duties exclusively in the interest of the public.

(3) Any person who works or who has worked for the CSSF, as well as the approved statutory auditors or experts mandated by the CSSF, shall be bound by the obligation of professional secrecy provided for by Article 16 of the amended Law of 23 December 1998 creating a commission for the supervision of the financial sector. This secrecy implies that confidential information which they may receive in the course of their duties may not be divulged to any person or authority whatsoever, save in summary or abridged form so that no person subject to this Law can be individually identified, without prejudice to cases covered by criminal law.

This paragraph shall not prevent the CSSF from exchanging confidential information with the supervisory authorities of other Member States, ESMA, EBA and ESRB within the limits, under the conditions and in accordance with the provisions of this Law, Directive 2011/61/EU and other legal provisions governing the CSSF's professional secrecy.

Art. 48 Responsibility of the CSSF as competent authority of the home Member State of the AIFM

(1) The CSSF is in charge of prudential supervision of AIFMs established in Luxembourg, authorised under this Law, irrespective of whether such AIFM manages and/or markets AIFs in another Member State or not, without prejudice to those provisions of this Law which confer the responsibility for supervision on the competent authorities of the host Member State of the AIFM.

(2) Where an AIFM established in Luxembourg and authorised pursuant to this Law, which manages or markets AIFs in the territory of another Member State, by operating or not through a branch, refuses to provide the competent authorities of the host Member State with the information falling under their responsibility, or fails to take the necessary steps to put an end to the breach of the rules falling under their responsibility, the CSSF is informed thereof. The CSSF shall, at the earliest opportunity, take all appropriate measures to ensure that the AIFM concerned provides the information requested by the competent authorities of its host Member State or puts an end to the breach. The CSSF shall request, where applicable, the necessary

information from the competent supervisory authorities of third countries. The nature of the measures referred to in this paragraph shall be communicated by the CSSF to the competent authorities of the AIFM's host Member State.

(3) The CSSF shall take appropriate measures, including requesting, if necessary, additional information from the relevant supervisory authorities of third countries, if the competent authorities of the AIFM's host Member State inform the CSSF that they have clear and demonstrable grounds for believing that the AIFM is in breach of the obligations arising from rules in relation to which they have no responsibility.

Art. 49 Responsibility of the CSSF as competent authority of the host Member State of the AIFM

(1) Where an AIFM established in another Member State manages and/or markets AIFs through a branch in Luxembourg, the CSSF, as competent authority of the AIFM's host Member State, shall be responsible for supervising compliance with the provisions of Articles 11 and 13 of this Law.

(2) The AIFM managing or marketing AIFs in Luxembourg, whether or not through a branch, is required to provide the CSSF with the information necessary for the monitoring of the AIFM's compliance with the rules which are applicable to it and which are under the responsibility of the CSSF.

(3) Where the CSSF ascertains that an AIFM managing and/or marketing AIFs in Luxembourg, whether or not through a branch, is in breach of one of the rules falling under its responsibility, it shall require the AIFM concerned to put an end to that breach and informs the competent authorities of the home Member State thereof.

(4) If the AIFM concerned refuses to provide the CSSF with information falling under its responsibility, or fails to take the necessary steps to put an end to the breach referred to in paragraph (3), the CSSF shall inform the competent authorities of the home Member State of the AIFM thereof. The nature of the measures taken by the competent authorities of the home Member State of the AIFM shall be communicated to the CSSF so that the AIFM provides the information requested by the CSSF or puts an end to the breach.

(5) If, despite the measures taken by the competent authorities of the home Member State of the AIFM pursuant to paragraph (4) or because such measures prove to be inadequate or are not available in the Member State in question, the AIFM continues to refuse to provide the information requested by the CSSF pursuant to paragraph (2), or persists in breaching the legal or regulatory provisions, referred to in paragraph (3), in force in Luxembourg, the CSSF shall, after informing the competent authorities of the home Member State of the AIFM, take the appropriate measures, including those laid down in Articles 50 and 51, to prevent or penalise further irregularities and, in so far as necessary, to prevent that AIFM from initiating any further transactions in Luxembourg. Where the function carried out in Luxembourg is the management of AIFs, the CSSF may require the AIFM to cease managing those AIFs.

(6) Where the CSSF has clear and demonstrable grounds for believing that the AIFM is in breach of the obligations arising from rules which do not fall under its responsibility, it shall inform the competent authorities of the home Member State of the AIFM which shall take appropriate measures, including, if necessary, request additional information from the relevant supervisory authorities in third countries.

(7) If despite the measures taken by the competent authorities of the home Member State of the AIFM or because such measures prove to be inadequate, or because the home Member State of the AIFM fails to act within a reasonable timeframe, the AIFM persists in acting in a manner that is clearly prejudicial to the interests of the investors of the relevant AIF, the financial stability or the integrity of the Luxembourg market, the CSSF shall, after informing the competent authorities of the home Member State of the AIFM, take all appropriate measures needed in order to protect the investors of the relevant AIF, the financial stability and the

integrity of the Luxembourg market, including preventing the AIFM concerned from further marketing the units or shares of the relevant AIF in Luxembourg.

(8) The procedure laid down in paragraphs (6) and (7) shall also apply in the event that the CSSF has clear and demonstrable grounds for disagreement with the authorisation of a non-EU AIFM by the Member State of reference.

Art. 50 Supervisory and investigatory powers

(1) For the purpose of applying this Law, the CSSF is given all supervisory and investigatory powers that are necessary for the exercise of its functions.

(2) The CSSF's powers include the right:

a) to have access to any document in any form and to receive a copy of it;

b) to require information from any person related to the activities of the AIFM or the AIF and if necessary to summon and question a person with a view to obtaining information;

c) to carry out on-site inspections with or without prior announcements of persons subject to its prudential supervision under this Law;

d) to require the communication of existing telephone and existing data traffic records;

e) to require the cessation of any practice that is contrary to the provisions adopted in the implementation of this Law;

f) to request the freezing or the sequestration of assets by the President of the District Court of and in Luxembourg acting on request;

g) to pronounce the temporary prohibition of professional activities of persons subject to its prudential supervision, as well as of the members of administrative, governing and management bodies, employees and agents linked to these persons;

h) to require authorised AIFMs, depositaries or approved statutory auditors to provide information;

i) to adopt, in accordance with national law, any type of measure to ensure that AIFMs or depositaries continue to comply with the requirements of this Law applicable to them;

j) to require the suspension of the issue, repurchase or redemption of units of AIFs in the interest of the unitholders or of the public;

k) to withdraw the authorisation granted to an AIFM or a depositary;

l) to transmit information to the Public Prosecutor for criminal proceedings;

m) to instruct approved statutory auditors or experts to carry out verifications or investigations of persons subject to this Law.

(3) The CSSF shall in particular make use of the powers referred to in paragraph (2) in order to ensure the orderly functioning of markets in those cases where the activity of one or more AIFs in the market for a financial instrument might jeopardise the orderly functioning of that market.

Art. 51 Administrative penalties

(1) Legal persons subject to the supervision of the CSSF under this Law and natural persons in charge of the administration or management of these legal persons as well as natural persons subject to the same supervision may be sanctioned by the CSSF in the case that:

- they fail to comply with the obligations provided for by Articles 3 (3), 4 (2), 5 (2) (3) (5) (7), 8, 9 (1), 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 32, 34, 35, 37 and 46 of this Law or by the implementing measures relating to these Articles,

- they refuse to provide accounting documents or other requested information,

- they have provided documents or other information that proves to be incomplete, inaccurate or false,

- they prevent the CSSF from exercising its powers of supervision, inspection and investigation,

- they contravene the rules governing the publication of balance sheets and accounts,

- they fail to act in response to injunctions of the CSSF,

- they risk, with their behaviour, to jeopardise the sound and prudent management of the institution concerned.

(2) The CSSF may impose the following sanctions, classed in order of severity:

- a warning,

- a reprimand,

- a fine of between EUR 250 and EUR 250,000,

- and, in the cases referred to in the 4th, 6th and 7th indents of paragraph (1), one or several of the following measures:

  a) a temporary or definitive prohibition on carrying out operations or activities, as well as any other restrictions on the activity of the person or entity,

  b) a temporary or definitive prohibition on acting as directors, managers or conducting persons, whether *de jure* or *de facto*, of persons or entities subject to the supervision of the CSSF.

The CSSF may disclose to the public the penalties imposed under this Article, unless such disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.

When imposing a penalty, the CSSF takes into account the nature, duration and the severity of the infringement, the conduct and past record of the natural or legal person to be sanctioned, the damage caused to third parties and the potential benefits or gain and/or those effectively deriving from the infringement.

Art. 52 Right of appeal

(1) The decisions to be adopted by the CSSF in implementation of this Law shall state in writing the reasons on which they are based and, unless the delay entails risks, they shall be adopted after preparatory proceedings at which all parties are able to state their case. They shall be notified by registered letter or delivered by bailiff.

(2) The decisions by the CSSF concerning the granting, refusal or withdrawal of the authorisations provided for in this Law as well as the decisions by the CSSF concerning the administrative penalties pursuant to Article 51, may be referred to the administrative court which will deal with the substance of the case. The appeal must be filed within one month from the date of notification of the contested decision, or else shall be time-barred.

Section 2 - Cooperation between different competent authorities

Art. 53 Obligation to cooperate

(1) The CSSF shall cooperate with the competent authorities of the other Member States as well as with ESMA and the ESRB in view of the accomplishment of their duties under Directive 2011/61/EU or the exercise of their powers under the aforementioned directive or under national law.

(2) The CSSF shall cooperate with the competent authorities, even in cases where the conduct under investigation does not constitute an infringement of any regulation in force in Luxembourg.

(3) The CSSF shall supply the competent authorities of the other Member States and shall supply immediately ESMA with the information required for the purposes of carrying out their duties under Directive 2011/61/EU.

The CSSF, as the competent authority of the home Member State of the AIFM, shall forward a copy of the relevant cooperation arrangements entered into by it in accordance with Articles 35, 37 and/or 40 of Directive 2011/61/EU to the competent authorities of the host Member States of the AIFM concerned. The CSSF shall, in accordance with procedures relating to the applicable regulatory technical standards referred to in paragraph (14) of Article 35, paragraph (17) of Article 37 or paragraph (14) of Article 40 of Directive 2011/61/EU, forward the information received from third-country supervisory authorities in accordance with cooperation arrangements with such supervisory authorities in respect of an AIFM, or, where relevant, pursuant to paragraphs (6) or (7) of Article 45 of that Directive, to the competent authorities of the host Member State of the AIFM concerned.

Where the CSSF, as the competent authority of the host Member State of the AIFM, considers that the contents of the cooperation arrangement entered into by the home Member State of the AIFM concerned in accordance with Article 35, 37 and/or 40 of Directive 2011/61/EU does not comply with what is required pursuant to the applicable regulatory technical standards, the CSSF may refer the matter to ESMA which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.

(4) Where the CSSF has clear and demonstrable grounds to suspect that acts contrary to Directive 2011/61/EU are being or have been carried out by an AIFM not subject to its supervision, it shall notify ESMA and the competent authorities of the home and host Member States of the AIFM concerned thereof in as specific a manner as possible.

(5) If the competent authorities of another Member State have clear and demonstrable grounds to suspect that acts contrary to Directive 2011/61/EU are being or have been carried out by an AIFM authorised under this Law, the authorities concerned shall notify the CSSF thereof. The CSSF shall take appropriate measures, shall inform ESMA and the notifying competent authorities of the outcome of that action and, to the extent possible, of significant interim developments.

Art. 54 Transfer and retention of personal data

(1) The provisions of Directive 95/46/EC are applicable to personal data transferred between the CSSF and the competent authorities concerned under Directive 2011/61/EU.

(2) The CSSF shall retain the personal data referred to in paragraph (1) for a maximum period of five years.

Art. 55 Disclosure of information to the competent authorities of third countries

(1) The CSSF is authorised to transfer to the competent authorities of third countries data and the analysis of data on a case-by-case basis where the conditions laid down in Article 25 or Article 26 of Directive 95/46/EC are met and where the CSSF is satisfied that this transfer is necessary for the purpose of the application of Directive 2011/61/EU. The competent authorities of the third country which receive information from the CSSF are only authorised to transfer the data to the competent authorities of another third country with the express written authorisation of the CSSF.

(2) Information received by the CSSF under Directive 2011/61/EU may not be disclosed to a supervisory authority of a third country without the express agreement of the competent authorities which transmitted the information to the CSSF and solely for the purposes for which such authorities gave their agreement.

Art. 56 Exchange of information relating to the potential systemic consequences of AIFM activity

(1) The CSSF shall communicate to the competent authorities of the other Member States concerned the information which is relevant for them for monitoring and responding to the potential implications of the activities of individual AIFMs or AIFMs collectively for the stability of systemically relevant financial institutions as well as the orderly functioning of markets on which AIFMs are active and to enable them to take appropriate measures. The CSSF also informs ESMA and the ESRB thereof which shall forward this information to the competent authorities of the other Member States.

(2) Subject to the conditions laid down in Article 35 of Regulation (EU) No 1095/2010, aggregated information relating to the activities of AIFMs subject to the supervision of the CSSF under this Law shall be communicated by the CSSF to ESMA and the ESRB.

Art. 57 Cooperation in the accomplishment of supervisory missions

(1) The competent authorities of one Member State may request the cooperation of the CSSF in the conduct of their supervisory mission or for an on-the-spot verification or in an investigation in Luxembourg within the framework of their powers pursuant to Directive 2011/61/EU.

Where the CSSF receives a request with respect to an on-the-spot verification or an investigation, it shall perform one of the following:

a) carry out the verification or investigation itself;

b) allow the requesting authority to carry out the verification or investigation;

c) allow auditors or experts to carry out the verification or investigation.

(2) If the verification or investigation is performed by the CSSF, the competent authority of the Member State which has requested cooperation may ask that members of its own personnel assist the CSSF carrying out the verification or investigation. The verification or investigation shall, however, be subject to the overall control of the CSSF.

If the verification or investigation is carried out by the authority which made the request, the CSSF may request that its own personnel assist the personnel in carrying out the verification or investigation.

(3) The CSSF may refuse to exchange information or to act on a request to cooperate in an investigation or on-the-spot verification under Directive 2011/61/EU only where:

a) the investigation, on-the-spot verification or exchange of information might adversely affect the sovereignty, security or public order of Luxembourg;

b) judicial proceedings have already been initiated in respect of the same actions and the same persons in Luxembourg;

c) final judgment has already been delivered in Luxembourg in respect of the same persons and the same actions.

The CSSF shall notify the requesting competent authorities of any decision taken under this paragraph. Such notification shall contain information about the reasons of the decision.

Chapter 10. - Transitional provisions

Art. 58 Transitional provisions

(1) The persons performing activities of AIFM within the meaning of this Law before 22 July 2013 shall take all necessary measures to comply with the provisions of this Law and shall have until 22 July 2014 to submit an application for authorisation to the CSSF.

(2) Articles 29, 30 and 32 shall not apply to the marketing of units or shares of AIFs that are subject to a current offer to the public under a prospectus that has been drawn up and published in accordance with Directive 2003/71/EC before 22 July 2013 for the duration of validity of that prospectus.

(3) AIFMs in so far as they manage AIFs of the closed-ended type before 22 July 2013 which do not make any additional investments after this date may continue to manage such AIFs without being authorised under this Law.

(4) AIFMs in so far as they manage AIFs of the closed-ended type whose subscription period for investors has closed prior to 22 July 2011 and are constituted for a period of time which expires at the latest three years after 22 July 2013, may continue to manage such AIFs without needing to comply with the provisions of this Law except Article 20 and, where relevant, Articles 24 to 28, or to submit an application for authorisation under this Law.

(5) Articles 35 to 36 and 38 to 44 of this Law will be applicable once the European Commission has adopted the delegated act referred to under paragraph (6) of Article 67 of Directive 2011/61/EU, and from the date disclosed therein. Articles 37 and 45 of this Law will cease to be applicable once the European Commission has adopted the delegated act referred to under paragraph (6) of Article 68 of Directive 2011/61/EU, and from the date disclosed therein.

(6) AIFMs which have been authorised under Chapter 2 before the entry into force of the Law of 10 May 2016 transposing Directive 2014/91/EU will have until 15 September 2016 to appoint an approved statutory auditor in accordance with Article 7*bis*.

The provisions of Articles 7*bis* have to be complied with in their entirety with respect to the annual accounts concerning the accounting years ending on or after 31 December 2016.

Chapter 11. - Criminal law provisions

Art. 59 Criminal law provisions

(1) A penalty of imprisonment of eight days to five years and a fine of EUR 5,000 to EUR 125,000 or either of these penalties, shall be imposed upon any persons who carry out or attempt to carry out the activity of AIFM within the meaning of paragraph (1), points a) or b) of Article 4 of this Law without being in possession of an authorisation from the CSSF under this Law.

(2) A penalty of imprisonment of eight days to five years and a fine of EUR 5,000 to EUR 125,000 or either of these penalties, shall be imposed upon any persons who, in violation of paragraph (6) of Article 7, have used a designation or description giving the impression that they relate to the activities subject to this Law if they have not obtained the authorisation provided for in Article 7.

Chapter 12. - Amending and various provisions

[…]

Chapter 13. - Repealing and final provisions

Art. 215

Article 28-8 of the amended Law of 5 April 1993 on the financial sector shall be repealed with effect from 22 July 2014.

Art. 216

Reference to this Law may be made under abbreviated form using the following title: "Law of 12 July 2013 on alternative investment fund managers".

Art. 217

This Law enters into force upon its publication in the *Mémorial*. The amendments of Article 208, 1° and of Article 209 do not apply to common limited partnerships incorporated prior to this Law entering into force.

Annexes

ANNEX I

1. Investment management functions which an AIFM must at least perform when managing an AIF:

   a) portfolio management;

   b) risk management.

2. Other functions that an AIFM may additionally perform in the course of the collective management of an AIF:

   a) administration:

      i) legal and fund management accounting services;

      ii) customer inquiries;

      iii) valuation and pricing, including tax returns;

      iv) regulatory compliance monitoring;

      v) maintenance of unit-/shareholder register;

      vi) distribution of income;

      vii) unit/shares issues and redemptions;

      viii) contract settlements, including certificate dispatch;

      ix) record keeping;

   b) marketing;

   c) activities related to the assets of AIFs, namely services necessary to meet the fiduciary duties of the AIFM, facilities management, real estate administration activities, advice to undertakings on capital structure, industrial strategy and related matters, advice and services relating to mergers and the purchase of undertakings and other services connected to the management of the AIF and the companies and other assets in which it has invested.

ANNEX II

Remuneration policy

1. When establishing and applying the total remuneration policies, inclusive of salaries and discretionary pension benefits, for those categories of staff, including senior management, risk takers, control functions and any employee receiving total remuneration that takes them into the same remuneration bracket as senior management and risk takers, whose professional activities have a material impact on the risk profiles of the AIFMs or of AIFs they manage, AIFMs must comply with the following principles in a way and to the extent that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities:

   a) the remuneration policy is consistent with and promotes sound and effective risk management and does not encourage risk-taking which is inconsistent with the risk profiles, management regulations[14] or instruments of incorporation of the AIFs they manage;

   b) the remuneration policy is in line with the business strategy, objectives, values and interests of the AIFM and the AIFs it manages or the investors of such AIFs, and includes measures to avoid conflicts of interest;

   c) the management body of the AIFM, in its supervisory function, adopts and periodically reviews the general principles of the remuneration policy and is responsible for its implementation;

   d) the implementation of the remuneration policy is, at least annually, subject to central and independent internal review for compliance with policies and procedures for remuneration adopted by the management body in its supervisory function;

   e) staff engaged in control functions are compensated in accordance with the achievement of the objectives linked to their functions, independent of the performance of the business areas they control;

   f) the remuneration of the senior officers in the risk management and compliance functions is directly overseen by the remuneration committee;

   g) where remuneration is performance related, the total amount of remuneration is based on a combination of the assessment of the performance of the individual and of the business unit or AIF concerned and of the overall results of the AIFM, and when assessing individual performance, financial as well as non-financial criteria are taken into account;

   h) the assessment of performance is set in a multi-year framework appropriate to the life-cycle of the AIFs managed by the AIFM in order to ensure that the assessment process is based on longer term performance and that the actual payment of performance-based components of remuneration is spread over a period which takes account of the redemption policy of the AIFs it manages and their investment risks;

   i) guaranteed variable remuneration is exceptional, occurs only in the context of hiring new staff and is limited to the first year;

   j) fixed and variable components of total remuneration are appropriately balanced and the fixed component represents a sufficiently high proportion of the total remuneration to allow the operation of a fully flexible policy, on variable remuneration components, including the possibility to pay no variable remuneration component;

[14] *règlement*

k) payments related to the early termination of a contract reflect performance achieved over time and are designed in a way that does not reward failure;

l) the measurement of performance used to calculate variable remuneration components or pools of variable remuneration components includes a comprehensive adjustment mechanism to integrate all relevant types of current and future risks;

m) subject to the legal structure of the AIF and its management regulations[15] or instruments of incorporation, a substantial portion, and in any event at least 50% of any variable remuneration consists of units or shares of the AIF concerned, or equivalent ownership interests, or share-linked instruments or equivalent non-cash instruments, unless the management of AIFs accounts for less than 50% of the total portfolio managed by the AIFM, in which case the minimum of 50% does not apply.

The instruments referred to in this point shall be subject to an appropriate retention policy designed to align incentives with the interests of the AIFM and the AIFs it manages and the investors of such AIFs. This point shall be applied to both the portion of the variable remuneration component deferred in line with point n) and the portion of the variable remuneration component not deferred;

n) a substantial portion, and in any event at least 40%, of the variable remuneration component, is deferred over a period which is appropriate in view of the life cycle and redemption policy of the AIF concerned and is correctly aligned with the nature of the risks of the AIF in question.

The period referred to in this point shall be at least three to five years unless the life cycle of the AIF concerned is shorter; remuneration payable under deferral arrangements vests no faster than on a pro-rata basis; in the case of a variable remuneration component of a particularly high amount, at least 60% of the amount is deferred;

o) the variable remuneration, including the deferred portion, is paid or vests only if it is sustainable according to the financial situation of the AIFM as a whole, and justified according to the performance of the business unit, the AIF and the individual concerned.

The total variable remuneration shall generally be considerably contracted where subdued or negative financial performance of the AIFM or of the AIF concerned occurs, taking into account both current compensation and reductions in payouts of amounts previously earned, including through malus or clawback arrangements;

p) the pension policy is in line with the business strategy, objectives, values and long-term interests of the AIFM and the AIFs it manages.

If the employee leaves the AIFM before retirement, discretionary pension benefits shall be held by the AIFM for a period of five years in the form of instruments defined in point m). In the case of an employee reaching retirement, discretionary pension benefits shall be paid to the employee in the form of instruments defined in point m), subject to a five year retention period;

q) staff are required to undertake not to use personal hedging strategies or remuneration- and liability-related insurance to undermine the risk alignment effects embedded in their remuneration arrangements;

r) variable remuneration is not paid through vehicles or methods that facilitate the avoidance of the requirements of this Directive.

[15] *règlement*

2. The principles set out in point 1. shall apply to remuneration of any type paid by the AIFM, to any amount paid directly by the AIF itself, including carried interest, and to any transfer of units or shares of the AIF, made to the benefits of those categories of staff, including senior management, risk takers, control functions and any employee receiving total remuneration that takes them into the same remuneration bracket as senior management and risk takers, whose professional activities have a material impact on their risk profile or the risk profiles of the AIF that they manage.

3. AIFMs that are significant in terms of their size or the size of the AIFs they manage, their internal organisation and the nature, the scope and the complexity of their activities must establish a remuneration committee. The remuneration committee shall be constituted in a way that enables it to exercise competent and independent judgment on remuneration policies and practices and the incentives created for managing risk.

   The remuneration committee shall be responsible for the preparation of decisions regarding remuneration, including those which have implications for the risk and risk management of the AIFM or the AIF concerned and which are to be taken by the management body in its supervisory function. The remuneration committee shall be chaired by a member of the management body who does not perform any executive functions in the AIFM concerned. The members of the remuneration committee shall be members of the management body who do not perform any executive functions in the AIFM concerned.

ANNEX III

Documentation and information to be provided in case of marketing in Luxembourg

a) a notification letter, including a programme of operations identifying the AIFs the AIFM intends to market and information on where the AIFs are established;

b) the AIF management regulations or instruments of incorporation;

c) identification of the depositary of the AIF;

d) a description of, or any information on, the AIF available to investors;

e) information on where the master AIF is established if the AIF is a feeder AIF;

f) any additional information referred to in paragraph (1) of Article 21 for each AIF the AIFM intends to market;

g) where relevant, information on the arrangements established to prevent units or shares of the AIF from being marketed to retail investors, including in the case where the AIFM relies on activities of independent entities to provide investment services in respect of the AIF.

ANNEX IV

Documentation and information to be provided in case of marketing in a Member State other than Luxembourg

a) a notification letter, including a programme of operations identifying the AIFs the AIFM intends to market and information on where the AIFs are established;

b) the AIF management regulations or instruments of incorporation;

c) identification of the depositary of the AIF;

d) a description of, or any information on, the AIF available to investors;

e) information on where the master AIF is established if the AIF is a feeder AIF;

f) any additional information referred to in paragraph (1) of Article 21 for each AIF the AIFM intends to market;

g) the indication of the Member State in which it intends to market the units or shares of the AIF to professional investors;

h) information about arrangements made for the marketing of AIFs and, where relevant, information on the arrangements established to prevent units or shares of the AIF from being marketed to retail investors, including in the case where the AIFM relies on activities of independent entities to provide investment services in respect of the AIF.

2.

AMENDED LAW OF 17 DECEMBER 2010 CONCERNING UNDERTAKINGS FOR COLLECTIVE INVESTMENT

CONSOLIDATED VERSION AS OF 1 AUGUST 2016

AMENDED LAW OF 17 DECEMBER 2010 CONCERNING UNDERTAKINGS FOR COLLECTIVE INVESTMENT

INTRODUCTORY PART:

DEFINITIONS

Art. 1

For the purposes of this Law:

1. "competent authorities" means the authorities which each Member State designates under Article 97 of Directive 2009/65/EC. The competent authority in Luxembourg which is responsible for the supervision of undertakings for collective investment and management companies is the CSSF;

2. "depositary" means a credit institution entrusted with the duties as set out in Articles 17, 18, 33 and 34 for Luxembourg UCIs;

3. "initial capital" means the funds as referred to in Article 57, items a) and b) of Directive 2006/48/EC;

4. "CSSF" means the *Commission de Surveillance du Secteur Financier* (the Commission for the Supervision of the Financial Sector);

5. "Directive 78/660/EEC" means Council Directive 78/660/EEC of 25 July 1978 based on Article 54, paragraph 3 under g) of the Treaty on the annual accounts of certain types of companies, as amended;

6. "Directive 83/349/EEC" means Council Directive 83/349/EEC of 13 June 1983 based on Article 54, paragraph 3 under g) of the Treaty on consolidated accounts, as amended;

7. "Directive 97/9/EC" means Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes;

7*bis*. "Directive 98/26/EC" means Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems;

8. "Directive 2004/39/EC" means Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments;

9. "Directive 2006/48/EC" means Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions;

10. "Directive 2006/49/EC" means Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions;

10*bis*. "Directive 2006/73/EC" means Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive;

11. "Directive 2009/65/EC" means Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS);

11*bis*. "Directive 2011/61/EU" means Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No. 1060/2009 and (EU) No. 1095/2010;

11*ter*. "Directive 2013/34/EU" means Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC;

11*quater*. "Directive 2014/65/EU" means Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU;

11*quinquies*. "Directive 2014/91/EU" means Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014 amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions;

12. "parent undertaking" means an undertaking which owns the following rights:

a) it has the majority of shareholders' or members' voting rights of another undertaking, or

b) it has the right to appoint or remove the majority of the members of the administrative, management or supervisory board of another undertaking and is at the same time a shareholder or member of that undertaking, or

c) it has the right to exercise a dominant influence over an undertaking of which it is a shareholder or member, pursuant to a contract entered into with that undertaking or to a provision in its articles of association where the law governing that undertaking allows it to be subject to such contracts or provisions, or

d) it is a shareholder or member of an undertaking and controls alone, pursuant to an agreement entered into with other shareholders or members of this undertaking, the majority of the voting rights of the shareholders and members of the latter, or

e) it may exercise or effectively exercises a dominant influence over another undertaking, or

f) it is placed under management on a unified basis with another undertaking;

13. "Member State" means a Member State of the European Union. The States that are contracting parties to the Agreement creating the European Economic Area other than the Member States of the European Union, within the limits set forth by this Agreement and related acts, are considered as equivalent to Member States of the European Union;

14. "UCITS host Member State" means a Member State other than the UCITS home Member State, in which the units of the common fund or the investment company are marketed;

15. "UCITS home Member State" means the Member State in which the common fund or the investment company is authorised pursuant to Article 5 of Directive 2009/65/EC;

16. "management company's host Member State" means a Member State other than the home Member State, within the territory of which a management company has a branch or provides services;

17. "management company's home Member State" means the Member State in which the management company has its registered office;

18. "subsidiary" means a subsidiary undertaking in respect of which rights are owned as set out in point 12. A subsidiary undertaking of a subsidiary undertaking shall also be considered to be a subsidiary of the parent undertaking which is at the head of those undertakings;

18*bis*. "alternative investment funds (AIF)" means undertakings for collective investment, including investment compartments thereof, as referred to in point a) of paragraph 1 of Article 4 of Directive 2011/61/EU, which:

a) raise capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and

b) do not require authorisation pursuant to Article 5 of Directive 2009/65/EC.

In Luxembourg, this means alternative investment funds within the meaning of paragraph 39 of Article 1 of the Law of 12 July 2013 relating to alternative investment fund managers;

19. "own funds" means own funds as defined in Title V, chapter 2, section 1 of Directive 2006/48/EC. For the purposes of this definition, Articles 13 to 16 of Directive 2006/49/EC shall apply *mutatis mutandis*;

20. "merger" means an operation whereby:

a) one or more UCITS or investment compartments thereof, the "merging UCITS", on being dissolved without going into liquidation, transfer all of their assets and liabilities to another existing UCITS or an investment compartment thereof, the "receiving UCITS", in exchange for the issue to their unitholders of units of the receiving UCITS and, if applicable, a cash payment not exceeding 10% of the net asset value of those units,

b) two or more UCITS or investment compartments thereof, the "merging UCITS", on being dissolved without going into liquidation, transfer all of their assets and liabilities to a UCITS which they form or an investment compartment thereof, the "receiving UCITS", in exchange for the issue to their unitholders of units of the receiving UCITS and, if applicable, a cash payment not exceeding 10% of the net asset value of those units,

c) one or more UCITS or investment compartments thereof, the "merging UCITS", which continue to exist until the liabilities have been discharged, transfer their net assets to another investment compartment of the same UCITS, to a UCITS which they form or to another existing UCITS or an investment compartment thereof, the "receiving UCITS";

21. "cross-border merger" means a merger of UCITS:

a) at least two of which are established in different Member States, or

b) established in the same Member State into a newly constituted UCITS established in another Member State;

22. "domestic merger" means a merger between UCITS established in the same Member State where at least one of the involved UCITS has been notified pursuant to Article 93 of Directive 2009/65/EC;

22*bis*. "managing AIFs" means performing at least the investment management functions referred to in point 1a) or b) of Annex I of Directive 2011/61/EU for one or more AIFs;

22*ter*. "Alternative Investment Fund Managers (AIFMs)" means legal persons whose regular business is managing one or more AIFs as defined in paragraph 1, point a) of Article 4 of Directive 2011/61/EU. In Luxembourg, this means AIFMs within the meaning of Article 1, paragraph 46 of the Law of 12 July 2013 relating to alternative investment fund managers;

23. "money market instruments" means instruments normally dealt in on the money market which are liquid and have a value which can be accurately determined at any time;

23*bis*. "financial instrument" means a financial instrument specified in section C of Annex I of Directive 2014/65/EU;

24. "close links" means a situation in which two or more natural or legal persons are linked by either:

a) "participation", which means the ownership, direct or by way of control, of 20% or more of the voting rights or capital of an undertaking, or

b) "control", which means the relationship between a "parent undertaking" and a "subsidiary", as defined in Articles 1 and 2 of Seventh Council Directive 83/349/EEC of 13 June 1983 based on Article 54, paragraph 3, point g), of the Treaty on consolidated accounts and in all the cases referred to in Article 1 paragraphs 1 and 2 of Directive 83/349/EEC, or a similar relationship between any natural or legal person and an undertaking.

For the purposes of point b), the following provisions apply:

- a subsidiary undertaking of a subsidiary undertaking shall also be considered to be a subsidiary of the parent undertaking which is at the head of those undertakings;

- situations in which two or more natural or legal persons are permanently linked to the same person by a control relationship shall also be regarded as constituting a close link between such persons;

24*bis*. "Law of 12 July 2013 relating to alternative investment fund managers" means the Law of 12 July 2013 relating to alternative investment fund managers transposing Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No. 1060/2009 and (EU) No. 1095/2010;

25. "UCI" means undertaking for collective investment;

26. "UCITS" means undertaking for collective investment in transferable securities subject to Directive 2009/65/EC;

26*bis*. "management body" means:

a) as regards public limited companies, the board of directors or the management board, as the case may be,

b) as regards other types of companies, the body that represents, by virtue of the law and of the instruments of incorporation, the management company or the UCITS;

27. "units" means units of an undertaking constituted in accordance with contract law (common fund managed by a management company) and also shares in an undertaking constituted by statute (investment company);

28. "qualifying holding in a management company" means a direct or indirect holding in a management company which represents 10% or more of the capital or of the voting rights, in accordance with Articles 8 and 9 of the Law of 11 January 2008 on transparency requirements and on the conditions governing the aggregation of voting rights under Article 11, paragraphs 4 and 5 of this aforesaid Law, or any other possibility to exercise a significant influence over the management of this company;

29. "third country" means a state other than a Member State;

30. "unitholder" means unitholders in undertakings constituted in accordance with contract law (common fund managed by a management company) and also shareholders in undertakings constituted by statute (investment companies);

31. "SICAV" means investment company with variable capital[1];

32. "branch" means a place of business which is a part of the management company, which has no legal personality and which provides the services for which the management company has been authorised. For the purposes of this definition, all places of business established in the same Member State by a management company with its head office in another Member State shall be regarded as a single branch;

33. "durable medium" means an instrument which enables an investor to store information addressed personally to that investor in a way that is accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;

34. "transferable securities" means:

- shares in companies and other securities equivalent to shares in companies ("shares"),
- bonds and other forms of securitised debt ("debt securities"),
- any other negotiable securities which carry the right to acquire any such transferable securities by subscription or exchange.

For the purposes of this definition, the techniques and instruments referred to in Article 42 do not constitute transferable securities.

PART I: UCITS

Chapter 1 – General provisions and scope

Art. 2

(1) This Part applies to all UCITS established in Luxembourg.

(2) For the purposes of this Law, and subject to Article 3, UCITS means an undertaking

- with the sole object of collective investment in transferable securities and/or in other liquid financial assets referred to in Article 41, paragraph 1, of capital raised from the public and which operate on the principle of risk-spreading, and
- with units which are, at the request of holders, repurchased, directly or indirectly, out of this undertaking's assets. Action taken by a UCITS to ensure that the stock exchange value of its units does not significantly vary from their net asset value shall be regarded as equivalent to any such repurchase.

(3) Any such undertakings may be constituted in accordance with contract law (common funds managed by management companies) or by statute (investment companies).

(4) Investment companies whose assets are invested through the intermediary of subsidiary companies, mainly in other assets than in transferable securities or in other liquid financial assets referred to in Article 41, paragraph 1 shall not, however, be subject to this Part.

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[1] *société d'investissement à capital variable*

(5) UCITS which are subject to this Part are prohibited from transforming themselves into investment undertakings which are not subject to Directive 2009/65/EC.

Art. 3

The following are not subject to this Part:

- UCITS of the closed-ended type,
- UCITS which raise capital without promoting the sale of their units to the public within the European Union or any part of it,
- UCITS whose units, under their management regulations or instruments of incorporation, may be sold only to the public in countries which are not members of the European Union,
- categories of UCITS determined by the CSSF, for which the rules laid down in Chapter 5 are inappropriate in view of their investment and borrowing policies.

Art. 4

A UCITS is deemed to be established in Luxembourg if it is authorised in accordance with Article 129.

Chapter 2 – Common funds in transferable securities

Art. 5

For the purposes of this Part, any undivided collection of transferable securities and/or other liquid financial assets referred to in Article 41, paragraph 1 shall be regarded as a common fund if it is made up and managed according to the principle of risk spreading on behalf of joint owners who are liable only up to the amount contributed by them and whose rights are represented by units intended for placement with the public by means of a public or private offer.

Art. 6

A common fund shall not be liable for the obligations of the management company or of the unitholders; it shall be answerable only for the obligations and expenses expressly imposed upon it by its management regulations.

Art. 7

The management of a common fund shall be carried out by a management company referred to in Part IV, Chapter 15.

Art. 8

(1) The management company shall issue registered, bearer or dematerialised securities, representing one or more portions of the common fund which it manages. The management company may issue, in accordance with the conditions laid down in the management regulations, written certificates of entry in the register of units or fractions of units without limitation as to the fractioning of units.

Rights attaching to fractions of units are exercised in proportion to the fraction of a unit held except for possible voting rights which can only be exercised for whole units. The bearer securities shall be signed by the management company and by the depositary referred to in Article 17.

These signatures may be reproduced mechanically.

(2) Ownership of units, in the form of registered or bearer securities, shall be determined and transfer thereof shall be effected in accordance with the rules laid down in Articles 40 and 42 of the Law of 10 August 1915 concerning commercial companies, as amended. The rights of units inscribed in a securities account shall be determined and transfer thereof shall be effected in accordance with the rules laid down in the law on dematerialised securities and the Law of 1 August 2001 concerning the circulation of securities.

(3) The owners of bearer securities may, at any moment, demand the conversion of bearer securities, at their own expense, into registered securities or, if the articles of incorporation[2] provide for this, into dematerialised securities. In the latter case, the costs are borne by the person provided for in the law on dematerialised securities.

Unless a formal prohibition is stated in the articles of incorporation[3], the owners of registered securities may, at any moment, demand the conversion of registered securities into bearer securities.

If the articles of incorporation[4] provide for this, the owners of registered securities may demand the conversion of registered securities into dematerialised securities. The costs are borne by the person provided for in the law on dematerialised securities.

The holders of dematerialised securities may, at any moment, demand the conversion, at their own expense, of dematerialised securities into registered securities, unless the management regulations provide for the compulsory dematerialisation of securities.

Art. 9

(1) Units shall be issued at a price obtained by dividing the net asset value of the common fund by the number of units outstanding; this price may be increased by expenses and commissions, the maximum amounts and procedures for collection of which may be determined by a CSSF regulation.

(2) Units may not be issued unless the equivalent of the net issue price is paid into the assets of the common fund within the usual time limits. This provision shall not preclude the distribution of bonus units.

(3) Unless otherwise provided for in the management regulations of the fund, the valuation of the assets of the fund shall be based, in the case of securities admitted to official listing on a stock exchange, on the last known stock exchange quotation, unless this quotation is not representative. For securities not so admitted on such a stock exchange and for securities which are so admitted on such a stock exchange, but for which the latest quotation is not representative, the valuation shall be based on the probable realisation value, estimated with care and in good faith.

Art. 10

The purchase and sale of the assets may only be effected at prices conforming to the valuation criteria laid down in paragraph 3 of Article 9.

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[2] The original version of the Law of 6 April 2013 refers to "articles of incorporation". This shall be understood as "management regulations" for a common fund.

[3] The original version of the Law of 6 April 2013 refers to "articles of incorporation". This shall be understood as "management regulations" for a common fund.

[4] The original version of the Law of 6 April 2013 refers to "articles of incorporation". This shall be understood as "management regulations" for a common fund.

Art. 11

(1) Neither the holders of the units nor their creditors may require the distribution or the dissolution of the common fund.

(2) A common fund must repurchase its units at the request of a unitholder.

(3) The repurchase of units shall be effected on the basis of the value calculated in accordance with Article 9, paragraph 1, after deduction of any applicable expenses and commissions, the maximum amounts and procedures for collection of which may be determined by a CSSF regulation.

Art. 12

(1) By way of derogation from Article 11, paragraph 2:

a) the management company may, in the cases and according to the procedures provided for by the management regulations, temporarily suspend the repurchase of units. Suspension may be provided for only in exceptional cases where circumstances so require and where suspension is justified having regard to the interests of the unitholders;

b) the CSSF may in the interests of the unitholders or of the public require the suspension of the repurchase of units, in particular where the provisions of laws, regulations or agreements concerning the activity and operation of the common fund are not observed.

(2) In the cases referred to in paragraph 1, point a), the management company must, without delay, communicate its decision to the CSSF and, if the units of the fund are marketed in other Member States of the European Union, to the competent authorities of those Member States.

(3) The issue and repurchase of units shall be prohibited:

a) during any period where there is no management company or depositary;

b) where the management company or the depositary is put into liquidation or declared bankrupt or seeks an arrangement with creditors, a suspension of payment or a controlled management or is the subject of similar proceedings.

Art. 13

(1) The management company shall draw up the management regulations for the common fund. These management regulations must be lodged with the register of commerce and companies and their publication in the *Recueil électronique des sociétés et associations*[5] will be made by way of a notice advising of the deposit of the document, in accordance with the provisions of Chapter V*bis* of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings. The provisions of these management regulations shall be deemed accepted by the unitholders by the mere fact of the acquisition of these units.

(2) The management regulations of the common fund are subject to Luxembourg law and must contain at least the following provisions:

a) the name and duration of the common fund, the name of the management company and of the depositary,

[5] The *Recueil électronique des sociétés et associations* is the central electronic platform of official publication.

b) the investment policy according to its specific objectives and the criteria therefore,

c) the distribution policy within the scope of Article 16,

d) the remuneration and expenditure which the management company is entitled to charge to the common fund and the method of calculation of that remuneration,

e) the provisions as to publication,

f) the date of the closing of the accounts of the common fund,

g) the cases where, without prejudice to legal grounds, the common fund shall be dissolved,

h) the procedures for amendment of the management regulations,

i) the procedure for the issue of units,

j) the procedure for the repurchase of units and the conditions under which the repurchases are carried out and may be suspended.

Art. 14

(1) The management company shall manage the common fund in accordance with the management regulations and in the exclusive interests of the unitholders.

(2) It shall act in its own name, but shall indicate that it is acting on behalf of the common fund.

(3) It shall exercise all the rights attaching to the securities comprised in the portfolio of the common fund.

Art. 15

The management company must fulfil its obligations with the diligence of a salaried agent; it shall be liable to the unitholders for any loss resulting from the non-fulfilment or improper fulfilment of its obligations.

Art. 16

Unless otherwise provided for in the management regulations, the net assets of the common fund may be distributed subject to the limits set out in Article 23.

Art. 17

(1) For each of the common funds it manages, a management company shall ensure that a single depositary is appointed in accordance with the provisions of this Article and of Articles 18 to 22.

(2) The depositary must either have its registered office in Luxembourg or be established in Luxembourg if its registered office is in another Member State.

(3) The depositary must be a credit institution within the meaning of the amended Law of 5 April 1993 on the financial sector.

(4) (…)[6]

[6] Repealed by the Law of 10 May 2016 transposing Directive 2014/91/EU.

(5) The directors[7] of the depositary must be of sufficiently good repute and be sufficiently experienced, also in relation to the type of common fund concerned. To that end, the identity of the directors and of every person succeeding them in office must be communicated forthwith to the CSSF.

"Directors" shall mean those persons, who under law or the instruments of incorporation represent the depositary or effectively determine the conduct of its activity.

(5*bis*) The appointment of the depositary shall be evidenced by a written contract. This contract shall, inter alia, regulate the flow of information deemed to be necessary to allow the depositary to perform its functions for the common fund for which it has been appointed as depositary, as laid down in this Law and in other applicable laws, regulations and administrative provisions.

(6) The depositary is required to provide the CSSF on request with all the information that the depositary has obtained in the exercise of its missions and which is necessary to enable the CSSF to fulfil its monitoring mission.

Where the management of the common fund is performed by a management company established in another Member State, the CSSF shall, without delay, communicate the information received to the competent authorities of the home Member State of the management company.

Art. 18

(1) (…)[8]

(2) The depositary must:

a) ensure that the sale, issue, repurchase, redemption and cancellation of units of the common fund are carried out in accordance with the law and the management regulations,

b) ensure that the value of the units of the common fund is calculated in accordance with the law and the management regulations,

c) carry out the instructions of the management company, unless they conflict with the law or the management regulations,

d) ensure that in transactions involving the common fund's assets, any consideration is remitted to it within the usual time limits,

e) ensure that the common fund's income is applied in accordance with the law or the management regulations.

(3) The depositary shall ensure that the cash flows of the common fund are properly monitored and, in particular, that all payments made by, or on behalf of, unitholders of the common fund upon the subscription of units of the common fund have been received and that all cash of the common fund has been booked in cash accounts that are:

a) opened in the name of the common fund, of the management company acting on behalf of the common fund or of the depositary acting on behalf of the common fund;

b) opened at an entity referred to in points a), b) and c) of Article 18, paragraph 1 of Directive 2006/73/EC; and

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7 *dirigeants*

8 Repealed by the Law of 10 May 2016 transposing Directive 2014/91/EU.

c) maintained in accordance with the principles set out in Article 16 of Directive 2006/73/EC.

Where the cash accounts are opened in the name of the depositary acting on behalf of the common fund, no cash of the entity referred to in point b) of the first sub-paragraph and none of the own cash of the depositary shall be booked on such accounts.

(4) The assets of the common fund shall be entrusted to the depositary for safekeeping as follows:

a) for financial instruments that may be held in custody, the depositary shall:

i) hold in custody all financial instruments that may be registered in a financial instruments account opened in the depositary's books and all financial instruments that can be physically delivered to the depositary;

ii) ensure that all financial instruments that can be registered in a financial instruments account opened in the depositary's books are registered in the depositary's books within segregated accounts, in accordance with the principles set out in Article 16 of Directive 2006/73/EC, opened in the name of the management company acting on behalf of the common fund, so that they can be clearly identified as belonging to the common fund in accordance with the applicable law at all times;

b) for the other assets, the depositary shall:

i) verify the ownership by the common fund of these assets by assessing whether the common fund holds the ownership based on information or documents provided by the management company acting on behalf of the common fund and, where available, on external evidence;

ii) maintain a record of those assets for which it is satisfied that the common fund holds the ownership and keep that record up to date.

(5) The depositary shall provide the management company, on a regular basis, with a comprehensive inventory of all the assets of the common fund.

(6) The assets of the common fund held in custody by the depositary shall not be reused by the depositary, or by any third party to which the custody function has been delegated, for their own account. Reuse comprises any transaction of assets held in custody including, but not limited to, transferring, pledging, selling and lending.

The assets of the common fund held in custody by the depositary are allowed to be reused only where:

a) the reuse of the assets is executed for the account of the common fund;

b) the depositary is carrying out the instructions of the management company on behalf of the common fund;

c) the reuse is for the benefit of the common fund and in the interest of the unitholders; and

d) the transaction is covered by high-quality and liquid collateral received by the common fund under a title transfer arrangement.

The market value of the collateral shall, at all times, amount to at least the market value of the reused assets plus a premium.

(7) In case of insolvency of the depositary and/or of any third party located in Luxembourg to which custody of the assets of the common fund has been delegated, the assets held in custody are unavailable for distribution among, or realisation for the benefit of, creditors of such a depositary and/or such a third party.

Art. 18*bis*

(1) The depositary shall not delegate to third parties the functions referred to in paragraphs 2 and 3 of Article 18.

(2) The depositary may delegate to third parties the functions referred to in paragraph 4 of Article 18 only where:

a) the tasks are not delegated with the intention of avoiding the requirements laid down in this Law;

b) the depositary can demonstrate that there is an objective reason for the delegation;

c) the depositary has exercised all due skill, care and diligence in the selection and the appointment of any third party to whom it intends to delegate parts of its tasks, and continues to exercise all due skill, care and diligence in the periodic review and ongoing monitoring of any third party to which it has delegated parts of its tasks and of the arrangements of the third party in respect of the matters delegated to it.

(3) The functions referred to in paragraph 4 of Article 18 may be delegated by the depositary to a third party only where that third party at all times during the performance of the tasks delegated to it:

a) has structures and expertise that are adequate and proportionate to the nature and complexity of the assets of the common fund which have been entrusted to it;

b) for custody tasks referred to in point a) of paragraph 4 of Article 18, is subject to:

i) effective prudential regulation, including minimum capital requirements, and supervision in the jurisdiction concerned;

ii) an external periodic audit to ensure that the financial instruments are in its possession;

c) segregates the assets of the clients of the depositary from its own assets and from the assets of the depositary in such a way that they can, at any time, be clearly identified as belonging to the clients of a particular depositary;

d) takes all necessary steps to ensure that in the event of insolvency of the third party, assets of a common fund held by the third party in custody are unavailable for distribution among, or realisation for the benefit of, creditors of the third party; and

e) complies with the general obligations and prohibitions laid down in paragraph 5*bis* of Article 17, in paragraphs 4 and 6 of Article 18 and in Article 20.

Notwithstanding sub-paragraph 1, point b) i), where the law of a third country requires that certain financial instruments be held in custody by a local entity and no local entities satisfy the delegation requirements laid down in that point, the depositary may delegate its functions to such a local entity only to the extent required by the law of that third country, only for as long as there are no local entities that satisfy the delegation requirements, and only where:

a) the unitholders investing in the relevant common fund are duly informed, prior to their investment, of the fact that such a delegation is required due to legal constraints in the law of the third country, of the circumstances justifying the delegation and of the risks involved in such a delegation;

b) the management company on behalf of the common fund has instructed the depositary to delegate the custody of such financial instruments to such a local entity.

The third party may, in turn, sub-delegate those functions, subject to the same requirements. In such a case, paragraph 2 of Article 19 shall apply *mutatis mutandis* to the relevant parties.

(4) For the purposes of this Article, the provision of services as specified in Directive 98/26/EC by securities settlement systems as designated for the purposes of that Directive or the provision of similar services by third-country securities settlement systems shall not be considered to be a delegation of custody functions.

Art. 19

(1) The depositary shall be liable, to the common fund and to the unitholders of the common fund, for the loss by the depositary or a third party to whom the custody of financial instruments held in custody in accordance with point a) of paragraph 4 of Article 18 has been delegated.

In the case of a loss of a financial instrument held in custody, the depositary shall return a financial instrument of an identical type or the corresponding amount to the management company acting on behalf of the common fund without undue delay. The depositary shall not be liable if it can prove that the loss has arisen as a result of an external event beyond its reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary.

The depositary is also liable to the common fund and to the unitholders for all other losses suffered by them as a result of the depositary's negligent or intentional failure to properly fulfil its obligations pursuant to this Law.

(2) The liability of the depositary referred to in paragraph 1 shall not be affected by any delegation referred to in Article 18*bis*.

(3) The liability of the depositary referred to in paragraph 1 shall not be excluded or limited by agreement.

(4) Any agreement that contravenes paragraph 3 shall be void.

(5) Unitholders of the common fund may invoke the liability of the depositary directly or indirectly through the management company, provided that this does not lead to a duplication of redress or to unequal treatment of the unitholders.

Art. 20

(1) No company shall act as both management company and depositary.

(2) In carrying out their respective functions, the management company and the depositary shall act honestly, fairly, professionally, independently and solely in the interest of the common fund and the unitholders.

A depositary shall not carry out activities with regard to the common fund or the management company on behalf of the common fund that may create conflicts of interest between the common fund, the unitholders, the management company and itself, unless the depositary has functionally and hierarchically separated the performance of its depositary tasks from its other potentially conflicting tasks, and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the unitholders of the common fund.

Art. 21

The duties of the management company or of the depositary in respect of the common fund shall cease:

a) in the case of withdrawal of the management company, provided that it is replaced by another management company authorised in accordance with Directive 2009/65/EC;

b) in the case of voluntary withdrawal of the depositary or of its removal by the management company; until the replacement of the depositary, which must happen within two months, the depositary must take all necessary steps for the good preservation of the interests of the unitholders;

c) where the management company or the depositary has been declared bankrupt, has entered into an arrangement with creditors, has obtained a suspension of payment, has been put under court-controlled management, or has been the subject of similar proceedings or has been put into liquidation;

d) where the authorisation of the management company or the depositary has been withdrawn by the competent authority;

e) in all other cases provided for in the management regulations.

Art. 22

(1) Liquidation of the common fund shall take place:

a) upon the expiry of any period as may be fixed by the management regulations;

b) in the event of cessation of their duties by the management company or by the depositary in accordance with Article 21, points b), c), d) and e), if they have not been replaced within two months without prejudice to the specific circumstance addressed in point c) below;

c) in the event of bankruptcy of the management company;

d) if the net assets of the common fund have fallen for more than 6 months below one quarter of the legal minimum provided for in Article 23 hereafter;

e) in all other cases provided for in the management regulations.

(2) Notice of the event giving rise to liquidation shall be lodged without delay by the management company or the depositary in the file of the common fund with the register of commerce and companies and published in the *Recueil électronique des sociétés et associations,* in accordance with the provisions of Chapter V*bis* of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings and in at least two newspapers with adequate circulation, at least one of which must be a Luxembourg newspaper. Failing this, the deposit and the publication will be arranged by the CSSF at the expense of the common fund.

(3) As soon as the event giving rise to liquidation of the common fund occurs, the issue of units shall be prohibited, on penalty of nullity. The repurchase of units remains possible provided the equal treatment of unitholders can be ensured.

Art. 23

The net assets of a common fund may not be less than one million two hundred and fifty thousand euros (EUR 1,250,000).

This minimum must be reached within a period of six months following the authorisation of the common fund.

A CSSF regulation may increase this minimum amount up to a maximum of two million five hundred thousand euros (EUR 2,500,000).

Art. 24

The management company must inform the CSSF without delay if the net assets of the common fund have fallen below two thirds of the legal minimum. In a case where the net assets of the common fund have fallen below two thirds of the legal minimum, the CSSF may, having regard to the circumstances, compel the management company to put the common fund into liquidation.

The order addressed to the management company by the CSSF to put a common fund into liquidation shall be lodged without delay with the register of commerce and companies in the file of the common fund and published by the management company or the depositary in the *Recueil électronique des sociétés et associations,* in accordance with the provisions of Chapter V*bis* of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings and in at least two newspapers with adequate circulation, at least one of which must be a Luxembourg newspaper. Failing this, the deposit and the publication will be arranged by the CSSF at the expense of the common fund.

Chapter 3 – SICAVs in transferable securities

Art. 25

For the purposes of this Part, SICAVs shall be taken to mean those companies which have adopted the form of a public limited company[9] governed by Luxembourg law,

- whose sole object is to invest their funds in transferable securities and/or other liquid financial assets referred to in Article 41, paragraph 1 in order to spread the investment risks and to ensure for their unitholders the benefit of the result of the management of their assets, and

- whose units are intended to be placed with the public by means of a public or private offer, and

- whose articles of incorporation provide that the amount of the capital shall at all times be equal to the net asset value of the company.

Art. 26

(1) SICAVs shall be subject to the provisions applicable in general to public limited companies, insofar as this Law does not derogate therefrom.

(2) The articles of incorporation of a SICAV and any amendment thereto shall be recorded in a special notarial deed drawn up in French, German or English as the appearing parties may decide. By derogation from the provisions of the Decree of 24 Prairial, year XI, when this deed is in English, the requirement to attach a translation into an official language to that deed, when it is filed with the registration authorities, does not apply. This requirement does not apply either to other deeds which must be recorded in notarial form, such as notarial deeds recording the minutes of meetings of shareholders of a SICAV or of a merger proposal concerning a SICAV.

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9 *société anonyme*

(3) By derogation to Article 73, sub-paragraph 2 of the Law of 10 August 1915 on commercial companies, as amended, SICAVs are not required to send the annual accounts, as well as the report of the approved statutory auditor, the management report and, where applicable, the comments made by the supervisory board to the registered unitholders at the same time as the convening notice to the annual general meeting. The convening notice shall indicate the place and the practical arrangements for providing these documents to the unitholders and shall specify that each unitholder may request that the annual accounts, as well as the report of the approved statutory auditor, the management report and, where applicable, the comments made by the supervisory board are sent to him.

(4) The convening notices to general meetings of unitholders may provide that the quorum and the majority at the general meeting shall be determined according to the units issued and outstanding at midnight (Luxembourg time) on the fifth day prior to the general meeting (referred to as "Record Date"). The rights of a unitholder to attend a general meeting and to exercise a voting right attaching to his units are determined in accordance with the units held by this unitholder at the Record Date.

Art. 27

(1) The minimum capital of a SICAV which has not designated a management company may not be less than three hundred thousand euros (EUR 300,000) at the time of authorisation. The capital of any SICAV including SICAVs which have designated a management company must reach one million two hundred and fifty thousand euros (EUR 1,250,000) within a period of 6 months following the authorisation of the SICAV. A CSSF regulation may raise those minimum amounts up to a respective maximum of six hundred thousand euros (EUR 600,000) and two million five hundred thousand euros (EUR 2,500,000).

In addition, where a SICAV has not designated a management company authorised pursuant to Directive 2009/65/EC:

- the application for authorisation must be accompanied by a programme of operations setting out, at least, the organisational structure of the SICAV;

- the directors of the SICAV shall be of sufficiently good repute and be sufficiently experienced in relation to the type of business carried out by that company. To that end, the name of the directors and of every person succeeding them in office must be communicated forthwith to the CSSF. The conduct of a SICAV's business must be decided by at least two persons meeting these conditions. "Directors" shall mean those persons who, under law or the instruments of incorporation represent the SICAV or who effectively determine the policy of the company;

- moreover, where close links exist between the SICAV and other natural or legal persons, the CSSF shall grant authorisation only if those links do not prevent the effective exercise of its supervisory functions.

The CSSF shall also refuse authorisation if the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the SICAV has close links, or difficulties involved in their enforcement, prevent the effective exercise of its supervisory functions.

SICAVs shall communicate to the CSSF the information it requires.

The applicant shall be informed, within six months of the submission of a complete application, whether or not authorisation has been granted. Reasons shall be given whenever an authorisation is refused.

A SICAV may start business as soon as authorisation has been granted.

For the members of the administrative body, management board and supervisory board of the SICAV, the granting of authorisation implies an obligation to notify the CSSF, spontaneously, in writing and in a complete, coherent and comprehensible manner, of any change regarding substantial information upon which the CSSF based itself to examine the application for authorisation.

The CSSF may withdraw the authorisation issued to a SICAV subject to this part of the Law only where that company:

a) does not make use of the authorisation within twelve months, expressly renounces the authorisation or has ceased the activity covered by this Law for more than six months;

b) has obtained the authorisation by making false statements or by any other irregular means;

c) no longer fulfils the conditions under which authorisation was granted;

d) has seriously and/or systematically infringed the provisions of this Law or of the regulations adopted pursuant thereto;

e) falls within any of the cases where this Law provides for withdrawal.

(2) Articles 110, 111, 111*bis*, 111*ter* and 112 shall apply to SICAVs that have not designated a management company authorised pursuant to Directive 2009/65/EC, provided that the words "management company" shall be construed as "SICAV".

SICAVs may only manage assets of their own portfolio and may not, under any circumstances, receive any mandate to manage assets on behalf of a third party.

(3) SICAVs that have not designated a management company authorised pursuant to Directive 2009/65/EC shall at all times observe applicable prudential rules.

In particular, the CSSF, having regard also to the nature of the SICAV, shall require that the company has sound administrative and accounting procedures, control and safeguard arrangements for electronic data processing and adequate internal control mechanisms including, in particular, rules for personal transactions by its employees or for the holding or management of investments in financial instruments in order to invest its initial capital and ensuring, *inter alia*, that each transaction involving the company may be reconstructed according to its origin, the parties concerned, its nature, and the time when and the place at which it was effected and that the assets of the SICAV are invested according to the instruments of incorporation and the legal provisions in force.

Art. 28

(1) a) Subject to any contrary provisions of its articles of incorporation, the SICAV may issue its units at any time.

b) The SICAV must repurchase its units at the request of the unitholder without prejudice to paragraphs 5 and 6 of this Article.

(2) a) The units shall be issued at a price arrived at by dividing the net asset value of the SICAV by the number of units outstanding; this price may be increased by expenses and commissions, the maximum amounts and procedures for collection of which may be determined by a CSSF regulation.

b) The units shall be redeemed at a price arrived at by dividing the net asset value of the SICAV by the number of units outstanding; this price may be decreased by expenses and commissions, the maximum amounts and procedures for collection of which may be determined by a CSSF regulation.

(3) Units of a SICAV may not be issued unless the equivalent of the net issue price is paid into the assets of the SICAV within the usual time limits. This provision shall not preclude the distribution of bonus units.

(4) The articles of incorporation shall determine the time limits for payments in respect of issues and repurchase and shall specify the principles and methods of valuation of the assets of the SICAV. Unless otherwise provided for in the articles of incorporation, the valuation of the assets of the SICAV shall be based, in the case of securities admitted to official listing on a stock exchange, on the last known stock exchange quotation, unless that quotation is not representative. For securities not so admitted on such a stock exchange and for securities which are admitted on such a stock exchange but for which the latest quotation is not representative, the valuation shall be based on the probable realisation value which must be estimated with care and in good faith.

(5) By way of derogation from paragraph 1, the articles of incorporation shall specify the conditions in which issues and repurchases may be suspended, without prejudice to legal causes. In the event of suspension of issues or repurchases, the SICAV must inform the CSSF without delay and, if it markets its units in other Member States of the European Union, the competent authorities of those states.

In the interests of the unitholders, repurchases may be suspended by the CSSF if the provisions of the laws, regulations or the articles of incorporation concerning the activity and operation of the SICAV are not observed.

(6) The articles of incorporation shall determine the frequency of the calculation of the issue and repurchase price.

(7) The articles of incorporation shall specify the nature of the expenses to be borne by the SICAV.

(8) The units must be fully paid up. They shall have no par value.

(9) A unit shall specify the minimum amount of capital and shall give no indication regarding its par value or the portion of the capital which it represents.

(10) The purchase and sale of assets must be effected at prices conforming to the valuation criteria of paragraph 4.

Art. 29

(1) Variations in the capital shall be effected *ipso jure* and without compliance with measures regarding publication and entry in the register of commerce and companies prescribed for increases and decreases of capital of public limited companies.

(2) Reimbursement to unitholders following a reduction of capital shall not be subject to any restriction other than that provided for in Article 31, paragraph 1.

(3) In the case of issue of new units, pre-emptive rights may not be claimed by existing unitholders unless those rights are expressly provided for in the articles of incorporation.

Art. 30

(1) If the capital of the SICAV falls below two thirds of the minimum capital, the directors or the management board, as the case may be, must submit the question of the dissolution of the SICAV to a general meeting for which no quorum shall be prescribed and which shall decide by a simple majority of the units represented at the meeting.

(2) If the capital of the SICAV falls below one quarter of the minimum capital, the directors or the management board, as the case may be, must submit the question of the dissolution of the SICAV to a general meeting for which no quorum shall be prescribed; dissolution may be

resolved by unitholders holding one quarter of the units at the meeting.

(3) The meeting must be convened so that it is held within a period of forty days as from the ascertainment that the net assets have fallen below two thirds or one quarter of the minimum capital, as the case may be.

Art. 31

(1) Unless otherwise provided for in the articles of incorporation, the net assets of the SICAV may be distributed subject to the limits set out in Article 27.

(2) SICAVs shall not be obliged to create a legal reserve.

(3) SICAVs are not subject to the provisions in respect of payment of interim dividends as set out in Article 72-2 of the Law of 10 August 1915 on commercial companies, as amended.

Art. 32

For companies to which this Chapter applies, the words "public limited company" or "European company (SE)" shall be replaced by the words "investment company with variable capital" or the letters "SICAV", or by the words "European investment company with variable capital"[10] or "SICAV-SE".

Art. 33

(1) SICAVs shall ensure that a single depositary is appointed in accordance with the provisions of this Article and of Articles 34 to 37.

(2) The depositary must either have its registered office in Luxembourg or be established in Luxembourg if its registered office is in another Member State.

(3) The depositary must be a credit institution within the meaning of the amended Law of 5 April 1993 on the financial sector.

(4) The directors of the depositary must be of sufficiently good repute and be sufficiently experienced, also in relation to the type of SICAV concerned. To that end, the identity of the directors and of every person succeeding them in office must be communicated forthwith to the CSSF.

"Directors" shall mean those persons, who under law or the instruments of incorporation represent the depositary or effectively determine the conduct of its activity.

(5) The appointment of the depositary shall be evidenced by a written contract. This contract shall, inter alia, regulate the flow of information deemed to be necessary to allow the depositary to perform its functions for the SICAV for which it has been appointed as depositary, as laid down in this Law and in other relevant laws, regulations and administrative provisions.

(6) The depositary is required to provide the CSSF on request with all the information that the depositary has obtained in the exercise of its missions and which is necessary to enable the CSSF to fulfil its monitoring mission.

In the case of a SICAV having designated a management company whose home Member State is not the same as that of the SICAV, the CSSF shall, without delay, communicate the information received to the competent authorities of the home Member State of the management company.

[10] *société européenne d'investissement à capital variable*

Art. 34

(1) The depositary must:

a) ensure that the sale, issue, repurchase, redemption and cancellation of shares of the SICAV are carried out in accordance with the law and the articles of incorporation of the SICAV;

b) ensure that the value of the shares of the SICAV is calculated in accordance with the law and the articles of incorporation of the SICAV;

c) carry out the instructions of the SICAV or of the management company acting on behalf of the SICAV, unless they conflict with the law or the articles of incorporation of the SICAV;

d) ensure that in transactions involving the assets of the SICAV any consideration is remitted to it within the usual time limits;

e) ensure that the income of the SICAV is applied in accordance with the law or the articles of incorporation.

(2) The depositary shall ensure that the cash flows of the SICAV are properly monitored and, in particular, that all payments made by, or on behalf of, unitholders upon the subscription of shares of the SICAV have been received and that all cash of the SICAV has been booked in cash accounts that are:

a) opened in the name of the SICAV or of the depositary acting on behalf of the SICAV;

b) opened at an entity referred to in points a), b) and c) of Article 18, paragraph 1, of Directive 2006/73/EC; and

c) maintained in accordance with the principles set out in Article 16 of Directive 2006/73/EC.

Where the cash accounts are opened in the name of the depositary acting on behalf of the SICAV, no cash of the entity referred to in point b) of the first sub-paragraph and none of the own cash of the depositary shall be booked on such accounts.

(3) The assets of the SICAV shall be entrusted to the depositary for safekeeping as follows:

a) for financial instruments that may be held in custody, the depositary shall:

i) hold in custody all financial instruments that may be registered in a financial instruments account opened in the depositary's books and all financial instruments that can be physically delivered to the depositary;

ii) ensure that all financial instruments that can be registered in a financial instruments account opened in the depositary's books are registered in the depositary's books within segregated accounts, in accordance with the principles set out in Article 16 of Directive 2006/73/EC, opened in the name of the SICAV, so that they can be clearly identified as belonging to the SICAV in accordance with the applicable law at all times;

b) for the other assets, the depositary shall:

i) verify the ownership by the SICAV of such assets by assessing whether the SICAV holds the ownership based on information or documents provided by the SICAV and, where available, on external evidence;

ii) maintain a record of those assets for which it is satisfied that the SICAV holds the ownership and keep that record up to date.

(4) The depositary shall provide the SICAV, on a regular basis, with a comprehensive inventory of all the assets of the SICAV.

(5) The assets of the SICAV held in custody by the depositary shall not be reused by the depositary, or by any third party to which the custody function has been delegated, for their own account. Reuse comprises any transaction of assets held in custody including, but not limited to, transferring, pledging, selling and lending.

The assets of the SICAV held in custody by the depositary are allowed to be reused only where:

a) the reuse of the assets is executed for the account of the SICAV;

b) the depositary is carrying out the instructions of the SICAV or of the management company on behalf of the SICAV;

c) the reuse is for the benefit of the SICAV and in the interest of the unitholders; and

d) the transaction is covered by high-quality and liquid collateral received by the SICAV under a title transfer arrangement.

The market value of the collateral shall, at all times, amount to at least the market value of the reused assets plus a premium.

(6) In case of insolvency of the depositary and/or of any third party located in Luxembourg to which custody of the assets of the SICAV has been delegated, the assets held in custody shall be unavailable for distribution among, or realisation for the benefit of, creditors of such a depositary and/or such a third party.

Art. 34*bis*

(1) The depositary shall not delegate to third parties the functions referred to in paragraphs 1 and 2 of Article 34.

(2) The depositary may delegate to third parties the functions referred to in paragraph 3 of Article 34 only where:

a) the tasks are not delegated with the intention of avoiding the requirements laid down in this Law;

b) the depositary can demonstrate that there is an objective reason for the delegation;

c) the depositary has exercised all due skill, care and diligence in the selection and the appointment of any third party to whom it intends to delegate parts of its tasks, and continues to exercise all due skill, care and diligence in the periodic review and ongoing monitoring of any third party to which it has delegated parts of its tasks and of the arrangements of the third party in respect of the matters delegated to it.

(3) The functions referred to in paragraph 3 of Article 34 may be delegated by the depositary to a third party only where that third party at all times during the performance of the tasks delegated to it:

a) has structures and expertise that are adequate and proportionate to the nature and complexity of the assets of the SICAV which have been entrusted to it;

b) for custody tasks referred to in point a) of paragraph 3 of Article 34, is subject to:

i) effective prudential regulation, including minimum capital requirements, and supervision in the jurisdiction concerned;

ii) an external periodic audit to ensure that the financial instruments are in its possession;

c) segregates the assets of the clients of the depositary from its own assets and from the assets of the depositary in such a way that they can, at any time, be clearly identified as belonging to the clients of a particular depositary;

d) takes all necessary steps to ensure that in the event of insolvency of the third party, assets of the SICAV held by the third party in custody are unavailable for distribution among, or realisation for the benefit of, creditors of the third party; and

e) complies with the general obligations and prohibitions laid down in paragraph 5 of Article 33, in paragraphs 3 and 5 of Article 34 and in Article 37.

Notwithstanding sub-paragraph 1, point b) i), where the law of a third country requires that certain financial instruments be held in custody by a local entity and no local entities satisfy the delegation requirements laid down in that point, the depositary may delegate its functions to such a local entity only to the extent required by the law of that third country, only for as long as there are no local entities that satisfy the delegation requirements, and only where:

a) the unitholders investing in the relevant SICAV are duly informed, prior to their investment, of the fact that such a delegation is required due to legal constraints in the law of the third country, of the circumstances justifying the delegation and of the risks involved in such a delegation;

b) the SICAV has instructed the depositary to delegate the custody of such financial instruments to such a local entity.

The third party may, in turn, sub-delegate those functions, subject to the same requirements. In such a case, paragraph 2 of Article 35 shall apply *mutatis mutandis* to the relevant parties.

(4) For the purposes of this Article, the provision of services as specified in Directive 98/26/EC by securities settlement systems as designated for the purposes of that Directive or the provision of similar services by third-country securities settlement systems shall not be considered to be a delegation of custody functions.

Art. 35

(1) The depositary shall be liable, to the SICAV and to the unitholders, for the loss by the depositary or a third party to whom the custody of financial instruments held in custody in accordance with point a) of paragraph 3 of Article 34 has been delegated.

In the case of a loss of a financial instrument held in custody, the depositary must return a financial instrument of an identical type or the corresponding amount to the SICAV without undue delay. The depositary shall not be liable if it can prove that the loss has arisen as a result of an external event beyond its reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary.

The depositary is also liable to the SICAV and to the unitholders for all other losses suffered by them as a result of the depositary's negligent or intentional failure to properly fulfil its obligations pursuant to this Law.

(2) The liability of the depositary referred to in paragraph 1 shall not be affected by any delegation referred to in Article 34*bis*.

(3) The liability of the depositary referred to in paragraph 1 shall not be excluded or limited by agreement.

(4) Any agreement that contravenes paragraph 3 shall be void.

(5) Unitholders may invoke the liability of the depositary directly or indirectly through the SICAV provided that this does not lead to a duplication of redress or to unequal treatment of the unitholders.

Art. 36

The duties of the depositary or of the management company in the case of a SICAV having designated a management company, shall cease, respectively, regarding the SICAV:

a) in the case of voluntary withdrawal of the depositary or of its removal by the SICAV; until the replacement of the depositary, which must happen within two months, the depositary must take all necessary steps for the good preservation of the interests of the unitholders;

b) in the case of voluntary withdrawal of the designated management company or of its removal by the SICAV, provided that it is replaced by another management company authorised in accordance with Directive 2009/65/EC;

c) in the case of withdrawal of the designated management company by the SICAV, the SICAV having decided to adopt the status of a self-managed SICAV;

d) where the SICAV, the depositary or the designated management company has been declared bankrupt, has entered into an arrangement with creditors, has obtained a suspension of payment, has been put under court-controlled management or has been the subject of similar proceedings, or has been put into liquidation;

e) where the authorisation of the SICAV, the depositary or the designated management company has been withdrawn by the competent authority;

f) in all other cases provided for in the articles of incorporation.

Art. 37

(1) No company shall act as both SICAV and depositary. No company shall act as both management company and depositary.

(2) In carrying out their respective functions, the SICAV, the management company acting on behalf of the SICAV and the depositary shall act honestly, fairly, professionally, independently and solely in the interest of the SICAV and the unitholders.

A depositary shall not carry out activities with regard to the SICAV or the management company on behalf of the SICAV that may create conflicts of interest between the SICAV, the unitholders, the management company and itself, unless the depositary has functionally and hierarchically separated the performance of its depositary tasks from its other potentially conflicting tasks, and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the unitholders of the SICAV.

Chapter 4 – Other investment companies in transferable securities

Art. 38

For the purposes of this Part I, other investment companies shall be taken to mean companies other than SICAVs and

- whose sole object is to invest their funds in transferable securities and/or other liquid financial assets referred to in Article 41, paragraph 1 in order to spread the investment risks and to

ensure for their unitholders the benefit of the results of the management of their assets, and

- whose units are intended to be placed with the public by means of a public or private offer provided that the words "investment company" appear on all their deeds, announcements, publications, letters and other documents.

Art. 39

Articles 26, 27, 28 with the exception of paragraphs 8 and 9, 30, 33, 34, 34*bis*, 35, 36 and 37 are applicable to investment companies falling within the scope of this Chapter.

Chapter 5 – Investment policy of UCITS

Art. 40

Where a UCITS comprises more than one investment compartment, each compartment shall be regarded as a separate UCITS for the purposes of this Chapter.

Art. 41

(1) The investments of a UCITS must comprise only one or more of the following:

a) transferable securities and money market instruments admitted to or dealt in on a regulated market within the meaning of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments;

b) transferable securities and money market instruments dealt in on another market in a Member State which is regulated, operates regularly and is recognised and open to the public;

c) transferable securities and money market instruments admitted to official listing on a stock exchange in a non-Member State of the European Union or dealt in on another market in a non-Member State of the European Union which is regulated, operates regularly and is recognised and open to the public provided that the choice of the stock exchange or market has been provided for in the management regulations or the instruments of incorporation of the UCITS;

d) recently issued transferable securities and money market instruments, provided that:

- the terms of issue include an undertaking that application will be made for admission to official listing on a stock exchange or to another regulated market which operates regularly and is recognised and open to the public, provided that the choice of the stock exchange or the market has been provided for in the management regulations or the instruments of incorporation of the UCITS;

- the admission is secured within one year of issue;

e) units of UCITS authorised according to Directive 2009/65/EC and/or other UCIs within the meaning of Article 1, paragraph 2, points a) and b) of Directive 2009/65/EC, whether or not established in a Member State provided that:

- such other UCIs are authorised under laws which provide that they are subject to supervision considered by the CSSF to be equivalent to that laid down in Community law, and that cooperation between authorities is sufficiently ensured;

- the level of protection for unitholders in the other UCIs is equivalent to that provided for unitholders in a UCITS, and in particular that the rules on assets segregation, borrowing, lending, and uncovered sales of transferable

securities and money market instruments are equivalent to the requirements of Directive 2009/65/EC;

- the business of the other UCIs is reported in half-yearly and annual reports to enable an assessment of the assets and liabilities, income and operations over the reporting period;

- no more than 10% of the assets of the UCITS or of the other UCIs, whose acquisition is contemplated, can, according to their management regulations or instruments of incorporation, be invested in aggregate in units of other UCITS or other UCIs;

f) deposits with a credit institution which are repayable on demand or have the right to be withdrawn, and maturing in no more than 12 months, provided that the credit institution has its registered office in a Member State or, if the registered office of the credit institution is situated in a third country, provided that it is subject to prudential rules considered by the CSSF as equivalent to those laid down in Community law;

g) financial derivative instruments, including equivalent cash-settled instruments, dealt in on a regulated market referred to in points a), b) and c) above or financial derivative instruments dealt in over-the-counter ("OTC derivatives"), provided that

- the underlying consists of instruments covered by Article 41, paragraph 1, financial indices, interest rates, foreign exchange rates or currencies, in which the UCITS may invest according to its investment objectives as stated in the UCITS management regulations or incorporation of instruments,

- the counterparties to OTC derivative transactions are institutions subject to prudential supervision, and belonging to the categories approved by the CSSF, and

- the OTC derivatives are subject to reliable and verifiable valuation on a daily basis and can be sold, liquidated or closed by an offsetting transaction at any time at their fair value at the UCITS initiative;

h) money market instruments other than those dealt in on a regulated market and which fall under Article 1, if the issue or the issuer of such instruments is itself regulated for the purpose of protecting investors and savings, and provided that these investments are:

- issued or guaranteed by a central, regional or local authority or by a central bank of a Member State, the European Central Bank, the European Union or the European Investment Bank, a third country or, in the case of a Federal State, by one of the members making up the federation, or by a public international body to which one or more Member States belong, or

- issued by an undertaking any securities of which are dealt in on regulated markets referred to in points a), b) or c) above, or

- issued or guaranteed by an establishment subject to prudential supervision, in accordance with criteria defined by EU law, or by an establishment which is subject to and complies with prudential rules considered by the CSSF to be at least as stringent as those laid down by Community law; or

- issued by other bodies belonging to the categories approved by the CSSF provided that investments in such instruments are subject to investor protection equivalent to that laid down in the first, the second or the third indent and provided that the issuer is a company whose capital and reserves amount to at least ten million euros (EUR 10,000,000) and which presents and publishes its annual accounts in accordance with the fourth Directive

78/660/EEC, is an entity which, within a group of companies which includes one or several listed companies, is dedicated to the financing of the group or is an entity which is dedicated to the financing of securitisation vehicles which benefit from a banking liquidity line.

(2) A UCITS shall not, however:

a) invest more than 10% of its assets in transferable securities or money market instruments other than those referred to in paragraph 1;

b) acquire either precious metals or certificates representing them.

A UCITS may hold ancillary liquid assets.

(3) An investment company may acquire movable and immovable property which is essential for the direct pursuit of its business.

Art. 42

(1) A management company having its registered office in Luxembourg shall employ a risk-management process which enables it to monitor and measure at any time the risk of the positions and their contribution to the overall risk profile of the portfolio of a UCITS. In particular, it shall not solely or mechanistically rely on the credit ratings issued by credit rating agencies as defined in Article 3, paragraph 1, point b) of Regulation (EC) No. 1060/2009 of 16 September 2009 on credit rating agencies for assessing the creditworthiness of the UCITS' assets.

It shall employ a process for accurate and independent assessment of the value of OTC derivatives. It shall communicate to the CSSF regularly, in accordance with the detailed rules the latter shall define, with regard to the types of derivative instruments, the underlying risks, the quantitative limits and the methods which are chosen in order to estimate the risks associated with transactions in derivative instruments regarding each managed UCITS.

An investment company having its registered office in Luxembourg is subject to the same obligation.

(2) A UCITS is also authorised to employ techniques and instruments relating to transferable securities and money market instruments under the conditions and within the limits laid down by the CSSF provided that such techniques and instruments are used for the purpose of efficient portfolio management. When these operations concern the use of derivative instruments, these conditions and limits shall conform to the provisions laid down in this Law.

Under no circumstances shall these operations cause the UCITS to diverge from its investment objectives as laid down in the UCITS management regulations, its instruments of incorporation or prospectus.

(3) A UCITS shall ensure that its global exposure relating to derivative instruments does not exceed the total net value of its portfolio.

The exposure is calculated taking into account the current value of the underlying assets, the counterparty risk, future market movements and the time available to liquidate the positions. This shall also apply to the following sub-paragraphs.

A UCITS may invest, as a part of its investment policy and within the limits laid down in Article 43, paragraph 5 in financial derivative instruments, provided that the exposure to the underlying assets does not exceed in aggregate the investment limits laid down in Article 43. When a UCITS invests in index-based financial derivative instruments, those investments are not required to be combined for the purposes of the limits laid down in Article 43.

When a transferable security or a money market instrument embeds a derivative instrument, the derivative instrument shall be taken into account when complying with the requirements of this Article.

(3*bis*) The CSSF shall, taking into account the nature, scale and complexity of the UCITS' activities, monitor the adequacy of the credit assessment processes of the management companies or investment companies having their registered office in Luxembourg, assess the use of references to credit ratings, as referred to in paragraph 1, second sentence, in the UCITS' investment policies and encourage where appropriate mitigation of the impact of such references, with a view to reducing sole and mechanistic reliance on such credit ratings.

Art. 43

(1) A UCITS may invest no more than 10% of its assets in transferable securities or money market instruments issued by the same body. A UCITS may not invest more than 20% of its assets in deposits made with the same body. The risk exposure to a counterparty of the UCITS in an OTC derivative transaction may not exceed 10% of its assets when the counterparty is a credit institution referred to in Article 41, paragraph 1, point f), or 5% of its assets in other cases.

(2) The total value of the transferable securities and money market instruments held by a UCITS in the issuing bodies in each of which it invests more than 5% of its assets shall not exceed 40% of the value of its assets. This limitation does not apply to deposits and OTC derivative transactions made with financial institutions subject to prudential supervision.

Notwithstanding the individual limits laid down in paragraph 1, a UCITS shall not combine, where this would lead to investment of more than 20% of its assets in a single body, any of the following:

- investments in transferable securities or money market instruments issued by that body,

- deposits made with that body, or

- exposures arising from OTC derivative transactions undertaken with that body.

(3) The limit laid down in the first sentence of paragraph 1 may be of a maximum of 35% if the transferable securities or money market instruments are issued or guaranteed by a Member State, by its public local authorities, by a third country or by public international bodies of which one or more Member States belong.

(4) The limit laid down in the first sentence of paragraph 1 may be of a maximum of 25% for certain bonds where they are issued by a credit institution which has its registered office in a Member State and is subject by law, to special public supervision designed to protect bondholders. In particular, sums deriving from the issue of those bonds must be invested in accordance with the law in assets which, during the whole period of validity of the bonds, are capable of covering claims attaching to the bonds and which, in case of bankruptcy of the issuer, would be used on a priority basis for the reimbursement of the principal and payment of the accrued interest.

Where a UCITS invests more than 5% of its assets in the bonds referred to in the first sub-paragraph which are issued by a single issuer, the total value of such investments may not exceed 80% of the value of the assets of the UCITS.

The CSSF shall send to the European Securities and Markets Authority the list of the categories of bonds referred to in the first sub-paragraph and of the categories of issuers authorised, in accordance with the law and the provisions concerning the supervision mentioned in that sub-paragraph, to issue bonds complying with the criteria set out in this Article.

(5) The transferable securities and money market instruments referred to in paragraphs 3 and 4 shall not be taken into account for the purpose of applying the limit of 40% referred to in paragraph 2.

The limits set out in paragraphs 1, 2, 3 and 4 shall not be combined; thus investments in transferable securities or money market instruments issued by the same body or in deposits or derivative instruments made with this body carried out in accordance with paragraphs 1, 2, 3 and 4 shall not exceed in total 35% of the assets of the UCITS.

Companies which are included in the same group for the purposes of consolidated accounts, as defined in accordance with Directive 83/349/EEC or in accordance with recognised international accounting rules, shall be regarded as a single body for the purpose of calculating the limits contained in this Article.

A UCITS may cumulatively invest up to a limit of 20% of its assets in transferable securities and money market instruments within the same group.

Art. 44

(1) Without prejudice to the limits laid down in Article 48, the limits laid down in Article 43 are raised to a maximum of 20% for investments in shares and/or debt securities issued by the same body when, according to the management regulations or instruments of incorporation of the UCITS, the aim of the UCITS investment policy is to replicate the composition of a certain stock or debt securities index which is recognised by the CSSF, on the following basis:

- the composition of the index is sufficiently diversified;
- the index represents an adequate benchmark for the market to which it refers;
- it is published in an appropriate manner.

(2) The limit laid down in paragraph 1 is raised to 35% where that proves to be justified by exceptional market conditions in particular in regulated markets where certain transferable securities or money market instruments are highly dominant. The investment up to this limit is only permitted for a single issuer.

Art. 45

(1) By way of derogation from Article 43, the CSSF may authorise a UCITS to invest in accordance with the principle of risk-spreading up to 100% of its assets in different transferable securities and money market instruments issued or guaranteed by a Member State, one or more of its local authorities, a non-Member State of the European Union or public international body to which one or more Member States belong.

The CSSF shall grant such an authorisation only if it considers that unitholders in the UCITS have protection equivalent to that of unitholders of UCITS complying with the limits laid down in Articles 43 and 44.

These UCITS shall hold securities from at least six different issues, but securities from any single issue shall not account for more than 30% of its total assets.

(2) The UCITS referred to in paragraph 1 must make express mention, in their management regulations or instruments of incorporation, of the States, local public authorities or public international bodies issuing or guaranteeing securities in which they intend to invest more than 35% of their assets.

(3) In addition, the UCITS referred to in paragraph 1 must include a prominent statement in their prospectuses or marketing communications, drawing attention to such authorisation and indicating the States, local public authorities and public international bodies in the securities of which they intend to invest or have invested more than 35% of their assets.

Art. 46

(1) A UCITS may acquire the units of UCITS and/or other UCIs referred to in Article 41, paragraph 1, point e), provided that no more than 20% of its assets are invested in the units of a single UCITS or other UCI.

For the purpose of the application of this investment limit, each compartment of a UCI with multiple compartments is to be considered as a separate issuer provided that the principle of segregation of the obligations of the various compartments *vis-à-vis* third parties is ensured.

(2) Investments made in units of UCIs other than UCITS may not in aggregate exceed 30% of the assets of a UCITS.

When a UCITS has acquired units of UCITS and/or other UCIs, the assets of the respective UCITS or other UCIs do not have to be combined for the purposes of the limits laid down in Article 43.

(3) Where a UCITS invests in the units of other UCITS and/or other UCIs that are managed, directly or by delegation, by the same management company or by any other company with which the management company is linked by common management or control, or by a substantial direct or indirect holding, that management company or other company may not charge subscription or redemption fees on account of the UCITS investment in the units of such other UCITS and/or other UCIs.

A UCITS that invests a substantial proportion of its assets in other UCITS and/or other UCIs shall disclose in its prospectus the maximum level of the management fees that may be charged both to the UCITS itself and to the other UCITS and/or other UCIs in which it intends to invest. In its annual report it shall indicate the maximum proportion of management fees charged both to the UCITS itself and to the UCITS and/or other UCIs in which it invests.

Art. 47

(1) The prospectus shall indicate in which categories of assets a UCITS is authorised to invest. It shall mention if transactions in financial derivative instruments are authorised; in this event, it must include a prominent statement indicating if these operations may be carried out for the purpose of hedging or with the aim of meeting investment goals, and the possible outcome of the use of financial derivative instruments on the risk profile.

(2) When a UCITS invests principally in any category of assets defined in Article 41 other than transferable securities and money market instruments or replicates a stock or debt securities index in accordance with Article 44, its prospectus and, where necessary, marketing communications must include a prominent statement drawing attention to its investment policy.

(3) When the net asset value of a UCITS is likely to have a high volatility due to its portfolio composition or the portfolio management techniques that may be used, its prospectus and, where necessary, marketing communications must include a prominent statement drawing attention to this characteristic of the UCITS.

(4) Upon request of an investor, the management company must also provide supplementary information relating to the quantitative limits that apply in the risk management of the UCITS, to the methods chosen to this end and to the recent evolution of the main risks and yields of the categories of instruments.

Art. 48

(1) An investment company or a management company acting in connection with all of the common funds which it manages and which fall within the scope of Part I or of Directive 2009/65/EC, may not acquire any shares carrying voting rights which would enable it to exercise significant influence over the management of an issuing body.

(2) Moreover, a UCITS may acquire no more than:

- 10% of the non-voting shares of the same issuer;

- 10% of the debt securities of the same issuer;

- 25% of the units of the same UCITS or other UCI within the meaning of Article 2, paragraph 2;

- 10% of the money market instruments of any single issuer.

The limits laid down in the second, third and fourth indents may be disregarded at the time of acquisition if at that time the gross amount of bonds or of the money market instruments, or the net amount of the instruments in issue cannot be calculated.

(3) Paragraphs 1 and 2 are waived as regards:

a) transferable securities and money market instruments issued or guaranteed by a Member State or its local authorities;

b) transferable securities and money market instruments issued or guaranteed by a non-Member State of the European Union;

c) transferable securities and money market instruments issued by public international bodies of which one or more Member States of the European Union are members;

d) shares held by UCITS in the capital of a company incorporated in a third country of the European Union which invests its assets mainly in the securities of issuing bodies having their registered office in that State, where under the legislation of that State, such a holding represents the only way in which the UCITS can invest in the securities of issuing bodies of that State. This derogation, however, shall apply only if in its investment policy the company from the third country of the European Union complies with the limits laid down in Articles 43 and 46 and Article 48, paragraphs 1 and 2. Where the limits set in Articles 43 and 46 are exceeded, Article 49 shall apply *mutatis mutandis*;

e) shares held by one or more investment companies in the capital of subsidiary companies which, carry on the business of management, advice or marketing in the country where the subsidiary is established, in regard to the repurchase of units at the request of unitholders exclusively on its or their behalf.

Art. 49

(1) UCITS need not comply with the limits laid down in this Chapter when exercising subscription rights attaching to transferable securities or money market instruments which form part of their assets.

While ensuring observance of the principle of risk-spreading, newly authorised UCITS may derogate from Articles 43, 44, 45 and 46 for six months following the date of their authorisation.

(2) If the limits referred to in paragraph 1 are exceeded for reasons beyond the control of the UCITS or as a result of the exercise of subscription rights, it must adopt as a priority objective for its sales transactions the remedying of that situation, taking due account of the interests of its unitholders.

Art. 50

(1) Neither may borrow:

- an investment company, nor
- a management company or depositary acting on behalf of a common fund.

However, a UCITS may acquire foreign currency by means of back-to-back loans.

(2) By way of derogation from paragraph 1, UCITS may borrow provided that such a borrowing is:

a) on a temporary basis and represents:

- in the case of investment companies, no more than 10% of their assets, or
- in the case of common funds, no more than 10% of the value of the fund, or

b) to enable the acquisition of immovable property essential for the direct pursuit of its business and represents, in the case of an investment company, no more than 10% of its assets.

Where a UCITS is authorised to borrow under points a) and b), that borrowing shall not exceed 15% of its assets in total.

Art. 51

(1) Without prejudice to the application of Articles 41 and 42, neither may grant loans to or act as guarantor for third parties

- an investment company, nor
- a management company or depositary acting on behalf of common fund.

(2) Paragraph 1 shall not prevent such undertakings from acquiring transferable securities, money market instruments or other financial instruments referred to in Article 41, paragraph 1, points e), g) and h) which are not fully paid.

Art. 52

Neither may carry out uncovered sales of transferable securities, money market instruments or other financial instruments referred to in Article 41, paragraph 1, points e), g) and h)

- an investment company, nor
- a management company or depositary acting on behalf of a common fund.

Chapter 6 – UCITS established in Luxembourg which market their units in other Member States

Art. 53

A UCITS which markets its units in another Member State shall, in accordance with the laws, regulations and administrative provisions in force in the Member State where its units are marketed, take the measures necessary to ensure that facilities are available in that Member State for making payments to unitholders, repurchasing or redeeming units and making available the information which UCITS are required to provide.

Art. 54

(1) A UCITS which proposes to market its units in another Member State, shall first submit a notification letter to the CSSF.

The notification letter shall include information on arrangements made for marketing units of the UCITS in the host Member State, including, where relevant, in respect of unit classes. In the context of Article 113, it shall specify in particular that the UCITS is marketed by the management company that manages the UCITS.

(2) A UCITS shall enclose with the notification letter, as referred to in paragraph 1, the latest version of the following documents:

a) its management regulations or its instruments of incorporation, its prospectus and, where appropriate, its latest annual report and any subsequent half-yearly report translated in accordance with the provisions of Article 55, paragraph 1, points c) and d); and

b) its key investor information referred to in Article 159, translated in accordance with Article 55, paragraph 1, points b) and d).

(3) The CSSF shall verify whether the documentation submitted by the UCITS in accordance with paragraphs 1 and 2 is complete.

The CSSF shall transmit the complete documentation referred to in paragraphs 1 and 2 to the competent authorities of the Member State in which the UCITS proposes to market its units, no later than ten working days of the date of receipt of the notification letter accompanied by the complete documentation provided for in paragraph 2. The CSSF shall enclose with the documentation an attestation that the UCITS fulfils the conditions imposed by Directive 2009/65/EC.

Upon the transmission of the documentation, the CSSF shall immediately notify the UCITS of the transmission. The UCITS may access the market of the UCITS host Member State as from the date of that notification.

The UCITS must communicate to the competent authorities of the UCITS host Member State any amendments made to the documents referred to in paragraph 2 and shall indicate where those documents can be obtained in electronic form.

(4) In the event of a change in the information regarding the arrangements made for marketing communicated in the notification letter in accordance with paragraph 1, or a change regarding unit classes to be marketed, the UCITS shall give written notice thereof to the competent authorities of the host Member State before implementing the change.

Art. 55

(1) Where a UCITS markets its units in another Member State, it shall provide to investors within the territory of that Member State all information and documents which it is required to provide to investors in Luxembourg in accordance with Chapter 21.

Such information and documents shall be provided to investors in compliance with the following provisions:

a) without prejudice to the provisions of Chapter 21, such information or documents shall be provided to investors in the way prescribed by the laws, regulations or administrative provisions of the UCITS host Member State;

b) key investor information referred to in Article 159 shall be translated into the official language, or one of the official languages, of the UCITS host Member State or into a language approved by the competent authorities of that Member State;

c) information and documents other than key investor information referred to in Article 159 shall be translated, at the choice of the UCITS, into the official language, or one of the official languages, of the UCITS host Member State, into a language approved by the competent authorities of that Member State or into a language customary in the sphere of international finance; and

d) translations of information and documents under points b) and c) shall be produced under the responsibility of the UCITS and shall faithfully reflect the content of the original information.

(2) The requirements set out in paragraph 1 shall also be applicable to any changes to the information and documents referred to therein.

(3) According to Article 157, the frequency of the publication of the issue, sale, repurchase or redemption price of units of UCITS shall be subject to the current laws, regulations and administrative provisions of Luxembourg.

Art. 56

For the purpose of pursuing its activities, a UCITS may use the same reference to its legal form such as "investment company" or "common fund" in its designation in a UCITS host Member State as it uses in Luxembourg.

Art. 57

For the purposes of this Chapter, the term "UCITS" refers also to investment compartments of a UCITS.

Art. 58

The provisions of Articles 53 to 57 are also applicable, within the limits provided by the Agreement on the European Economic Area and the instruments relating thereto, where a UCITS situated in Luxembourg markets its units on the territory of a State other than a Member State which is a party to that Agreement.

Chapter 7 – UCITS established in other Member States which market their units in Luxembourg

Art. 59

A UCITS established in another Member State which markets its units in Luxembourg must appoint a credit institution to ensure that facilities are available in Luxembourg for making payments to unitholders and repurchasing or redeeming units.

The UCITS must take the necessary measures to ensure that the information which it is obliged to provide is made available to unitholders in Luxembourg.

Art. 60

(1) If a UCITS established in another Member State proposes to market its units in Luxembourg, the CSSF will receive from the competent authorities of the UCITS home Member State the documentation referred to in Article 93, paragraphs 1 and 2 of Directive 2009/65/EC as well as an attestation certifying that the UCITS fulfils the conditions imposed by Directive 2009/65/EC.

Upon notification to the UCITS of the transmission to the CSSF referred to in this paragraph by the competent authorities of the UCITS home Member State, the UCITS can have access to the Luxembourg market as from the date of this notification.

(2) In the event of a change in the information relating to the arrangements made for marketing communicated in the notification letter in accordance with paragraph 1, or a change regarding unit classes to be marketed, the UCITS shall give written notice thereof to the CSSF before implementing the change.

Art. 61

(1) If a UCITS established in another Member State markets its units in Luxembourg, it must provide investors in Luxembourg with all information and documents that it is required to provide in its home Member State in accordance with Chapter IX of Directive 2009/65/EC.

Such information and documents shall be provided to investors in compliance with the following provisions:

a) without prejudice to the provisions of Chapter IX of Directive 2009/65/EC, such information or documents shall be provided to investors in the way prescribed by the current laws, regulations or administrative provisions in Luxembourg;

b) key investor information referred to in Article 78 of Directive 2009/65/EC, as well as information and documents other than key investor information referred to in Article 78 of Directive 2009/65/EC, shall be translated into Luxembourgish, French, German or English;

c) translations of information and documents under point b) shall be produced under the responsibility of the UCITS and shall faithfully reflect the content of the original information.

(2) The requirements set out in paragraph 1 shall also be applicable to any changes to the information and documents referred to therein.

(3) The frequency of the publication of the issue, sale, repurchase or redemption price of units of UCITS according to Article 76 of Directive 2009/65/EC shall be subject to the current laws, regulations and administrative provisions of UCITS home Member State.

Art. 62

For the purpose of pursuing its activities, a UCITS may use the same reference to its legal form such as "investment company" or "common fund" in its designation in Luxembourg as it uses in its home Member State.

Art. 63

For the purposes of this Chapter, the term "UCITS" also refers to investment compartments of a UCITS.

Art. 64

The provisions of Articles 59 to 63 are also applicable, within the limits provided by the Agreement on the European Economic Area and the instruments relating thereto, where a UCITS established in a State other than a Member State, which is a party to that Agreement, markets its units in Luxembourg.

Chapter 8 – Mergers of UCITS

A. – Principle, authorisation and approval

Art. 65

For the purposes of this Chapter, the term "UCITS" also refers to investment compartments of a UCITS.

Art. 66

(1) Subject to the conditions set out in this Chapter and irrespective of the manner in which UCITS are constituted under Article 2, paragraph 3, a UCITS established in Luxembourg may, either as a merging UCITS or as a receiving UCITS, be subject to cross-border and domestic mergers as defined in Article 1, points 21 and 22 in accordance with one or more of the merger techniques provided for in Article 1, point 20.

(2) Mergers between UCITS established in Luxembourg where none of the UCITS concerned has been notified in accordance with Article 93 of Directive 2009/65/EC are also covered by this Chapter.

(3) The provisions of Section XIV of the amended Law of 10 August 1915 on commercial companies, as amended, on mergers are not applicable to mergers of UCITS.

(4) Without prejudice to the following sub-paragraph, the instruments of incorporation of a UCITS established in corporate form in Luxembourg must foresee who of the meeting of unitholders or the board of directors or the management board, where applicable, is competent to decide on the effective date of the merger with another UCITS. For UCITS having the legal form of a common fund established in Luxembourg, the management company of these UCITS is, unless otherwise provided in the management regulations, competent to decide on the effective date of a merger with another UCITS. Where the management regulations or the instruments of incorporation provide for the approval by a meeting of unitholders, these documents must provide for the quorum and majority requirements applicable save that with respect to the approval of the common draft terms of the merger by the unitholders, such an approval must be adopted by simple majority at least, without however requiring more than 75% of the votes cast by the unitholders present or represented at the meeting.

In the absence of specific provisions in the management regulations or the instruments of incorporation, any merger must be approved by the management company for merging UCITS having the legal form of a common fund or by the meeting of unitholders deciding by simple majority of the votes cast by unitholders present or represented at the meeting for the merging UCITS in corporate form.

For any merger where the merging UCITS is an investment company which ceases to exist, the effective date of the merger must be decided by a meeting of the unitholders of the merging UCITS deciding in accordance with the quorum and majority requirements provided in the articles of incorporation, it being understood that the provisions of this paragraph apply. For any merging investment company which ceases to exist, the effective date of the merger must be recorded by notarial deed.

For any merger where the merging UCITS is a common fund which ceases to exist, the effective date of the merger must be decided by the management company of this UCITS, unless otherwise provided in the management regulations. For any merging common fund

which ceases to exist, the decision regarding the effective date of the merger must be deposited with the register of commerce and companies and published in the *Recueil électronique des sociétés et associations* by way of a notice of the deposit of this decision with the register of commerce and companies, in accordance with the provisions of the amended Law of 10 August 1915 on commercial companies.

Insofar as a merger requires the approval of the unitholders pursuant to the provisions above, only the approval of the unitholders of the compartment(s) concerned by the merger shall be required, unless otherwise provided in the management regulations or the instruments of incorporation of the UCITS.

The practical terms of merger procedures for Luxembourg UCITS concerned by a merger may be laid down by means of a CSSF regulation. Mergers provided for in Article 1, point 20 c) shall be carried out in accordance with the terms and conditions provided for in this Chapter.

Where the receiving UCITS and the merging UCITS are established in Luxembourg, the provisions of this Chapter as to the intervention of the competent authorities of another Member State shall not apply.

Art. 67

(1) Where the merging UCITS is established in Luxembourg, a merger is subject to prior authorisation by the CSSF.

(2) The merging UCITS shall provide the following information to the CSSF:

a) the common draft terms of the proposed merger duly approved by the merging UCITS and the receiving UCITS;

b) an up-to-date version of the prospectus and the key investor information, referred to in Article 78 of Directive 2009/65/EC, of the receiving UCITS, if it is established in another Member State;

c) a statement by each of the depositaries of the merging and the receiving UCITS confirming that, in accordance with Article 70, they have verified compliance of the particulars set out in Article 69, paragraph 1, points a), f) and g) with the requirements of this Law and the management regulations or the instruments of incorporation of their respective UCITS. In the case where the receiving UCITS is established in another Member State, this statement issued by the depositary of the receiving UCITS confirms that, in accordance with Article 41 of Directive 2009/65/EC, compliance of the particulars set out in Article 40, paragraph 1 points a), f) and g) with the requirements of Directive 2009/65/EC and the management regulations or the instruments of incorporation of the receiving UCITS has been verified; and

d) the information on the proposed merger that the merging and the receiving UCITS intend to provide to their respective unitholders.

Such information shall be provided to the CSSF in either Luxembourgish, French, German or English.

(3) If it considers that the file is not complete, the CSSF shall request additional information within a maximum of ten working days of receiving the information referred to in paragraph 2.

(4) (a) Where the receiving UCITS is not established in Luxembourg and once the file is complete, the CSSF shall immediately transmit copies of the information referred to in paragraph 2 to the competent authorities of the receiving UCITS home Member State. The CSSF and the competent authorities of the receiving UCITS home Member State shall, respectively, consider the potential impact of the proposed merger on

unitholders of the merging and the receiving UCITS to assess whether appropriate information is being provided to unitholders.

If the CSSF considers it necessary, it may require, in writing, that the information to unitholders of the merging UCITS be clarified.

If the competent authorities of the receiving UCITS home Member State consider it necessary, they may require, in writing, and no later than fifteen working days of receipt of the copies of the complete information referred to in paragraph 2, that the receiving UCITS modifies the information to be provided to its unitholders.

In such a case, the competent authorities of the receiving UCITS home Member State shall send an indication of their dissatisfaction to the CSSF. They shall inform the CSSF whether they are satisfied with the modified information to be provided to the unitholders of the receiving UCITS within twenty working days of being notified thereof.

(b) Where the receiving UCITS is established in Luxembourg and insofar as the file is complete, the CSSF shall consider the potential impact of the proposed merger on the unitholders of the merging and the receiving UCITS to assess whether appropriate information is being provided to unitholders. If the CSSF considers it necessary, it may require, in writing, (i) that the information to unitholders of the merging UCITS be clarified and (ii) no later than fifteen working days of receipt of the copies of the complete information referred to in paragraph 2, that the receiving UCITS modifies the information to be provided to its unitholders.

(5) The CSSF shall inform the merging UCITS, within twenty working days of submission of the complete information, in accordance with paragraph 2, whether or not the merger has been authorised.

(6) Where the receiving UCITS is not established in Luxembourg and in the cases where:

a) the proposed merger complies with all of the requirements of Articles 67, 69, 70 and 71; and

b) the receiving UCITS has been notified, in accordance with Article 60, to market its units in Luxembourg and in all Member States where the merging UCITS is either authorised or has been notified to market its units in accordance with Article 60; and

c) the CSSF and the competent authorities of the receiving UCITS home Member State are satisfied with the proposed information to be provided to unitholders, or no indication of dissatisfaction from the competent authorities of the receiving UCITS home Member State has been received under the fourth sub-paragraph of paragraph 4 (a),

the CSSF shall authorise the proposed merger if these conditions are met. The CSSF shall also inform the competent authorities of the receiving UCITS home Member State of its decision.

Where the receiving UCITS is also established in Luxembourg and in the cases where:

a) the proposed merger complies with all of the requirements of Articles 67, 69, 70 and 71; and

b) the receiving UCITS has been notified, in accordance with Article 60, to market its units in all Member States where the merging UCITS is either authorised or has been notified to market its units in accordance with Article 60; and

c) the CSSF is satisfied with the proposed information to be provided to unitholders of the merging and receiving UCITS,

the CSSF shall authorise the proposed merger if these conditions are met.

Art. 68

(1) Where the receiving UCITS is established in Luxembourg and the merging UCITS is established in another Member State, the CSSF must receive copies of the information referred to in Article 67 (2) a), c) and d) from the competent authorities of this other Member State.

(2) The CSSF and the competent authorities of the merging UCITS home Member State shall, respectively, consider the potential impact of the proposed merger on unitholders of the merging and the receiving UCITS to assess whether appropriate information is being provided to unitholders.

If the CSSF considers it necessary, it may require, in writing, and no later than fifteen working days of receipt of the copies of the complete information referred to in paragraph 1, that the receiving UCITS modifies the information to be provided to its unitholders.

The CSSF shall inform the competent authorities of the merging UCITS home Member State within twenty working days of being notified thereof whether it is satisfied with the modified information to be provided to the unitholders of the receiving UCITS.

(3) While ensuring observance of the principle of risk-spreading, the receiving UCITS is allowed to derogate from Articles 43, 44, 45 and 46 for six months following the effective date of the merger.

Art. 69

(1) The merging and the receiving UCITS must draw up common draft terms of merger.

The common draft terms of merger shall set out the following particulars:

a) an identification of the type of merger and of the UCITS involved;

b) the background to and rationale for the proposed merger;

c) the expected impact of the proposed merger on the unitholders of both the merging and the receiving UCITS;

d) the criteria adopted for valuation of the assets and, where applicable, the liabilities on the date for calculating the exchange ratio as referred to in Article 75, paragraph 1;

e) the calculation method of the exchange ratio;

f) the planned effective date of the merger;

g) the rules applicable to the transfer of assets and the exchange of units, respectively; and

h) in the case of a merger pursuant to Article 1, point 20 b) and, and as the case may be, Article 1, point 20 c) or as the case may be Article 2, paragraph 1, point p) ii) and, as the case may be, Article 2, paragraph 1, point p) iii) of Directive 2009/65/EC, the management regulations or the instruments of incorporation of the newly constituted receiving UCITS.

(2) The merging and receiving UCITS may decide to include further items in the common draft terms of merger.

B. – Third-party control, information of unitholders and other rights of unitholders

Art. 70

The depositaries of the merging and of the receiving UCITS, insofar as they are established in Luxembourg, must verify the conformity of the particulars set out in Article 69, paragraph 1, points a), f) and g) with the requirements of this Law and with the management regulations or the instruments of incorporation of their respective UCITS.

Art. 71

(1) The merging UCITS established in Luxembourg shall entrust either an approved statutory auditor or, as the case may be, an independent auditor to validate the following:

a) the criteria adopted for valuation of the assets and, as the case may be, the liabilities on the date for calculating the exchange ratio, as referred to in Article 75, paragraph 1;

b) where applicable, the cash payment per unit; and

c) the calculation method of the exchange ratio as well as the actual exchange ratio determined at the date for calculating that ratio, as referred to in Article 75, paragraph 1.

(2) The approved statutory auditor or the independent auditor of the merging UCITS or the approved statutory auditor or the independent auditor of the receiving UCITS shall be considered approved statutory auditors, or, independent auditors for the purposes of paragraph 1.

(3) A copy of the reports of the approved statutory auditor or, as the case may be, the independent auditor shall be made available on request and free of charge to the unitholders of both the merging UCITS and the receiving UCITS and to their respective competent authorities.

Art. 72

(1) Where merging and/or receiving UCITS are established in Luxembourg, each shall provide appropriate and accurate information on the proposed merger to their respective unitholders so as to enable them to make an informed judgement of the impact of the merger on their investment.

(2) This information shall be provided to unitholders of the merging and of the receiving UCITS established in Luxembourg only after the CSSF has authorised the proposed merger under Article 67.

This information shall be provided at least thirty days before the last date for requesting repurchase or redemption or, as the case may be, conversion without additional charge under Article 73, paragraph 1.

(3) The information to be provided to unitholders of the merging UCITS and/or of the receiving UCITS established in Luxembourg shall include appropriate and accurate information on the proposed merger such as to enable them to take an informed decision on the possible impact of the merger on their investment and to exercise their rights under Articles 66, paragraph 4 and 73.

It shall include the following:

a) the background to and the rationale for the proposed merger;

b) the possible impact of the proposed merger on unitholders, including but not limited to any material differences in respect of investment policy and strategy, costs, expected outcome, periodic reporting, possible dilution in performance, and, where relevant, a prominent warning to investors that their tax treatment may be changed following the merger;

c) any specific rights unitholders have in relation to the proposed merger, including but not limited to the right to obtain additional information, the right to obtain or request a copy of the report of the approved statutory auditor or the independent auditor or the depositary (if applicable in the receiving or merging UCITS home Member State) and the right to request the repurchase or redemption or, as the case may be, the conversion of their units without charge as specified in Article 73, paragraph 1 and the last date for exercising that right;

d) the relevant procedural aspects and the planned effective date of the merger; and

e) a copy of the key investor information of the receiving UCITS, referred to in Article 159, or, as the case may be, in Article 78 of Directive 2009/65/EC.

(4) If the merging or the receiving UCITS has been notified in accordance with Article 93 of Directive 2009/65/EC, the information referred to in paragraph 3 shall be provided in one of the official languages of the relevant UCITS host Member State, or in a language approved by its competent authorities. The UCITS required to provide the information shall be responsible for producing the translation. That translation shall faithfully reflect the content of the original.

Art. 73

(1) Where the merging and/or the receiving UCITS are established in Luxembourg, their unitholders have the right to request, without any charge other than those retained by the UCITS to meet disinvestment costs, the repurchase or redemption of their units or, where possible, to convert them into units in another UCITS with similar investment policy and managed by the same management company or by any other company with which the management company is linked by common management or control, or by a substantial direct or indirect holding. This right shall become effective from the moment that the unitholders of the merging UCITS and those of the receiving UCITS have been informed of the proposed merger in accordance with Article 72, and shall cease to exist five working days before the date for calculating the exchange ratio referred to in Article 75, paragraph 1.

(2) Without prejudice to paragraph 1, for mergers between UCITS and by way of derogation from Articles 11, paragraph 2, and 28, paragraph 1, point b), the relevant UCITS may temporarily suspend the subscription, repurchase or redemption of units, provided that any such suspension is justified for the protection of the unitholders. The CSSF may moreover require the temporary suspension of the subscription, repurchase or redemption of units, provided that any such suspension is justified by the protection of the unitholders.

C. – Costs and entry into effect

Art. 74

Except in cases where UCITS have not designated a management company, any legal, advisory or administrative costs associated with the preparation and the completion of the merger shall not be charged to the merging or the receiving UCITS, or to any of their unitholders.

Art. 75

(1) The common draft terms of the merger referred to in Article 69 shall determine the effective date of the merger as well as the date for calculating the exchange ratio of units of the merging UCITS into units of the receiving UCITS and, as the case may be, for determining the relevant net asset value for cash payments. Such dates shall be after the approval, as the case may be, of the merger by unitholders of the receiving UCITS or the merging UCITS.

(2) The entry into effect of the merger shall be made public through all appropriate means by the receiving UCITS established in Luxembourg and shall be notified to the CSSF and to the other competent authorities involved in the merger.

(3) A merger which has taken effect as provided for in paragraph 1 shall not be declared null and void.

Art. 76

(1) A merger effected in accordance with Article 1, point 20., a) shall have the following consequences:

a) all the assets and liabilities of the merging UCITS are transferred to the receiving UCITS or, as the case may be, to the depositary of the receiving UCITS;

b) the unitholders of the merging UCITS become unitholders of the receiving UCITS and, as the case may be, they are entitled to a cash payment not exceeding 10% of the net asset value of their units in the merging UCITS; and

c) the merging UCITS established in Luxembourg ceases to exist on the entry into effect of the merger.

(2) A merger effected in accordance with Article 1, point 20,. b) shall have the following consequences:

a) all the assets and liabilities of the merging UCITS are transferred to the newly constituted receiving UCITS or, as the case may be, to the depositary of the receiving UCITS;

b) the unitholders of the merging UCITS become unitholders of the newly constituted receiving UCITS and, as the case may be, they are entitled to a cash payment not exceeding 10% of the net asset value of their units in the merging UCITS; and

c) the merging UCITS established in Luxembourg cease to exist on the entry into effect of the merger.

(3) A merger effected in accordance with Article 1, point 20., c) shall have the following consequences:

a) the net assets of the merging UCITS are transferred to the receiving UCITS or, as the case may be, to the depositary of the receiving UCITS;

b) the unitholders of the merging UCITS become unitholders of the receiving UCITS; and

c) the merging UCITS established in Luxembourg continues to exist until the liabilities have been discharged.

(4) The management company of the receiving UCITS shall confirm in writing to the depositary of the receiving UCITS that the transfer of assets and, as the case may be, liabilities is complete. Where the receiving UCITS has not designated a management company, it shall give that confirmation to the depositary of the receiving UCITS.

Chapter 9 – Master-feeder structures

A. – Scope and approval

Art. 77

(1) A feeder UCITS is a UCITS, or an investment compartment thereof, which has been approved to invest, by way of derogation from Article 2, paragraph 2, first indent, Articles 41, 43 and 46, and Article 48, paragraph 2, third indent of this Law, at least 85% of its assets in units of another UCITS or investment compartment thereof (the "master UCITS").

(2) A feeder UCITS may hold up to 15% of its assets in one or more of the following:

a) ancillary liquid assets in accordance with Article 41, paragraph 2, second sub-paragraph;

b) financial derivative instruments, which may be used only for hedging purposes, in accordance with Article 41 paragraph 1, point g) and Article 42, paragraphs 2 and 3;

c) movable and immovable property which is essential for the direct pursuit of its business, if the feeder UCITS is an investment company.

For the purposes of compliance with Article 42, paragraph 3, the feeder UCITS shall calculate its global exposure related to financial derivative instruments by combining its own direct exposure under point b) of the first sub-paragraph with either:

a) the master UCITS actual exposure to financial derivative instruments in proportion to the feeder UCITS investment into the master UCITS; or

b) the master UCITS potential maximum global exposure to financial derivative instruments provided for in the master UCITS management regulations or instruments of incorporation in proportion to the feeder UCITS investment into the master UCITS.

(3) A master UCITS is a UCITS, or an investment compartment thereof, which:

a) has, among its unitholders, at least one feeder UCITS;

b) is not itself a feeder UCITS; and

c) does not hold units of a feeder UCITS.

(4) The following derogations for a master UCITS shall apply:

a) if a master UCITS has at least two feeder UCITS as unitholders, Article 2, paragraph 2, first indent and Article 3, second indent of this Law shall not apply, giving the master UCITS the choice whether or not to raise capital from other investors;

b) if a master UCITS does not raise capital from the public in a Member State other than that in which it is established, but only has one or more feeder UCITS in that Member State, Chapter XI and Article 108, paragraph (1), 2nd sub-paragraph of Directive 2009/65/EC shall not apply.

Art. 78

(1) The investment of a feeder UCITS which is established in Luxembourg into a given master UCITS which exceeds the limit applicable under Article 46, paragraph 1 for investments in other UCITS shall be subject to the prior approval of the CSSF.

(2) The feeder UCITS shall be informed within fifteen working days following the submission of a complete file, whether or not the CSSF has approved the feeder UCITS investment into the master UCITS.

(3) The CSSF shall grant approval if the feeder UCITS, its depositary and its approved statutory auditor, as well as the master UCITS, comply with all the requirements set out in this Chapter. For such purposes, the feeder UCITS shall provide the CSSF with the following documents:

a) the management regulations or instruments of incorporation of the feeder UCITS and the master UCITS;

b) the prospectus and the key investor information referred to in Article 159 of the feeder and the master UCITS;

c) the agreement between the feeder and the master UCITS or the internal conduct of business rules referred to in Article 79, paragraph 1;

d) where applicable, the information to be provided to unitholders referred to in Article 83, paragraph 1;

e) if the master UCITS and the feeder UCITS have different depositaries, the information-sharing agreement referred to in Article 80, paragraph 1 between their respective depositaries; and

f) if the master UCITS and the feeder UCITS have different approved statutory auditors, the information-sharing agreement referred to in Article 81, paragraph 1 between their respective auditors.

Points a), b), c) of paragraph 3 of this Article shall not apply in the case where the feeder UCITS and the master UCITS are both established in Luxembourg.

Where the feeder UCITS is established in Luxembourg and the master UCITS is established in another Member State, the feeder UCITS shall also provide the CSSF with an attestation by the competent authorities of the master UCITS home Member State that the master UCITS is a UCITS, or an investment compartment thereof, which fulfils the conditions set out in Article 58, paragraph 3, points b) and c) of Directive 2009/65/EC. Documents shall be provided by the feeder UCITS either in Luxembourgish, French, German or English.

B. – Common provisions for feeder and master UCITS

Art. 79

(1) The master UCITS must provide the feeder UCITS with all documents and information necessary for the latter to meet the requirements laid down in this Law. For this purpose, the feeder UCITS shall enter into an agreement with the master UCITS.

The feeder UCITS shall not invest in excess of the limit applicable under Article 46, paragraph 1, in units of that master UCITS until the agreement referred to in the first sub-paragraph has become effective. That agreement shall be made available, on request and free of charge, to all unitholders.

In the event that both master and feeder UCITS are managed by the same management company, the agreement may be replaced by internal conduct of business rules ensuring compliance with the requirements set out in this paragraph.

(2) The master and the feeder UCITS shall take appropriate measures to coordinate the timing of their net asset value calculation and publication, in order to avoid market timing in their units, preventing arbitrage opportunities.

(3) Without prejudice to Article 11, paragraph 2 and Article 28, paragraph 1, point b), if a master UCITS temporarily suspends the repurchase, redemption or subscription of its units, whether at its own initiative or at the request of its competent authorities, each of its feeder UCITS is entitled to suspend the repurchase, redemption or subscription of its units, notwithstanding the conditions laid down in Article 12, paragraph 1, and Article 28, paragraph 5, within the same period of time as the master UCITS.

(4) If a master UCITS is liquidated, the feeder UCITS shall also be liquidated, unless the CSSF approves:

a) the investment of at least 85% of the assets of the feeder UCITS in units of another master UCITS; or

b) the amendment of the management regulations or the instruments of incorporation of the feeder UCITS in order to enable it to convert into a UCITS which is not a feeder UCITS.

Without prejudice to specific provisions regarding compulsory liquidation, the liquidation of a master UCITS shall take place no sooner than three months after the master UCITS has informed all of its unitholders and the CSSF of the binding decision to liquidate.

(5) If a master UCITS merges with another UCITS or is divided into two or more UCITS, the feeder UCITS shall be liquidated, unless the CSSF grants approval to the feeder UCITS to:

a) continue to be a feeder UCITS of the master UCITS or another UCITS resulting from the merger or division of the master UCITS;

b) invest at least 85% of its assets in units of another master UCITS not resulting from the merger or the division; or

c) amend its management regulations or its instruments of incorporation in order to convert into a UCITS which is not a feeder UCITS.

No merger or division of a master UCITS shall become effective, unless the master UCITS has provided all of its unitholders and the competent authorities of the home Member State of its feeder UCITS with the information referred to, or comparable with that referred to, in Article 72, at least sixty days before the proposed effective date.

Unless the CSSF has granted approval pursuant to the first sub-paragraph, point a) above, the master UCITS shall enable the feeder UCITS to repurchase or redeem all units in the master UCITS before the merger or division of the master UCITS becomes effective.

C. – Depositaries and approved statutory auditors

Art. 80

(1) If the master and the feeder UCITS have different depositaries, those depositaries must enter into an information-sharing agreement in order to ensure the fulfilment of the duties of both depositaries.

The feeder UCITS shall not invest in units of the master UCITS until such agreement has become effective.

Where they comply with the requirements laid down in this Chapter, neither the depositary of the master UCITS nor that of the feeder UCITS shall be found to be in breach of any rules that restrict the disclosure of information or relate to data protection, where such rules are provided for in a contract or in a law, regulation or administrative provision. Such compliance shall not give rise to any liability, on the part of such depositary or any person acting on its behalf.

The feeder UCITS or, when applicable, the management company of the feeder UCITS, must be in charge of communicating to the depositary of the feeder UCITS any information about the master UCITS which is required for the completion of the duties of the depositary of the feeder UCITS.

(2) The depositary of the master UCITS shall immediately inform the competent authorities of the master UCITS home Member State, the feeder UCITS or, where applicable, the management company and the depositary of the feeder UCITS, about any irregularities it detects with regard to the master UCITS, which are deemed to have a negative impact on the feeder UCITS.

Art. 81

(1) If the master and the feeder UCITS have different approved statutory auditors, those approved statutory auditors shall enter into an information-sharing agreement, in order to ensure the fulfilment of the duties of both approved statutory auditors, including the arrangements taken to comply with the requirements of paragraph 2.

The feeder UCITS shall not invest in units of the master UCITS until such agreement has become effective.

(2) In its audit report, the approved statutory auditor of the feeder UCITS shall take into account the audit report of the master UCITS. If the feeder and the master UCITS have different accounting years, the approved statutory auditor of the master UCITS shall make an *ad hoc* report on the closing date of the feeder UCITS.

The approved statutory auditor of the feeder UCITS shall, in particular, report on any irregularities revealed in the audit report of the master UCITS and on their impact on the feeder UCITS.

(3) Where they comply with the requirements laid down in this Chapter, neither the approved statutory auditor of the master UCITS nor that of the feeder UCITS shall be found to be in breach of any rules that restrict the disclosure of information or relate to data protection, where such rules are provided for in a contract or in a law, regulation or administrative provision. Such compliance shall not give rise to any liability, on the part of such approved statutory auditor or any person acting on its behalf.

D. – Compulsory information and marketing communications by the feeder UCITS

Art. 82

(1) In addition to the information provided for in Schedule A of Annex I, the prospectus of the feeder UCITS must contain the following information:

a) a declaration that the feeder UCITS is a feeder of a particular master UCITS and as such permanently invests 85% or more of its assets in units of that master UCITS;

b) the investment objective and policy, including the risk profile and whether the performance of the feeder and the master UCITS are identical, or to what extent and for which reasons they differ, including a description of investment made in accordance with Article 77, paragraph 2;

c) a brief description of the master UCITS, its organisation, its investment objective and policy, including the risk profile, and an indication of how the prospectus of the master UCITS may be obtained;

d) a summary of the agreement entered into between the feeder UCITS and the master UCITS or of the internal conduct of business rules pursuant to Article 79, paragraph 1;

e) how the unitholders may obtain further information on the master UCITS and the agreement entered into between the feeder UCITS and the master UCITS pursuant to Article 79, paragraph 1;

f) a description of all remuneration and reimbursement of costs payable by the feeder UCITS by virtue of its investment in units of the master UCITS, as well as of the aggregate charges of the feeder UCITS and the master UCITS; and

g) a description of the tax implications of the investment into the master UCITS for the feeder UCITS.

(2) In addition to the information provided for in Schedule B of Annex I, the annual report of the feeder UCITS must include a statement on the aggregate charges of the feeder UCITS and the master UCITS.

The annual and the half-yearly reports of the feeder UCITS must indicate how the annual and the half-yearly report of the master UCITS can be obtained.

(3) In addition to the requirements laid down in Articles 155, paragraph 1 and 163, paragraph 1, the feeder UCITS must send the prospectus, the key investor information referred to in Article 159 and any amendment thereto, as well as the annual and half-yearly reports of the master UCITS, to the CSSF.

(4) A feeder UCITS must disclose in any relevant marketing communications that it permanently invests 85% or more of its assets in units of such master UCITS.

(5) A paper copy of the prospectus, and the annual and half-yearly reports of the master UCITS must be delivered by the feeder UCITS to investors on request and free of charge.

E. – Conversion of existing UCITS into feeder UCITS and change of master UCITS

Art. 83

(1) A feeder UCITS, which already pursues activities as a UCITS, including those of a feeder UCITS of a different master UCITS, must provide the following information to its unitholders:

a) a statement that the CSSF approved the investment of the feeder UCITS in units of such master UCITS;

b) the key investor information referred to in Article 159 concerning the feeder and the master UCITS;

c) the date when the feeder UCITS is to start to invest in the master UCITS or, if it has already invested therein, the date when its investment will exceed the limit applicable under Article 46, paragraph 1; and

d) a statement that the unitholders have the right to request, within thirty days, the repurchase or redemption of their units without any charges other than those retained by the UCITS to cover disinvestment costs; that right shall become effective from the moment the feeder UCITS has provided the information referred to in this paragraph.

That information shall be provided at least thirty days before the date referred to in point c) of this paragraph.

(2) In the event that the feeder UCITS has been notified in accordance with Chapter 7, the information referred to in paragraph 1 shall be provided in Luxembourgish, French, German or English. The feeder UCITS shall be responsible for producing the translation. That translation shall faithfully reflect the content of the original.

(3) The feeder UCITS is not authorised to invest into the units of the given master UCITS in excess of the limit applicable under Article 46, paragraph 1 before the period of thirty days referred to in paragraph 1, second sub-paragraph has elapsed.

F. – Obligations and competent authorities

Art. 84

(1) The feeder UCITS must monitor effectively the activity of the master UCITS. In performing that obligation, the feeder UCITS may rely on information and documents received from the master UCITS or, where applicable, its management company, depositary and approved statutory auditor, unless there is reason to doubt their accuracy.

(2) Where, in connection with an investment in the units of the master UCITS, a distribution fee, commission or other monetary benefit, is received by the feeder UCITS, its management company, or any person acting on behalf of either the feeder UCITS or the management company of the feeder UCITS, the fee, commission or other monetary benefit must be paid into the assets of the feeder UCITS.

Art. 85

(1) Any master UCITS established in Luxembourg shall immediately inform the CSSF of the identity of each feeder UCITS, which invests in its units. If the feeder UCITS is established in another Member State, the CSSF shall immediately inform the competent authorities of the feeder UCITS home Member State of such investment.

(2) The master UCITS shall not charge subscription or redemption fees for the investment of the feeder UCITS into its units or the divestment thereof.

(3) The master UCITS must ensure the timely availability of all information that is required in accordance with this Law, and any other laws, regulations and administrative provisions applicable in Luxembourg, Community law provisions, as well as the management regulations or the instruments of incorporation of the UCITS to the feeder UCITS or, where applicable, its management company, and to the competent authorities, the depositary and the approved statutory auditor of the feeder UCITS.

Art. 86

(1) If the master UCITS and the feeder UCITS are both established in Luxembourg, the CSSF shall immediately inform the feeder UCITS of any decision, measure, observation of non-compliance with the conditions of this Chapter or of any information reported pursuant to Article 154, paragraph 3, with regard to the master UCITS or, where applicable, its management company, depositary or approved statutory auditor.

(2) If the master UCITS is established in Luxembourg and the feeder UCITS is established in another Member State, the CSSF shall immediately communicate any decision, measure, observation of non-compliance with the conditions of this Chapter or information reported pursuant to Article 154, paragraph 3, with regard to the master UCITS or, where applicable, its management company, depositary or approved statutory auditor, to the competent authorities of the feeder UCITS home Member State.

(3) If the master UCITS is established in another Member State and the feeder UCITS is established in Luxembourg, the CSSF shall transmit any decision, measure, observation referred to in Article 67, paragraph 2 of Directive 2009/65/EC and which have been communicated to the CSSF by the competent authorities of the master UCITS home Member State.

PART II: OTHER UCIs

Chapter 10 – Scope

Art. 87

This Part shall apply to all UCITS referred to in Article 3 and to all other UCIs situated in Luxembourg not covered by Part I.

Art. 88

A UCI shall be deemed to be established in Luxembourg if the registered office of the management company of the common fund or the registered office of the investment company is established in Luxembourg. The head office must be located in Luxembourg.

Chapter 10*bis* – General provisions

Art. 88-1

Any UCI governed by Part II qualifies as an AIF within the meaning of the Law of 12 July 2013 relating to alternative investment fund managers.

This Chapter sets out the general provisions applicable to UCIs governed by Part II by virtue of the Law of 12 July 2013 relating to alternative investment fund managers.

Art. 88-2

(1) Without prejudice to the derogations provided for in Article 3 of the Law of 12 July 2013 relating to alternative investment fund managers, every UCI must be managed by a single AIFM, which may either be an AIFM established in Luxembourg authorised under Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers, or an AIFM established in another Member State or in a third country authorised under Chapter II of Directive 2011/61/EU, subject to the application of Article 66, paragraph 3 of the aforementioned Directive where the UCI is managed by an AIFM established in a third country.

(2) The AIFM must be determined in accordance with the provisions of Article 4 of the Law of 12 July 2013 relating to alternative investment fund managers or in accordance with the provisions of Article 5 of Directive 2011/61/EU respectively.

The AIFM is:

a) either an external AIFM, which is the legal person appointed by the UCI or on behalf of the UCI and which through this appointment, is responsible for managing this UCI; in case of appointment of an external AIFM, the latter must, subject to the derogations provided for in Article 3 of the Law of 12 July 2013 relating to alternative investment fund managers, be authorised in accordance with the provisions of Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers, or in accordance with the provisions of Chapter II, respectively and, where applicable, also in accordance with the provisions of Chapter VII of Directive 2011/61/EU;

b) or where the legal form of the UCI permits an internal management and where the UCI's governing body chooses not to appoint an external AIFM, the UCI itself.

An internally managed UCI within the meaning of point b) of paragraph (2) of this Article must, in addition to the authorisation required under Article 129 and subject to the derogations provided for in Article 3 of the Law of 12 July 2013 relating to alternative investment fund managers, be authorised as an AIFM under Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers. The relevant UCI must ensure at all times compliance with all provisions of the aforementioned law, provided that those provisions are applicable to it.

Art. 88-3

The assets of a UCI shall be entrusted to a single depositary for safe-keeping, appointed in accordance with the provisions of Article 17, paragraph 1, Article 33, paragraph 1 or Article 39 depending on the legal form adopted by the UCI concerned.

This provision is also applicable to UCIs which are managed by an AIFM authorised under Chapter 2 of the amended Law of 12 July 2013 relating to alternative investment fund managers as well as to UCIs the AIFM of which benefits from and uses the derogations provided for in Article 3 of said law.

Art. 88-4

Without prejudice to the application of the provisions of Article 9, 28 paragraph 4 and 99, paragraph 5, the valuation of the assets of a UCI managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers is performed in accordance with the rules laid down in Article 17 of the Law of 12 July 2013 relating to alternative investment fund managers and in the delegated acts provided for in Directive 2011/61/EU.

Art. 88-5

The AIFM of a UCI is authorised to delegate to third parties the power to carry out on its behalf one or more of its functions. In this case, the delegation of functions by the AIFM must comply with all the conditions provided for in Article 18 of the Law of 12 July 2013 relating to alternative investment fund managers and in the delegated acts provided for in Directive 2011/61/EU, in case of UCIs managed by an AIFM established in Luxembourg, and in accordance with the provisions provided for in Article 20 of Directive 2011/61/EU, in case of UCIs managed by an AIFM established in another Member State or in a third country, subject to the application of Article 66, paragraph 3 of the aforementioned Directive where the UCI is managed by an AIFM established in a third country. This Article shall not apply if the AIFM benefits from and makes use of the derogations provided for in Article 3 of the Law of 12 July 2013 relating to alternative investment fund managers.

Art. 88-6

The marketing by an AIFM in the European Union of units or shares of UCIs as well as the management of such UCIs in the European Union on a cross-border basis are governed by the provisions of Chapter 6 of the Law of 12 July 2013 relating to alternative investment fund managers in the case of UCIs managed by an AIFM established in Luxembourg, or by the provisions of Chapters VI and VII of Directive 2011/61/EU in the case of UCIs managed by an AIFM established in another Member State or in a third country, subject to the application of Article 66, paragraph 3 of the aforementioned Directive where the UCI is managed by an AIFM established in a third country. This Article shall not apply if the AIFM benefits from and makes use of the derogations provided for in Article 3 of the Law of 12 July 2013 relating to alternative investment fund managers.

Chapter 11 – Common funds

Art. 89

(1) For the purpose of this Part, any undivided collection of assets shall be regarded as a common fund if it is made up and managed according to the principle of risk-spreading on behalf of joint owners who are liable only up to the amount contributed by them and whose rights are represented by units intended for placement with the public by means of a public or private offer.

(2) The management of a common fund shall be carried out by a management company having its registered office in Luxembourg, which complies with the conditions set out in Chapter 15 or 16 of Part IV.

(3) (…)[11]

Art. 90

(1) Articles 6, 8, 9, 10, 11 (1), 12 (1) b), 12 (3), 13 (1), 13 (2) a) to i), 14, 15, 16, 17, 18, 18*bis*, 19, 20, 21, 22, 23 and 24 are applicable to common funds subject to this Chapter.

(2) (…)[12]

Art. 91

(1) A CSSF regulation may determine:

a) the minimum frequency for the determination of the issue and repurchase prices for units of the common fund;

b) the minimum percentage of the assets of the common fund which must be represented by liquid assets;

c) the maximum percentage of the assets of the common fund which may be invested in transferable securities which are not quoted on a stock exchange or dealt in on an organised market offering comparable safeguards;

d) the maximum percentage of securities of the same kind issued by the same body which the common fund may hold;

e) the maximum percentage of the assets of the common fund which may be invested in securities issued by the same body;

f) the conditions under which and possibly the maximum percentages the common fund may invest in securities of other UCIs;

g) the maximum percentage of the amounts the common fund is authorised to borrow in relation to its total assets and the terms and conditions for such borrowings.

(2) The frequency and percentages determined in accordance with the foregoing paragraph may be differentiated depending on whether or not the common funds display certain characteristics or fulfil certain conditions.

(3) A newly created common fund may, while ensuring observance of the principle of risk-spreading, derogate from paragraph 1, point e) above for six months following the date of its authorisation.

(4) Where the limits referred to in points c), d), e), f) and g) of paragraph 1 above are exceeded as a result of the exercise of rights attaching to securities in the portfolio or otherwise than by the purchase of securities, the management company must adopt as a priority objective for its sales transactions the remedying of that situation of the fund, taking due account of the interests of the unitholders.

[11] Repealed by the Law of 12 July 2013 relating to alternative investment fund managers.
[12] Repealed by the Law of 10 May 2016 transposing Directive 2014/91/EU.

Art. 92

(1) Neither the management company nor the depositary, each acting on behalf of the common fund, may, either directly or indirectly, grant loans to purchasers and unitholders of the common fund with a view to the acquisition or subscription of units.

(2) Paragraph 1 shall not prevent common funds from acquiring transferable securities which are not fully paid up.

Chapter 12 – SICAVs

Art. 93

For the purposes of this Part, SICAVs shall be taken to mean those companies which have adopted the form of a public limited company[13] governed by Luxembourg law,

- whose sole object is to invest their funds in assets in order to spread the investment risks and to ensure for their investors the benefit of the results of the management of their assets, and

- whose units are intended to be placed with the public by means of a public or private offer, and

- whose articles of incorporation provide that the amount of capital shall, at all times, be equal to the value of the net assets of the company.

Art. 94

The share capital of a SICAV may not be less than one million two hundred and fifty thousand euros (EUR 1,250,000). This minimum must be reached within a period of six months following the authorisation of the SICAV. A CSSF regulation may raise that minimum amount up to a maximum of two million five hundred thousand euros (EUR 2,500,000).

Art. 95

(1) Articles 26, 28 (1) a), 28 (2) a), 28 (3) to (10), 29, 30, 31, 32, 33, 34, 34*bis*, 35, 36 and 37 are applicable to the SICAVs subject to this Chapter.

(1*bis*) (…)[14]

(2) SICAVs which are managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers, which have appointed an external AIFM within the meaning of point a) of Article 88-2, paragraph 2, are authorised to delegate to third parties, for the purpose of a more efficient conduct of their activities, the power to carry out on their behalf, one or more of their functions of administration and marketing, to the extent that the external AIFM does not itself perform the functions in question.

In that case, the following preconditions must be complied with:

a) the CSSF must be informed in an appropriate manner;

b) the mandate must not prevent the effectiveness of supervision over the SICAV, in particular, it must not prevent the SICAV from acting, or from being managed, in the best interests of investors.

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13 *société anonyme*

14 Repealed by the Law of 10 May 2016 transposing Directive 2014/91/EU.

For internally managed SICAVs within the meaning of point b) of Article 88-2, paragraph 2 and which do not or cannot make use of the derogations laid down in Article 3 of the Law of 12 July 2013 relating to alternative investment fund managers, the delegation of one or more of their functions must comply with all the conditions laid down in Article 18 of the Law of 12 July 2013 relating to alternative investment fund managers.

(3) SICAVs whose AIFM benefits from and makes use of the derogations provided for in Article 3 of the Law of 12 July 2013 relating to alternative investment fund managers are authorised to delegate to third parties for the purpose of a more efficient conduct of their activities, to carry out, on their behalf, one or more of their functions. In such a case, the following preconditions must be complied with:

a) the CSSF must be informed in an appropriate manner;

b) the mandate must not prevent the effectiveness of supervision over the SICAV, and in particular it must not prevent the SICAV from acting, or from being managed, in the best interests of the investors;

c) when the delegation concerns investment management, the mandate may be given only to undertakings which are authorised or registered for the purpose of asset management and subject to prudential supervision, when the mandate is given to a third country undertaking subject to prudential supervision, cooperation between the CSSF and the supervisory authority of this country must be ensured;

d) where the conditions of point c) are not fulfilled, the delegation can only become effective after prior approval of the CSSF; and

e) a mandate with regard to the core function of investment management shall not be given to the depositary.

Art. 96

(1) A CSSF regulation may determine:

a) the minimum frequency for the determination of the issue and, where the articles of incorporation provide for the right of unitholders to have their units repurchased, the repurchase prices for units of the SICAV;

b) the minimum percentage of the assets of a SICAV which must be represented by liquid assets;

c) the maximum percentage of the assets of the SICAV which may be invested in transferable securities which are not quoted on a stock exchange or dealt in on an organised market offering comparable safeguards;

d) the maximum percentage of securities of the same kind issued by the same body which the SICAV may hold;

e) the maximum percentage of the assets which the SICAV may invest in securities issued by the same body;

f) the conditions under which and possibly the maximum percentages the SICAV may invest in securities of other UCIs;

g) the maximum percentage of the amounts the SICAV is authorised to borrow in relation to its total assets and the terms and conditions for such borrowings.

(2) The frequency and percentages determined in accordance with the foregoing paragraph may be differentiated depending on whether or not the SICAVs display certain characteristics or fulfil certain conditions.

(3) A newly created SICAV may, while ensuring observance of the principle of risk-spreading, derogate from paragraph 1, point e) above for six months following the date of its authorisation.

(4) Where the maximum percentages fixed by reference to points c), d), e), f) and g) of paragraph 1 above are exceeded as a result of the exercise of rights attaching to securities in the portfolio or otherwise than by the purchase of securities, the SICAV must adopt as a priority objective for its sales transactions, the remedying of that situation, taking due account of the interests of the unitholders.

Art. 96*bis*

Notwithstanding Article 309 of the amended Law of 10 August 1915 on commercial companies, SICAVs referred to under this Chapter as well as their subsidiaries are exempt from the obligation to consolidate the accounts of the companies owned for investment purposes.

Chapter 13 – UCIs which have not been constituted as common funds or SICAVs

Art. 97

This Chapter is applicable to all companies and all undertakings other than common funds or SICAVs

- whose sole object is the collective investment of their funds in assets in order to spread the investment risks and to ensure for the investors the benefit of the results of the management of their assets, and

- whose units are intended to be placed with the public by means of a public or private offer.

Art. 98

(1) The net assets of the UCIs falling within this Chapter may not be less than one million two hundred and fifty thousand euros (EUR 1,250,000).

This minimum must be reached within a period of six months following their authorisation. A CSSF regulation may raise that minimum amount up to a maximum of two million five hundred thousand euros (EUR 2,500,000).

(2) If the net assets have fallen below two thirds of the legal minimum, the directors or the management board, as the case may be, or managers must submit the question of the dissolution of the UCI to a general meeting for which no quorum shall be prescribed and which shall decide by simple majority of the units represented at the meeting.

(3) If the net assets have fallen below one quarter of the legal minimum, the directors or the management board, as the case may be, or the managers must submit the question of the dissolution to a general meeting for which no quorum shall be prescribed; the dissolution may be resolved by investors holding one quarter of the units represented at the meeting.

(4) The meeting must be convened so that it is held within a period of forty days as from the ascertainment that the net assets have fallen below two thirds or one fourth of the legal minimum, as the case may be.

(5) If the instruments of incorporation of the undertaking do not provide for general meetings, the directors or the management board, as the case may be, or the managers must, if the net assets of the UCI have fallen below two thirds of the legal minimum, inform the CSSF without delay. In such a case, the CSSF may, having regard to the circumstances, require the directors or the managers to liquidate the UCI.

Art. 99

(1) A CSSF regulation may determine:

a) the minimum frequency for the determination of the issue and, in case the instruments of incorporation provide the right for the unitholders or members to have their units redeemed, the redemption price of the shares or units of the UCI;

b) the minimum percentage of the assets of the UCI which must be represented by liquid assets;

c) the maximum percentage of the assets of the UCI which may be invested in transferable securities which are not quoted on a stock exchange or dealt in on an organised market offering comparable safeguards;

d) the maximum percentage of securities of the same kind issued by the same body which the UCI may hold;

e) the maximum percentage of the assets of the UCI which may be invested in securities issued by the same body;

f) the conditions under which and possibly the maximum percentages the UCI may invest in securities of other UCIs;

g) the maximum percentage of the amounts the UCI is authorised to borrow in relation to its total assets and the terms and conditions for such borrowings.

(2) The frequency and percentages determined in accordance with paragraph 1 above may be differentiated depending on whether or not the UCI displays certain characteristics or fulfils certain conditions.

(3) A newly created UCI may, while ensuring observance of the principle of risk-spreading, derogate from paragraph 1, point e) above, for six months following the date of its authorisation.

(4) Where the maximum percentages fixed by reference to points c), d), e), f) and g) of paragraph 1 above are exceeded as a result of the exercise of rights attaching to securities in the portfolio or otherwise than by the purchase of securities, the UCI must adopt as a priority objective for its sales transactions, the remedying of that situation, taking due account of the interests of the unitholders or members.

(5) The management regulations or the instruments of incorporation of the UCI provide for the principles and methods of valuation of the assets of the UCI. Unless otherwise provided in the management regulations or the instruments of incorporation, the valuation of the assets of the UCI shall be based in the case of officially listed securities, on the last known stock exchange quotation, unless such quotation is not representative. For securities which are not so listed and for securities which are so listed but for which the latest quotation is not representative, the valuation shall be based on the probable realisation value which must be estimated with care and in good faith.

(6) Articles 28 (5), (…)[15], 33, 34, 34*bis*, 35, 36 and 37 are applicable to the UCIs subject to this Chapter.

(6*bis*) (…)[16]

[15] Repealed by the Law of 12 July 2013 on alternative investment fund managers.
[16] Repealed by the Law of 10 May 2016 transposing Directive 2014/91/EU.

(6*ter*) UCIs which do not have the legal form of a common fund or a SICAV and whose management is the responsibility of an AIFM authorised under Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers, which have appointed an external AIFM within the meaning of point a) of Article 88-2, paragraph 2, are authorised to delegate to third parties, for the purpose of a more efficient conduct of their activities, the power to carry out, on their behalf, one or more of their functions of administration and marketing, to the extent that the external AIFM does not itself perform the functions in question.

In that case, the following preconditions must be complied with:

a) the CSSF must be informed in an appropriate manner;

b) the mandate must not prevent the effectiveness of supervision over the SICAV; in particular, it must not prevent the SICAV from acting, or from being managed, in the best interests of investors.

For UCIs which do not have the legal form of a common fund or a SICAV and which are managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers, which are internally managed within the meaning of point b) of Article 88-2, paragraph 2, the delegation of one or more of their functions must comply with all the conditions provided for in Article 18 of the Law of 12 July 2013 relating to alternative investment fund managers.

(6*quater*) UCIs which do not have the legal form of a common fund or a SICAV and whose AIFM benefits from and makes use of the derogations provided for in Article 3 of the Law of 12 July 2013 relating to alternative investment fund managers are authorised to delegate to third parties, for the purpose of a more efficient conduct of their activities, to carry out, on their behalf, one or more of their functions. In this case, the following preconditions must be complied with:

a) the CSSF must be informed in an appropriate manner;

b) the mandate must not prevent the effectiveness of supervision over the UCI, and in particular it must not prevent the UCI from acting, or from being managed, in the best interests of the investors;

c) when the delegation concerns the investment management, the mandate may only be given to undertakings which are authorised or registered for the purpose of asset management and subject to prudential supervision. When the mandate is given to a third country undertaking subject to prudential supervision, cooperation between the CSSF and the supervisory authority of this country must be ensured;

d) where the conditions of point c) are not fulfilled, the delegation can only become effective after the prior approval of the CSSF; and

e) a mandate with regard to the core function of investment management shall not be given to the depositary.

(7) The articles of incorporation of the UCI having adopted the form of one of the companies referred to in Article 2 of the Law of 10 August 1915 on commercial companies, as amended, and any amendment to these articles of incorporation shall be recorded in a special notarial deed, drawn up in French, German or English, as the appearing parties may decide. By derogation from the provisions of the Decree of 24 Prairial, year XI, where this deed is in English, the requirement to attach a translation into an official language to that deed when it is filed with the registration authorities, does not apply. This requirement does not apply either to other deeds which must be recorded in notarial form, such as notarial deeds recording the minutes of meetings of shareholders of the abovementioned companies or of a merger proposal concerning such companies.

(8) By derogation to Article 73, sub-paragraph 2 of the Law of 10 August 1915 on commercial companies, as amended, UCIs subject to this Chapter and which have adopted the form of a public limited company or of a corporate partnership limited by shares[17], are not required to send the annual accounts, as well as the report of the approved statutory auditor, the management report and, where applicable, the comments made by the supervisory board to the registered unitholders, at the same time as the convening notice to the annual general meeting. The convening notice indicates the place and the practical arrangements for providing these documents to the unitholders and shall specify that each unitholder may request that the annual accounts, as well as the report of the approved statutory auditor, the management report and, where applicable, the comments made by the supervisory board are sent to him.

(9) The convening notices to general meetings of unitholders may provide that the quorum and the majority at the general meeting shall be determined according to the units issued and outstanding at midnight (Luxembourg time) on the fifth day prior to the general meeting (referred to as "Record Date"). The rights of a unitholder to attend a general meeting and to exercise the voting rights attaching to his units are determined in accordance with the units held by this unitholder at the Record Date.

(10) The provisions of the amended Law of 10 August 1915 on commercial companies are applicable to UCIs falling within the scope of this Chapter, insofar as this Law does not derogate therefrom.

PART III: FOREIGN UCIs

Chapter 14 – General provisions and scope

Art. 100

(1) Without prejudice to paragraph (2), UCIs other than the closed-ended type established or operating under foreign laws, which are not subject to Chapter 7 and whose securities are marketed to retail investors in or from Luxembourg, must be subject in their home State to a permanent supervision performed by a supervisory authority set up by law in order to ensure the protection of investors. These UCIs must moreover be subject to supervision considered by the CSSF to be equivalent to that laid down in this Law. Article 59 is applicable to these UCIs.

(2) This Article is not applicable to the marketing of units or shares of foreign law AIFs to professional investors in Luxembourg which is made in compliance with the provisions of Chapters 6 and 7 of the Law of 12 July 2013 relating to alternative investment fund managers where marketing is undertaken by an AIFM established in Luxembourg, or in accordance with the provisions of Chapters VI and VII of Directive 2011/61/EU where marketing is undertaken by an AIFM established in another Member State or in a third country, subject to the provisions of Article 58(5) of the Law of 12 July 2013 relating to alternative investment fund managers.

PART IV: MANAGEMENT COMPANIES

Chapter 15 – Management companies managing UCITS governed by Directive 2009/65/EC

Title A. – Conditions for taking up business of management companies having their registered office in Luxembourg

Art. 101

(1) Access to the business of management companies having their registered office in Luxembourg within the meaning of this Chapter is subject to prior authorisation by the CSSF.

[17] *société en commandite par actions*

Authorisation granted under this Law to a management company shall be valid for all Member States and shall be notified to the European Securities and Markets Authority.

A management company shall be incorporated as a public limited company, a private limited company[18], a cooperative company[19], a cooperative company set up as a public limited company[20] or a corporate partnership limited by shares. The capital of that company must be represented by registered shares. The provisions of the amended Law of 10 August 1915 on commercial companies are applicable to management companies subject to this Chapter, insofar as this Law does not derogate therefrom.

Authorised management companies are entered by the CSSF on a list. This entry is tantamount to authorisation and is notified by the CSSF to the management company concerned. Applications for entry on the list must be filed with the CSSF before the incorporation of the management company. The incorporation of the management company can only be undertaken after notification of the authorisation by the CSSF. This list and modifications made thereto are published in the *Mémorial*[21] by the CSSF.

(2) No management company shall engage in activities other than the management of UCITS authorised according to Directive 2009/65/EC with the exception of the additional management of other UCIs which are not covered by the aforementioned Directive and for which the management company is subject to prudential supervision but the units of which cannot be marketed in other Member States of the European Union under Directive 2009/65/EC.

The activity of the management of UCITS includes the functions listed in Annex II of this Law.

(3) By way of derogation from paragraph 2, management companies may also provide the following services:

a) management of portfolios of investments, including those owned by pension funds, in accordance with mandates given by investors on a discretionary, client-by-client basis, where such portfolios include one or more of the instruments listed in section B of Annex II of the amended Law of 5 April 1993 on the financial sector;

b) as non-core services:

- investment advice concerning one or more of the instruments listed in section B of Annex II of the amended Law of 5 April 1993 on the financial sector;

- safe-keeping and administration in relation to units of UCIs.

Management companies shall in no case be authorised under this Chapter to provide only the services mentioned in this paragraph or to provide non-core services without being authorised for the services referred to in point a).

For the purpose of this Article, investment advice consists of the provision of personalised recommendations to a client, either upon the request of this client or at the management company's initiative, regarding one or more transactions concerning financial instruments referred to in section B of Annex II of the amended Law of 5 April 1993 on the financial sector.

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18 *société à responsabilité limitée*

19 *société coopérative*

20 *société coopérative organisée* comme *une société anonyme*

21 The *Mémorial B, Recueil Administratif et Economique* is the part of the Luxembourg official gazette in which certain administrative publications are made.

For the purpose of this Article, a personalised recommendation is a recommendation which is addressed to a person by reason of his capacity as investor or potential investor or its capacity as agent of an investor or of a potential investor.

This recommendation has to be adapted to this person or has to be based on the examination of this person's personal circumstances and has to recommend the realisation of an operation of the following categories:

a) the purchase, the sale, the subscription, the exchange, the repayment, the holding or the underwriting of a particular financial instrument;

b) the exercise or non-exercise of the right conferred by a particular financial instrument to purchase, to sell, to subscribe, to exchange or to reimburse a financial instrument.

A recommendation is not a personalised recommendation if it is exclusively disseminated by distribution channels within the meaning of Article 1, point 18) of the Law of 9 May 2006 on market abuse or if it is intended for the public.

(4) Article 1-1, Article 37-1 and Article 37-3 of the amended Law of 5 April 1993 on the financial sector shall apply *mutatis mutandis* to the provision by management companies of the services mentioned in paragraph 3 of this Article.

Management companies which provide the services referred to in point a) of paragraph 3 of this Article must furthermore comply with the Luxembourg regulations implementing Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (recast).

(5) The assets under management in application of paragraphs 2 and 3 do not form part of the estate in case of insolvency of the management company. They cannot be claimed by the creditors of the management company.

Art. 101-1

(1) By way of derogation from Article 101, paragraph 2, management companies having their registered office in Luxembourg authorised pursuant to this Chapter which are appointed as AIFM of an AIF within the meaning of Directive 2011/61/EU must also obtain prior authorisation by the CSSF as AIFM of an AIF under Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers.

(2) Where a management company applies for authorisation under paragraph 1, this management company is exempt from providing the information or documents which the management company has already provided to the CSSF when applying for authorisation under Article 102, provided that such information or documents remain up-to-date.

(3) Management companies referred to in this Article can only engage in the activities referred to in Annex I of the Law of 12 July 2013 relating to alternative investment fund managers and in the additional activities of the management of UCITS subject to authorisation pursuant to Article 101.

In the context of their management activity of managing AIFs, these management companies may also provide non-core services within the meaning of Article 5, paragraph 4 of the Law of 12 July 2013 relating to alternative investment fund managers, comprising reception and transmission of orders in relation to financial instruments.

(4) Management companies appointed as AIFMs of AIFs within the meaning of this Article are subject to all the rules provided for by the Law of 12 July 2013 relating to alternative investment fund managers, to the extent that these rules are applicable to them.

(5) The management of a UCI subject to Part II by a management company appointed as AIFM within the meaning of this Article is subject, as the case may be, to the rules laid down in Articles 17, 18, 18*bis*, 19 and 20 or in Articles 33, 34, 34*bis*, 35 and 37 of this Law.

Art. 102

(1) The CSSF shall not grant authorisation to a management company unless the following conditions are met:

a) the management company has an initial capital of at least one hundred and twenty-five thousand euros (EUR 125,000) taking into account the following:

- When the value of the portfolios of the management company exceeds two hundred and fifty million euros (EUR 250,000,000), the management company must be required to provide an additional amount of own funds. This additional amount of own funds is equal to 0.02% of the amount by which the value of the portfolios of the management company exceeds two hundred and fifty million euros (EUR 250,000,000). The required total of the initial capital and the additional amount must not, however, exceed ten million euros (EUR 10,000,000).

- For the purposes of this paragraph, the following portfolios are deemed to be the portfolios of the management company:

  i) common funds managed by the management company, including portfolios for which it has delegated the management function but excluding portfolios that it is managing under delegation;

  ii) investment companies for which the management company is the designated management company;

  iii) other UCIs managed by the management company including portfolios for which it has delegated the management function but excluding portfolios that it is managing under delegation.

- Irrespective of the amount of these requirements, the own funds of the management company shall never be less than the amount prescribed in Article 21 of Directive 2006/49/EC.

Management companies may not provide up to 50% of the additional amount of own funds referred to above if they benefit from a guarantee of the same amount given by a credit institution or an insurance undertaking. The credit institution or insurance undertaking must have its registered office in a Member State or in a non-Member State provided that it is subject to prudential rules considered by the CSSF as equivalent to those laid down in EU law.

b) The funds referred to in paragraph 1 a) are to be maintained at the permanent disposal of the management company and to be invested in its own interest.

c) The persons who effectively conduct the business of a management company must be of sufficiently good repute and be sufficiently experienced also in relation to the type of UCITS managed by the management company. To that end, the identity of these persons and of every person succeeding them in office must be communicated forthwith to the CSSF. The conduct of the business of a management company must be determined by at least two persons meeting such conditions;

d) the application for authorisation must be accompanied by a programme of operations setting out, *inter alia*, the organisational structure of the management company;

e) both its head office and its registered office are located in Luxembourg.

f) Directors of a management company must be of sufficiently good repute and sufficiently experienced within the meaning of Article 129, paragraph 5, in relation to the type of UCITS or UCI concerned.

(2) Moreover, where close links exist between the management company and other natural or legal persons, the CSSF shall grant authorisation only if those links do not prevent the effective exercise of its supervisory functions.

The CSSF shall also refuse authorisation, if the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the management company has close links, or difficulties involved in their enforcement, prevent the effective exercise of its supervisory functions.

The CSSF shall require management companies to provide it with the information required to monitor compliance with the conditions referred to in this paragraph on a continuous basis.

(3) The applicant shall be informed, within six months of the submission of a complete application whether or not authorisation has been granted. Reasons shall be given where an authorisation is refused.

(4) A management company may start business as soon as authorisation has been granted.

For the members of the administrative body, management board and supervisory board of the management company, the granting of authorisation implies the obligation to notify the CSSF, spontaneously in writing and in a complete, coherent and comprehensible manner, of any change regarding the substantial information upon which the CSSF based itself to examine the application for authorisation.

(5) The CSSF may withdraw the authorisation issued to a management company subject to this Chapter only where that company:

a) does not make use of the authorisation within twelve months, expressly renounces the authorisation or has ceased to exercise the activity covered by this Chapter for more than six months;

b) has obtained the authorisation by making false statements or by any other irregular means;

c) no longer fulfils the conditions under which authorisation was granted;

d) no longer complies with the Law of 5 April 1993 on the financial sector, as amended, resulting from the transposition of Directive 2006/49/EC if its authorisation also covers the discretionary portfolio management service referred to in Article 101, paragraph 3, point a) above;

e) has seriously and/or systematically infringed the provisions of this Law or of regulations adopted pursuant thereto;

f) falls within any of the other cases where this Law provides for withdrawal.

(6) In the case where a management company pursues collective portfolio management activities on a cross-border basis pursuant to Article 116, the CSSF shall consult the competent authorities of the UCITS home Member State before withdrawing the authorisation of the management company.

Art. 103

(1) The CSSF shall not grant authorisation to take up the business of a management company until it has been informed of the identities of the shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings and of the amounts of those holdings.

The CSSF shall refuse authorisation if, taking into account the need to ensure the sound and prudent management of a management company, it is not satisfied as to the suitability of such shareholders or members.

(2) The competent authorities of the other Member State involved shall be consulted beforehand in relation to the authorisation of any management company which is:

a) a subsidiary of another management company, an investment firm, a credit institution or an insurance undertaking authorised in another Member State;

b) a subsidiary of the parent undertaking of another management company, an investment firm, a credit institution or an insurance undertaking authorised in another Member State, or

c) controlled by the same natural or legal persons as those who control another management company, an investment firm, a credit institution or an insurance undertaking authorised in another Member State.

Art. 104

(1) The authorisation of a management company is subject to the condition that the audit of its annual accounting documents is entrusted to one or more approved statutory auditors who can prove that they have adequate professional experience.

(2) Any change regarding the approved statutory auditors must be previously approved by the CSSF.

(3) The institution of supervisory auditors[22] provided for by the Law of 10 August 1915 concerning commercial companies, as amended, and by Article 140 of that Law, shall not apply to management companies subject to this Chapter.

(4) Each Luxembourg management company subject to the supervision of the CSSF whose accounts have to be audited by an approved statutory auditor, must communicate to the CSSF spontaneously the reports and written comments of the approved statutory auditor in the context of its audit of the annual accounting documents.

The CSSF may regulate the scope of the mandate for the audit of annual accounting documents and the content of the reports and written comments of the approved statutory auditor referred to in the preceding sub-paragraph, without prejudice to the legal provisions governing the content of the independent auditor's[23] report.

(5) The approved statutory auditor must report promptly to the CSSF any fact or decision which it has become aware of while carrying out the audit of the accounting information contained in the annual report of a management company or any other legal task concerning a management company or a UCI, where any such fact or decision is likely to:

- constitute a material breach of this Law or the regulations adopted for its execution ; or

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22 *commissaires aux comptes*
23 *contrôleur légal des comptes*

- impair the continuous functioning of the management company, or of an undertaking contributing towards its business activity; or

- lead to a refusal to certify the accounts or to the expression of reservations thereon.

The approved statutory auditor has also a duty to promptly report to the CSSF in the accomplishment of its duties referred to in the preceding sub-paragraph in respect of a management company, any fact or decision concerning the management company and meeting the criteria listed in the preceding sub-paragraph, of which it has become aware while carrying out the audit of the accounting information contained in its annual report or while carrying out any other legal task related to another undertaking having close links resulting from a control relationship with this management company or an undertaking contributing towards its business activity.

If, in the discharge of its duties, the approved statutory auditor becomes aware that the information provided to investors or to the CSSF in the reports or other documents of the management company does not truly describe the financial situation and the assets and liabilities of the management company, it is obliged to inform the CSSF forthwith.

The approved statutory auditor is also obliged to provide the CSSF with all information or certificates which it may require on any matters of which the approved statutory auditor has or ought to have knowledge in connection with the discharge of its duties.

The disclosure to the CSSF in good faith by the approved statutory auditor of any fact or decision referred to in this paragraph does not constitute a breach of professional secrecy or of any restriction on disclosure of information imposed by contract and shall not result in liability of any kind of the approved statutory auditor.

[…][24]

The CSSF may request an approved statutory auditor to perform a control of one or several particular aspects of the activities and operations of a management company. This control is performed at the expense of the management company concerned.

Art. 105

In the event of the voluntary liquidation of a management company, the liquidator(s) must be approved by the CSSF. The liquidator(s) must provide all guarantees of good repute and professional skill.

Art. 105*bis*

(1) The District Court dealing with commercial matters shall, at the request of the Public Prosecutor, acting on its own initiative or at the request of the CSSF, pronounce the dissolution and order the liquidation of management companies, whose entry on (i) the list provided for in Article 101, paragraph 1 and, where applicable, (ii) the list provided for in Article 7, paragraph 1 of the Law of 12 July 2013 relating to alternative investment fund managers, has definitively been refused or withdrawn.

(2) The decision of the CSSF regarding the withdrawal from the lists referred to in paragraph 1 of this Article shall, as from the notification thereof to the management company and until the decision has become final, ipso jure entail the suspension of any payment by this management company and prohibition, on penalty of nullity, of taking any measures other than protective measures, except with the authorisation of the CSSF.

[24] Repealed by the Law of 21 December 2012.

Title B. – Relations with third countries

Art. 106

Relations with third countries shall be regulated in accordance with the rules laid down in Article 15 of Directive 2004/39/EC.

For the purpose of this Law, the terms "firm/investment firm" and "investment firms" contained in Article 15 of Directive 2004/39/EC shall mean respectively "management company" and "management companies"; the term "providing investment services" contained in Article 15, paragraph 1 of Directive 2004/39/EC shall mean "providing services".

Title C. – Operating conditions applicable to management companies having their registered office in Luxembourg

Art. 107

(1) The management company must comply at all times with the conditions laid down in Article 101 and Article 102, paragraphs 1 and 2 above. The own funds of a management company shall not fall below the level specified in Article 102, paragraph 1 point a). If they do, however, the CSSF may, where the circumstances so justify, allow such firm a limited period in which to rectify its situation or cease its activities.

(2) The prudential supervision of a management company shall be the responsibility of the CSSF, whether or not the management company establishes a branch as defined in Article 1 or provides services in another Member State or not, without prejudice to those provisions of Directive 2009/65/EC which confer responsibility to the authorities of the host Member State.

Art. 108

(1) Qualifying holdings in a management company shall be subject to the same rules as those applicable to investment firms under Article 18 of the Law of 5 April 1993 on the financial sector, as amended.

(2) For the purpose of this Law, the expressions "firm/investment firm" and "investment firms" contained in Article 18 of the Law of 5 April 1993 on the financial sector, as amended, shall be construed respectively as "management company" and "management companies".

Art. 109

(1) With regard to the nature of the UCITS managed by it and in furtherance of the prudential rules it is required to observe at all times with regard to the activity of management of UCITS according to Directive 2009/65/EC, a management company shall be required:

a) to have sound administrative and accounting procedures, control and safeguard arrangements for electronic data processing and adequate internal control mechanisms including, in particular, rules for personal transactions by its employees or for the holding or management of investments in financial instruments in order to invest on its own account and ensuring, at least, that each transaction involving the UCITS may be reconstructed according to its origin, the parties to it, its nature, and the time and place at which it was effected and that the assets of the UCITS managed by the management company are invested according to the management regulations or to the instruments of incorporation and the legal provisions in force;

b) to be structured and organised in such a way as to minimise the risk of UCITS or clients' interests being prejudiced by conflicts of interest between the company and its clients, between two of its clients, between one of its clients and a UCITS or between two UCITS.

(2) The management company the authorisation of which also covers the discretionary portfolio management service mentioned in Article 101, paragraph 3, point a), shall:

- not be permitted to invest all or a part of the investor's portfolio in units of UCITS it manages, unless it has received the prior general approval from the client;

- be subject with regard to the services referred to in Article 101, paragraph 3 to the provisions laid down by the Law of 27 July 2000 implementing Directive 97/9/EC on investor-compensation schemes in the amended Law of 5 April 1993 on the financial sector[25].

Art. 110

(1) Management companies are authorised to delegate to third parties, for the purpose of a more efficient conduct of their business, the power to carry out on their behalf one or more of their functions. In that case, all of the following preconditions shall be complied with:

a) the management company must inform the CSSF in an appropriate manner; the CSSF must, without delay, transmit the information to the competent authorities of the UCITS home Member State;

b) the mandate may not prevent the effectiveness of supervision over the management company; in particular, it must not prevent the management company from acting, or the UCITS from being managed, in the best interests of the investors;

c) when the delegation concerns investment management, the mandate must be given only to undertakings which are authorised or registered for the purpose of asset management and subject to prudential supervision; the delegation must be in accordance with investment allocation criteria periodically laid down by the management company;

d) when the mandate concerns investment management and is given to a third country undertaking, cooperation between the CSSF and the supervisory authority of that country must be ensured;

e) a mandate with regard to the core function of investment management must not be given to the depositary or to any other undertaking whose interests may conflict with those of the management company or the unitholders;

f) measures must exist which enable the persons who conduct the business of the management company to monitor effectively at any time the activity of the undertaking to which the mandate is given;

g) the mandate must not prevent the persons who conduct the business of the management company from giving at any time further instructions to the undertaking to which functions are delegated or from withdrawing the mandate with immediate effect when this is in the interests of investors;

h) having regard to the nature of the functions to be delegated, the undertaking to which functions will be delegated must be qualified and capable of undertaking the functions in question; and

[25] This requires the management company concerned to be a member of a Luxembourg-based investor compensation scheme.

i) the UCITS' prospectuses must list the functions delegated by the management company.

(2) The liability of the management company or the depositary shall not be affected by delegation by the management company of any functions to third parties. The management company shall not delegate its functions to the extent that it becomes a letter box entity.

Art. 111

In the conduct of its business activities, a management company authorised under this Chapter shall, at all times, by virtue of rules of conduct:

a) act honestly and fairly in conducting its business activities in the best interests of the UCITS it manages and the integrity of the market,

b) act with due skill, care and diligence, in the best interests of the UCITS it manages and the integrity of the market,

c) have and employ efficiently the resources and procedures that are necessary for the proper performance of its business activities,

d) try to avoid conflicts of interest and, when they cannot be avoided, ensure that the UCITS it manages are fairly treated, and

e) comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of its investors and the integrity of the market.

Art. 111*bis*

(1) The management companies referred to in this Chapter shall establish and apply remuneration policies and practices that are consistent with, and promote, sound and effective risk management and that neither encourage risk taking which is inconsistent with the risk profiles, the fund rules or instruments of incorporation of the UCITS that they manage nor impair compliance with the management company's duty to act in the best interest of the UCITS.

(2) The remuneration policies and practices shall include fixed and variable components of salaries and discretionary pension benefits.

(3) The remuneration policies and practices shall apply to those categories of staff, including senior management, risk takers, control functions and any employee receiving total remuneration that falls within the remuneration bracket of senior management and risk takers whose professional activities have a material impact on the risk profiles of the management companies or of the UCITS that they manage.

Art. 111*ter*

(1) When establishing and applying the remuneration policies referred to in Article 111*bis*, management companies shall comply with the following principles in a way and to the extent that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities:

a) the remuneration policy is consistent with and promotes sound and effective risk management and does not encourage risk taking which is inconsistent with the risk profiles, rules or instruments of incorporation in such UCITS that the management company manages;

b) the remuneration policy is in line with the business strategy, objectives, values and interests of the management company and the UCITS that it manages and of the investors of this UCITS, and includes measures to avoid conflicts of interest;

c) the remuneration policy is adopted by the management body of the management company in its supervisory function, and that body adopts, and reviews at least annually, the general principles of the remuneration policy and is responsible for, and oversees, their implementation. The tasks referred to in this point shall be undertaken only by members of the management body who do not perform any executive functions in the management company concerned and who have expertise in risk management and remuneration;

d) the implementation of the remuneration policy is, at least annually, subject to central and independent internal review for compliance with policies and procedures for remuneration adopted by the management body in its supervisory function;

e) staff engaged in control functions are compensated in accordance with the achievement of the objectives linked to their functions, independently of the performances of the business areas that they control;

f) the remuneration of the senior officers in the risk management and compliance functions is overseen directly by the remuneration committee, where such a committee exists;

g) where remuneration is performance-related, the total amount of remuneration is based on a combination of the assessment as to the performance of the individual and of the business unit or UCITS concerned and as to their risks and of the overall results of the management company when assessing individual performance, taking into account financial and non-financial criteria;

h) the assessment of performance is set in a multi-year framework appropriate to the holding period recommended to the investors of the UCITS managed by the management company in order to ensure that the assessment process is based on the longer-term performance of the UCITS and its investment risks and that the actual payment of performance-based components of remuneration is spread over the same period;

i) guaranteed variable remuneration is exceptional, occurs only in the context of hiring new staff and is limited to the first year of engagement;

j) fixed and variable components of total remuneration are appropriately balanced and the fixed remuneration component represents a sufficiently high proportion of the total remuneration to allow the operation of a fully flexible policy on variable components, including the possibility to pay no variable remuneration component;

k) payments relating to the early termination of a contract reflect performance achieved over time and are designed in a way that does not reward failure;

l) the measurement of performance used to calculate variable remuneration components or pools of variable remuneration components includes a comprehensive adjustment mechanism to integrate all relevant types of current and future risks;

m) subject to the legal structure of the UCITS and its fund rules or its instruments of incorporation, a substantial portion, and in any event at least 50%, of any variable remuneration component consists of units of the UCITS concerned, equivalent ownership interests, or share-linked instruments or equivalent non-cash instruments with equally effective incentives as any of the instruments referred to in this point, unless the management of the UCITS accounts for less than 50% of the total portfolio managed by the management company, in which case the minimum of 50% does not apply.

The instruments referred to in this point shall be subject to an appropriate retention policy designed to align incentives with the interests of the management company and the UCITS that it manages and the investors of such UCITS. This point shall

apply to both the portion of the variable remuneration component deferred in line with point n) and the portion of the variable remuneration component not deferred;

n) a substantial portion, and in any event at least 40%, of the variable remuneration component, is deferred over a period which is appropriate in view of the holding period recommended to the investors of the UCITS concerned and is correctly aligned with the nature of the risks of the UCITS in question.

The period referred to in this point shall be at least three years; remuneration payable under deferral arrangements vests no faster than on a pro-rata basis; in the case of a variable remuneration component of a particularly high amount, at least 60% of the amount shall be deferred;

o) the variable remuneration, including the deferred portion, is paid or vests only if it is sustainable according to the financial situation of the management company as a whole, and justified according to the performance of the business unit, the UCITS and the individual concerned.

The total variable remuneration shall generally be considerably contracted where subdued or negative financial performance of the management company or of the UCITS concerned occurs, taking into account both current compensation and reductions in payouts of amounts previously earned, including through malus or clawback arrangements;

p) the pension policy is in line with the business strategy, objectives, values and long-term interests of the management company and of the UCITS that it manages.

If the employee leaves the management company before retirement, discretionary pension benefits shall be held by the management company for a period of five years in the form of instruments defined in point m). In the case of an employee reaching retirement, discretionary pension benefits shall be paid to the employee in the form of instruments defined in point m), subject to a five-year retention period;

q) staff are required to undertake not to use personal hedging strategies or remuneration- and liability-related insurance to undermine the risk alignment effects embedded in their remuneration arrangements;

r) variable remuneration is not paid through vehicles or methods that facilitate the avoidance of the requirements of this Law.

(2) The principles set out in paragraph 1 shall apply to any benefit of any type paid by the management company, to any amount paid directly by the UCITS itself, including performance fees, and to any transfer of units or shares of the UCITS, made for the benefit of those categories of staff, including senior management, risk takers, control functions and any employee receiving total remuneration that falls into the remuneration bracket or senior management and risk takers, whose professional activities have a material impact on their risk profile or the risk profile of the UCITS that they manage.

(3) Management companies that are significant in terms of their size or of the size of the UCITS that they manage, their internal organisation and the nature, scope and complexity of their activities shall establish a remuneration committee. The remuneration committee shall be constituted in a way that enables it to exercise competent and independent judgment on remuneration policies and practices and the incentives created for managing risk.

The remuneration committee that is, where appropriate, set up in accordance with the guidelines of the European Securities Markets Authority referred to in Article 14a (4) of the Directive 2009/65/EC shall be responsible for the preparation of decisions regarding remuneration, including those which have implications for the risk and risk management of the management company or the UCITS concerned and which are to be taken by the management body in its supervisory function. The remuneration committee shall be chaired

by a member of the management body who does not perform any executive functions in the management company concerned. The members of the remuneration committee shall be members of the management body who do not perform any executive functions in the management company concerned.

In those management companies where employee representation on the management body is provided for by the Labour Code, the remuneration committee shall include one or more employee representatives. When preparing its decisions, the remuneration committee shall take into account the long-term interest of investors and other stakeholders and the public interest.

Art. 112

A management company shall take measures in accordance with Article 53 and establish appropriate procedures and arrangements to ensure that it deals properly with investor complaints and that there are no restrictions on investors exercising their rights in the event that the management company manages a UCITS established in another Member State. Those measures shall allow investors to file complaints in the official language or one of the official languages of their Member State.

The management company shall establish appropriate procedures and arrangements to make information available at the request of the public or the competent authorities of the UCITS home Member State.

Art. 112*bis*

(1) Management companies are authorised to appoint tied agents within the meaning of point 1) of Article 1 of the amended Law of 5 April 1993 on the financial sector.

(2) Where a management company decides to appoint tied agents, this management company must, within the limits of activities permitted under this Law, comply with the same rules as those applicable to investment firms under Article 37-8 of the amended Law of 5 April 1993 on the financial sector. For the purpose of applying this paragraph, the term "investment firm" in Article 37-8 of the amended Law of 5 April 1993 on the financial sector shall read "management company".

Title D. – The right of establishment and the freedom to provide services

Art. 113

Where a management company authorised under this Chapter proposes, without establishing a branch, only to market the units of the UCITS it manages as provided for in Annex II in a Member State other than the UCITS home Member State, without proposing to pursue any other activities or services, such marketing shall be subject only to the requirements of Chapter 6.

I. Freedom of establishment and freedom to provide services in another Member State by a management company authorised in accordance with this Chapter

Art. 114

(1) In addition to meeting the conditions imposed in Articles 101 and 102, a management company authorised under this Chapter wishing to establish a branch within the territory of another Member State to pursue the activities for which it has been authorised shall notify the CSSF.

(2) The notification provided for in paragraph 1 shall be accompanied by the following information and documents:

a) the Member State within the territory of which the management company plans to establish a branch;

b) a programme of operations setting out the activities and services according to Article 101, paragraphs 2 and 3 envisaged and the organisational structure of the branch, which shall include a description of the risk management process put in place by the management company. It shall also include a description of the procedures and arrangements taken in accordance with Article 112;

c) the address, in the management company's host Member State from which documents may be obtained; and

d) the name of those responsible for the management of the branch.

(3) Unless the CSSF has reason to doubt the adequacy of the administrative structure or the financial situation of the management company, taking into account the activities envisaged, it shall, within two months of receiving all the information referred to in paragraph 2, communicate that information to the competent authorities of the management company's host Member State and shall inform the management company accordingly. It shall also communicate details of any compensation scheme intended to protect investors.

Where the CSSF refuses to communicate the information referred to in paragraph 2 to the competent authorities of the management company's host Member State, it shall give reasons for such refusal to the management company concerned within two months of receiving all the information. The refusal or any failure to reply shall be subject to the right to apply to the courts of Luxembourg.

Where a management company wishes to pursue the activity of collective portfolio management referred to in Annex II, the CSSF shall enclose with the documentation sent to the competent authorities of the management company's host Member State an attestation that the management company has been authorised pursuant to the provisions of Directive 2009/65/EC, a description of the scope of the management company's authorisation and details of any restriction on the types of UCITS that the management company is authorised to manage.

(4) A management company which pursues activities by a branch within the territory of the host Member State shall comply with the rules drawn up by the management company's host Member State pursuant to Article 14 of Directive 2009/65/EC.

(5) Before the branch of a management company starts business, the competent authorities of the management company's host Member State shall, within two months of receiving the information referred to in paragraph 2, prepare for supervising the compliance of the management company with the rules under their responsibility.

(6) On receipt of a communication from the competent authorities of the management company's host Member State or on the expiry of the period provided for in paragraph 5 without receipt of any communication from those authorities, the branch may be established and start business.

(7) In the event of a change in any particulars communicated in accordance with paragraph 2, point b), c) or d), a management company shall give written notice of that change to the CSSF and the competent authorities of its host Member State at least one month before implementing the change so that the CSSF may take a decision on the change under paragraph 3 and the competent authorities of the management company's host Member State may do so under paragraph 6 of Article 17 of Directive 2009/65/EC.

(8) In the event of a change in the particulars communicated in accordance with paragraph 3, sub-paragraph 1, the CSSF shall inform the competent authorities of the management company's host Member State accordingly.

The CSSF shall update the information contained in the attestation referred to in paragraph 3, sub-paragraph 3 and inform the competent authorities of the management company's host Member State whenever there is a change in the scope of the management company's

authorisation or in the details of any restriction on the types of UCITS that the management company is authorised to manage.

Art. 115

(1) Any management company authorised pursuant to this Chapter wishing to pursue the activities for which it has been authorised within the territory of another Member State for the first time under the freedom to provide services shall communicate the following information to the CSSF:

a) the Member State within the territory of which the management company intends to operate; and

b) a programme of operations stating the envisaged activities and services referred to in Article 101, paragraphs 2 and 3 which shall include a description of the risk management process put in place by the management company. It shall also include a description of the procedures and arrangements taken in accordance with Article 112.

(2) The CSSF shall, within one month of receiving the information referred to in paragraph 1 forward it to the competent authorities of the management company's host Member State.

The CSSF shall also communicate details of any applicable compensation scheme intended to protect investors.

Where a management company wishes to pursue the activity of collective portfolio management as referred to in Annex II, the CSSF shall enclose with the documentation sent to the competent authorities of the management company's host Member State, an attestation that the management company has been authorised pursuant to the provisions of Directive 2009/65/EC, a description of the scope of the management company's authorisation and details of any restriction on the types of UCITS that the management company is authorised to manage.

Notwithstanding Article 20 of Directive 2009/65/EC and Article 54, the management company may then start business in the management company's host Member State.

(3) A management company which pursues activities under the freedom to provide services shall comply with the rules drawn up by the CSSF pursuant to Article 111.

(4) Where the content of the information communicated in accordance with paragraph 1, point b) is amended, the management company shall give notice of the amendment in writing to the CSSF and the management company's host Member State before implementing the change. The CSSF shall update the information contained in the attestation referred to in paragraph 2 and inform the competent authorities of the management company's host Member State whenever there is a change in the scope of the management company's authorisation or in the details of any restriction on the types of UCITS that the management company is authorised to manage.

Art. 116

(1) A management company authorised pursuant to this Chapter which pursues the activity of collective portfolio management on a cross-border basis by establishing a branch or under the freedom to provide services shall comply with this Law as it relates to its organisation, including delegation arrangements, risk-management procedures, prudential rules and supervision, procedures referred to in Article 109 and the management company's reporting requirements.

(2) The CSSF shall be responsible for supervising compliance with paragraph 1.

(3) A management company which pursues the activity of collective portfolio management on a cross-border basis by establishing a branch or in accordance with the freedom to provide services shall comply with the rules of the UCITS home Member State which relate to the constitution and functioning of the UCITS, namely the rules applicable to:

a) the setting up and authorisation of the UCITS;

b) the issuance and redemption of units;

c) investment policies and limits, including the calculation of total exposure and leverage;

d) restrictions on borrowing, lending and uncovered sales;

e) the valuation of assets and the accounting of the UCITS;

f) the calculation of the issue or redemption price, and errors in the calculation of the net asset value and related investor compensation;

g) the distribution or reinvestment of income;

h) the disclosure and reporting requirements of the UCITS, including the prospectus, key investor information and periodic reports;

i) the arrangements made for marketing;

j) the relationship with unitholders;

k) the merging and restructuring of the UCITS;

l) the dissolution and liquidation of the UCITS;

m) where applicable, the content of the unitholder register;

n) the licensing and supervision fees regarding the UCITS; and

o) the exercise of unitholders' voting rights and other unitholders' rights in relation to points a) to m).

(4) The management company shall comply with the obligations set out in the management regulations or in the instruments of incorporation, and the obligations set out in the prospectus.

(5) The management company shall decide and be responsible for adopting and implementing all the arrangements and organisational decisions which are necessary to ensure compliance with the rules which relate to the constitution and functioning of the UCITS and with the obligations set out in the management regulations or in the instruments of incorporation, and with the obligations set out in the prospectus.

(6) The CSSF shall be responsible for supervising the adequacy of the arrangements and organisation of the management company so that the management company is in a position to comply with the obligations and rules which relate to the constitution and functioning of all the UCITS it manages.

Art. 117

(1) A management company pursuant to this Chapter which applies to manage a UCITS established in another Member State shall provide the competent authorities of the UCITS home Member State with the following documentation:

a) the written contract with the depositary referred to in Article 22, paragraph 2, of Directive 2009/65/EC; and

b) information on delegation arrangements regarding functions of investment management and administration referred to in Annex II.

If a management company already manages other UCITS of the same type in the UCITS home Member State, reference to the documentation already provided shall be sufficient.

(2) The competent authorities of the UCITS home Member State may ask the CSSF for clarification and information regarding the documentation referred to in paragraph 1 and, based on the attestation referred to in Articles 114, paragraph 3, third sub-paragraph and 115, paragraph 2, third sub-paragraph, as to whether the type of UCITS for which authorisation has been requested falls within the scope of the management company's authorisation. The CSSF shall provide its opinion within ten working days of the initial request.

(3) Any subsequent material modifications of the documentation referred to in paragraph 1 shall be notified by the management company to the competent authorities of the UCITS home Member State.

Art. 118

(1) A management company's host Member State may require management companies pursuing business within its territory under Directive 2009/65/EC to provide the information necessary for the monitoring of their compliance with the rules under the responsibility of the management company's host Member State that apply to them.

Management companies shall ensure that the procedures and arrangements referred to in Article 112 enable the competent authorities of the UCITS home Member State to obtain directly from the management company the information referred to in this paragraph.

(2) Where the competent authorities of a management company's host Member State ascertain that this management company is in breach of one of the rules under their responsibility, those authorities shall require the management company concerned to put an end to that breach and inform the CSSF.

(3) If the management company concerned refuses to provide the management company's host Member State with information falling under its responsibility, or fails to take the necessary steps to put an end to the breach referred to in paragraph 1, the competent authorities of the management company's host Member State shall inform the CSSF accordingly. The CSSF shall, at the earliest opportunity, take all appropriate measures to ensure that the management company concerned provides the information requested by the management company's host Member State pursuant to paragraph 1 or puts an end to the breach. The nature of those measures shall be communicated to the competent authorities of the management company's host Member State.

(4) If, despite the measures taken by the CSSF, the management company continues to refuse to provide the information requested by the management company's host Member State pursuant to paragraph 1, or persists in breaching the legal or regulatory provisions referred to in the same paragraph, the competent authorities of the management company's host Member State may, after informing the CSSF, take appropriate measures, including under Articles 98 and 99 of Directive 2009/65/EC, to prevent or penalise further irregularities and, in so far as necessary, to prevent that management company from initiating any further

transaction within its territory. Where the service provided within the management company's host Member State is the management of a UCITS, the management company's host Member State may require the management company to cease managing that UCITS.

(5) Any measure adopted pursuant to paragraphs 3 or 4 involving measures or penalties shall be duly justified and communicated to the management company concerned. Every such measure shall be subject to the right to apply to the courts in the Member State which adopted it.

II. Freedom of establishment and freedom to provide services in Luxembourg by a management company authorised under Directive 2009/65/EC in another Member State

Art. 119

(1) A management company authorised by the competent authorities of another Member State under Directive 2009/65/EC may pursue in Luxembourg the activity for which it has been authorised, either by the establishment of a branch or under the freedom to provide services.

(2) The establishment of a branch or the provision of the aforementioned services is not subject to any authorisation requirement or to any requirement to provide endowment capital or to any other measure having equivalent effect.

(3) Within the limits thus provided, a UCITS established in Luxembourg shall be free to designate, or to be managed by a management company authorised in another Member State under Directive 2009/65/EC, in accordance with the provisions of Article 16, paragraph (3) of Directive 2009/65/EC.

Art. 120

(1) A management company authorised in another Member State wishing to establish a branch in Luxembourg to pursue the activities for which it has been authorised shall notify the competent authorities of its home Member State in accordance with the provisions of Article 17 of Directive 2009/65/EC.

The competent authorities of the home Member State shall notify to the CSSF the information referred to in Article 17, paragraph (2) of Directive 2009/65/EC within two months of receiving the same.

Where a management company wishes to pursue the activity of collective portfolio management, this notification shall include an attestation that the management company has been authorised pursuant to the provisions of Directive 2009/65/EC, a description of the scope of the management company's authorisation and details of any possible restriction on the types of UCITS that the management company is authorised to manage.

(2) The management company shall comply with Article 111. The CSSF shall be responsible for supervising compliance with this provision.

(3) The CSSF shall within two months of receiving the information referred to in Article 17 of Directive 2009/65/EC prepare for supervising the compliance of the management company with the rules under its responsibility.

(4) On receipt of a communication from the CSSF or on the expiry of the period provided for in paragraph 3 without receipt of any communication from the latter, the branch may be established and start business.

(5) In the event of change of any particulars communicated in accordance with Article 17, paragraph (2) of Directive 2009/65/EC, the management company shall give written notice of that change to the competent authorities of the management company's home Member State and to the CSSF, at least one month before implementing the change, so that the competent authorities of the management company's home Member State and the CSSF may take a

decision on the change in accordance with discharging their responsibilities under Directive 2009/65/EC and this Law respectively.

Art. 121

(1) A management company wishing to pursue the activities for which it has been authorised in another Member State for the first time in Luxembourg under the freedom to provide services shall communicate this to the competent authorities of the management company's home Member State in accordance with the provisions of Article 18 of Directive 2009/65/EC.

(2) The competent authorities of the management company's home Member State shall, within one month of receiving the information referred to in the abovementioned Article, communicate it to the CSSF. Where a management company wishes to pursue the activity of collective portfolio management, this shall include an attestation that the management company has been authorised pursuant to the provisions of Directive 2009/65/EC, a description of the scope of the management company's authorisation and details of any restriction on the types of UCITS that the management company is authorised to manage.

(3) Notwithstanding Articles 20 and 93 of Directive 2009/65/EC, the management company may then start business in Luxembourg.

(4) The management company shall comply with the rules drawn up pursuant to Article 14 of Directive 2009/65/EC.

(5) In the event of a change in any particulars communicated in accordance with Article 18, paragraph (1), point (b) of Directive 2009/65/EC, the management company shall give written notice of that change to the competent authorities of the management company's home Member State and of the CSSF before implementing the change.

Art. 122

(1) A management company which pursues the activity of collective portfolio management in Luxembourg on a cross-border basis by establishing a branch or under the freedom to provide services shall comply with the rules of the management company's home Member State which relate to the organisation of the management company, including delegation arrangements, risk-management procedures, prudential rules and supervision, procedures referred to in Article 12 of Directive 2009/65/EC and the management company's reporting requirements.

(2) The management company referred to in paragraph 1 shall comply with the rules in force in Luxembourg as regards the constitution and functioning of the UCITS, in particular the rules applicable to:

a) the setting up and authorisation of the UCITS;

b) the issuance and redemption of units;

c) investment policies and limits, including the calculation of total exposure and leverage;

d) restrictions on borrowing, lending and uncovered sales;

e) the valuation of assets and the accounting of the UCITS;

f) the calculation of the issue or redemption price, and errors in the calculation of the net asset value and related investor compensation;

g) the distribution or reinvestment of income;

h) the disclosure and reporting requirements of the UCITS, including the prospectus, key investor information and periodic reports;

i) the arrangements made for marketing;

j) the relationship with unitholders;

k) the merging and restructuring of the UCITS;

l) the dissolution and liquidation of the UCITS;

m) where applicable, the content of the unitholder register;

n) the licensing and supervision fees regarding the UCITS; and

o) the exercise of unitholders' voting rights and other unitholders' rights in relation to points a) to m).

(3) The management company shall comply with the obligations set out in the management regulations or in the instruments of incorporation, and the obligations set out in the prospectus.

(4) The CSSF shall be responsible for supervising compliance with paragraphs 2 and 3.

(5) The management company shall decide and be responsible for adopting and implementing all the arrangements and organisational decisions which are necessary to ensure compliance with the rules which relate to the constitution and functioning of the UCITS and with the obligations set out in the management regulations or in the instruments of incorporation, as well as with the obligations set out in the prospectus.

Art. 123

(1) Notwithstanding Article 129, a management company which applies to manage a UCITS established in Luxembourg shall provide the CSSF with the following documentation:

a) the written contract with the depositary, referred to in Articles 17 and 33; and

b) any information on delegation arrangements, regarding functions of investment management and administration referred to in Annex II of this Law.

If a management company already manages other UCITS of the same type in Luxembourg, reference to the documentation already provided shall be sufficient.

(2) In so far as it is necessary, the CSSF may ask the competent authorities of the management company's home Member State for clarification and information regarding the documentation referred to in paragraph 1 of this Article and, based on the attestation referred to in Articles 120, paragraph 1 and 121, paragraph 2, to verify as to whether the type of UCITS for which authorisation has been requested falls within the scope of the management company's authorisation.

(3) The CSSF may refuse the application of the management company only if:

a) the management company does not comply with the rules falling under its responsibility pursuant to Article 122;

b) the management company is not authorised by the competent authorities of its home Member State to manage the type of UCITS for which authorisation is requested; or

c) the management company has not provided the documentation referred to in paragraph 1.

Before refusing an application, the CSSF shall consult the competent authorities of the management company's home Member State.

(4) Any subsequent material modifications of the documentation referred to in paragraph 1 shall be notified by the management company to the CSSF.

Art. 124

(1) For statistical purposes, a management company with a branch in Luxembourg shall report periodically on its activities in Luxembourg to the CSSF.

(2) The management company which pursues activities in Luxembourg through the establishment of a branch or under the freedom to provide services, has to provide the CSSF with the information necessary for the monitoring of the management company's compliance with the rules under the responsibility of the CSSF that apply to it.

The management company shall ensure that the procedures and arrangements referred to in Article 15 of Directive 2009/65/EC enable the CSSF to obtain the information referred to in this paragraph directly from the management company.

(3) Where the CSSF ascertains that a management company that has a branch or provides services in Luxembourg, is in breach of one of the rules under its responsibility, it shall require the management company concerned to put an end to that breach and inform the competent authorities of the management company's home Member State thereof.

(4) If the management company concerned refuses to provide the CSSF with information falling under its responsibility, or fails to take the necessary steps to put an end to the breach referred to in paragraph 3, the CSSF shall inform the competent authorities of the management company's home Member State accordingly. The competent authorities of the management company's home Member State shall, at the earliest opportunity, take all appropriate measures to ensure that the management company concerned provides the information requested by the CSSF pursuant to paragraph 2 or puts an end to the breach. The nature of those measures shall be communicated to the CSSF.

(5) If, despite the measures taken by the competent authorities of the management company's home Member State or because such measures prove to be inadequate or are not available in the Member State in question, the management company continues to refuse to provide the information requested by the CSSF pursuant to paragraph 2, or persists in breaching the legal or regulatory provisions, referred to in the same paragraph, in force in Luxembourg, the CSSF may, after informing the competent authorities of the management company's home Member State, take appropriate measures, including under Articles 147 and 148, to prevent or penalise further irregularities and, in so far as necessary, to prevent that management company from initiating any further transactions in Luxembourg.

Where the service provided is the management of a UCITS, the CSSF may require the management company to cease managing that UCITS.

If the CSSF considers that the competent authority of the management company's home Member State has not acted adequately, it may refer the matter to the European Securities and Markets Authority.

(6) Any measure adopted pursuant to paragraph 4 or 5 involving measures or penalties shall be duly justified and communicated to the management company concerned. Every such measure shall be subject to the right to apply to the courts in Luxembourg.

(7) Before following the procedure laid down in paragraph 3, 4 or 5, the CSSF may, in emergencies, take any precautionary measures necessary to protect the interests of investors and others for whom services are provided. The Commission of the European Union, the European Securities and Markets Authority and the competent authorities of the

other Member States concerned shall be informed of such measures at the earliest opportunity.

After consulting the competent authorities of the Member States concerned, the Commission of the European Union may decide that the CSSF must amend or abolish those measures.

(8) The competent authorities of the management company's home Member State shall consult the CSSF before withdrawing the authorisation of the management company. In such case, the CSSF shall take appropriate measures to safeguard investors' interests. Those measures may include decisions preventing the management company concerned from initiating any further transactions in Luxembourg.

Title E. – Management companies belonging to a financial conglomerate

Art. 124-1

Without prejudice to the provisions relating to monitoring provided by this Law, if a management company authorised under this Chapter is part of a financial conglomerate within the meaning of Article 2, point 14, of Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council, it is also submitted to the supplementary supervision undertaken by the CSSF as per the provisions provided for in Part II[26], Chapter 3*ter*, of the amended Law of 5 April 1993 on the financial sector.

Chapter 16 – Other management companies

Art. 125-1

(1) Access to the business of a management company within the meaning of this Chapter is subject to prior authorisation by the CSSF.

The management company shall be incorporated as a public limited company, a private limited company, a cooperative company, a cooperative company set up as a public limited company or a corporate partnership limited by shares. The capital of the company must be represented by registered shares. The provisions of the amended Law of 10 August 1915 concerning commercial companies are applicable to management companies falling within the scope of this Chapter, insofar as this Law does not derogate therefrom.

Authorised management companies shall be entered by the CSSF on a list. That entry shall be tantamount to authorisation and shall be notified by the CSSF to the management company concerned. Applications for entry on the list must be filed with the CSSF before the incorporation of the management company. The incorporation of the management company can only be undertaken after notification of the authorisation by the CSSF. This list and any modifications made thereto are published in the *Mémorial* by the CSSF.

Without prejudice to the application of Article 125-2, management companies authorised pursuant to this Article can only engage in the following activities:

a) ensure the management of investment vehicles other than AIFs within the meaning of Directive 2011/61/EU;

b) ensure the function of management company within the meaning of Article 89, paragraph 2, for one or more common funds which qualify as AIFs within the meaning of Directive 2011/61/EU or for one or more investment companies with variable capital or investment companies with fixed capital which qualify as AIFs

[26] The French version of the Law of 15 March 2016 refers to Part II instead of Part III.

within the meaning of Directive 2011/61/EU. In such case, the management company must appoint, on behalf of the common fund(s) and/or of the investment compan(y/ies) with variable capital or investment compan(y/ies) with fixed capital concerned, an external AIFM in accordance with point a) of Article 88-2, paragraph 2;

c) ensure the management of one or more AIFs, whose assets under management do not exceed one of the thresholds provided for in Article 3, paragraph 2 of the Law of 12 July 2013 relating to alternative investment fund managers. In such case, the management companies concerned must:

- identify the AIFs they manage to the CSSF;

- provide information on the investment strategies of the AIFs that they manage to the CSSF;

- regularly provide the CSSF with information on the main instruments in which they are trading and on the principal exposures and most important concentrations of the AIFs that they manage in order to enable the CSSF to monitor systemic risk effectively.

Where the threshold conditions set out above are no longer met and where the management company concerned has not appointed an external AIFM within the meaning of point a) of Article 88-2, paragraph 2, or where the management company has chosen to be subject to the Law of 12 July 2013 relating to alternative investment fund managers, the management company concerned must apply to the CSSF for authorisation within thirty calendar days in accordance with the procedures laid down in Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers.

Under no circumstances shall management companies be authorised under this Article to only perform the services referred to in point a) without also performing the services referred to in points b) or c), unless the investment vehicles other than AIFs within the meaning of Directive 2011/61/EU, are regulated by specific sector laws which concern them.

The administration of the management companies' own assets must only be of an ancillary nature.

Both its head office and its registered office must be situated in Luxembourg.

Management companies falling within the scope of this Article performing the activities referred to in points a) or c) of the fourth sub-paragraph of this Article are authorised to delegate to third parties, for the purposes of a more efficient conduct of their activities, the power to carry out on their behalf, one or more of their functions. In that case, the following preconditions must be complied with:

a) the CSSF must be informed in an appropriate manner;

b) the mandate must not prevent the effectiveness of the supervision over the management company; in particular, it must not prevent the management company from acting, or the UCI from being managed, in the best interests of the investors;

c) when the delegation concerns investment management, the mandate may only be given to undertakings which are authorised or registered for the purpose of asset management and subject to prudential supervision; when the mandate is given to a third country undertaking subject to prudential supervision, cooperation between the CSSF and the supervisory authority of this country must be ensured;

d) where the conditions of point c) are not fulfilled, the delegation can only become effective after prior approval of the CSSF; and

e) no mandate regarding the core function of investment management shall be given to the depositary.

Management companies falling within the scope of this Article performing activities referred to under point b) of the fourth sub-paragraph of this Article are authorised to delegate to third parties, for the purpose of a more efficient conduct of their activities, the power to carry out on their behalf, one or more of their functions of administration and marketing, to the extent that the external AIFM appointed by the management company concerned does not itself undertake the functions in question. In that case, the following preconditions must be complied with:

a) the CSSF must be informed in an appropriate manner;

b) the mandate must not prevent the effectiveness of the supervision over the management company; in particular, it must not prevent the management company from acting, or the common fund, the investment company with variable capital or the investment company with fixed capital from being managed in the best interests of investors.

(2) The CSSF will grant authorisation to the company only on the following conditions:

a) it must have sufficient financial resources at its disposal to enable it to conduct its business effectively and meet its liabilities; in particular it must have a minimum paid-up capital of one hundred and twenty-five thousand euros (EUR 125,000); a CSSF regulation may raise that minimum amount to a maximum of six hundred and twenty-five thousand euros (EUR 625,000);

b) the funds referred to in paragraph 2 a) are to be maintained at the management company's permanent disposal and invested in its own interests;

c) the directors of the management company, within the meaning of Article 129, paragraph 5, must be of sufficiently good repute and have the professional experience required for the performance of their duties;

d) the identity of reference shareholders or members of the management company must be provided to the CSSF;

e) the application for authorisation must describe the organisational structure of the management company.

(3) The applicant shall be informed, within six months of the submission of a complete application whether or not authorisation has been granted. Reasons shall be given whenever authorisation is refused.

(4) A management company may start business as soon as authorisation has been granted.

For the members of the administrative body, management board and supervisory board of the management company, the granting of authorisation implies an obligation to notify the CSSF, spontaneously in writing and in complete, coherent and comprehensible manner, of any change regarding the substantial information upon which the CSSF based itself to examine the application for authorisation.

(5) The CSSF may withdraw the authorisation issued to a management company subject to this Chapter only where that company:

a) does not make use of the authorisation within twelve months, expressly renounces the authorisation or has ceased the activity covered by this Chapter for more than six months;

b) has obtained the authorisation by making false statements or by any other irregular means;

c) no longer fulfils the conditions under which authorisation was granted;

d) has seriously and/or systematically infringed the provisions adopted pursuant to this Law; or

e) falls within any of the other cases that provide for withdrawal in this Law.

(6) The management company may not make use of the assets of the UCIs it manages for its own needs.

(7) The assets of the UCIs under management do not form part of the estate in case of insolvency of the management company. They cannot be claimed by the creditors of the management company.

Art. 125-2

(1) Management companies authorised pursuant to this Article which, as appointed management company, manage one or more AIFs within the meaning of Directive 2011/61/EU, without having appointed an external AIFM within the meaning of point a) of Article 88-2, paragraph 2, must also, where the assets under management exceed one of the thresholds provided for in Article 3, paragraph 2 of the Law of 12 July 2013 relating to alternative investment fund managers, obtain prior authorisation from the CSSF as AIFM of an AIF under Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers.

(2) Management companies referred to in this Article can only engage in the activities referred to in Annex I of the Law of 12 July 2013 relating to alternative investment fund managers as well as in the non-core activities referred to in Article 5, paragraph 4 of that Law.

(3) In relation to the AIFs that they manage pursuant to this Article, management companies, as appointed management company, are subject to all the rules provided for by the Law of 12 July 2013 relating to alternative investment fund managers, to the extent that these rules are applicable to them.

(4) The management of a UCI subject to Part II by a management company appointed as an AIFM within the meaning of this Article is subject, as the case may be, to the rules laid down in Articles 17, 18, 18*bis*, 19 and 20 or to Articles 33, 34, 34*bis*, 35 and 37.

Art. 126

(1) Article 104 of this Law is applicable to management companies falling within the scope of this Chapter.

(2) In the event of the voluntary liquidation of a management company, the liquidator(s) must be approved by the CSSF. The liquidator(s) must provide all guarantees of good repute and professional skill.

Art. 126-1

(1) The District Court dealing with commercial matters shall, at the request of the Public Prosecutor, acting on its own initiative or at the request of the CSSF, pronounce the dissolution and order the liquidation of management companies, whose entry on (i) the list provided for in Article 125, paragraph 1 and, where applicable, (ii) the list provided for in Article 7, paragraph 1 of the Law of 12 July 2013 relating to alternative investment fund managers, has definitively been refused or withdrawn.

(2) The decision of the CSSF regarding the withdrawal from the lists referred to in paragraph 1 of this article shall, as from the notification thereof to the management company and until the

decision has become final, *ipso jure* entail the suspension of any payment by this management company and prohibition, on penalty of nullity, of taking any measures other than protective measures, except with the authorisation of the CSSF.

Chapter 17 – Management companies other than those authorised by the competent authorities of another Member State in accordance with Directive 2009/65/EC, from Member States or third countries

Art. 127

(1) Management companies other than those authorised by the competent authorities of another Member State in accordance with Directive 2009/65/EC, from a Member State or a third country, wishing to establish a branch in Luxembourg, are subject to the same authorisation rules as management companies subject to Chapter 16.

(2) For the purposes of the preceding paragraph, compliance with the conditions required for authorisation is assessed in the context of the foreign establishment.

(3) The authorisation for the activity of a management company of UCIs shall not be granted to branches of foreign companies, unless these companies have own funds distinct from the assets of their members. The branch must in addition have at its permanent disposal an endowment capital or financial resources equivalent to those required for a management company under Luxembourg law pursuant to Chapter 16.

(4) The requirements of good repute and professional experience are extended to the directors of the branch. The branch must also have, instead of the condition relating to the central administration, an adequate administrative infrastructure in Luxembourg.

Chapter 18 – Exercise of the activity of a management company by multilateral development banks

Art. 128

The multilateral development banks listed in Annex VI, point 20, of Directive 2006/48/EC, as amended and which are permitted by their statute to provide the services of collective portfolio management, are authorised to manage UCIs for the purposes of Article 125-1.

The institutions referred to in the preceding sub-paragraph are required to provide the CSSF, in relation to UCIs under its supervision, the information required by the CSSF for the purposes of prudential supervision of the UCI(s) managed.

In case of UCIs managed by institutions referred to in the first sub-paragraph, which have the form of a common fund, the provisions of this Article shall only apply if the management regulations of the UCIs concerned are subject to Luxembourg law.

PART V: GENERAL PROVISIONS APPLICABLE TO UCITS AND OTHER UCIS

Chapter 19 – Authorisation

Art. 129

(1) UCIs subject to Articles 2, 87 and 100, paragraph (1) must, in order to carry out their activities in Luxembourg, be previously authorised by the CSSF pursuant to this Law.

A UCITS subject to Article 2 which is legally prevented from marketing its units in Luxembourg, in particular by a provision included in the management regulations or the instruments of incorporation, will not be authorised by the CSSF.

(2) A UCI shall be authorised only if the CSSF has approved the instruments of incorporation and the management regulations respectively and the choice of the depositary.

(2*bis*) In addition to the conditions provided for in paragraph 2, and subject to the derogations provided for in Article 3 of the Law of 12 July 2013 relating to alternative investment fund managers, a UCI subject to Part II shall only be authorised if its external AIFM, appointed in accordance with point a) of Article 88-2, paragraph 2, has been previously authorised in accordance with that Article.

A UCI subject to Part II, which is internally managed within the meaning of point b) of Article 88-2, paragraph 2 must, in addition to the authorisation required pursuant to Article 129, paragraph 1 of this Law, and subject to the derogations provided for in Article 3 of the Law of 12 July 2013 relating to alternative investment fund managers, be authorised in accordance with point b) of Article 88-2, paragraph 2.

(3) In addition to the conditions laid down in paragraph 2, a UCITS within the scope of Article 2 shall not be authorised by the CSSF unless it fulfils the following conditions:

a) A common fund shall be authorised only if the CSSF has approved the application of the management company to manage that common fund. An investment company having designated a management company shall be authorised only if the CSSF has approved the application of the management company designated to manage that investment company.

b) Without prejudice to sub-paragraph a), if the UCITS which is established in Luxembourg is managed by a management company subject to Directive 2009/65/EC and which has been authorised by the competent authorities of another Member State pursuant to Directive 2009/65/EC, the CSSF shall decide on the application of the management company to manage the UCITS in accordance with Article 123.

(4) The CSSF may refuse to authorise a UCITS within the scope of Article 2 if:

a) it establishes that the investment company does not comply with the preconditions laid down in Chapter 3; or

b) the management company is not authorised to manage a UCITS pursuant to Chapter 15, or

c) the management company is not authorised to manage a UCITS in its home Member State.

Without prejudice to Article 27, paragraph 1, the management company or, where applicable, the investment company shall be informed within two months of the submission of a complete application whether or not the authorisation of the UCITS has been granted.

(5) The directors of the UCI and of the depositary must be of sufficiently good repute and be sufficiently experienced, also in relation to the type of UCI concerned. To that end, the identity of the directors and of every person succeeding them in office must be communicated forthwith to the CSSF.

"Directors" shall mean those persons who under law or the instruments of incorporation represent the UCI or the depositary or who effectively determine the conduct of the activity of the UCI.

(6) The replacement of the management company, the AIFM or the depositary and the amendment of the management regulations or the instruments of incorporation of the investment company are subject to approval by the CSSF.

(7) The granting of the authorisation pursuant to paragraph 1 of this article implies that the members of the administrative, management and supervisory bodies of the management company, the AIFM or, where applicable, the investment company, are obliged to notify the CSSF spontaneously in writing and in a complete, coherent and comprehensible manner of

any change regarding the substantial information on which the CSSF based itself to examine the application for authorisation as well as any change in respect of the directors referred to in paragraph 5 above.

Art. 130

(1) Authorised UCIs shall be entered by the CSSF on a list. That entry shall be tantamount to authorisation and shall be notified by the CSSF to the UCI concerned. For the UCIs referred to in Articles 2 and 87, applications for entry on the list must be filed with the CSSF within the month following their incorporation or formation. This list and any amendments made thereto shall be published in the *Mémorial* by the CSSF.

(2) The entering and the maintaining on the list referred to in paragraph 1 shall be subject to observance of all the provisions of laws, regulations or agreements relating to the organisation and operation of UCIs and the distribution, placing or sale of their units.

Art. 131

Luxembourg UCIs other than of the closed-ended type, UCITS governed by harmonised Community law and foreign UCIs in case of a public offer in Luxembourg shall be exempt from publishing a prospectus as provided for in Part III of the Law on prospectuses for transferable securities. The prospectus which those UCIs draw up in accordance with the regulatory requirements applicable to UCIs shall be valid for the purposes of an offer to the public of transferable securities or the admission of transferable securities to trading on a regulated market.

Art. 132

The fact that a UCI has been entered on the list referred to in Article 130, paragraph 1 shall not, under any circumstances, be described in any way whatsoever as a positive assessment made by the CSSF of the quality of the units offered for sale.

Chapter 20 – Organisation of supervision

A. – Competent authority for supervision

Art. 133

(1) The authority which is to carry out the duties provided for in this Law is the CSSF.

(2) The CSSF carries out its duties exclusively in the interest of the public.

(3) The CSSF has jurisdiction to settle any consumer disputes concerning the activity of UCIs governed by this Law through out-of-court procedures.

Art. 134

(1) Any person who works or who has worked for the CSSF, as well as the approved statutory auditors or experts mandated by the CSSF, shall be bound by the obligation of professional secrecy provided for by Article 16 of the Law of 23 December 1998 creating a commission for the supervision of the financial sector, as amended. Such secrecy implies that confidential information which they may receive in the course of their duties may not be divulged to any person or authority whatsoever, save in summary or abridged form such that no UCIs, management company or depositary can be individually identified, without prejudice to cases covered by criminal law.

However, when a UCI or an undertaking contributing towards its business activity has been declared bankrupt or is being compulsorily wound up, confidential information which does not concern the third parties involved in rescue attempts may be divulged in the course of civil or commercial proceedings.

(2) Paragraph 1 shall not prevent the CSSF from exchanging information with the supervisory authorities of other Member States of the European Union within the limits provided by this Law or from transmitting this information to the European Securities and Markets Authority in accordance with Regulation (EU) No. 1095/2010 or to the European Systemic Risk Board.

The supervisory authorities of countries, other than Member States of the European Union which are party to the Agreement on the European Economic Area are assimilated to the supervisory authorities of Member States of the European Union within the limits provided by that Agreement and the instruments relating thereto.

(3) Paragraph 1 shall not prevent the CSSF from exchanging information with:

- authorities of third countries with public responsibilities for the prudential supervision of UCIs,

- other authorities, bodies and persons referred to in paragraph 5, with the exception of central credit registers established in third countries,

- authorities of third countries referred to in paragraph 6.

The communication of information by the CSSF authorised by this paragraph is subject to the following conditions:

- the transmitted information must be required for the purpose of performing the duty of the recipient authorities, bodies and persons,

- the information received must be subject to the professional secrecy of the recipient authorities, bodies and persons, and the professional secrecy of these authorities, bodies and persons must offer guarantees at least equivalent to the professional secrecy to which the CSSF is bound,

- the authorities, bodies and persons which receive information from the CSSF may only use that information for the purposes for which it has been communicated to them and must be able to ensure that no other use can be made thereof,

- the authorities, bodies and persons who receive information from the CSSF grant the same right of information to the CSSF,

- the CSSF may only disclose information received from EU authorities responsible for the prudential supervision of UCIs with the express consent of those authorities and, where appropriate, solely for the purposes for which those authorities gave their consent.

For the purpose of this paragraph, third countries are countries other than those referred to in paragraph 2.

(4) Where the CSSF receives confidential information under paragraphs 2 and 3, it may use it only in the course of its duties for the purposes of:

- checking that the conditions governing the taking-up of the business of UCITS, of management companies, depositaries and of any other undertaking contributing towards their business activity are met and facilitating the monitoring of the conduct of that business, of administrative and accounting procedures as well as of internal control mechanisms; or

- imposing penalties; or

- conducting administrative appeals against decisions by the CSSF; or

- pursuing court proceedings initiated against decisions taken by the CSSF under this Law.

(5) Paragraphs 1 and 4 shall not preclude:

a) the exchange of information within the European Union or in Luxembourg between the CSSF and:

- authorities with public responsibility for the supervision of credit institutions, investment firms, insurance undertakings and other financial institutions and the authorities responsible for the supervision of financial markets,

- bodies involved in the liquidation, bankruptcy or other similar proceedings concerning UCIs, management companies and depositaries or other undertakings contributing towards their business activity,

- persons responsible for carrying out statutory audits of the accounts of credit institutions, investment firms, other financial institutions or insurance undertakings,

- the European Securities and Markets Authority, the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Systemic Risk Board,

in the performance of their functions,

b) the disclosure by the CSSF within the European Union or in Luxembourg to bodies which administer compensation schemes of investors or to central credit registers of information necessary for the performance of their functions.

The communication of information by the CSSF authorised by this paragraph is subject to the condition that such information is covered by the professional secrecy of the authorities, bodies and persons receiving the information and is only authorised to the extent that the professional secrecy of those authorities, bodies and persons offers guarantees at least equivalent to the professional secrecy of the CSSF. In particular, authorities which receive information from the CSSF may only use such information for the purposes for which it has been communicated to them and must be able to ensure that no other use can be made thereof.

Countries other than Member States of the European Union which are party to the Agreement on the European Economic Area are assimilated to the Member States of the European Union within the limits provided by that Agreement and the instruments relating thereto.

(6) Paragraphs 1 and 4 do not prevent exchanges of information within the European Union or in Luxembourg between the CSSF and:

- the authorities responsible for overseeing the bodies involved in the liquidation, bankruptcy and other similar proceedings concerning credit institutions, investment firms, insurance undertakings, UCIs, management companies and depositaries,

- the authorities responsible for overseeing persons entrusted with the carrying out of statutory audits of the accounts of credit institutions, investment firms, insurance undertakings and other financial institutions.

The communication of information by the CSSF authorised by this paragraph is subject to the following conditions:

- the transmitted information is intended to be used for the purpose of performing the supervisory duty of the recipient authorities,

- the information received shall be subject to the professional secrecy of the recipient authorities and the professional secrecy of such authorities must offer guarantees at least equivalent to the professional secrecy of the CSSF,

- the authorities which receive information from the CSSF may only use that information for the purposes for which it has been communicated to them and must be able to ensure that no other use can be made thereof,

- the CSSF may only disclose information received from supervisory authorities referred to in paragraphs 2 and 3 with the express consent of those authorities and, where appropriate, solely for the purposes for which those authorities gave their consent.

Countries other than Member States of the European Union which are party to the Agreement on the European Economic Area are assimilated to Member States of the European Union within the limits provided by that Agreement and the instruments relating thereto.

(7) This Article shall not prevent the CSSF from transmitting to central banks and other bodies with a similar function in their capacity as monetary authorities information intended for the performance of their duties.

The communication of information by the CSSF authorised by this paragraph is subject to the condition that such information is covered by the professional secrecy of the recipient authorities and is only authorised to the extent that the professional secrecy of those authorities offers guarantees at least equivalent to the professional secrecy of the CSSF. In particular, authorities which receive information from the CSSF may only use that information for the purposes for which it has been communicated to them and must be able to ensure that no other use can be made thereof.

This Article shall furthermore not prevent the authorities or bodies referred to in this paragraph from communicating to the CSSF any such information as it may require for the purposes of paragraph 4. Information received in this context by the CSSF shall be subject to its professional secrecy.

(8) This Article shall not prevent the CSSF from communicating the information referred to in paragraphs 1 to 4 to a clearing house or other similar undertaking recognised under law for the provision of clearing or settlement services for a market in Luxembourg if the CSSF considers it is necessary to communicate such information in order to ensure the proper functioning of those undertakings in relation to defaults or potential defaults by market participants.

The communication of information by the CSSF authorised by this paragraph is subject to the condition that any such information is covered by the professional secrecy of the recipient bodies and is only authorised to the extent that the professional secrecy of those undertakings offers guarantees at least equivalent to the professional secrecy of the CSSF. In particular, undertakings which receive information from the CSSF may only use that information for the purposes for which it has been communicated to them and must be able to ensure that no other use can be made thereof.

The information received by the CSSF pursuant to paragraphs 2 and 3 may not be disclosed in the circumstances referred to in this paragraph without the express consent of the supervisory authorities which have disclosed that information to the CSSF.

Art. 134*bis*

The treatment of personal data in application of this Law shall be carried out in accordance with the amended Law of 2 August 2002 relating to the protection of persons with regard to the processing of personal data.

B. – Cooperation with competent authorities of the other Member States

Art. 135

(1) The CSSF shall cooperate with the competent authorities of other Member States for the purpose of carrying out their duties under Directive 2009/65/EC or of exercising their powers under the aforementioned Directive or under national law.

The CSSF shall cooperate with the competent authorities of other Member States even in cases where the conduct under investigation does not constitute an infringement of any regulation in force in Luxembourg.

(2) The CSSF shall provide the competent authorities of other Member States with the information required for the purposes of carrying out their duties under Directive 2009/65/EC without delay.

(2*bis*) The CSSF shall cooperate with the European Securities and Markets Authority for the purposes of Directive 2009/65/EC, in accordance with Regulation (EU) No. 1095/2010.

The CSSF shall provide the European Securities and Markets Authority, without delay, with all the information necessary to carry out its duties, in accordance with Article 35 of Regulation (EU) No. 1095/2010.

(3) Where the CSSF has good reason to suspect that acts contrary to the provisions of Directive 2009/65/EC are being or have been carried out by entities not subject to its supervision on the territory of another Member State, it shall notify the competent authorities of the other Member State thereof in as specific a manner as possible.

(4) The competent authorities of a Member State may request the cooperation of the CSSF in a supervisory activity or for an on-the-spot verification or in an investigation in Luxembourg within the framework of their powers pursuant to Directive 2009/65/EC. Where the CSSF receives a request with respect to an on-the-spot verification or investigation, it shall:

a) carry out the verification or investigation itself;

b) allow the requesting competent authorities of the Member State to carry out the verification or investigation;

c) allow supervisory auditors or experts to carry out the verification or investigation.

(5) If the verification or investigation is carried out by the CSSF, the competent authorities of the Member State which have requested cooperation may request that their own officials accompany the officials of the CSSF carrying out the verification or investigation. The verification or investigation shall, however, be subject to the overall control of the CSSF.

If the verification or investigation is carried out in Luxembourg by a competent authority of a Member State, the CSSF may request that its own officials accompany the officials carrying out the verification or investigation.

(6) The CSSF may refuse to exchange information as provided for in paragraph 2 or to act on a request for cooperation in carrying out an investigation or on-the-spot verification as provided for in paragraph 4, only where:

a) such an investigation, on-the-spot verification or exchange of information might adversely affect the sovereignty, security or public policy of Luxembourg;

b) judicial proceedings have already been initiated in respect of the same persons and the same actions before the authorities of Luxembourg;

c) final judgement in respect of the same persons and the same actions has already been delivered in Luxembourg.

d) compliance with the request is likely to affect adversely the investigation of the CSSF or, where applicable, an ongoing criminal investigation.

(7) The CSSF shall notify the requesting competent authorities of any decision taken under paragraph 6. Any such notification shall contain information about the reasons of the decision.

Art. 136

(1) The CSSF, in so far as a UCITS is established in Luxembourg, shall have the exclusive rights to take action against the UCITS if it infringes the laws, regulations or administrative provisions as well as the rules provided for by the management regulations or the instruments of incorporation of the investment company.

(2) Any decision to withdraw authorisation, or any other serious measure taken against a UCITS, or any suspension of the issue, repurchase or redemption of its units imposed upon it, shall be communicated without delay by the CSSF to the authorities of the UCITS host Member State and, if the management company of a UCITS is established in another Member State, to the competent authorities of the management company's home Member State.

(3) The CSSF, as the competent authority of the UCITS home Member State, and the competent authorities of the management company's home Member State may take action against the management company if it infringes rules under their respective responsibility.

(4) The CSSF shall take the appropriate measures in the event that the competent authorities of the UCITS host Member State inform the CSSF that they have clear and demonstrable grounds for believing that a UCITS, the units of which are marketed within the territory of that Member State is in breach of the obligations arising from the provisions adopted pursuant to Directive 2009/65/EC which do not grant them powers.

Art. 137

(1) The CSSF may take actions against a UCITS, the units of which are marketed in Luxembourg if it infringes the laws, regulations or administrative provisions in force that fall outside the scope of this Law or the requirements set out in Articles 59 and 61.

(2) Any decision to withdraw authorisation, or any other serious measure taken against a UCITS, or any suspension of the issue, repurchase or redemption of its units imposed upon it, shall be communicated without delay to the CSSF by the authorities of the UCITS home Member States. This information shall also be communicated to the CSSF if the management company of a UCITS is established in Luxembourg.

(3) The CSSF shall inform the competent authorities of the UCITS home Member State in the event that the CSSF has clear and demonstrable grounds for believing that such a UCITS is in breach of the obligations arising from the provisions adopted pursuant to Directive 2009/65/EC which do not confer powers on it.

(4) If, despite the measures taken by the competent authorities of the UCITS home Member State, the UCITS persists in acting in a manner that is clearly prejudicial to the interests of investors in Luxembourg, the CSSF may:

a) after informing the competent authorities of the UCITS home Member State, take all the appropriate measures needed in order to protect investors, including the possibility of preventing the UCITS concerned from carrying out any further marketing of its units in Luxembourg; or

b) if necessary, refer the matter to the European Securities and Markets Authority, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No. 1095/2010.

The CSSF shall inform the Commission of the European Union and the European Securities and Markets Authority without delay of any measure taken pursuant to point a).

Art. 138

Where, through the provision of services or by the establishment of branches, a management company operates in one or more management company's host Member States, the CSSF shall collaborate closely with the competent authorities concerned.

It shall supply on request all the information concerning the management and ownership of that management company that is likely to facilitate their supervision and all information likely to facilitate the monitoring of such companies.

Art. 139

(1) Where the CSSF is the competent authority of the management company, it cooperates in order to ensure the collection by the authorities of the management company's host Member State of the information referred to in Article 21, paragraph (2) of Directive 2009/65/EC.

(2) In so far as it is necessary for the purpose of exercising its powers of supervision, as the management company's home Member State competent authority, the competent authorities of the management company's host Member State shall inform the CSSF of any measures taken by them pursuant to Article 21, paragraph (5) of Directive 2009/65/EC which involves measures or penalties imposed on a management company or restrictions on a management company's activities.

(3) The CSSF, as the competent authority of the management company, shall, without delay, notify the competent authorities of the home Member State of the UCITS of any problem identified at the level of the management company which may materially affect the ability of the management company to perform its duties properly with respect to the UCITS or of any breach of the requirements under Chapter 15.

(4) The CSSF shall be informed by the competent authorities of the UCITS home Member State of any problem identified at the level of the UCITS which may materially affect the ability of the management company to perform its duties properly or to comply with the requirements under Directive 2009/65/EC which fall under the responsibility of the UCITS home Member State.

Art. 140

Where the UCITS is established in Luxembourg, the CSSF shall, without delay, notify the competent authorities of the management company's home Member State of any problem identified at the level of the UCITS which may materially affect the ability of the management company to perform its duties properly or to comply with the requirements under this Law, which fall under the responsibility of the CSSF.

Art. 141

(1) Where a management company authorised in another Member State pursues its business in Luxembourg through the provision of services or through a branch, insofar as this is necessary for the purpose of exercising the powers of supervision, the CSSF shall inform the competent authorities of the management company's home Member State, of any measures taken by the CSSF pursuant to Article 124, paragraph 5 which involve measures or penalties imposed on a management company or restrictions on a management company's activities.

(2) Where a management company authorised in another Member State pursues its business within the territory of Luxembourg through a branch, the CSSF shall ensure that the competent authorities of the management company's home Member State may, after having informed the CSSF, carry out themselves or through the intermediary they instruct on-the-spot verification of the information referred to in Article 109 of Directive 2009/65/EC.

(3) Paragraph 2 shall not affect the right of the CSSF in discharging its duties under this Law, to carry out on-the-spot verifications of branches established in Luxembourg.

C. – Supervisory powers and powers of sanction

Art. 142

(1) The decisions to be adopted by the CSSF in implementation of this Law shall state in writing the reasons on which they are based and, unless the delay entails risks, they shall be adopted after preparatory proceedings at which all parties are able to state their case. They shall be notified by registered letter or delivered by bailiff.

(2) The decisions by the CSSF concerning the granting, refusal or withdrawal of the authorisations provided for in this Law as well as the decisions of the CSSF regarding administrative sanctions and other administrative measures within the meaning of Article 148 may be referred to the administrative court which will deal with the substance of the case. The case must be filed within one month from the date of notification of the contested decision, or else shall be time-barred.

(3) The decision of the CSSF withdrawing the name of a UCI referred to in Articles 2 and 87 from the list provided for in Article 130, paragraph 1, shall, as from the notification thereof to that undertaking and until the decision has become final, *ipso jure* entail for that undertaking suspension of any payment by the undertaking and prohibition for that undertaking, on pain of nullity, to take any measures other than protective measures, except with the authorisation of the supervisory commissioner. The CSSF shall *ipso jure* hold the office of supervisory commissioner, unless at its request, the District Court dealing with commercial matters appoints one or more supervisory commissioners. The application, stating the reasons on which it is based and accompanied by supporting documents, shall be lodged for that purpose at the Registry of the District Court in the district within which the undertaking has its registered office.

The Court shall give its ruling within a short period.

If it considers that it has sufficient information, it shall immediately pronounce in open court, without hearing the parties. If it deems it necessary, it shall convene the parties by notification from the Registrar within three days from the lodging of the application. It shall hear the parties in chambers and give its decision in public session.

The written authorisation of the supervisory commissioners is required for all actions and decisions of the undertaking and, failing such authorisation, they shall be void.

The Court may, however, limit the scope of operations subject to authorisation.

The commissioners may submit for consideration to the relevant bodies of the undertaking any proposals which they consider appropriate. They may attend proceedings of the administrative body, management, executive or supervisory boards of the undertaking.

The Court shall decide as to the expenses and fees of the supervisory auditors; it may grant them advances.

The judgement provided for in paragraph 1 of Article 143 shall terminate the functions of the supervisory commissioner who must, within one month after his replacement, submit to the liquidators appointed in such judgement a report on the use of the undertaking's assets together with the accounts and supporting documents.

If the withdrawal decision is amended on appeal in accordance with paragraph 2 above, the supervisory commissioner shall be deemed to have resigned.

Art. 143

(1) The District Court dealing with commercial matters shall, at the request of the Public Prosecutor, acting on its own initiative or at the request of the CSSF, pronounce the dissolution and order the liquidation of the UCIs referred to in Articles 2 and 87, whose entry on the list provided for in Article 130, paragraph 1 has finally been refused or withdrawn.

The District Court dealing with commercial matters shall, at the request of the Public Prosecutor, acting on its own initiative or at the request of the CSSF, pronounce the dissolution and order the liquidation of one or more compartments of UCIs referred to in Article 2 and 87, in cases where the authorisation of this compartment has been refused or withdrawn.

When ordering the liquidation, the Court shall appoint a reporting judge and one or more liquidators. It shall determine the method of liquidation. It may render applicable, as far at it may determine, the rules governing liquidation in bankruptcy. The method of liquidation may be changed by subsequent decision, either at the Court's own motion or at the request of the liquidator(s).

The Court shall decide as to the expenses and fees of the liquidators; it may grant advances to them. The judgement pronouncing dissolution and ordering liquidation shall be enforceable on a provisional basis.

(2) The liquidator(s) may bring and defend all actions on behalf of the undertaking, receive all payments, grant releases with or without discharge, realise all the transferable securities of the undertaking and reemploy the proceeds therefrom, issue or endorse any negotiable instruments, compound or compromise on all claims. They may alienate immovable property of the undertaking by public auction.

They may also but only with the authorisation of the Court, mortgage and pledge its assets and alienate its immovable property by private treaty.

(3) As from the day of the judgement, no legal actions relating to movable or immovable property or any enforcement procedures relating to movable or immovable property may be pursued, commenced or exercised otherwise than against the liquidators.

The judgement ordering liquidation shall terminate all arrests effected at the request of unsecured creditors who are not secured by charges on movable and immovable property.

(4) After payment or deposit of the sums necessary for the discharge of the debts, the liquidators shall distribute to unitholders the sums or amounts due to them.

(5) The liquidators may convene, at their own initiative, and must convene at the request of unitholders representing at least one quarter of the assets of the undertaking, a general meeting of unitholders for the purpose of deciding whether, instead of an outright liquidation, it would be appropriate to contribute the assets of the undertaking in liquidation to another UCI. That decision shall be taken, provided that the general meeting is composed of a number of unitholders representing at least one half of the outstanding units or share capital of the undertaking, by a majority of two thirds of the votes of the unitholders present or represented.

(6) The Court's decisions pronouncing the dissolution and ordering the liquidation of a UCI shall be published in the *Recueil électronique des sociétés et associations* and in two newspapers with adequate circulation specified by the Court, at least one of which must be a Luxembourg newspaper. The Liquidator(s) shall arrange for such publications.

(7) If there are no or insufficient assets, as ascertained by the reporting judge, the documents relating to the proceedings shall be exempt from any registry and registration duties and the expenses and fees of the liquidators shall be borne by the Treasury and paid as judicial costs.

(8) The liquidators shall be responsible both towards third parties and to the UCI for the discharge of their duties and for any faults committed in the conduct of their activities.

(9) When the liquidation is completed, the liquidators shall report to the Court on the use made of the assets of the undertaking and shall submit the accounts and supporting documents thereof. The Court shall appoint the supervisory auditors to examine the documents.

After receipt of the supervisory auditors' report, a ruling shall be given on the management of the liquidators and the closure of the liquidation.

The closure of the liquidation shall be published in accordance with paragraph 6 above.

That publication shall also indicate:

- the place designated by the Court where the books and records must be kept for at least five years;

- the measures taken in accordance with Article 145 with a view to the deposit of the sums and assets due to creditors, unitholders or members to whom it has not been possible to deliver the same.

(10) Any legal actions against the liquidators of UCIs, in their capacity as such, shall be prescribed five years after publication of the closure of the liquidation provided for in paragraph 9.

Legal actions against the liquidators in connection with the performance of their duties shall be prescribed five years after the date of the facts or, in the event of intentional concealment, five years after the discovery thereof.

(11) The provisions of this Article shall also apply equally to the UCIs which have not applied to be entered on the list provided for in Article 130, paragraph 1 within the time limit laid down therein.

Art. 144

(1) UCIs shall, after dissolution, be deemed to exist for the purpose of their liquidation. In the case of a non-judicial liquidation, they shall remain subject to supervision by the CSSF.

(2) All documents issued by a UCI in liquidation shall indicate that it is in liquidation.

Art. 145

(1) In the event of a non-judicial liquidation of a UCI, the liquidator(s) must be approved by the CSSF. The liquidator(s) must provide all guarantees of good repute and professional skill.

(2) Where a liquidator does not accept its appointment or is not approved, the District Court dealing with commercial matters shall, at the request of any interested party or of the CSSF, appoint the liquidator(s). The judgement appointing the liquidator(s) shall be provisionally enforceable, on the production of the original thereof and before registration, notwithstanding any appeal or objection.

Art. 146

In the event of a voluntary or compulsory liquidation of a UCI within the meaning of this Law, the sums and assets payable in respect of units whose holders failed to present themselves at the time of the closure of the liquidation, shall be paid to the public trust office[27] to be held for the benefit of the persons entitled thereto.

Art. 147

(1) For the purposes of application of this Law, the CSSF is granted all supervisory and investigative powers that are necessary for the exercise of their functions.

(2) The powers of the CSSF shall include the right to:

a) access any document in any form and receive a copy thereof;

b) require any person to provide information and, if necessary, to summon and question any person with a view to obtaining information;

c) carry out on-site inspections or investigations, by itself or by its delegates, of persons subject to its supervision under this Law;

d) require existing recordings of telephone conversations or electronic communications or other data traffic records held by a UCI, a management company, an investment company, a depositary or any other entity governed by this Law;

e) require the cessation of any practice that is contrary to the provisions adopted in implementation of this Law;

f) request the freezing or the sequestration of assets by the president of the District Court of and in Luxembourg acting on request;

g) pronounce the temporary prohibition of exercising professional activities against the persons subject to its prudential supervision, as well as the members of administrative, governing and management bodies, employees and agents linked to these persons;

h) require authorised investment companies, management companies or depositaries to provide information;

i) adopt any type of measure to ensure that investment companies, management companies or depositaries continue to comply with the requirements of this Law;

j) require the suspension of the issue, repurchase or redemption of units in the interest of the unitholders or of the public;

k) withdraw the authorisation granted to a UCI, a management company or a depositary;

l) transmit information to the Public Prosecutor for criminal proceedings; and

m) instruct approved statutory auditors or experts to carry out verifications or investigations.

[27] *Caisse de Consignation*

(3) The judge presiding over the District Court dealing with commercial matters may, at the request of the organisations referred to in Article L. 313-1 and following of the Consumer Code enacted by the Law of 8 April 2011, or the CSSF, order any measure for the purpose of stopping any acts contrary to the provisions of this Law referred to in the second sub-paragraph of this paragraph. The action for an injunction is brought according to the procedure applicable to summary proceedings[28]. The judge presiding over the District Court dealing with commercial matters shall decide on the merits of the case. The appeal period is fifteen days.

The acts referred to in the first sub-paragraph are the following:

a) the fact of performing or having performed activities of collection of savings from the public in view of their placement without the UCI having been entered on the list referred to in Article 130;

b) the fact of performing activities of a management company of UCIs without being authorised in accordance with the provisions of Chapter 15, 16 or 17;

c) the fact of making use of a designation or of a description giving the impression of activities being subject to this Law without having obtained the authorisation provided for in Article 130.

Art. 148

(1) The CSSF is competent to impose the administrative sanctions and other administrative measures listed in paragraph 4 on:

- UCIs subject to Part I and Part II, their management companies, their depositaries as well as any undertaking contributing towards the activities of the UCI which is subject to the supervision of the CSSF;

- the members of the management body or of the supervisory board of the entities referred to in the first indent or the persons who conduct the business of such entities within the meaning of Article 129, paragraph 5;

- the liquidators in case of voluntary liquidation of a UCI,

in the following cases:

a) the refusal to provide accounting documents or other requested information, necessary for the CSSF for the purpose of applying this Law;

b) the provision of documents or other information which prove to be incomplete, inaccurate or false;

c) if the exercise of the powers of inspection and the supervisory and investigatory powers of the CSSF are obstructed;

d) the non-compliance with the rules governing the publication of balance sheets and financial situations;

e) the failure to comply with the injunctions of the CSSF pronounced by the CSSF by virtue of paragraph 4, point b);

f) a behaviour that is likely to put at risk the sound and prudent management of the undertaking concerned;

[28] *Tribunal des référés*

g) the non-compliance with the provisions of Article 132.

(2) Without prejudice to the provisions set forth in paragraph 1, the CSSF is competent to impose the administrative sanctions and other administrative measures listed in paragraph 4 on:

- UCITS subject to Part I, their management companies, their depositaries;

- the members of the management body or of the supervisory board of the entities referred to in the first indent or the persons who effectively conduct the business of such entities within the meaning of Article 129, paragraph 5,

in the following cases:

a) where a qualifying holding in a management company subject to Chapter 15 is acquired, directly or indirectly, or such a qualifying holding in a management company is further increased so that the proportion of the voting rights or of the capital held would reach or exceed 20%, 30% or 50% or so that the management company would become its subsidiary (hereafter "proposed acquisition"), without notifying in writing the CSSF of the management company in which the acquirer is seeking to acquire or increase a qualifying holding, in violation of Article 108, paragraph 1;

b) where a qualifying holding in a management company subject to Chapter 15 is disposed of, directly or indirectly, or reduced, so that the proportion of the voting rights or of the capital held would fall below 20%, 30% or 50%, or so that the management company would cease to be a subsidiary, without notifying in writing the CSSF, in violation of Article 108, paragraph 1;

c) where a management company subject to Chapter 15 has obtained an authorisation through false statements or any other irregular means, in violation of Article 102, paragraph 5, point b);

d) where an investment company within the meaning of Article 27 has obtained an authorisation through false statements or any other irregular means, in violation of Article 27, paragraph 1;

e) where a management company subject to Chapter 15, on becoming aware of any acquisition or disposal of holdings in their capital that cause holdings to exceed or fall below one of the thresholds referred to in Article 11, paragraph 1, of Directive 2014/65/EU, fails to inform the CSSF of those acquisitions or disposals, in violation of Article 108, paragraph 1;

f) where a management company subject to Chapter 15 fails to inform the CSSF, at least once a year, of the names of shareholders and members possessing qualifying holdings and the sizes of such holdings, in violation of Article 108, paragraph 1;

g) where a management company subject to Chapter 15 fails to comply with procedures and arrangements imposed in accordance with the provisions of Article 109, paragraph 1, point a);

h) where a management company subject to Chapter 15 fails to comply with the structural and organisational requirements imposed in accordance with the provisions of Article 109, paragraph 1, point b);

i) where an investment company within the meaning of Article 27 fails to comply with the procedures and arrangements imposed in accordance with Article 27, paragraph 3;

j) where a management company subject to Chapter 15 or an investment company within the meaning of Article 27 fails to comply with requirements related to delegation of its functions to third parties imposed in accordance with the provisions of Article 110;

k) where a management company subject to Chapter 15 or an investment company within the meaning of Article 27 fails to comply with the rules of conduct imposed in accordance with the provisions of Article 111 ;

l) where a depositary fails to perform its tasks in accordance with Articles 18, paragraphs 1 to 5, or 34, paragraphs 1 to 5;

m) where an investment company within the meaning of Article 27 or, for each of the common funds that it manages, a management company subject to Chapter 15 repeatedly fails to comply with obligations concerning the investment policies laid down in the provisions of Chapter 5;

n) where a management company subject to Chapter 15 or an investment company within the meaning of Article 27 fails to employ a risk-management process or a process for accurate and independent assessment of the value of OTC derivatives as laid down in the provisions of Article 42, paragraph 1;

o) where an investment company within the meaning of Article 27 or, for each of the common funds that it manages, a management company subject to Chapter 15 repeatedly fails to comply with obligations concerning information to be provided to investors imposed in accordance with the provisions of Articles 47 and 150 to 163;

p) where a management company subject to Chapter 15 marketing units of a UCITS that it manages in another Member State, or an investment company within the meaning of Article 27, marketing its units in another Member State fails to comply with the notification requirement laid down in Article 54, paragraph 1.

(3) Without prejudice to the provisions set forth in paragraph 1, the CSSF is competent to impose the administrative sanctions and other administrative measures listed in paragraph 4 on:

- UCIs subject to Part II, their management companies, their depositaries;

- the members of the management body or of the supervisory board of the entities referred to in the first indent or the persons who effectively conduct the business of such entities within the meaning of Article 129, paragraph 5,

in the following cases:

a) where a management company subject to Chapter 16 has obtained an authorisation through false statements or any other irregular means, in violation of Article 125-1, paragraph 5, point b);

b) where a management company subject to Chapter 16 fails to comply with requirements related to delegation of its functions to third parties in accordance with the provisions of Article 125-1;

c) where a SICAV subject to Chapter 12 fails to comply with requirements related to delegation of its functions to third parties in accordance with the provisions of Article 95, paragraphs 2 and 3;

d) where a UCITS which does not have the legal form of a common fund or a SICAV subject to Chapter 13 does not comply with the requirements related to delegation of its functions to third parties in accordance with the provisions of Article 99, paragraphs 6*bis* and 6*ter* ;

e) where a UCI or its management company repeatedly fails to comply with obligations concerning information to be provided to investors imposed in accordance with Articles 150 to 158;

f) where a depositary fails to perform its tasks in accordance with the provisions of Articles 18, paragraphs 1 to 5, or 34, paragraphs 1 to 5 ;

g) where a management company subject to Article 125-2 has obtained an authorisation as AIFM of AIFs through false statements or any other irregular means, thus infringing Article 10, paragraph 1, point b), of the amended Law of 12 July 2013 relating to alternative investment fund managers;

h) where a management company subject to Article 125-2 fails to comply with the organisational requirements imposed in accordance with Articles 16 and 17 of the amended Law of 12 July 2013 relating to alternative investment fund managers;

i) where a management company subject to Article 125-2 fails to comply with the procedures and measures for protection against conflicts of interests imposed in accordance with the provisions of Article 13 of the amended Law of 12 July 2013 relating to alternative investment fund managers;

j) where a management company subject to Article 125-2 fails to comply with the rules of conduct imposed in accordance with the provisions of Article 11, paragraph 1, of the amended Law of 12 July 2013 relating to alternative investment fund managers;

k) where a management company subject to Article 125-2 fails to comply with the risk management procedures and systems imposed in accordance with the provisions of Article 14 of the amended Law of 12 July 2013 relating to alternative investment fund managers;

l) where a management company subject to Article 125-2 fails to comply with the requirements related to delegation of its functions to third parties imposed in accordance with the provisions of Article 18 of the amended Law of 12 July 2013 relating to alternative investment fund managers;

m) where a management company subject to Article 125-2 repeatedly fails to comply, for each of the AIFs that it manages, with obligations concerning information to be provided to investors imposed in accordance with the provisions of Articles 20 to 21 of the amended Law of 12 July 2013 relating to alternative investment fund managers;

n) where a management company subject to Article 125-2, marketing units of an AIF that it manages in another Member State fails to comply with the notification requirement laid down in Article 30 of the amended Law of 12 July 2013 relating to alternative investment fund managers.

(4) In the cases referred to in paragraphs 1 to 3, the CSSF may impose the following administrative penalties and other administrative measures:

a) a public statement which identifies the person responsible and the nature of the violation of the law;

b) an order requiring the person responsible to cease the conduct and to desist from a repetition of that conduct;

c) in the case of a UCI or a management company, suspension or withdrawal of the authorisation of the UCI or the management company;

d) a temporary or, for repeated serious violations of the law, a permanent ban against a member of the management body of the management company or the UCI or against

any other natural person employed by the management company or the UCI who is held responsible, from exercising management functions in those or in other such entities;

e) in the case of a legal person, a maximum fine of 5,000,000 euros or a maximum amount of 10% of the total annual turnover of the legal person according to the last available accounts approved by the management body; where the legal person is a parent undertaking or a subsidiary of the parent undertaking which has to prepare consolidated financial accounts in accordance with Directive 2013/34/EU, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant Union law in the area of accounting according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking;

f) in the case of a natural person, a maximum fine of 5,000,000 euros;

g) as an alternative to points e) and f), a maximum fine of at least twice the amount of the benefit derived from the violation of the law where that benefit can be determined, even if that exceeds the maximum amounts in points e) and f).

Art. 149

(1) The CSSF shall publish on its website any decision against which there is no appeal imposing an administrative sanction or measure for infringements of the provisions of this Law without undue delay after the person on whom the sanction or measure was imposed has been informed of that decision. The publication shall include at least information on the type and nature of the infringement and the identity of the persons responsible. This obligation does not apply to decisions imposing measures that are of an investigatory nature.

However, where the publication of the identity of the legal persons or of the personal data of the natural persons is considered by the CSSF to be disproportionate following a case-by-case assessment conducted on the proportionality of the publication of such data, or where publication jeopardises the stability of financial markets or an ongoing investigation, the CSSF shall:

a) defer the publication of the decision to impose the sanction or measure until the reasons for non-publication cease to exist;

b) publish the decision to impose the sanction or measure on an anonymous basis in a manner which complies with applicable law, if such anonymous publication ensures effective protection of the personal data concerned; or

c) not publish the decision to impose a sanction or measure in the event that the options laid down in points a) and b) are considered to be insufficient to ensure:

i) that the stability of the financial markets would not be put in jeopardy;

ii) the proportionality of the publication of such decisions with regard to measures which are deemed to be of a minor nature.

In the case the CSSF decides to publish a sanction or measure on an anonymous basis, the publication of the relevant data may be postponed for a reasonable period of time if it is envisaged that within that period the reasons for anonymous publication shall cease to exist.

(2) Where the decision to impose a sanction or measure is subject to appeal, the CSSF shall also publish immediately on its official website such information and any subsequent information on the outcome of such an appeal. Any decision annulling a previous decision to impose a sanction or a measure shall also be published.

(3) Any publication of a sanction or a measure in accordance with this Article shall remain on the website of the CSSF for a minimum period of five years and a maximum period of ten years from its publication.

(4) In accordance with Article 99e, paragraph 2, of Directive 2009/65/EC, where the CSSF has disclosed administrative penalties or measures to the public relating to a UCITS, a management company or a depositary of a UCITS, it shall simultaneously report those administrative penalties or measures to the European Securities and Markets Authority.

Furthermore, the CSSF shall inform the European Securities and Markets Authority of any administrative penalties imposed but not published, in accordance with paragraph 1, point c), including any appeal in relation thereto and the outcome of such an appeal.

Art. 149*bis*

Where the CSSF determines the type of administrative penalties or measures and the level of fines, it shall ensure that they are effective, proportionate and dissuasive and take into account all relevant circumstances, including, where appropriate:

a) the gravity and the duration of the infringement;

b) the degree of responsibility of the person responsible for the infringement;

c) the financial strength of the person responsible for the infringement, as indicated, for example, by its total turnover in the case of a legal person or the annual income in the case of a natural person;

d) the importance of the profits gained or losses avoided by the person responsible for the infringement, the damage to other persons and, where applicable, the damage to the functioning of markets or the wider economy, in so far as they can be determined;

e) the level of cooperation of the person responsible for the infringement with the CSSF;

f) previous infringements by the person responsible for the infringement;

g) measures taken after the infringement by the person responsible for the infringement to prevent its repetition.

Art. 149*ter*

(1) The CSSF shall establish effective and reliable mechanisms to encourage the reporting of potential or actual infringements of the provisions of this Law, including secure communication channels for reporting such infringements.

(2) The mechanisms referred to in paragraph 1 shall include at least:

a) specific procedures for the receipt of reports on infringements and their follow-up;

b) appropriate protection for employees of UCIs, management companies, depositaries as well as any undertaking contributing towards the activities of the UCI which is subject to supervision by the CSSF who report infringements committed within those entities, at least against retaliation, discrimination and other types of unfair treatment;

c) the protection of personal data concerning both the person who reports the infringements and the natural person who is allegedly responsible for an infringement, in accordance with the amended Law of 2 August 2002 relating to the protection of persons with regard to the processing of personal data;

d) clear rules that ensure that confidentiality is guaranteed in all cases in relation to the person who reports an infringement, unless disclosure is required in the context of further investigations or subsequent judicial proceedings.

(3) The reporting of infringements by employees of UCIs, management companies, depositaries as well as any undertaking contributing towards the activities of the UCI which is subject to supervision by the CSSF, referred to in paragraph 1, does not constitute an infringement of any restriction on disclosure of information imposed by contract or by any law, regulation or administrative provision, and does not subject the person reporting to liability of any kind relating to such reporting.

(4) UCIs, management companies, depositaries as well as any undertaking contributing towards the activities of the UCI which is subject to supervision by the CSSF shall have in place appropriate procedures for their employees to report infringements internally through a specific, independent and autonomous channel.

Chapter 21 – Obligations concerning information to be supplied to investors

A. – Publication of a prospectus and periodical reports

Art. 150

(1) The investment company and the management company, for each of the common funds it manages, must publish:

- a prospectus,
- an annual report for each financial year, and
- a half-yearly report covering the first six months of the financial year.

(2) The annual and half-yearly reports must be published within the following time limits, with effect from the end of the periods to which they relate:

- four months in the case of the annual report,
- two months in the case of the half-yearly report.

However, for undertakings for collective investment subject to Part II, the time limit of four months for the publication of the annual report referred to in the first indent is extended to six months, and the time limit for the publication of the half-yearly report referred to in the second indent is extended to three months.

(3) The obligation to publish a prospectus within the meaning of this Law shall not apply to undertakings for collective investment of the closed-ended type.

Art. 151

(1) The prospectus must include the information necessary for investors to be able to make an informed judgement of the investment proposed to them, and, in particular, of the risks attached thereto. The prospectus shall include, independent of the instruments invested in, a clear and easily understandable description of the fund's risk profile.

For UCITS falling within the scope of Part I, the prospectus shall also include either:

a) the details of the up-to-date remuneration policy, including, but not limited to, a description of how remuneration and benefits are calculated, the identity of persons responsible for awarding the remuneration and benefits, including the composition of the remuneration committee, where such a committee exists; or

b) a summary of the remuneration policy and a statement to the effect that the details of the up-to-date remuneration policy, including, but not limited to, a description of how the remuneration and benefits are calculated, the identity of persons responsible for awarding the remuneration and benefits, including the composition of the remuneration committee where such a committee exists, are available by means of a website – including a reference to that website – and that a paper copy will be made available free of charge upon request.

(2) The prospectus shall contain at least the information provided for in Schedule A of Annex I of this Law in so far as such information does not already appear in the management regulations or instruments of incorporation annexed to the prospectus in accordance with Article 152, paragraph 1.

(3) The annual report must include a balance sheet or a statement of assets and liabilities, a detailed income and expenditure account for the financial year, a report on the activities of the past financial year and the other information provided for in Schedule B of Annex I of this Law, as well as any significant information which will enable investors to make an informed judgement on the development of the activities and the results of the UCI.

For UCITS falling within the scope of Part I, the annual report shall also include:

a) the total amount of remuneration for the financial year, split into fixed and variable remuneration paid by the management company and by the investment company to its staff, and the number of beneficiaries, and where relevant, any amount paid directly by the UCITS itself, including any performance fee;

b) the aggregate amount of remuneration broken down by categories of employees or other members of staff as referred to in article 111*bis*, paragraph 3;

c) a description of how the remuneration and the benefits have been calculated;

d) the outcome of the reviews referred to in article 111*ter*, paragraph 1, points c) and d), including any irregularities that have occurred;

e) material changes to the adopted remuneration policy.

(4) The half-yearly report must include at least the information provided for in Chapters I to IV of Schedule B of Annex I of this Law. Where a UCI has paid or proposes to pay an interim dividend, the figures must indicate the results after tax for the half-year concerned and the interim dividend paid or proposed.

(5) The Schedules as provided for by paragraphs 2, 3 and 4 may be differentiated by the CSSF for UCIs subject to Articles 87 and 100, depending on whether or not these UCIs display certain characteristics or fulfil certain conditions.

Art. 152

(1) The management regulations or the instruments of incorporation of the investment company shall form an integral part of the prospectus and must be annexed thereto.

(2) The documents referred to in paragraph 1 need not, however, be annexed to the prospectus provided that the unitholder is informed that, on request, he will either be sent those documents or be apprised of the place where, in each Member State the units are marketed, he may consult them.

Art. 153

The essential elements of the prospectus must be kept up to date.

Art. 154

(1) Luxembourg UCIs must have the accounting information given in their annual report audited by an approved statutory auditor.

The approved statutory auditor's report and, as the case may be, its qualifications are set out in full in each annual report.

The approved statutory auditor must prove it has appropriate professional experience.

(2) The approved statutory auditor shall be appointed and remunerated by the UCI.

(3) The approved statutory auditor must report promptly to the CSSF any fact or decision of which it has become aware while carrying out the audit of the accounting information contained in the annual report of a UCI or any other legal task concerning a UCI, where such a fact or decision is likely to:

- constitute a substantial breach of this Law or the regulations adopted for its execution; or

- affect the continuous functioning of the UCI or of an undertaking contributing towards its business activity; or

- lead to a refusal to certify the accounts or to the expression of qualifications thereon.

The approved statutory auditor likewise has a duty to promptly report to the CSSF, in the accomplishment of its duties referred to in the preceding sub-paragraph in respect of a UCI, any fact or decisions concerning the UCI and meeting the criteria referred to in the preceding sub-paragraph of which it has become aware while carrying out the audit of the accounting information contained in their annual report or of another legal task in relation to another undertaking having close links resulting from a control relationship with the UCI or having close links with an undertaking involved in its business activity.

If, in the discharge of his duties, the approved statutory auditor ascertains that the information provided to investors or to the CSSF in the reports or other documents of the UCI does not truly describe the financial situation and the assets and liabilities of the UCI, he shall be obliged to inform the CSSF forthwith.

The approved statutory auditor shall moreover be obliged to provide the CSSF with all information or certificates required by the latter on any matters of which the approved statutory auditor has or ought to have knowledge in connection with the discharge of his duties. The same applies if the approved statutory auditor ascertains that the assets of the UCI are not or have not been invested in accordance with the provisions of this Law or of the prospectus.

The disclosure in good faith to the CSSF by the approved statutory auditor of any fact or decision referred to in this paragraph shall not constitute a breach of professional secrecy or of any restriction on disclosure of information imposed contractually and shall not result in liability of any kind of the approved statutory auditor.

Each Luxembourg UCI subject to the supervision of the CSSF whose accounts have to be audited by an approved statutory auditor, must communicate to the CSSF spontaneously the reports and written comments of the approved statutory auditor in the context of its audit of the annual accounting documents.

The CSSF may regulate the scope of the mandate for the audit of annual accounting documents and the content of the reports and written comments of the approved statutory auditor referred to in the preceding sub-paragraph, without prejudice to the legal provisions governing the content of the independent auditor's report.

The CSSF may request an approved statutory auditor to perform an audit on one or several particular aspects of the activities and operations of a UCI. This audit is performed at the expense of the UCI concerned.

(4) The CSSF shall refuse or withdraw the entry on the list of UCIs whose approved statutory auditor does not satisfy the conditions or does not discharge the obligations prescribed in this Article.

(5) The institution of the supervisory auditors provided for by Articles 61, 109, 114 and 200 of the Law of 10 August 1915 on commercial companies, as amended, is not applicable to Luxembourg investment companies. The directors or the management board, as the case may be, are solely competent in all cases where the Law of 10 August 1915 on commercial companies, as amended, provides for the joint action of the supervisory auditors and the directors or the management board, as the case may be, or managers together.

The institution of supervisory auditors provided for by Article 151 of the Law of 10 August 1915 on commercial companies, as amended, is not applicable to Luxembourg investment companies. Upon completion of the liquidation, a report on the liquidation shall be drawn up by the approved statutory auditor. This report shall be tabled at the general meeting at which the liquidators report on the application of the corporate assets and submit the accounts and supporting documents. The same meeting shall resolve on the approval of the accounts of the liquidation, the discharge and the closure of the liquidation.

The obligation to draw up a report on the liquidation as referred to in the preceding sub-paragraph is also applicable to UCIs having the legal form of a common fund. The decision to put the common fund into liquidation and the decision relating to the closure of the liquidation must be deposited with the register of commerce and companies and their publication in the *Recueil électronique des sociétés et associations* is made by way of a notice advising of the deposit of these decisions with the register of commerce and companies in accordance with the provisions of the amended Law of 10 August 1915 on commercial companies.

(6) The accounting information included in the annual reports of foreign UCIs as referred to in Article 100 must be audited by an independent expert providing all guarantees of good repute and professional skill.

Paragraphs 2, 3 and 4 are applicable to the case referred to in this paragraph.

Art. 155

(1) UCIs must send their prospectuses and any amendments thereto, as well as their annual and half-yearly reports, to the CSSF. UCIs must, on request, provide these documents to the competent authorities of the management company's home Member State.

(2) The CSSF may publish or cause the publication of the aforesaid documents by any such means as it shall consider adequate.

Art. 156

(1) The prospectus and the latest published annual and half-yearly reports shall be provided to investors on request and free of charge.

(2) The prospectus may be provided in a durable medium or by means of a website. A paper copy shall, in any case, be delivered to investors on request and free of charge.

(3) The annual and half-yearly reports shall be available to investors in the manner specified in the prospectus as well as in the key investor information referred to in Article 159 in respect of UCITS. A paper copy of the annual and half-yearly reports shall, in any case, be delivered to investors on request and free of charge.

B. – Publication of other information

Art. 157

(1) The UCITS referred to in Article 2 must make public the issue, sale and repurchase price of their units each time they issue, sell and repurchase their units, and at least twice a month. The CSSF may, however, permit a UCITS to reduce this frequency to once a month, on condition that such derogation does not prejudice the interests of unitholders.

(2) The UCIs referred to in Article 87 must make public the issue, sale and repurchase price of their units each time they issue, sell and repurchase their units, and at least once a month. The CSSF may, however, grant derogations therefrom upon a duly justified application.

Art. 158

All marketing communications to investors shall be clearly identifiable as such. They shall be fair, clear and not misleading. In particular, any marketing communication comprising an invitation to purchase units of UCIs that contains specific information about UCIs shall make no statement that contradicts or diminishes the significance of the information contained in the prospectus and, for UCITS, the key investor information referred to in Article 159. It shall indicate that a prospectus exists and, for UCITS, that the key investor information referred to in Article 159 is available. It shall specify where and in which language such information and documents may be obtained by investors or potential investors or how they may obtain access to them.

C. – Key investor information to be established by UCITS

Art. 159

(1) Investment companies and management companies, for each of the common funds they manage, must draw up a short document containing key information for investors. That document shall be referred to as "key investor information" in this Law.

Where the UCITS is established in Luxembourg or markets its units in Luxembourg pursuant to Chapter 7, the words "key investor information" shall be clearly stated in that document, in Luxembourgish, French, German or English.

(2) Key investor information shall include appropriate information about the essential characteristics of the UCITS concerned, which is to be provided to investors so that they are reasonably able to understand the nature and the risks of the investment product that is being offered to them and, consequently, to take investment decisions on an informed basis.

(3) Key investor information shall provide information on the following essential elements in respect of the UCITS concerned:

a) identification of the UCITS and the reference that the CSSF is the competent authority for the supervision of the UCITS pursuant to this Law;

b) a short description of its investment objectives and investment policy;

c) past performance presentation or, where relevant, performance scenarios;

d) costs and associated charges; and

e) risk/reward profile of the investment, including appropriate guidance and warnings in relation to the risks associated with investments in the relevant UCITS.

Those essential elements shall be comprehensible to the investor without any reference to other documents.

(4) Key investor information shall clearly specify where and how to obtain additional information relating to the proposed investment, including but not limited to where and how the prospectus and the annual and half-yearly reports can be obtained on request and free of charge, at any time, and the language in which such information is available to investors.

Key investor information shall also include a statement to the effect that the details of the up-to-date remuneration policy, including, but not limited to, a description of how remuneration and benefits are calculated, the identity of persons responsible for awarding the remuneration and benefits including the composition of the remuneration committee, where such a committee exists, are available by means of a website – including a reference to that website – and that a paper copy will be made available free of charge upon request.

(5) Key investor information shall be written in a concise manner and in non-technical language. It shall be drawn up in a common format, allowing for comparison, and shall be presented in a way that is likely to be understood by retail investors.

(6) Key investor information shall be used without alterations or supplements, except translation, in all Member States where the UCITS is notified to market its units in accordance with Article 54.

Art. 160

(1) Key investor information shall constitute pre-contractual information. It shall be fair, clear and not misleading. It shall be consistent with the relevant parts of the prospectus.

(2) No person shall incur civil liability solely on the basis of the key investor information, including any translation thereof, unless it is misleading, inaccurate or inconsistent with the relevant parts of the prospectus. Key investor information shall contain a clear warning that no person shall incur civil liability solely on the basis of the key investor information, including any translation thereof, unless it is misleading, inaccurate or inconsistent with the relevant parts of the prospectus.

Art. 161

(1) Investment companies and management companies, for each of the common funds they manage, which sell UCITS directly or through another natural or legal person who acts on their behalf and under their full and unconditional responsibility shall provide investors with key investor information on those UCITS in good time before their proposed subscription of units in those UCITS.

Key investor information does not necessarily need to be provided to investors in a State other than a Member State, unless the competent authorities of this State require that this information is provided to investors.

A UCI, other than a UCITS, is authorised to draw up a document containing key investor information, within the meaning of this Law. In that case, the document in question must contain a clear statement that the UCI which draws up the key investor information is not a UCITS subject to Directive 2009/65/EC.

(2) Investment companies and management companies, for each of the common funds they manage, which do not sell UCITS directly or through another natural or legal person who acts on their behalf and under their full and unconditional responsibility shall provide key investor information to product manufacturers and intermediaries selling those UCITS to investors or advising investors on potential investments in those UCITS or in products offering exposure to those UCITS upon their request. The intermediaries selling UCITS or advising investors on potential investments in UCITS must provide key investor information to their clients or potential clients.

(3) Key investor information shall be provided to investors free of charge.

Art. 162

Key investor information may be provided in a durable medium or by means of a website. A paper copy shall, in any case, be delivered to investors on request and free of charge.

In addition an up to date version of the key investor information shall moreover be published on the Website of the investment company or the management company.

Art. 163

(1) UCITS must provide the CSSF with key investor information and any amendment thereto.

(2) The essential elements of the key investor information must be kept up to date.

D. – Protection of name

Art. 164

(1) No entity shall make use of designations or of a description giving the impression that its activities are subject to this Law if it has not obtained the authorisation provided for in Article 130. The UCIs referred to in Chapter 7 and in Article 100 may use the designation they bear according to their national law. However, should this be misleading, these undertakings shall accompany the designation they use with adequate particulars.

(2) The District Court dealing with commercial matters of the place where the UCI is situated or of the place where the designation has been used, may, at the request of the public prosecutor's office, issue an injunction prohibiting anyone from using the designation as defined in paragraph 1, if the conditions provided for by this Law are not or no longer met.

(3) The final judgement or court decision which delivers this injunction, is published by the public prosecutor's office and at the expense of the person convicted in two Luxembourg or foreign newspapers with adequate circulation.

Chapter 22 – Criminal law provisions

Art. 165

A penalty of imprisonment of one month to one year and a fine of five hundred to twenty-five thousand euros or either of these penalties shall be imposed upon:

(1) any person who has issued or redeemed or caused to be issued or redeemed units of a common fund in the cases referred to in Articles 12, paragraph 3, 22, paragraph 3 and in Article 90 to the extent that this Article provides that Chapter 11 is subject to Articles 12, paragraph 3 and 22, paragraph 3;

(2) any person who has issued or redeemed units of a common fund at a price other than that obtained by application of the criteria provided for in Articles 9, paragraph 1, 9, paragraph 3, 11, paragraph 3 and in Article 90 to the extent that this Article provides that Chapter 11 is subject to Articles 9, paragraph 1 and 9, paragraph 3;

(3) any person who, as director or member of the management board, as the case may be, or as manager or supervisory auditor of the management company or the depositary has made loans or advances on units of the common fund using assets of the common fund, or who has by any means at the expense of the common fund, made payments in order to pay up units or acknowledged payments to have been made which have not actually been so made.

Art. 166

(1) A penalty of imprisonment of one to six months and a fine of five hundred to twenty-five thousand euros or either of these penalties shall be imposed upon:

(a) the directors or members of the management board, as the case may be, or managers of the management company who has failed to inform the CSSF without delay that the net assets of the common fund have fallen below two thirds and one fourth, respectively, of the legal minimum for the net assets of the common fund;

(b) the directors or members of the management board, as the case may be, or managers of the management company who has infringed Article 10 and Articles 41 to 52 or Article 90 to the extent that this Article provides that Chapter 11 is subject to Article 10 and the regulations made pursuant to Article 91.

(2) A fine of five hundred to twenty-five thousand euros shall be imposed upon any persons who, in violation of Article 164, use a designation or description giving the impression that they relate to the activities subject to this Law if they have not obtained the authorisation provided for in Article 130.

Art. 167

A fine of five hundred to ten thousand euros shall be imposed on the directors or members of the management board, as the case may be, or managers of the management company or the investment company who have not caused the issue and repurchase price of the units of the UCI to be determined at the specified intervals or who have not made such prices public according to Article 157.

Art. 168

A penalty of imprisonment of one month to one year and a fine of five hundred to twenty-five thousand euros or either of these penalties shall be imposed upon the founders, directors or members of the management board, as the case may be, or managers of an investment company who have infringed the provisions of Articles 28, paragraph 2, 28, paragraph 4 and 28, paragraph 10 of this Law; of Article 39 to the extent that it provides that Chapter 4 is subject to Articles 28, paragraph 2, 28, paragraph 4 and 28, paragraph 10; of Articles 41 to 52; of Article 95 of this Law to the extent that it provides that Chapter 12 is subject to Articles 28, paragraph 2, point a), 28, paragraph 4 and 28, paragraph 10; of the regulations made pursuant to Article 96 and of the regulations made pursuant to Article 99.

Art. 169

A penalty of imprisonment of one month to one year and a fine of five hundred to twenty-five thousand euros or either of these penalties shall be imposed upon the directors or members of the management board, as the case may be, or managers of an investment company who have not convened the extraordinary general meeting in accordance with Article 30; Article 39 to the extent that it provides that Chapter 4 is subject to Article 30; Article 95 to the extent that it provides that Chapter 12 is subject to Article 30 and Article 98 paragraphs 2 to 4.

Art. 170

A penalty of imprisonment of three months to two years and a fine of five hundred to fifty thousand euros or either of these penalties shall be imposed on anyone who has carried out or caused to be carried out operations involving the receipt of savings from the public with a view to investment if the UCI for which they acted was not entered on the list.

Art. 170-1

A penalty of imprisonment of three months to two years and a fine of five hundred to fifty thousand euros or either of these penalties shall be imposed on anyone who carries out, the activity of a management company within the meaning of Chapters 15, 16 and 17 or the activity of an investment company within the meaning of article 27, without the prior approval of the CSSF.

Art. 171

(1) A penalty of imprisonment of one month to one year and a fine of five hundred to twenty-five thousand euros or either of these penalties shall be imposed on the directors of UCIs referred to in Articles 97 and 100 who have failed to observe the conditions imposed upon them by this Law.

(2) The same penalties, or either one of them only, shall be imposed upon the directors of UCIs referred to in Articles 2 and 87 who, notwithstanding the provisions of Article 142, paragraph 3, have taken measures other than protective measures without being authorised for that purpose by the supervisory commissioner.

Chapter 23 – Tax provisions

Art. 172

The tax provisions of this Law apply to UCIs which are subject to this Law as well as UCIs which are subject to the Law of 20 December 2002 on undertakings for collective investment, as amended.

Art. 173

(1) Without prejudice to the collection of registration fees and transcription and implementation of national legislation on value added tax, there is no other tax payable by UCIs located or established in Luxembourg within the meaning of this Law, apart from the subscription tax mentioned below in Articles 174 to 176.

(2) The amounts distributed by such undertakings shall not be subject to withholdings and are not taxable if received by non-residents.

Art. 174

(1) The rate of the annual subscription tax payable by the undertakings referred to in this Law shall be 0.05%.

(2) This rate is 0.01% for:

a) undertakings whose sole object is the collective investment in money market instruments and in deposits with credit institutions;

b) undertakings whose sole object is the collective investment in deposits with credit institutions;

c) individual compartments of UCIs with multiple compartments referred to in this Law as well as for individual classes of securities issued within a UCI or within a compartment of a UCI with multiple compartments, provided that the securities of such compartments or classes are reserved to one or more institutional investors.

Art. 175

Are exempt from the subscription tax:

a) the value of the assets represented by units held in other UCIs, provided such units have already been subject to the subscription tax provided for in Article 174 or in Article 68 of the

Law of 13 February 2007 on specialised investment funds or by article 46 of the Law of 23 July 2016 on reserved alternative investment funds;

b) UCIs as well as individual compartments of UCIs with multiple compartments:

(i) whose securities are reserved for institutional investors, and

(ii) whose sole object is the collective investment in money market instruments and the placing of deposits with credit institutions, and

(iii) whose weighted residual portfolio maturity does not exceed 90 days, and

(iv) that have obtained the highest possible rating from a recognised rating agency.

Where several classes of securities exist within the UCI or the compartment, the exemption only applies to classes whose securities are reserved for institutional investors;

c) UCIs whose securities are reserved for (i) institutions for occupational retirement pension or similar investment vehicles, set up on one or more employers' initiative for the benefit of their employees and (ii) companies of one or more employers investing funds they hold, to provide retirement benefits to their employees.

d) UCIs as well as individual compartments of UCIs with multiple compartments whose main objective is the investment in microfinance institutions.

e) UCIs as well as individual compartments of UCIs with multiple compartments:

(i) whose securities are listed or traded on at least one stock exchange or another regulated market operating regularly, recognised and open to the public; and

(ii) whose exclusive object is to replicate the performance of one or more indices.

If several classes of securities exist within the UCI or the compartment, the exemption only applies to classes fulfilling the condition of sub-point (i).

Art. 176

(1) The taxable basis of the subscription tax shall be the aggregate net assets of the UCI as valued on the last day of each quarter.

(2) A Grand-Ducal Regulation shall determine the conditions necessary for the application of the rate of 0.01% and the exemption, and shall determine the criteria with which the money market instruments referred to in Articles 174 and 175 must comply.

(3) A Grand-Ducal Regulation shall determine the criteria which must be met by UCIs as well as by individual compartments of UCIs with multiple compartments referred to in Article 175 point (d).

(4) Without prejudice to additional or alternative criteria that may be determined by Grand-Ducal Regulation, the index referred to in Article 175, point (e), sub-point (ii) must represent an adequate benchmark for the market to which it refers and must be published in an appropriate manner.

(5) Any condition of pursuing a sole objective as laid down in Article 174 2 and Article 175 does not preclude the management of liquid assets, if any, on an ancillary basis by means of placement of securities issued by undertakings referred to in Article 174 2 a) and 2 b), or the use of techniques and instruments used for hedging or for purposes of efficient portfolio management.

(6) The provisions of Articles 174 to 176 apply *mutatis mutandis* to the individual compartments of a UCI with multiple compartments.

Art. 177

The duties of the registration administration include the fiscal control of UCIs.

If, at any date after the constitution of the UCIs referred to in this Law, the said administration ascertains that such UCIs are engaging in operations which exceed the framework of the activities authorised by this Law, the tax provisions provided for in Articles 172 to 175 shall cease to be applicable.

Moreover, the registration administration may levy a fiscal fine of a maximum of 0.2% on the aggregate amount of the assets of the UCIs.

Art. 178

Article 156, number 8), lit. c) of the amended Law of 4 December 1967 on income tax, is amended and supplemented as follows: "c), However, revenues from the sale of a holding in an undertaking for collective investment in corporate form, in an investment company in risk capital or in a family estate management company[29] are not concerned by number 8a and 8b."

Art. 179

UCIs which are established outside the territory of Luxembourg are exempt from corporate income tax, local business tax and wealth tax when they have their effective centre of management or head office within the territory of Luxembourg.

Chapter 24 – Special provisions in relation to the legal form

Art. 180

(1) Investment companies entered in the list provided for by Article 130, paragraph 1 may be converted into SICAVs and their articles of incorporation may be harmonised with the provisions of Chapter 3 or, as the case may be, Chapter 12 by resolution of a general meeting passed with a majority of two thirds of the votes of the unitholders present or represented regardless of the portion of the capital represented.

(2) The common funds referred to in Chapter 2 or, as the case may be, in Chapter 11 may, under the same conditions as those laid down in paragraph 1 above, convert themselves into a SICAV governed by Chapter 3 or, as the case may be, Chapter 12.

Art. 181

(1) UCIs may be comprised of multiple compartments, each compartment corresponding to a distinct part of the assets and liabilities of the UCI.

(2) The management regulations or the instruments of incorporation of the UCI must expressly provide for that possibility and the applicable operational rules. The prospectus must describe the specific investment policy of each compartment.

(3) The units of UCIs with multiple compartments may be of different value with or without indication of a par value depending on the legal form which has been chosen.

(4) Common funds with multiple compartments may, by separate management regulations, determine the characteristics of and rules applicable to each compartment.

[29] *société de gestion de patrimoine familiale*

(5) The rights of unitholders and of creditors concerning a compartment or which have arisen in connection with the creation, operation or liquidation of a compartment are limited to the assets of that compartment, unless a clause included in the management regulations or instruments of incorporation provides otherwise.

The assets of a compartment are exclusively available to satisfy the rights of investors in relation to that compartment and the rights of those creditors whose claims have arisen in connection with the creation, the operation or the liquidation of that compartment, unless a clause included in the management regulations or instruments of incorporation provides otherwise.

For the purpose of the relations between unitholders, each compartment will be deemed to be a separate entity, unless a clause included in the management regulations or instruments of incorporation provides otherwise.

(6) Each compartment of a UCI may be liquidated separately without that separate liquidation resulting in the liquidation of another compartment. Only the liquidation of the last remaining compartment of the UCI will result in the liquidation of the UCI as referred to in Article 145, paragraph 1. In this case, where the UCI is in corporate form as from the event giving rise to the liquidation of the UCI, and under penalty of nullity, the issue of shares shall be prohibited except for the purposes of liquidation.

(7) The authorisation of a compartment of a UCI, as referred to in Articles 2 and 87, is subject to the condition that all provisions of the laws, regulations or agreements relating to its organisation and operation are complied with. The withdrawal of authorisation of the compartment does not give rise to the withdrawal of the UCI from the list provided for in Article 130, paragraph 1.

(8) A compartment of a UCI may, subject to the conditions provided for in the management regulations or the instruments of incorporation as well as in the prospectus, subscribe, acquire and/or hold securities to be issued or issued by one or more other compartments of the same UCI without that UCI being subject to the requirements of the Law of 10 August 1915 on commercial companies, as amended, when it is constituted in corporate form, with respect to the subscription, acquisition and/or the holding by a company of its own shares, under the condition, however, that:

- the target compartment does not, in turn, invest in the compartment invested in this target compartment; and

- no more than 10% of the assets of the target compartments whose acquisition is contemplated may, pursuant to their management regulations or their instruments of incorporation, be invested in aggregate in units of other target compartments of the same UCI; and

- voting rights, if any, attaching to the relevant securities are suspended for as long as they are held by the compartment concerned and without prejudice to the appropriate processing in the accounts and the periodic reports; and

- in any event, for as long as these securities are held by the UCI, their value will not be taken into consideration for the calculation of the net assets of the UCI for the purposes of verifying the minimum threshold of the net assets imposed by this Law.

Art. 182

All the provisions of this Law referring to "public limited company" shall be understood as referring also to "European company (SE)".

Chapter 25 – Transitional provisions

Art. 183[30]

Art. 184[31]

Art. 185[32]

Art. 186[33]

Art. 186-1

(1) Without prejudice to the transitional provisions provided for in Article 58 of the Law of 12 July 2013 relating to alternative investment fund managers or, if it concerns an AIFM established in a third country, provided for in Article 45 of the Law of 12 July 2013 relating to alternative investment fund managers, UCIs subject to Part II established before 22 July 2013, and whose management is the responsibility of an AIFM authorised under Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers or under Chapter II of Directive 2011/61/EU, will have until 22 July 2014 to comply with the provisions of Chapter 10*bis*. For those UCIs, Articles 78, 79, 80, 81, 83, 86 and 87 of the Law of 12 July 2013 relating to alternative investment fund managers shall only be applicable from the date when they comply with the provisions of Chapter 10*bis*, or from 22 July 2014 at the latest.

(2) Without prejudice to the transitional provisions provided for in Article 58 of the Law of 12 July 2013 relating to alternative investment fund managers or, if it concerns an AIFM established in a third country, provided for in Article 45 of the Law of 12 July 2013 relating to alternative investment fund managers, UCIs subject to Part II, established between 22 July 2013 and 22 July 2014, shall qualify as AIFs within the meaning of the Law of 12 July 2013 relating to alternative investment fund managers, from the date they are established. These UCIs subject to Part II whose management is the responsibility of an AIFM authorised under Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers or under Chapter II of Directive 2011/61/EU must comply with the provisions of Chapter 10*bis* from the date they are established. By way of derogation from this principle, these UCIs of Part II, established between 22 July 2013 and 22 July 2014 with an external AIFM which exercises the activities of AIFM before 22 July 2013, will have until 22 July 2014 at the latest to comply with the provisions of Chapter 10*bis*. For those UCIs, Articles 78, 79, 80, 81, 83, 86 and 87 of the Law of 12 July 2013 relating to alternative investment fund managers shall only be applicable from the date when they comply with the provisions of Chapter 10*bis* or from 22 July 2014 at the latest.

(3) All UCIs subject to Part II, established after 22 July 2014, shall be ipso jure governed by Chapter 10*bis*. These UCIs of Part II or, where applicable, their AIFM, shall be ipso jure, subject to the derogations provided for in Article 3 of the Law of 12 July 2013 relating to alternative investment fund managers and the derogation provided for in Article 45 of the Law of 12 July 2013 relating to alternative investment fund managers, governed by the provisions of the Law of 12 July 2013 relating to alternative investment fund managers.

(4) UCIs subject to Part II established before 22 July 2013 which qualify as AIFs of the closed-ended type within the meaning of the Law of 12 July 2013 relating to alternative investment fund managers and which do not make any additional investments after such date, do not need to be managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers. These Part II UCIs must only comply with the Articles of this Law which are applicable to UCIs whose AIFM benefits from and makes

[30] Repealed by the Law of 10 May 2016 transposing Directive 2014/91/EU.
[31] Repealed by the Law of 10 May 2016 transposing Directive 2014/91/EU.
[32] Repealed by the Law of 10 May 2016 transposing Directive 2014/91/EU.
[33] Repealed by the Law of 10 May 2016 transposing Directive 2014/91/EU.

use of the derogations provided for in Article 3 of the Law of 12 July 2013 relating to alternative investment fund managers, except for Article 128.

(5) UCIs subject to Part II which qualify as AIFs of the closed-ended type within the meaning of the Law of 12 July 2013 relating to alternative investment fund managers and whose subscription period for investors has closed prior to 22 July 2011 and which are established for a period of time expiring at the latest three years after 22 July 2013, do not need to comply with the provisions of the Law of 12 July 2013 relating to alternative investment fund managers, except for Article 20 and, where applicable, Articles 24 to 28 of the Law of 12 July 2013 relating to alternative investment fund managers, nor do they need to submit an application for authorisation under the Law of 12 July 2013 relating to alternative investment fund managers.

(6) Subject to the application of Article 58(3) and (4) of the Law of 12 July 2013 relating to alternative investment fund managers, management companies authorised under Chapter 15 which manage, before 22 July 2013, as appointed management company, one or more AIFs within the meaning of Directive 2011/61/EU, will have until 22 July 2014 to comply with the provisions of Article 101-1.

(7) Subject to the application of Article 58(3) and (4) of the Law of 12 July 2013 relating to alternative investment fund managers, management companies authorised under Chapter 16 which manage, before 22 July 2013, as appointed management company, one or more AIFs within the meaning of Directive 2011/61/EU, in the case referred to in Article 125-2, will have until 22 July 2014 to comply with the provisions of this Article 125-2.

Art. 186-2

(1) Without prejudice to the provisions set forth in paragraphs 2, 3 and 4, UCITS subject to Part I as well as their depositaries will have until 18 March 2016 at the latest to comply with the new provisions of Articles 17 to 20, 33 to 35, 37 and 39 depending on the legal form adopted by the UCITS concerned.

This paragraph applies both to UCITS created before the entry into force of the Law of 10 May 2016 transposing Directive 2014/91/EU and to UCITS created after the entry into force of that Law.

(2) For common funds subject to Chapter 2 as well as their depositaries, which have not yet complied with the new provisions set forth in paragraph 1, the following former provisions remain in force and continue to refer to the amended Law of 17 December 2010 relating to undertakings for collective investment before its amendment by the Law of 10 May 2016 transposing Directive 2014/91/EU:

"**Art. 17**. (1) The assets of the common fund must be entrusted to a depositary for safe-keeping.

(2) The depositary must either have its registered office in Luxembourg or be established in Luxembourg if its registered office is in another Member State.

(3) The depositary must be a credit institution within the meaning of the Law of 5 April 1993 on the financial sector, as amended.

(4) The depositary's liability shall not be affected by the fact that it has entrusted to a third party all or some of the assets in its safe-keeping.

(5) The directors of the depositary must be of sufficiently good repute and be sufficiently experienced, also in relation to the common fund concerned. To that end, the identity of the directors and of every person succeeding them in office must be communicated forthwith to the CSSF.

"Directors" shall mean those persons, who under law or the instruments of incorporation represent the depositary or effectively determine the conduct of its activity.

(6) The depositary is required to provide the CSSF on request with all the information that the depositary has obtained in the exercise of its duties and which is necessary to enable the CSSF to monitor compliance by the common fund with this Law.

Art. 18. (1) The depositary shall carry out all operations concerning the day-to-day administration of the assets of the common fund.

(2) The depositary must moreover:

a) ensure that the sale, issue, repurchase and cancellation of units effected on behalf of the common fund or by the management company are carried out in accordance with the law and the management regulations,

b) ensure that the value of units is calculated in accordance with the law and the management regulations,

c) carry out the instructions of the management company, unless they conflict with the law or the management regulations,

d) ensure that in transactions involving the common fund's assets, any consideration is remitted to it within the usual time limits,

e) ensure that the common fund's income is applied in accordance with the management regulations.

(3) Where the management company's home Member State is not the same as that of the common fund, the depositary must sign a written agreement with the management company regulating the flow of information deemed necessary to allow it to perform the functions described in Articles 17(1) and (4) and 18(2) and in other laws, regulations or administrative provisions which are relevant for the depositary.

Art. 19. (1) The depositary shall be liable, in accordance with Luxembourg law, to the management company and to the unitholders for any loss suffered by them as a result of its unjustifiable failure to perform its obligations or its improper performance of them.

(2) Liability to unitholders shall be invoked through the management company. Should the management company fail to act despite a written notice to that effect from a unitholder within a period of three months following receipt of such a notice, that unitholder may directly invoke the liability of the depositary.

Art. 20. In the context of their respective roles, the management company and the depositary must act independently and solely in the interest of the "unitholders"."

(3) For SICAVs subject to Chapter 3 as well as for their depositaries, which have not yet complied with the new provisions set forth in paragraph 1, the following former provisions remain in force and continue to refer to the amended Law of 17 December 2010 relating to undertakings for collective investment before its amendment by the Law of 10 May 2016 transposing Directive 2014/91/EU:

"**Art. 33**. (1) The safe-keeping of the assets of a SICAV must be entrusted to a depositary.

(2) The depositary's liability shall not be affected by the fact that it has entrusted to a third party all or some of the assets in its safe-keeping.

(3) The depositary must moreover:

a) ensure that the sale, issue, repurchase and cancellation of units effected by or on behalf of the SICAV are carried out in accordance with the law and the articles of incorporation of the SICAV;

b) ensure that in transactions involving the assets of the SICAV, any consideration is remitted to it within the usual time limits;

c) ensure that the income of the SICAV is applied in accordance with its articles of incorporation.

(4) In the case where a SICAV has designated a management company, if the management company's home Member State is not the same as that of the SICAV, the depositary must sign a written agreement with the management company regulating the flow of information deemed necessary to allow it to perform the functions set out in Article 33 (1), (2) and (3) and in other laws, regulations or administrative provisions which are relevant for the depositary

Art. 34. (1) The depositary must either have its registered office in Luxembourg or be established in Luxembourg if its registered office is in another Member State.

(2) The depositary must be a credit institution within the meaning of the amended Law of 5 April 1993 on the financial sector.

(3) The directors of the depositary must be of sufficiently good repute and be sufficiently experienced, also in relation to the type of the SICAV concerned. To that end, the identity of the directors and of every person succeeding them in office must be communicated forthwith to the CSSF.

"Directors" shall mean those persons, who under law or the instruments of incorporation represent the depositary or effectively determine the conduct of its activity.

(4) The depositary is required to provide the CSSF on request with all the information that the depositary has obtained in the exercise of its duties and which is necessary to enable the CSSF to monitor compliance by the SICAV with this Law.

Art. 35. The depositary shall be liable, in accordance with Luxembourg law, to the investment company and to the unitholders for any loss suffered by them as a result of its unjustifiable failure of its obligations or improper performance of them.

Art. 37. In carrying out its role as depositary, the depositary must act solely in the interests of the unitholders."

(4) For the other investment companies in transferable securities subject to Chapter 4 as well as for their depositaries, which have not yet complied with the new provisions set forth in paragraph 1, the following former provisions remain in force and continue to refer to the amended Law of 17 December 2010 relating to undertakings for collective investment before its amendment by the Law of 10 May 2016 transposing Directive 2014/91/EU:

"**Art. 39**. Articles 26, 27, 28 with the exception of paragraphs (8) and (9), 30, 33, 34, 35, 36 and 37 of this Law are applicable to investment companies falling within the scope of this Chapter.".

Art. 186-3.

(1) Without prejudice to the provisions set forth in paragraphs 2 and 3, UCIs subject to Part II will have until **18 March 2016** at the latest to comply with the new provisions of Article 88-3.

This paragraph applies both to UCIs created before the entry into force of the Law of 10 May 2016 transposing Directive 2014/91/EU and to UCIs created after the entry into force of that law.

(2) For UCIs managed by an AIFM authorised under Chapter 2 of the amended Law of 12 July 2013 relating to alternative investment fund managers, which have not yet complied with the new provisions set forth in paragraph 1, the provisions of Article 19 of the amended Law of 12 July 2013 mentioned above will remain applicable:

(3) For UCIs whose AIFM benefits from and uses the exemptions set forth in Article 3 of the amended Law of 12 July 2013 relating to alternative investment fund managers, which have not yet complied with the new provisions set forth in paragraph 1, the former provisions set forth in Article 186-2, paragraphs 2 to 4 will remain in force depending on the legal form adopted by the UCI concerned.

Art. 186-4.

Management companies subject to Chapter 15 as well SICAVs within the meaning of Article 27 will have until 18 March 2016 at the latest to comply with the new provisions of Articles 111*bis* and 111*ter*. This Article applies both to management companies and SICAVs created before the entry into force of the Law of 10 May 2016 transposing Directive 2014/91/EU and to management companies and SICAVs created after the entry into force of that Law.

Chapter 26 –Final provisions

Art. 187[34]

Art. 188[35]

Art. 189[36]

Art. 190[37]

Art. 191[38]

Art. 192[39]

Art. 193

References to this Law may be made by using the following abridged title: "Law of 17 December 2010 on undertakings for collective investment".

Art. 194

This Law shall enter into force on the first day of the month following its publication in the *Mémorial*.

[34] Repealed by the Law of 10 May 2016 transposing Directive 2014/91/EU.
[35] Repealed by the Law of 10 May 2016 transposing Directive 2014/91/EU.
[36] Repealed by the Law of 10 May 2016 transposing Directive 2014/91/EU.
[37] Repealed by the Law of 10 May 2016 transposing Directive 2014/91/EU.
[38] Repealed by the Law of 10 May 2016 transposing Directive 2014/91/EU.
[39] Repealed by the Law of 10 May 2016 transposing Directive 2014/91/EU.

ANNEX I

SCHEDULE A

1. Information concerning the common fund	**1. Information concerning the management company, including an indication whether the management company is established in a Member State other than the home Member State of the UCITS**	**1. Information concerning the investment company**
1.1 Name	1.1 Name, corporate name, legal form, registered office and head office if different from registered office	1.1 Name, corporate name, legal form, registered office and head office if different from registered office
1.2 Date of establishment of the common fund. Indication of duration, if limited	1.2 Date of incorporation of the company. Indication of duration, if limited	1.2 Date of incorporation of the company. Indication of duration, if limited
1.3 In the case of common funds having different investment compartments, indication of the compartments	1.3 If the company manages other common funds, indication of those other funds	1.3 In the case of investment companies having different investment compartments, indication of the compartments
1.4 Statement of the place where the management regulations, if they are not annexed, and periodical reports may be obtained		1.4 Statement of the place where the instruments of incorporation, if they are not annexed, and the periodical reports may be obtained
1.5 Brief indications relevant to unitholders of the tax system applicable to the common fund. Details of whether deductions are made at source from the income and capital gains paid by the common fund to unitholders.		1.5 Brief indications relevant to unitholders of the tax system applicable to the company. Details of whether deductions are made at source from the income and capital gains paid by the company to unitholders.
1.6 Accounting and distribution dates		1.6 Accounting and distribution dates
1.7 Names of the persons responsible for auditing the accounting information referred to in Article 148[40]		1.7 Names of the persons responsible for auditing the accounting information referred to in Article 148[41]

[40] The French version of this Law refers to Article 148 instead of Article 154.
[41] The French version of this Law refers to Article 148 instead of Article 154.

	1.8 Names and positions in the company of the members of the administrative body, management and supervisory boards. Details of their main activities outside the company where these are of significance with respect to that company	1.8 Names and positions in the company of the members of the administrative, management and supervisory bodies. Details of their main activities outside the company where these are of significance with respect to that company
	1.9 Amount of the subscribed capital with an indication of the capital paid-up	1.9 Capital
1.10 Details of the types and main characteristics of the units and in particular: - the nature of the right (real, personal or other) represented by the unit, - original securities or certificates providing evidence of title; entry in a register or in an account, - characteristics of the units: registered or bearer. Indication of any denominations which may be provided for, - indication of unitholders' voting rights if these exist, - circumstances in which liquidation of the common fund can be decided on and winding-up procedure, in particular as regards the rights of unitholders		1.10 Details of the types and main characteristics of the units and in particular: - original securities or certificates providing evidence of title; entry in a register or in an account, - characteristics of the units: registered or bearer. Indication of any denominations which may be provided for, - indication of unitholders' voting rights, - circumstances in which liquidation of the common fund can be decided on and winding-up procedure, in particular as regards the rights of unitholders
1.11 Where applicable, indication of stock exchanges or markets where the units are listed or dealt in		1.11 Where applicable, indication of stock exchanges or markets where the units are listed or dealt in
1.12 Procedures and conditions of issue and/or sale of units		1.12 Procedures and conditions of issue and/or sale of units
1.13 Procedures and conditions for repurchase or redemption of units, and circumstances in which repurchase or redemption may be suspended. In the case of common funds having different investment compartments, information on how a unitholder may pass from one compartment into another and the charges applicable in		1.13 Procedures and conditions for repurchase or redemption of units, and circumstances in which repurchase or redemption may be suspended. In the case of investment companies having different investment compartments, information on how a unitholder may pass from one compartment into another and the charges applicable in

such cases		such cases
1.14 Description of rules for determining and applying income		1.14 Description of rules for determining and applying income
1.15 Description of the common fund's investment objectives, including its financial objectives (e.g. capital growth or income), investment policy (e.g. specialisation in geographical or industrial sectors), any limitations on that investment policy and an indication of any techniques and instruments or borrowing powers which may be used in the management of the common fund.		1.15 Description of the company's investment objectives, including its financial objectives (e.g. capital growth or income), investment policy (e.g. specialisation in geographical or industrial sectors), any limitations on that investment policy and an indication of any techniques and instruments or borrowing powers which may be used in the management of the company.
1.16 Rules for the valuation of assets		1.16 Rules for the valuation of assets
1.17 Determination of the sale or issue price and the repurchase or redemption price of units, in particular: - the method and frequency of the calculation of those prices, - information concerning the charges relating to the sale or issue and the repurchase or redemption of units, - information concerning the means, places and frequency of the publication of those prices		1.17 Determination of the sale or issue price and the repurchase or redemption price of units, in particular: - the method and frequency of the calculation of those prices, - information concerning the charges relating to the sale or issue and the repurchase or redemption of units, - information concerning the means, places and frequency of the publication of those prices
1.18 Information concerning the manner, amount and calculation of remuneration payable by the common fund to the management company, the depositary or third parties, and reimbursement of costs by the common fund to the management company, to the depositary or to third parties		1.18 Information concerning the manner, amount and calculation of remuneration paid by the company to its directors, and members of the administrative, management and supervisory bodies, to the depositary, or third parties, and reimbursement of any costs by the company to its directors, the depositary or to third parties

2. Information concerning the depositary:

2.1. The identity of the depositary of the UCITS and a description of its duties and of the conflicts of interest that may arise

2.2. A description of any safekeeping functions delegated by the depositary, the list of delegates and sub-delegates and any conflicts of interests that may arise from such a delegation

2.3. A statement to the effect that up-to-date information regarding points 2.1 and 2.2 will be made available to investors on request

3. Information concerning the advisory firms or external investment advisers who give advice under contract which is paid for out of the assets of the UCITS:

3.1. Name or corporate name of the firm or name of the adviser

3.2. Material provisions of the contract with the management company or the investment company which may be relevant to the unitholders, excluding those relating to remuneration

3.3. Other significant activities

4. Information concerning the arrangements for making payments to unitholders, repurchasing or redeeming units and making available information concerning the UCITS. Such information must in any case be given in Luxembourg. In addition, where units are marketed in another Member State, such information shall be given in respect of that Member State in the prospectus published therein

5. Other investment information:

5.1. Historical performance of the UCITS (where applicable) – such information may be either included in or attached to the prospectus;

5.2. Profile of the typical investor for whom the UCITS is designed;

5.3. In case an investment company or a common fund has different investment compartments, the information referred to in items 5.1. and 5.2. must be given for each compartment.

6. Economic information:

6.1. Possible expenses or fees, other than the charges mentioned in item 1.17, distinguishing between those to be paid by the unitholder or those to be paid out of the assets of the UCITS.

SCHEDULE B

Information to be included in the periodical reports

I. Statement of assets and liabilities

- transferable securities,
- bank balances,
- other assets,
- total assets,
- liabilities,
- net asset value.

II. Number of units in circulation

III. Net asset value per unit

IV. Portfolio securities, distinguishing between:

(a) transferable securities admitted to official stock exchange listing;

(b) transferable securities dealt in on another regulated market;

(c) transferable securities referred to in Article 41, paragraph 1, point d);

(d) other transferable securities referred to in Article 41, paragraph 2, point a);

and analysed in accordance with the most appropriate criteria in the light of the investment policy of the UCITS (e.g. in accordance with economic or geographical or currency criteria) as a percentage of net assets; for each of the aforementioned investments, the proportion it represents of the total assets of the UCITS.

Statement of changes in the composition of the portfolio during the reference period.

V. Statement of the developments concerning the assets of the UCITS during the reference period, including the following:

- income from investments,
- other income,
- management charges,
- depositary's charges,
- other charges and taxes,
- net income,
- distribution and income reinvested,
- increase or decrease of the capital account,
- appreciation or depreciation of investments,

- any other changes affecting the assets and liabilities of the UCITS,

- transaction costs, which are costs incurred by a UCITS in connection with transactions on its portfolio.

VI. A comparative table covering the last three financial years and including, for each financial year, at the end of the financial year:

- the total net asset value,

- the net asset value per unit.

VII. Details, by category of transactions within the meaning of Article 42 carried out by the UCITS during the reference period, of the resulting amount of commitments

ANNEX II

Functions included in the activity of collective portfolio management

- Investment management
- Administration:
  - a) legal and fund management accounting services;
  - b) customer inquiries;
  - c) valuation of the portfolio and pricing of the units (including tax returns);
  - d) regulatory compliance monitoring;
  - e) maintenance of unitholder register;
  - f) distribution of income;
  - g) unit issue and repurchase;
  - h) contract settlements (including certificate dispatch);
  - i) record keeping.
- Marketing

3.

LAW OF 23 JULY 2016 ON RESERVED ALTERNATIVE INVESTMENT FUNDS

LAW OF 23 JULY 2016 ON RESERVED ALTERNATIVE INVESTMENT FUNDS

Chapter 1 – Scope and general provisions

Art. 1

(1) For the purpose of this Law, reserved alternative investment funds shall be any undertakings for collective investment situated in Luxembourg:

a) which qualify as alternative investment funds under the amended Law of 12 July 2013 relating to alternative investment fund managers, and

b) the sole object of which is the collective investment of their funds in assets with the aim of spreading the investment risks and giving investors the benefit of the results of the management of their assets, and

c) the securities or partnership interests of which are reserved to one or several well-informed investors, and

d) the articles of incorporation, the management regulations or the partnership agreement of which provide that they are subject to the provisions of this Law.

"Management" within the meaning of point b), shall mean an activity comprising at least the service of portfolio management.

(2) Reserved alternative investment funds may take the legal forms provided for in Chapters 2, 3 and 4.

Art. 2

(1) Within the meaning of this Law, a well-informed investor shall be an institutional investor, a professional investor or any other investor who meets the following conditions:

a) he has stated in writing that he adheres to the status of well-informed investor and

b) (i) he invests a minimum of 125,000 euros in the reserved alternative investment fund, or

(ii) he has been the subject of an assessment made by a credit institution within the meaning of Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012, by an investment firm within the meaning of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC or by a management company within the meaning of Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) or by an authorised alternative investment fund manager within the meaning of Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No. 1060/2009 and (EU) No. 1095/2010 (hereinafter "Directive 2011/61/EU"), certifying his expertise, his experience and his knowledge to adequately appraise an investment in the reserved alternative investment fund.

(2) The conditions set forth in this Article are not applicable to the directors[1] and other persons involved in the management of reserved alternative investment funds.

(3) Reserved alternative investment funds must have the necessary means to ensure compliance with the conditions laid down in paragraph 1.

Art. 3

Reserved alternative investment funds shall be deemed to be situated in Luxembourg if the registered office of the management company of the common fund or the registered office of the investment company is situated in Luxembourg. The head office must be located in Luxembourg.

Art. 4

(1) Subject to the application of Article 2, paragraph 2, points c) and d) of the amended Law of 12 July 2013 relating to alternative investment fund managers, every reserved alternative investment fund must be managed by an AIFM, which may either be an AIFM established in Luxembourg authorised under Chapter 2 of the amended Law of 12 July 2013 relating to alternative investment fund managers, or an AIFM established in another Member State within the meaning of Directive 2011/61/EU or in a third country authorised under Chapter II of Directive 2011/61/EU, subject to the application of Article 66, paragraph 3 of the aforementioned directive where the management of the reserved alternative investment fund is performed by an AIFM established in a third country.

(2) The AIFM must be determined in accordance with the provisions of Article 4 of the amended Law of 12 July 2013 relating to alternative investment fund managers or in accordance with the provisions of Article 5 of Directive 2011/61/EU.

The AIFM shall be an external AIFM within the meaning of the amended Law of 12 July 2013 relating to alternative investment fund managers. This external AIFM must be authorised in accordance with the provisions of Chapter 2 of the amended Law of 12 July 2013 relating to alternative investment fund managers or in accordance with the provisions of Chapter II of Directive 2011/61/EU.

(3) In the case of voluntary withdrawal of the AIFM or of its removal by the reserved alternative investment fund or in the case that the AIFM is no longer authorised as required by paragraph 2 or in the case of insolvency of the AIFM, the directors or managers of the reserved alternative investment fund or its management company must take all necessary measures in order to replace the AIFM by another AIFM which complies with the requirements of paragraph 2. If the AIFM has not been replaced within two months as from the withdrawal of the AIFM, the directors or managers of the reserved alternative investment fund or of its management company shall, within 3 months following the withdrawal of the AIFM, request the District Court[2] dealing with commercial matters to pronounce the dissolution and liquidation of the reserved alternative investment fund pursuant to Article 18.

Art. 5

(1) The assets of a reserved alternative investment fund must be entrusted to a depositary for safe-keeping, appointed in accordance with the provisions of Article 19 of the amended Law of 12 July 2013 relating to alternative investment fund managers.

(2) The depositary must either have its registered office in Luxembourg or have a branch there if its registered office is in another Member State of the European Union.

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1 *dirigeants*
2 *tribunal d'arrondissement*

(3) Without prejudice to the requirement referred to in the second sub-paragraph of this paragraph, the depositary must be a credit institution or an investment firm within the meaning of the amended Law of 5 April 1993 on the financial sector. An investment firm shall only be eligible as a depositary to the extent that this investment firm also fulfils the conditions provided in Article 19, paragraph 3 of the amended Law of 12 July 2013 relating to alternative investment fund managers.

For reserved alternative investment funds which have no redemption rights exercisable during a period of five years from the date of the initial investments and which, in accordance with their core investment policy, generally do not invest in assets that must be held in custody in accordance with point a) of Article 19, paragraph 8 of the amended Law of 12 July 2013 relating to alternative investment fund managers or generally invest in issuers or non-listed companies in order to potentially acquire control over such companies in accordance with Article 24 of the aforementioned law, the depositary may also be an entity governed by Luxembourg law which has the status of a professional depositary of assets other than financial instruments within the meaning of Article 26-1 of the amended Law of 5 April 1993 on the financial sector.

The depositary must prove it has adequate professional experience by already exercising these functions for undertakings for collective investment referred to in the amended Law of 17 December 2010 on undertakings for collective investment, in the amended Law of 13 February 2007 on specialised investment funds or in the amended Law of 15 June 2004 relating to investment companies in risk capital. This requirement does not apply if the depositary has the status of a professional depositary of assets other than financial instruments within the meaning of Article 26-1 of the amended Law of 5 April 1993 on the financial sector.

(4) The duties and responsibilities of the depositary are defined in accordance with the rules laid down in Article 19 of the amended Law of 12 July 2013 relating to alternative investment fund managers.

(5) In the case of voluntary withdrawal of the depositary or of its removal by the reserved alternative investment fund or by its management company or in the case where the depositary no longer fulfils the conditions set forth in paragraphs 2 and 3 or in the case of insolvency of the depositary, the directors or managers of the reserved alternative investment fund or its management company must take all necessary measures in order to replace the depositary by another depositary which fulfils the conditions required by paragraphs 2 and 3. If the depositary has not been replaced within 2 months, the directors or managers of the reserved alternative investment fund or of its management company shall, within 3 months following the withdrawal of the depositary, request the District Court dealing with commercial matters to pronounce the dissolution and liquidation of the reserved alternative investment fund pursuant to Article 35.

Chapter 2 – Common funds

Art. 6

For the purpose of this Law, any undivided collection of assets shall be regarded as a common fund, if it is made up and managed according to the principle of risk-spreading on behalf of joint owners who are liable only up to the amount contributed by them and whose rights are represented by units reserved to one or several well-informed investors.

Art. 7

The common fund shall not be liable for the obligations of the management company or of the unitholders; it shall be answerable only for the obligations and expenses expressly imposed upon it by its management regulations.

Art. 8

A common fund referred to in this Law shall be managed by a Luxembourg management company which complies with the conditions set out in Article 125-1 or 125-2 of the amended Law of 17 December 2010 relating to undertakings for collective investment.

Art. 9

(1) The management company shall issue registered, bearer or dematerialised securities representing one or more portions of the common fund which it manages. The management company may issue, in accordance with the conditions laid down in the management regulations, written certificates of entry in the register of units or fractions of units without limitation as to the fractioning of units.

Rights attaching to fractions of units are exercised in proportion to the fraction of a unit held except for possible voting rights which can only be exercised for whole units. The bearer securities shall be signed by the management company and by the depositary.

These signatures may be reproduced mechanically.

(2) Ownership of units, in the form of registered or bearer securities, shall be determined and transfer thereof shall be effected in accordance with the rules laid down in Articles 40 and 42 of the amended Law of 10 August 1915 concerning commercial companies. The rights of units inscribed in a securities account shall be determined and transfer thereof shall be effected in accordance with the rules laid down in the Law of 6 April 2013 on dematerialised securities and the amended Law of 1 August 2001 concerning the circulation of securities.

(3) The owners of bearer securities may, at any moment, demand the conversion of bearer securities, at their own expense, into registered securities or, if the management regulations provide for this, into dematerialised securities. In the latter case, the costs are borne by the person provided for in the Law of 6 April 2013[3] on dematerialised securities.

Unless a formal prohibition is stated in the management regulations, the owners of registered securities may, at any moment, demand the conversion of registered securities into bearer securities.

If the management regulations provide for this, the owners of registered securities may demand the conversion of registered securities into dematerialised securities. The costs are borne by the person provided for in the Law of 6 April 2013 on dematerialised securities.

The holders of dematerialised securities may, at any moment, demand the conversion, at their own expense, of dematerialised securities into registered securities, unless the management regulations provide for the compulsory dematerialisation of securities.

Art. 10

(1) Units shall be issued and, as the case may be, redeemed in accordance with the conditions and procedures set forth in the management regulations.

(2) The issue and redemption of units shall be prohibited:

(a) during any period where there is no management company or depositary;

(b) where the management company or the depositary is put into liquidation or declared bankrupt or seeks an arrangement with creditors, a suspension of payment or a controlled management or is the subject of similar proceedings.

[3] The original version of the Law of 23 July 2016 on reserved alternative investment funds does not mention the date of such law.

Art. 11

Unless otherwise provided for in the management regulations of the fund, the valuation of the assets of the common fund shall be based on the fair value. This value must be determined in accordance with the rules set forth in the management regulations.

Without prejudice to the preceding sub-paragraph, the valuation of the assets of the common funds subject to this Law is performed in accordance with the rules laid down in Article 17 of the amended Law of 12 July 2013 relating to alternative investment fund managers.

Art. 12

Neither the holders of units nor their creditors may require the distribution or the dissolution of the common fund.

Art. 13

(1) The management company shall draw up the management regulations for the common fund. These regulations must be lodged with the register of commerce and companies and their publication in the *Recueil électronique des sociétés et associations*[4] will be made by way of a notice advising of the deposit of the document, in accordance with the provisions of Title I, Chapter V*bis* of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings. The provisions of these regulations shall be deemed accepted by the unitholders by the mere fact of the acquisition of these units.

(2) The management regulations of the common fund shall contain at least the following provisions:

a) the name and duration of the common fund, the name of the management company and of the depositary;

b) the investment policy according to its specific objectives and the criteria therefor;

c) the distribution policy within the scope of Article 16;

d) the remuneration and expenditure which the management company is entitled to charge to the fund and the method of calculation of that remuneration;

e) the provisions as to publications;

f) the date of the closing of the accounts of the common fund;

g) the cases where, without prejudice to legal grounds, the common fund shall be dissolved;

h) the procedures for amendment of the management regulations;

i) the procedures for the issue of units and, as the case may be, for the redemption of units;

j) the rules applicable to the valuation and the calculation of the net asset value per unit.

[4] The *Recueil électronique des sociétés et associations* is the central electronic platform of official publication.

Art. 14

(1) The management company shall manage the common fund in accordance with the management regulations and in the exclusive interest of the unitholders.

(2) It shall act in its own name, but shall indicate that it is acting on behalf of the common fund.

(3) It shall exercise all the rights attaching to the assets comprised in the portfolio of the common fund.

Art. 15

The management company must fulfil its obligations with the diligence of a salaried agent[5]. It shall be liable to the unitholders for any loss resulting from the non-fulfilment or improper fulfilment of its obligations.

Art. 16

Unless otherwise provided for in the management regulations, the net assets of the common fund may be distributed subject to the limits set out in Article 20.

Art. 17

In the context of their respective roles, the management company and the depositary must act independently and solely in the interests of the unitholders.

Art. 18

The duties of the management company or of the depositary in respect of the common fund shall cease:

a) in the case of withdrawal of the management company, provided that it is replaced by another management company authorised in accordance with Article 8;

b) in the case of voluntary withdrawal of the depositary or of its removal by the management company; until the replacement of the depositary, which must happen within two months, the depositary shall take all necessary steps for the good preservation of the interests of the unitholders;

c) where the management company or the depositary has been declared bankrupt, has entered into an arrangement with creditors, has obtained a suspension of payment, has been put under court-controlled management, or has been the subject of similar proceedings or has been put into liquidation;

d) where the competent supervisory authority withdraws its authorisation of the management company or the depositary;

e) in all other cases provided for in the management regulations.

Art. 19

(1) Liquidation of the common fund shall take place:

a) upon the expiry of any period as may be fixed by the management regulations;

b) in the event of cessation of their duties of the management company or of the depositary in accordance with points b), c), d) and e) of Article 18, if they have not

[5] *mandataire salarié*

been replaced within two months without prejudice to the specific case addressed in point c) below;

c) in the event of bankruptcy of the management company;

d) if the net assets of the common fund have fallen for more than six months below one quarter of the legal minimum provided for in Article 20 hereafter;

e) in all other cases provided for in the management regulations.

(2) Notice of the event giving rise to liquidation shall be lodged without delay by the management company or the depositary with the register of commerce and companies in the common fund's file and published in the *Recueil électronique des sociétés et associations,* in accordance with the provisions of Title I, Chapter V*bis* of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings and in at least two newspapers with adequate circulation, at least one of which must be a Luxembourg newspaper, at the expense of the common fund.

(3) As soon as the event giving rise to liquidation of the common fund occurs, the issue of units shall be prohibited, on penalty of nullity. The redemption of units remains possible provided the equal treatment of unitholders can be ensured.

Art. 20

The net assets of a common fund may not be less than 1,250,000 euros. This minimum must be reached within a period of twelve months following the entry into force of the management regulations of the common fund.

Art. 21

Neither the management company, nor the depositary, acting on behalf of the common fund may grant loans to unitholders of the common fund.

Art. 22

For funds to which this Law applies, the words "common fund" or "FCP" shall be completed by the words "reserved alternative investment fund" or "RAIF".

Chapter 3 – Investment companies with variable capital

Art. 23

For the purposes of this Law, investment companies with variable capital ("SICAV") shall be taken to mean those reserved alternative investment funds as defined in Article 1, paragraph 1:

– which have adopted the form of a public limited company[6], a partnership limited by shares[7], a common limited partnership[8], a special limited partnership[9], a limited company[10] or a cooperative in the form of a public limited company[11], and

– the articles of incorporation or the partnership agreement of which provide that the amount of the capital shall at all times be equal to the net asset value of the company.

6 *société anonyme*
7 *société en commandite par actions*
8 *société en commandite simple*
9 *société en commandite spéciale*
10 *société à responsabilité limitée*
11 *société coopérative sous forme de société anonyme*

Art. 24

(1) SICAVs shall be subject to the general provisions applicable to commercial companies, insofar as this Law does not derogate therefrom.

(2) When the articles of incorporation or the partnership agreement of a SICAV and any amendment thereto are recorded in a notarial deed, the latter is drawn up in French, German or English as the appearing parties may decide. By derogation from the provisions of the Decree of 24 Prairial, year XI, where this deed is in English, the requirement to attach a translation in an official language to this deed when it is filed with the registration authorities does not apply. This requirement furthermore does not apply to any other deeds which must be recorded in notarial form, such as notarial deeds recording the minutes of meetings of shareholders of a SICAV or of a merger proposal concerning a SICAV.

(3) By way of derogation from Article 73, sub-paragraph 2, of the amended Law of 10 August 1915 on commercial companies, SICAVs under this Chapter and which have adopted the form of a public limited company, a partnership limited by shares or a cooperative in the form of a public limited company are not required to send the annual accounts as well as the report of the approved statutory auditor[12], the management report and, where applicable, the comments made by the supervisory board to the registered shareholders at the same time as the convening notice to the annual general meeting. The convening notice shall indicate the place and the practical arrangements for providing these documents to the shareholders and shall specify that each shareholder may request that the annual accounts as well as the report of the approved statutory auditor, the management report and, where applicable, the comments made by the supervisory board, are sent to him.

(4) For SICAVs which have adopted the form of a public limited company, a partnership limited by shares or a cooperative in the form of a public limited company, the convening notices to general meetings of shareholders may provide that the quorum at the general meeting shall be determined according to the shares issued and outstanding at midnight (Luxembourg time) on the fifth day prior to the general meeting (referred to as the "Record Date"). The rights of shareholders to attend a general meeting and to exercise a voting right attaching to their shares are determined in accordance with the shares held by each shareholder at the Record Date.

Art. 25

The subscribed capital of the SICAV, increased by the share premiums or the value of the amount constituting partnership interests, may not be less than 1,250,000 euros. This minimum must be reached within a period of twelve months following the incorporation of the SICAV.

Art. 26

(1) Subject to any contrary provisions of its articles of incorporation or partnership agreement, a SICAV may issue its securities or partnership interests at any time.

(2) Securities or partnership interests shall be issued and, as the case may be, redeemed in accordance with the conditions and procedures set forth in the articles of incorporation or partnership agreement.

(3) The capital of a SICAV must be entirely subscribed, and at least 5 per cent of the subscription amount per share or unit must be paid up in cash or by means of a contribution other than cash.

[12] *réviseur d'entreprises agréé*

(4) Unless otherwise provided for in the articles of incorporation or partnership agreement, the valuation of the assets of the SICAV shall be based on the fair value. This value must be determined in accordance with the rules set forth in the articles of incorporation or the partnership agreement.

Without prejudice to the preceding provisions, the valuation of the assets of a SICAV subject to this Law is performed in accordance with the rules laid down in Article 17 of the amended Law of 12 July 2013 relating to alternative investment fund managers and in the delegated acts provided for in Directive 2011/61/EU.

(5) The articles of incorporation or partnership agreement shall specify the conditions under which issues and redemptions may be suspended, without prejudice to legal causes.

(6) The articles of incorporation or partnership agreement shall describe the nature of the expenses to be borne by the SICAV.

(7) The securities or partnership interests of a SICAV shall have no par value.

(8) The security or partnership interest shall specify the minimum amount of capital and shall give no indication regarding its par value or the portion of the capital which it represents.

Art. 27

(1) Variations in the capital shall be effected ipso jure and without compliance with measures regarding publication and entry in the register of commerce and companies.

(2) Reimbursement to investors following a reduction of capital shall not be subject to any restriction other than that provided for in paragraph 1 of Article 29.

(3) In the case of issue of new securities or partnership interests, pre-emptive rights may not be claimed by existing shareholders or unitholders, unless those rights are expressly provided for in the articles of incorporation.

Art. 28

(1) If the capital of the SICAV falls below two thirds of the minimum capital, as defined in Article 25, the directors or managers must submit the question of the dissolution of the SICAV to a general meeting for which no quorum shall be prescribed and which shall decide by a simple majority of the securities or partnership interests represented at the meeting.

(2) If the capital of the SICAV falls below one quarter of the minimum capital, as defined in Article 25, the directors or managers must submit the question of the dissolution of the SICAV to a general meeting for which no quorum shall be prescribed. The dissolution may be resolved by shareholders or unitholders holding one quarter of the securities or partnership interests represented at the meeting.

(3) The meeting must be convened so that it is held within a period of forty days as from the ascertainment that the capital has fallen below two thirds or one quarter of the minimum capital, as defined in Article 25, as the case may be.

(4) If the constitutive documents of the SICAV do not provide for general meetings and if the capital of the SICAV is below one fourth of the minimum capital, as defined in Article 25 for a period exceeding 2 months, the directors or managers shall put the reserved alternative investment fund into liquidation and, as the case may be, within 3 months following this ascertainment, request the District Court dealing with commercial matters to pronounce the dissolution and liquidation of the reserved alternative investment fund pursuant to Article 35.

Art. 29

(1) Unless otherwise provided for in the articles of incorporation or the partnership agreement, the net assets of the SICAV may be distributed subject to the limits set out in Article 25.

(2) SICAVs shall not be obliged to create a legal reserve.

(3) SICAVs are not subject to any rules in respect of payment of interim dividends other than those set forth in their articles of incorporation.

Art. 30

For companies to which this Law applies, the words "partnership limited by shares", "common limited partnership", "special limited partnership", "limited company", "public limited company", or "cooperative in the form of a public limited company" shall be completed by the words "investment company with variable capital-reserved alternative investment fund" or "SICAV-RAIF".

Chapter 4 – Reserved alternative investment funds which do not have the legal form of a SICAV or common fund

Art. 31

Reserved alternative investment funds which have do not have the legal form of a SICAV or common fund are subject to this Chapter.

Art. 32

(1) The subscribed capital, increased by share premiums, or the value of the amount constituting partnership interests of reserved alternative investment funds falling within the scope of this Chapter, may not be less than 1,250,000 euros. This minimum must be reached within a period of twelve months following their constitution.

(2) If the capital or the value of the amount constituting partnership interests has fallen below two thirds of the legal minimum, as defined in paragraph 1, the directors or managers must submit the question of the dissolution of the reserved alternative investment fund to a general meeting for which no quorum shall be prescribed and which shall decide by simple majority of the securities or partnership interests represented at the meeting.

(3) If the capital or the value of the amount constituting partnership interests has fallen below one quarter of the legal minimum, as defined in paragraph 1, the directors or managers must submit the question of the dissolution to a general meeting for which no quorum shall be prescribed. The dissolution may be resolved by investors holding one quarter of the securities represented at the meeting.

(4) The meeting must be convened so that it is held within a period of forty days as from the ascertainment that the capital or the value of the amount constituting partnership interests has fallen below two thirds or one quarter of the legal minimum, as defined in paragraph 1, as the case may be.

(5) If the constitutive documents of the reserved alternative investment fund do not provide for general meetings and if the capital or the value of the amount constituting partnership interests of the reserved alternative investment fund has fallen below one fourth of the legal minimum as defined in paragraph 1, for a period exceeding 2 months, the directors or managers shall within 3 months following this ascertainment, request the District Court dealing with commercial matters to pronounce the dissolution and the liquidation of the reserved alternative investment fund pursuant to Article 35.

(6) If the reserved alternative investment fund is constituted in the form of a public limited company, a corporate partnership limited by shares or a private limited company, its capital must be entirely subscribed and at least 5 per cent of each share or unit must be paid up in cash or by means of a contribution in kind.

Art. 33

(1) Unless otherwise provided for in the constitutive documents, the valuation of the assets of the reserved alternative investment fund shall be based on the fair value. This value must be determined in accordance with the rules set forth in the constitutive documents.

Without prejudice to the preceding sub-paragraph, the valuation of the assets of the reserved alternative investment funds is performed in accordance with the rules laid down in Article 17 of the amended Law of 12 July 2013 relating to alternative investment fund managers and in the delegated acts provided for in Directive 2011/61/EU.

(2) Article 24, paragraphs 2, 3 and 4, and Article 26, paragraph 5, are applicable to reserved alternative investment funds subject to this Chapter.

(3) The denomination of the alternative investment funds to which this Chapter 4 applies shall be completed by the words "alternative investment fund" or "RAIF".

Chapter 5 – Constitution formalities of reserved alternative investment funds

Art. 34

(1) The constitution of any reserved alternative investment fund shall be recorded in a notarial deed within 5 working days of its constitution.

(2) Within 15 working days of the ascertainment of their constitution by notarial deed, a notice regarding the constitution of the reserved alternative investment funds, with an indication of the AIFM which manages them pursuant to Article 4, shall be deposited with the register of commerce and companies in order to be published in the *Recueil électronique des sociétés et associations*, in accordance with the provisions of Title I, Chapter V*bis* of the amended Law of 19 December 2002 relating to the register of commerce and companies and the accounting and annual accounts of undertakings.

(3) Reserved alternative investment funds must be inscribed on a list held by the register of commerce and companies. This inscription must be made within 20 working days following the recording of the constitution of the reserved alternative investment fund by notarial deed.

(4) The modalities of maintaining the aforementioned list and the information to be published in the *Recueil électronique des sociétés et associations*, in accordance with the provisions of Title I, Chapter V*bis* of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings are laid down by Grand-Ducal Regulation.

Chapter 6 – Dissolution and liquidation

Art. 35

(1) The District Court dealing with commercial matters shall, at the request of the Public Prosecutor[13], pronounce the dissolution and liquidation of reserved alternative investment funds which pursue activities contrary to criminal law or which seriously contravene the provisions of this Law, the amended Law of 12 July 2013 relating to alternative investment fund managers or the laws governing commercial companies.

[13] *Procureur d'Etat*

When ordering the liquidation, the Court shall appoint a reporting judge[14] and one or more liquidators. It shall determine the method of liquidation. It may render applicable as far as it may determine the rules governing the liquidation. The method of liquidation may be changed by subsequent decision, either at the Court's own motion or at the request of the liquidator(s).

The Court shall decide as to the expenses and fees of the liquidators; it may grant advances to them. The judgment pronouncing dissolution and ordering liquidation shall be enforceable on a provisional basis.

(2) The liquidator(s) may bring and defend all actions on behalf of the reserved alternative fund, receive all payments, grant releases with or without discharge, realise all the assets of the reserved alternative investment fund and reemploy the proceeds therefrom, issue or endorse any negotiable instruments, compound or compromise all claims. They may alienate immovable property of the reserved alternative investment fund by public auction.

They may also, but only with the authorisation of the Court, mortgage and pledge the assets of the reserved alternative investment fund and alienate the immovable property of the reserved alternative investment fund by private treaty.

(3) As from the day of the judgment, no legal actions relating to movable or immovable property or any enforcement procedures relating to movable or immovable property may be pursued, commenced or exercised otherwise than against the liquidators.

The judgment ordering the liquidation shall terminate all seizures effected at the request of general creditors who are not secured by charges[15] on movable and immovable property.

(4) After payment or deposit of the sums necessary for the discharge of the debts, the liquidators shall distribute to the investors the sums or amounts due to them.

(5) The liquidators may convene at their own initiative and must convene, at the request of investors representing at least one quarter of the assets of the reserved alternative investment fund, a general meeting of investors for the purpose of deciding whether, instead of an outright liquidation, it would be appropriate to contribute the assets of the reserved alternative investment fund in liquidation to another reserved alternative investment fund. That decision shall be taken, provided that the general meeting is composed of a number of investors representing at least one half of the value of the amount constituting partnership interests or the capital, by a majority of two thirds of the votes of the investors present or represented.

(6) The Court's decisions pronouncing the dissolution and ordering the liquidation of a reserved alternative investment fund shall be published in the *Recueil électronique des sociétés et associations*, in accordance with the provisions of Title I, Chapter V*bis* of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings and in two newspapers with adequate circulation specified by the Court, at least one of which must be a Luxembourg newspaper. The liquidator(s) shall arrange for such publications.

(7) If there are no or insufficient assets, as ascertained by the reporting judge, the documents relating to the proceedings shall be exempt from any registry and registration duties and the expenses and fees of the liquidators shall be borne by the Treasury and paid as judicial costs.

(8) The liquidators shall be liable both to third parties and to the reserved alternative investment fund for the discharge of their duties and for any faults committed in the conduct of their activities.

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[14] *Juge-commissaire*

[15] *créanciers chirographaires et non-privilégiés*

(9) When the liquidation is completed, the liquidators shall report to the Court on the use made of the assets of the reserved alternative investment fund and shall submit the accounts and supporting documents thereof. The Court shall appoint supervisory auditors[16] to examine the documents. After receipt of the auditors' report, a ruling shall be given on the management of the liquidators and the closure of the liquidation.

The closure of the liquidation shall be published in accordance with paragraph 6. That publication shall also indicate:

– the place designated by the Court where the books and records must be kept for at least five years;

– the measures taken in accordance with Article 37 with a view to the deposit[17] of the sums and assets due to creditors, investors or members to whom it has not been possible to deliver the same.

(10) Any legal actions against the liquidators of reserved alternative investment funds, in their capacity as such, shall be prescribed five years after publication of the closure of the liquidation provided for in paragraph 9.

Legal actions against the liquidators in connection with the performance of their duties shall be prescribed five years after the date of the facts or, in the event of concealment thereof by wilful deceit, five years after the discovery thereof.

(11) The provisions of this Article shall also apply to the reserved alternative investment funds which have not requested the publication and inscription on the list provided for in Article 34 within the time limit laid down therein.

Art. 36

(1) Reserved alternative investment funds shall, after their dissolution, be deemed to exist for the purpose of their liquidation.

(2) All documents issued by a reserved alternative investment fund in liquidation shall indicate that it is in liquidation.

Art. 37

In the event of the voluntary or compulsory liquidation of a reserved alternative investment fund, the sums and assets payable in respect of securities or partnership interests whose holders failed to present themselves at the time of the closure of the liquidation shall be paid to the public trust office[18] to be held for the benefit of the persons entitled thereto.

Chapter 7 – Establishment of an offering document and an annual report and information to be provided to investors

Art. 38

(1) The reserved alternative investment fund and the management company, for each of the common funds it manages, must establish:

– an offering document, and

– an annual report for each financial year.

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16 *commissaires*
17 *consignation*
18 *Caisse de Consignation*

(2) The annual report must be made available to investors within six months from the end of the period to which it relates.

(3) If a prospectus under the amended Law of 10 July 2005 concerning the prospectus for transferable securities has been published, there is no obligation to establish an offering document within the meaning of this Law.

(4) Notwithstanding paragraphs 1 and 2 of Articles 29 and 30 of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings, reserved alternative investment funds prepare their annual report according to the annexed schedule. The requirements of this schedule are not applicable to reserved alternative investment funds referred to in Article 48, paragraph 1. The annual report must include a balance sheet or a statement of assets and liabilities, a detailed income and expenditure account for the financial year, a report on the activities of the past financial year as well as any significant information enabling investors to make an informed judgment on the development of the activities and of the results of the reserved alternative investment fund. However, Articles 56 and 57 of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings apply to reserved alternative investment funds subject to Chapter 3 and Chapter 4 of this Law.

The content of the annual report of reserved alternative investment funds is governed by the rules laid down in Article 20 of the amended Law of 12 July 2013 relating to alternative investment fund managers.

(5) Notwithstanding Article 309 of the amended Law of 10 August 1915 concerning commercial companies, reserved alternative investment funds and their subsidiaries are exempt from the obligation to consolidate the companies owned for investment purposes.

(6) For reserved alternative investment funds, contributions other than cash shall be, at the time of the contribution, subject to a report to be established by an approved statutory auditor. The conditions and method provided for in Article 26-1 of the amended Law of 10 August 1915 concerning commercial companies apply to the establishment of this report, irrespective of the legal form adopted by the reserved alternative investment fund concerned.

Art. 39

The offering document must include the information necessary for investors to be able to make an informed judgment of the investment proposed to them and, in particular, of the risks attached thereto.

The offering document must contain a clearly visible statement on its cover page to the effect that the reserved alternative investment fund is not subject to supervision by a Luxembourg supervisory authority.

Art. 40

The essential elements of the offering document must be kept up to date when additional securities or partnership interests are issued to new investors.

Art. 41

In relation to the information to be provided to investors, reserved alternative investment funds must comply with the rules laid down in Article 21 of the amended Law of 12 July 2013 relating to alternative investment fund managers.

Art. 42

(1) The offering document and the last published annual report shall be supplied, on request, to subscribers free of charge.

(2) The annual report shall be supplied, on request, to investors free of charge.

Chapter 8 – Approved statutory auditor

Art. 43

(1) Reserved alternative investment funds must have the accounting information given in their annual report audited by an approved statutory auditor.

The approved statutory auditor's report and, as the case may be, its qualifications, are set out in full in each annual report.

The approved statutory auditor must prove it has adequate professional experience by already exercising these functions for undertakings for collective investment referred to in the amended Law of 17 December 2010 on undertakings for collective investment, the amended Law of 13 February 2007 on specialised investment funds or the amended Law of 15 June 2004 relating to investment companies in risk capital.

(2) The approved statutory auditor shall be appointed and remunerated by the reserved alternative investment fund.

(3) The institution of supervisory auditors[19] provided for by Articles 61, 109, 114 and 200 of the amended Law of 10 August 1915 concerning commercial companies is repealed with respect to investment companies subject to this Law. The directors or managers are solely competent in all cases where the amended Law of 10 August 1915 concerning commercial companies provides for the joint action of the supervisory auditors and the directors or managers.

The institution of supervisory auditors provided for by Article 151 of the amended Law of 10 August 1915 concerning commercial companies is not applicable to Luxembourg investment companies subject to this Law. Upon completion of the liquidation, a report on the liquidation shall be drawn up by the approved statutory auditor. This report shall be tabled at the general meeting at which the liquidators report on the application of the corporate assets and submit the accounts and supporting documents. The same meeting shall resolve on the approval of the accounts of the liquidation, the discharge and the closure of the liquidation.

Chapter 9 – Protection of name

Art. 44

(1) No undertaking shall make use of designations or of a description giving the impression that its activities are subject to the legislation on reserved alternative investment funds if it has not been inscribed on the list provided for in Article 34.

(2) The District Court dealing with commercial matters in the place where the reserved alternative investment fund is situated or in the place where the designation has been used may, at the request of the Public Prosecutor, issue an injunction prohibiting any person from using the designation as defined in paragraph 1, if the conditions provided for by this Law are not or are no longer met.

(3) The final judgement or court decision which delivers this injunction is published, by the Public Prosecutor and at the expense of the person convicted, in two Luxembourg or foreign newspapers with adequate circulation.

[19] *commissaires aux comptes*

Chapter 10 – Tax provisions

Art. 45

(1) Without prejudice to the levy of registration and transcription taxes and the application of national law regarding value added tax and subject to the requirements of Article 48 of this Law, no other tax shall be payable by reserved alternative investment funds apart from the subscription tax referred to in Article 46.

(2) The amounts distributed by reserved alternative investment funds shall not be subject to a withholding tax. They are not taxable if received by non-residents.

Art. 46

(1) The rate of the annual subscription tax payable by the reserved alternative investment funds shall be 0.01 per cent.

(2) Exempt from the subscription tax are:

a) the value of the assets represented by units held in other undertakings for collective investment, provided that such units have already been subject to the subscription tax provided for by this Article or by Article 174 of the amended Law of 17 December 2010 relating to undertakings for collective investment or by Article 68 of the amended Law of 13 February 2007 on specialised investment funds;

b) reserved alternative investment funds as well as individual compartments of reserved alternative investment funds with multiple compartments:

(i) whose sole objective is the collective investment in money market instruments and the placing of deposits with credit institutions. For the purpose of this point, money markets instruments are any debt securities and instruments, irrespective of whether they are transferable securities or not, including bonds, certificates of deposits, deposit receipts and all other similar instruments, provided that, at the time of their acquisition by the reserved alternative investment fund, their initial or residual maturity does not exceed twelve months, taking into account the financial instruments connected therewith, or the terms and conditions governing those securities provide that the interest rate applicable thereto is adjusted at least annually on the basis of market conditions;

(ii) whose weighted residual portfolio maturity does not exceed 90 days; and

(iii) that have obtained the highest possible rating from a recognised rating agency;

c) reserved alternative investment funds as well as individual compartments and classes of reserved alternative investment funds whose securities or partnership interests are reserved for:

(i) institutions for occupational retirement provision, or similar investment vehicles, set up on one or more employers' initiative for the benefit of their employees; and

(ii) companies of one or more employers investing funds they hold in order to provide retirement benefits to their employees;

d) reserved alternative investment funds as well as individual compartments of reserved alternative investment funds with multiple compartments whose investment policy provides that at least 50 per cent of their assets shall be invested in one or several microfinance institutions. Microfinance institutions within the meaning of this point

means financial institutions of which half of the assets consist of investments in microfinance as well as undertakings for collective investment, specialised investment funds and reserved alternative investment funds whose investment policy provides that at least 50 per cent of their assets shall be invested in one or several microfinance institutions. Microfinance refers to any financial transaction other than customer loans whose objective is to assist poor populations excluded from the traditional financial system with the funding of small income-generating activities and whose value does not exceed EUR 5,000.

In order to obtain such exemptions, the reserved alternative investment funds must declare the value separately in the periodic declarations they file with the Registration Administration[20].

(3) The taxable basis of the subscription tax shall be the aggregate net assets of the reserved alternative investment funds valued on the last day of each quarter.

(4) Any condition of pursuing a sole objective as laid down in this Article does not preclude the management of liquid assets on an ancillary basis or the use of techniques and instruments used for hedging or for purposes of efficient portfolio management.

Art. 47

The duties of the Registration Administration include the fiscal control of reserved alternative investment funds.

If, at any date after the constitution of the reserved alternative investment funds, the Registration Administration ascertains that the reserved alternative investment funds are engaging in operations which exceed the framework of the activities authorised by this Law, Articles 45 and 46 shall cease to be applicable. Moreover, the Registration Administration may levy a fiscal fine of 0.2 per cent on the aggregate amount of the assets of the reserved alternative investment funds.

Art. 48

(1) a) Articles 45, paragraph 1, 46 and 47 do not apply to reserved alternative investment funds referred to in chapter 3 and 4, which provide in their constitutive documents that their exclusive object is the investment of their funds in assets representing risk capital and that the requirements of this Article are applicable to them. Investment in risk capital means the direct or indirect contribution of assets to entities in view of their launch, development or listing on a stock exchange. By way of derogation from the requirements of Article 1, reserved alternative investment funds or compartments referred to in this paragraph are not required to spread investment risks.

b) The approved statutory auditor of the reserved alternative investment fund shall establish for each financial year a report certifying that during the past financial year, the reserved alternative investment fund has complied with the policy of investing in risk capital. This report shall be transmitted to the direct Tax Administration.

(2) Income deriving from transferable securities as well as income generated from the transfer, contribution or liquidation of these assets does not constitute taxable income of a joint stock company subject to this Article. Realised losses resulting from the transfer of transferable securities as well as losses that have not been realised but accounted for upon the reduction of the value of these assets may not be deducted from the taxable income of the company.

(3) Income arising from funds held pending their investment in risk capital does not constitute taxable income for reserved alternative investment funds. This exemption is only applicable for a maximum period of twelve months preceding their investment in risk capital and where it can be established that the funds have effectively been invested in risk capital.

[20] *Administration de l'Enregistrement et des Domaines*

Chapter 11 – Special provisions in relation to the legal form

Art. 49

(1) Reserved alternative investment funds may be constituted with multiple compartments, each compartment corresponding to a distinct part of the assets and liabilities of the reserved alternative investment fund.

(2) The constitutive documents of the reserved alternative investment fund must expressly provide for that possibility and the applicable operational rules. The offering document established for the reserved alternative investment fund or the specific offering document established for the compartment concerned must describe the specific investment policy of each compartment.

(3) The securities and partnership interests of the offering document established for the reserved alternative investment fund with multiple compartments may be of different value with or without indication of a par value depending on the legal form which has been chosen.

(4) Common funds with multiple compartments may, by separate management regulations, determine the characteristics of and rules applicable to each compartment.

(5) The rights of investors and of creditors concerning a compartment or which have arisen in connection with the creation, operation or liquidation of a compartment are limited to the assets of that compartment, unless a clause included in the constitutive documents provides otherwise.

The assets of a compartment are exclusively available to satisfy the rights of investors in relation to that compartment and the rights of those creditors whose claims have arisen in connection with the creation, the operation or the liquidation of that compartment, unless a clause included in the constitutive documents provides otherwise.

For the purpose of the relations as between investors, each compartment will be deemed to be a separate entity, unless a clause included in the constitutive documents provides otherwise.

(6) Each compartment of a reserved alternative investment fund may be liquidated separately without that separate liquidation resulting in the liquidation of another compartment. Only the liquidation of the last remaining compartment of the reserved alternative investment fund will result in the liquidation of the reserved alternative investment fund, as referred to in Article 35. In this case, where the reserved alternative investment fund is in corporate form, as from the event giving rise to the liquidation of the reserved alternative investment fund, and under penalty of nullity, the issue of units shall be prohibited, except for the purposes of liquidation.

(7) A compartment of a reserved alternative investment fund may, subject to the conditions provided for in the offering document, subscribe, acquire and/or hold securities or partnership interests to be issued or issued by one or more other compartments of the same reserved alternative investment fund without that reserved alternative investment fund, when it is in corporate form, being subject to the requirements of the amended Law of 10 August 1915 on commercial companies, with respect to the subscription, the acquisition and/or the holding by a company of its own shares, under the condition, however, that:

a) the target compartment does not, in turn, invest in the compartment invested in this target compartment, and

b) voting rights, if any, attaching to the relevant securities or partnership interests are suspended for as long as they are held by the compartment concerned and without prejudice to the appropriate processing in the accounts and the periodic reports, and

c) in any event, for as long as these securities or partnership interests are held by the reserved alternative investment fund, their value will not be taken into consideration for the calculation of the net assets of the reserved alternative investment fund for the purposes of verifying the minimum threshold of the net assets imposed by this Law.

(8) A separate offering document may be established for each compartment. It shall indicate that the reserved alternative investment fund may contain other compartments.

(9) A separate annual report may be established for each compartment provided that it contains, in addition to the information on the compartment concerned, the collected data of all compartments.

(10) Reserved alternative investment funds may, subject to the necessary regulatory authorisations, be transformed into an undertaking for collective investment governed by the amended Law of 17 December 2010 on undertakings for collective investment, into a specialised investment fund governed by the amended Law of 13 February 2007 relating to specialised investment funds or into an investment company in risk capital within the meaning of the amended Law of 15 June 2004 relating to investment companies in risk capital and their constitutive documents may be harmonised with the provisions of the aforementioned laws by a resolution of a general meeting passed with a majority of two thirds of the votes cast, regardless of the portion of the capital represented.

(11) Luxembourg alternative investment funds other than alternative investment funds governed by the amended Law of 17 December 2010 on undertakings for collective investment, the amended Law of 13 February 2007 relating to specialised investment funds or the amended Law of 15 June 2004 relating to investment companies in risk capital, may be transformed into reserved alternative investment funds and their constitutive documents may be harmonised with the provisions of this Law by resolution of a general meeting passed with a majority of two thirds of the votes cast, regardless of the portion of the capital represented.

Chapter 12 – Cross-border marketing and management

Art. 50

The marketing by their AIFM in the European Union of securities or partnership interests of reserved alternative investment funds as well as the management of these reserved alternative investment funds in the European Union on a cross-border basis are governed by the provisions of Chapter 6 of the amended Law of 12 July 2013 relating to alternative investment fund managers in the case of reserved alternative investment funds managed by an AIFM established in Luxembourg, or by the provisions of Chapters VI and VII of Directive 2011/61/EU in the case of reserved alternative investment funds managed by an AIFM established in another Member State or in a third country, subject to the application of Article 66, paragraph 3, of the aforementioned directive where the reserved alternative investment fund is managed by an AIFM established in a third country.

Chapter 13 – Criminal law provisions

Art. 51

A penalty of imprisonment from one month to one year and a fine of 500 to 25,000 euros or either one of these penalties shall be imposed upon:

a) any person who has issued or redeemed or caused to be issued or redeemed units of a common fund in the cases referred to in Articles 10, paragraph 2, and 19, paragraph 3;

b) any person who has issued or redeemed units of a common fund at a price other than that obtained by application of the criteria provided for in Article 10, paragraph 1;

c) any person who, as director, manager or auditor[21] of the management company or the depositary has made loans or advances on units of the common fund using assets of the said fund, or who has by any means at the expense of the common fund, made payments in order to pay up units or acknowledged payments to have been made which have not actually been made.

d) the directors or managers of the management company which have contravened Article 11.

Art. 52

A fine of 500 to 25,000 euros shall be imposed upon any persons who, in violation of Article 44, use a designation or description giving the impression that they relate to the activities subject to the legislation on reserved alternative investment funds if they are not inscribed on the list provided for in Article 34.

Art. 53

A penalty of imprisonment from one month to one year and a fine of 500 to 25,000 euros, or either one of these penalties, shall be imposed upon the founders, directors or managers of an investment company who have infringed Articles 26, paragraph 2, and 26, paragraph 4.

Art. 54

A penalty of imprisonment of one month to one year and a fine of 500 to 25,000 euros or either one of these penalties shall be imposed upon the directors or managers of an investment company who have not convened the extraordinary general meeting in accordance with Article 28 and with Article 32, paragraphs 2, 3 and 4 or who have infringed the provisions of Articles 28, paragraph 4, and 32, paragraph 5.

Art. 55

A penalty of imprisonment of three months to two years and a fine of 500 to 50,000 euros or either one of these penalties shall be imposed on anyone who has carried out or caused to be carried out operations involving the receipt of funds from investors if, for the reserved alternative investment fund for which they acted, no request for publication and inscription on the list provided for in Article 34, paragraphs 1 and 2 has been made.

Art. 56

A penalty of imprisonment from one month to one year and a fine of 500 to 25,000 euros or either one of these penalties shall be imposed on the directors or managers of a reserved alternative investment funds or of its management company who have failed to observe the obligations imposed upon them by this Law.

Chapter 14 – Amending and final provisions

Art. 57

Number 5 of the first sub-paragraph of paragraph 3 of the amended Law of 16 October 1934 on wealth tax is amended as follows:

"5. The investment companies in risk capital (SICAR) and the reserved alternative investment funds complying with the criteria of Article 48, paragraph 1 of the Law of 23 July 2016 on reserved alternative investment funds, constituted in the form of a partnership limited by shares, a cooperative in the form of a public limited company, a private limited company or a public limited company, subject to the minimum wealth tax determined in accordance with the provisions of § 8, sub-paragraph 2;".

[21] *commissaire*

Art. 58

Number 4 of sub-paragraph 2 of paragraph 2 of the amended Law of 1 December 1936 on commercial communal tax is amended as follows:

"4. The provisions of number 3 are not applicable to investment companies in risk capital (SICAR) and to reserved alternative investment funds complying with the criteria of Article 48, paragraph 1 of the Law of 23 July 2016 on reserved alternative investment funds, constituted in the form of a common limited partnership or a special limited partnership.".

Art. 59

The amended Law of 4 December 1967 on income tax is amended as follows:

1. Article 14, number 1 is completed by the following sentence: "The reserved alternative investment fund in the form of a common limited partnership or a special limited partnership and complying with the criteria of Article 48, paragraph 1 of the Law of 23 July 2016 on reserved alternative investment funds is not to be considered as a commercial company.

2. Sub-paragraph 3 of Article 147 is amended as follows: "3. if the income is allocated by a family wealth management company (SPF)[22] or an undertaking for collective investment (UCI), including an investment company in risk capital (SICAR) as well as a reserved alternative investment fund complying with the criteria of Article 48, paragraph 1 of the Law of 23 July 2016 on reserved alternative investment funds, subject to Luxembourg law, without prejudice however to the taxation of the aforementioned income if received by beneficiaries who are residents."

3 Sub-paragraph 5 of Article 164*bis* is amended as follows: "(5) Investment companies in risk capital (SICAR) as well as reserved alternative investment funds complying with the criteria of Article 48, paragraph 1 of the Law of 23 July 2016 on reserved alternative investment funds are excluded from the scope of this Article."

Art. 60

Article 29-2, paragraph 1 of the amended Law of 5 April 1993 relating to the financial sector is amended by the addition of the words "reserved alternative investment funds," after the words "authorised securitisation undertakings".

Art. 61

Article 68 of the amended Law of 13 February 2007 relating to specialised investment funds is amended by the addition, at the end of point a) of paragraph 2, of the words "or by Article 46 of the Law of 23 July 2016 on reserved alternative investment funds".

Art. 62

Point a) of Article 175 of the amended Law of 17 December 2010 relating to undertakings for collective investment[23] is amended by the insertion, at the end of item a), of the words "or by Article 46 of the Law of 23 July 2016 on reserved alternative investment funds".

Art. 63

This Law may, in abbreviated form, be referred to as the "Law of 23 July 2016 relating to reserved alternative investment funds".

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[22] *société de gestion de patrimoine familial*

[23] The amended Law of 20 December 2002 relating to undertakings for collective investment has been repealed and replaced by the Law of 17 December 2010 relating to undertakings for collective investment.

ANNEX

Information to be included in the annual report by reserved alternative investment funds other than those subject to Article 48

I. Statement of assets and liabilities:

a) investments,

b) bank balances,

c) other assets,

d) total assets,

e) liabilities,

f) net asset value.

II. Number of units in circulation.

III. Net asset value per unit.

IV. Qualitative or quantitative information on the investment portfolio enabling investors to make an informed judgment on the development of the activities and the results of the reserved alternative investment fund.

V. Statement of the developments concerning the assets of the reserved alternative investment fund during the reference period including the following:

a) income from investments,

b) other income,

c) management charges,

d) depositary's charges,

e) other charges and taxes,

f) net income,

g) distributions and income reinvested,

h) increase or decrease of capital accounts,

i) appreciation or depreciation of investments,

j) any other changes affecting the assets and liabilities of the reserved alternative investment fund.

VI. A comparative table covering the three financial years and including, for each financial year, at the end of the financial year:

a) the total net asset value,

b) the net asset value per unit.

4.

AMENDED LAW OF 13 FEBRUARY 2007 ON SPECIALISED INVESTMENT FUNDS

CONSOLIDATED VERSION AS OF 1 AUGUST 2016

AMENDED LAW OF 13 FEBRUARY 2007 ON SPECIALISED INVESTMENT FUNDS

PART I - GENERAL PROVISIONS APPLICABLE TO SPECIALISED INVESTMENT FUNDS

Chapter 1. - General provisions and scope

Art. 1

(1) For the purpose of this Law, specialised investment funds shall be any undertakings for collective investment situated in Luxembourg:

– the sole object of which is the collective investment of their funds in assets with the aim of spreading the investment risks and giving investors the benefit of the results of the management of their assets, and

– the securities or partnership interests of which are reserved to one or several well-informed investors, and

– the constitutive documents or offering documents or the partnership agreement of which provide that they are subject to the provisions of this Law.

"Management" within the meaning of the 1st indent, shall mean an activity comprising at least the service of portfolio management.

(2) Specialised investment funds may be constituted under the legal forms provided for in Chapters 2, 3 and 4 of this Law.

Art. 2

(1) Within the meaning of this Law, a well-informed investor shall be an institutional investor, a professional investor or any other investor who meets the following conditions:

a) he has stated in writing that he adheres to the status of well-informed investor and

b) (i) he invests a minimum of 125,000 euros in the specialised investment fund, or

(ii) he has been the subject of an assessment made by a credit institution within the meaning of Directive 2006/48/EC, by an investment firm within the meaning of Directive 2004/39/EC or by a management company within the meaning of Directive 2009/65/EC certifying his expertise, his experience and his knowledge to adequately appraise an investment in the specialised investment fund.

(2) The conditions set forth in this Article are not applicable to the directors[1] and other persons involved in the management of specialised investment funds.

(3) Specialised investment funds must have the necessary means to ensure compliance with the conditions laid down in paragraph (1) of this Article.

Art. 2*bis*

The provisions of this Part shall apply to all specialised investment funds, unless the specific provisions contained in Part II of this Law applicable to specialised investment funds managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers or under Chapter II of Directive 2011/61/EU derogate therefrom.

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1 *dirigeants*

Art. 3

Specialised investment funds subject to this Law shall be deemed to be situated in Luxembourg if the registered office of the management company of the common fund or the registered office of the investment company is situated in Luxembourg. The head office must be located in Luxembourg.

Chapter 2. - Common funds

Art. 4

For the purpose of this Law, any undivided collection of assets shall be regarded as a common fund, if it is made up and managed according to the principle of risk-spreading on behalf of joint owners who are liable only up to the amount contributed by them and whose rights are represented by units reserved to one or several well-informed investors.

Art. 5

The common fund shall not be liable for the obligations of the management company or of the unitholders; it shall be answerable only for the obligations and expenses expressly imposed upon it by its management regulations.

Art. 6

The management of a common fund shall be carried out by a Luxembourg management company which complies with the conditions set out in Chapter 15, 16 or 18 of the Law of 17 December 2010 relating to undertakings for collective investment.

Art. 7

(1) The management company shall issue registered, bearer or dematerialised securities representing one or more portions of the common fund which it manages. The management company may issue, in accordance with the conditions laid down in the management regulations, written certificates of entry in the register of units or fractions of units without limitation as to the fractioning of units.

Rights attaching to fractions of units are exercised in proportion to the fraction of a unit held except for possible voting rights which can only be exercised for whole units. The bearer securities shall be signed by the management company and by the depositary referred to in Article 16[2].

These signatures may be reproduced mechanically.

(2) Ownership of units, in the form of registered or bearer securities, shall be determined and transfer thereof shall be effected in accordance with the rules laid down in Articles 40 and 42 of the amended Law of 10 August 1915 concerning commercial companies. The rights of units inscribed in a securities account shall be determined and transfer thereof shall be effected in accordance with the rules laid down in the law on dematerialised securities and the Law of 1 August 2001 concerning the circulation of securities.

(3) The owners of bearer securities may, at any moment, demand the conversion of bearer securities, at their own expense, into registered securities or, if the management regulations[3] provide for this, into dematerialised securities. In the latter case, the costs are borne by the person provided for in the law on dematerialised securities.

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[2] The original version of the Law of 6 April 2013 refers to "Article 17". This shall be understood as a reference to "Article 16".

[3] The original version of the Law of 6 April 2013 refers to "articles of incorporation". This shall be understood as "management regulations" for a common fund.

Unless a formal prohibition is stated in the management regulations[4], the owners of registered securities may, at any moment, demand the conversion of registered securities into bearer securities.

If the management regulations[5] provide for this, the owners of registered securities may demand the conversion of registered securities into dematerialised securities. The costs are borne by the person provided for in the law on dematerialised securities.

The holders of dematerialised securities may, at any moment, demand the conversion, at their own expense, of dematerialised securities into registered securities, unless the management regulations provide for the compulsory dematerialisation of securities.

Art. 8

Units shall be issued and, as the case may be, redeemed in accordance with the conditions and procedures set forth in the management regulations.

Art. 9

Unless otherwise provided for in the management regulations of the fund, the valuation of the assets of the common fund shall be based on the fair value. This value must be determined in accordance with the rules set forth in the management regulations.

Art. 10

Neither the holders of units nor their creditors may require the distribution or the dissolution of the common fund.

Art. 11

(1) The *Commission de Surveillance du Secteur Financier* ("CSSF") may, in the interests of the unitholders or of the public, require the suspension of the redemption of units, in particular where the provisions of laws, regulations or agreements concerning the activity and operation of the common fund are not observed.

(2) The issue and redemption of units shall be prohibited:

a) during any period where there is no management company or depositary;

b) where the management company or the depositary is put into liquidation or declared bankrupt or seeks an arrangement with creditors, a suspension of payment or a controlled management or is the subject of similar proceedings.

Art. 12

(1) The management company shall draw up the management regulations for the common fund. These regulations must be lodged with the register of commerce and companies and their publication in the *Recueil électronique des sociétés et associations*[6] will be made by way of a notice advising of the deposit of the document, in accordance with the provisions of Chapter V*bis* of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings. The provisions of these regulations shall be deemed accepted by the unitholders by the mere fact of the acquisition of these units.

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[4] The original version of the Law of 6 April 2013 refers to "articles of incorporation". This shall be understood as "management regulations" for a common fund.

[5] The original version of the Law of 6 April 2013 refers to "articles of incorporation". This shall be understood as "management regulations" for a common fund.

[6] The *Recueil électronique des sociétés et associations* is the central electronic platform of official publication.

(2) The management regulations of the common fund shall contain at least the following provisions:

a) the name and duration of the common fund, the name of the management company and of the depositary,

b) the investment policy according to its specific objectives and the criteria therefor,

c) the distribution policy within the scope of Article 15,

d) the remuneration and expenditure which the management company is entitled to charge to the fund and the method of calculation of that remuneration,

e) the provisions as to publications,

f) the date of the closing of the accounts of the common fund,

g) the cases where, without prejudice to legal grounds, the common fund shall be dissolved,

h) the procedures for amendment of the management regulations,

i) the procedures for the issue of units and, as the case may be, for the redemption of units.

Art. 13

(1) The management company shall manage the common fund in accordance with the management regulations and in the exclusive interest of the unitholders.

(2) It shall act in its own name, but shall indicate that it is acting on behalf of the common fund.

(3) It shall exercise all the rights attaching to the assets comprised in the portfolio of the common fund.

Art. 14

The management company must fulfil its obligations with the diligence of a salaried agent[7]; it shall be liable to the unitholders for any loss resulting from the non-fulfilment or improper fulfilment of its obligations.

Art. 15

Unless otherwise provided for in the management regulations, the net assets of the common fund may be distributed subject to the limits set out in Article 21 of this Law.

Art. 16

(1) The assets of the common fund must be entrusted to a depositary for safe-keeping.

(2) The depositary must either have its registered office in Luxembourg or be established there if its registered office is located abroad.

(3) Without prejudice to the provision laid down in the second sub-paragraph of this paragraph, the depositary must be a credit institution or an investment firm within the meaning of the amended Law of 5 April 1993 on the financial sector. An investment firm shall only be eligible as depositary to the extent that this investment firm also fulfils the conditions referred to in

[7] *mandataire salarié*

Article 19 paragraph (3) of the Law of 12 July 2013 relating to alternative investment fund managers.

For common funds that have no redemption rights exercisable during a period of five years from the date of the initial investments and that, in accordance with their core investment policy, generally do not invest in assets that must be held in custody in accordance with point a) of Article 19 paragraph (8) of the Law of 12 July 2013 relating to alternative investment fund managers or generally invest in issuers or non-listed companies in order to potentially acquire control over such companies in accordance with Article 24 of the aforementioned law, the depositary may also be an entity governed by Luxembourg law that has the status of a professional depositary of assets other than financial instruments within the meaning of Article 26-1 of the amended Law of 5 April 1993 on the financial sector.

(4) The depositary's liability shall not be affected by the fact that it has entrusted to a third party all or some of the assets in its safe-keeping.

(5) The depositary shall carry out all operations concerning the day-to-day administration of the assets of the common fund.

Art. 17

(1) The depositary shall be liable, in accordance with Luxembourg law, to the management company and the unitholders for any loss suffered by them as a result of its failure to perform its obligations or its improper performance thereof.

(2) The liability to unitholders shall be invoked through the management company. Should the management company fail to act despite a written notice to that effect from a unitholder within a period of three months following receipt of such a notice, that unitholder may directly invoke the liability of the depositary.

Art. 18

In the context of their respective roles, the management company and the depositary must act independently and solely in the interests of the unitholders.

Art. 19

The duties of the management company or of the depositary in respect of the common fund shall cease:

a) in the case of withdrawal of the management company, provided that it is replaced by another management company authorised in accordance with Article 6 of this Law;

b) in the case of voluntary withdrawal of the depositary or of its removal by the management company; until the replacement of the depositary, which must happen within two months, the depositary shall take all necessary steps for the good preservation of the interests of the unitholders;

c) where the management company or the depositary has been declared bankrupt, has entered into an arrangement with creditors, has obtained a suspension of payment, has been put under court-controlled management, or has been the subject of similar proceedings or has been put into liquidation;

d) where the CSSF withdraws its authorisation of the management company or the depositary;

e) in all other cases provided for in the management regulations.

Art. 20

(1) Liquidation of the common fund shall take place:

a) upon the expiry of any period as may be fixed by the management regulations;

b) in the event of cessation of their duties of the management company or of the depositary in accordance with points b), c), d) and e) of Article 19, if they have not been replaced within two months without prejudice to the specific case addressed in point c) below;

c) in the event of bankruptcy of the management company;

d) if the net assets of the common fund have fallen for more than 6 months below one quarter of the legal minimum provided for in Article 21 hereafter;

e) in all other cases provided for in the management regulations.

(2) Notice of the event giving rise to liquidation shall be lodged with the register of commerce and companies and published without delay by the management company or the depositary in the *Recueil électronique des sociétés et associations,* in accordance with the provisions of Chapter V*bis* of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings and in at least two newspapers with adequate circulation, at least one of which must be a Luxembourg newspaper. Failing this, the deposit and publication will be arranged by the CSSF at the expense of the common fund.

(3) As soon as the event giving rise to liquidation of the common fund occurs, the issue of units shall be prohibited, on penalty of nullity. The redemption of units remains possible provided the equal treatment of unitholders can be ensured.

Art. 21

The net assets of a common fund may not be less than one million two hundred and fifty thousand euros (EUR 1,250,000).

This minimum must be reached within a period of twelve months following the authorisation of the common fund.

A Grand-Ducal Regulation may increase this minimum amount up to a maximum of two million five hundred thousand euros (EUR 2,500,000).

Art. 22

The management company must inform the CSSF without delay if the net assets of the common fund have fallen below two thirds of the legal minimum. In a case where the net assets of the common fund have fallen below two thirds of the legal minimum, the CSSF may, having regard to the circumstances, require the management company to liquidate the common fund.

The order addressed to the management company by the CSSF to put the common fund into liquidation shall be lodged without delay by the management company or the depositary with the register of commerce and companies in the file of the common fund and published in the *Recueil électronique des sociétés et associations,* in accordance with the provisions of Chapter V*bis* of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings and in at least two newspapers with adequate circulation, at least one of which must be a Luxembourg newspaper. Failing this, the deposit and the publication will be arranged by the CSSF at the expense of the common fund.

Art. 23

Neither the management company, nor the depositary, acting on behalf of the common fund may grant loans to unitholders of the common fund.

Art. 24

For funds to which this Law applies, the words "common fund" or "FCP" shall be completed by the words "specialised investment fund" or "SIF".

Chapter 3. - Investment companies with variable capital

Art. 25

For the purposes of this Law, investment companies with variable capital ("SICAV") shall be taken to mean those companies:

– which have adopted the form of a public limited company, a partnership limited by shares, a common limited partnership, a special limited partnership, a limited company or a cooperative in the form of a public limited company,

– the sole object of which is to invest their funds in assets with the aim of spreading investment risks and giving the investors the benefit of the results of the management of their assets, and

– the securities or partnership interests of which are reserved to one or several well-informed investors, and

– the articles of incorporation or the partnership agreement of which provide that the amount of the capital shall at all times be equal to the net asset value of the company.

Art. 26

(1) SICAVs shall be subject to the general provisions applicable to commercial companies, insofar as this Law does not derogate therefrom.

(2) When the articles of incorporation or the partnership agreement of a SICAV and any amendment thereto are recorded in a notarial deed, the latter is drawn up in French, German or English as the appearing parties may decide. By derogation from the provisions of the Decree of 24 Prairial, year XI, where this deed is in English, the requirement to attach a translation in an official language to this deed when it is filed with the registration authorities, does not apply. This requirement does not apply either to all other deeds which must be recorded in notarial form, such as notarial deeds recording the minutes of meetings of shareholders of a SICAV or of a merger proposal concerning a SICAV.

(3) By way of derogation from Article 73 sub-paragraph 2 of the amended Law of 10 August 1915 on commercial companies, SICAVs under this Chapter and which have adopted the form of a public limited company[8], a partnership limited by shares[9] or a cooperative in the form of a public limited company[10] are not required to send the annual accounts as well as the report of the approved statutory auditor[11], the management report and, where applicable, the comments made by the supervisory board to the registered shareholders, at the same time as the convening notice to the annual general meeting. The convening notice shall indicate the place and the practical arrangements for providing these documents to the shareholders and shall specify that each shareholder may request that the annual accounts as well as the report

8 *société anonyme*
9 *société en commandite par actions*
10 *société coopérative sous forme de société anonyme*
11 *réviseur d'entreprises agréé*

of the approved statutory auditor, the management report and, where applicable, the comments made by the supervisory board, are sent to him.

(4) For SICAVs which have adopted the form of a public limited company, a partnership limited by shares or a cooperative in the form of a public limited company, the convening notices to general meetings of shareholders may provide that the quorum at the general meeting shall be determined according to the shares issued and outstanding at midnight (Luxembourg time) on the fifth day prior to the general meeting (referred to as "Record Date"). The rights of shareholders to attend a general meeting and to exercise a voting right attaching to their shares are determined in accordance with the shares held by each shareholder at the Record Date.

Art. 27

The subscribed capital of the SICAV, increased by the share premiums or the value of the amount constituting partnership interests, may not be less than one million two hundred and fifty thousand euros (EUR 1,250,000). This minimum must be reached within a period of twelve months following the authorisation of the SICAV. A Grand-Ducal Regulation may increase this minimum amount up to a maximum of two million five hundred thousand euros (EUR 2,500,000).

Art. 28

(1) Subject to any contrary provisions of its articles of incorporation or partnership agreement, a SICAV may issue its securities or partnership interests at any time.

(2) Securities or partnership interests shall be issued and, as the case may be, redeemed in accordance with the conditions and procedures set forth in the articles of incorporation or partnership agreement.

(3) The capital of a SICAV must be entirely subscribed, and at least 5% of the subscription amount per share or unit must be paid up in cash or by means of a contribution other than cash.

(4) Unless otherwise provided for in the articles of incorporation or partnership agreement, the valuation of the assets of the SICAV shall be based on the fair value. This value must be determined in accordance with the rules set forth in the articles of incorporation or partnership agreement.

(5) The articles of incorporation or partnership agreement shall specify the conditions in which issues and redemptions may be suspended, without prejudice to legal causes. In the event of suspension of issues or redemptions, the SICAV must inform the CSSF without delay.

Where the interests of the investors so require, redemptions may be suspended by the CSSF if the provisions of laws, regulations or the articles of incorporation concerning the activity and operation of the SICAV are not observed.

(6) The articles of incorporation or partnership agreement shall describe the nature of the expenses to be borne by the SICAV.

(7) The securities or partnership interests of a SICAV shall have no par value.

(8) The security or partnership interest shall specify the minimum amount of capital and shall give no indication regarding its par value or the portion of the capital which it represents.

Art. 29

(1) Variations in the capital shall be effected *ipso jure* and without compliance with measures regarding publication and entry in the register of commerce and companies.

(2) Reimbursement to investors following a reduction of capital shall not be subject to any restriction other than that provided for in Article 31, paragraph (1).

(3) In the case of issue of new securities or partnership interests, pre-emptive rights may not be claimed by existing shareholders or unitholders, unless those rights are expressly provided for in the articles of incorporation.

Art. 30

(1) If the capital of the SICAV falls below two thirds of the minimum capital, as defined in Article 27, the directors or managers must submit the question of the dissolution of the SICAV to a general meeting for which no quorum shall be prescribed and which shall decide by a simple majority of the securities or partnership interests represented at the meeting.

(2) If the capital of the SICAV falls below one quarter of the minimum capital, as defined in Article 27, the directors or managers must submit the question of the dissolution of the SICAV to a general meeting for which no quorum shall be prescribed; dissolution may be resolved by shareholders or unitholders holding one quarter of the securities or partnership interests represented at the meeting.

(3) The meeting must be convened so that it is held within a period of forty days as from the ascertainment that the capital has fallen below two thirds or one quarter of the minimum capital, as defined in Article 27, as the case may be.

(4) If the constitutive documents of the SICAV do not provide for general meetings, the managers must inform the CSSF without delay if the capital of the SICAV has fallen below two thirds of the minimum capital, as defined in Article 27. In the latter case, the CSSF may, having regard to the circumstances, require the managers to liquidate the SICAV.

Art. 31

(1) Unless otherwise provided for in the articles of incorporation, the net assets of the SICAV may be distributed subject to the limits set out in Article 27 of this Law.

(2) SICAVs shall not be obliged to create a legal reserve.

(3) SICAVs are not subject to any rules in respect of payment of interim dividends other than those set forth in their articles of incorporation.

Art. 32

For companies to which this Law applies, the words "partnership limited by shares", "common limited partnership, special limited partnership", "limited company", "public limited company", or "cooperative in the form of a public limited company" shall be completed by the words "investment company with variable capital-specialised investment fund" or "SICAV-SIF".

Art. 33

The safe-keeping of the assets of a SICAV must be entrusted to a depositary.

Art. 34

(1) The depositary must either have its registered office in Luxembourg or be established there if its registered office is located abroad.

(2) Without prejudice to the provision laid down in the second sub-paragraph of this paragraph, the depositary must be a credit institution or an investment firm within the meaning of the amended Law of 5 April 1993 on the financial sector. An investment firm shall only be eligible as depositary to the extent that this investment firm also fulfils the conditions referred to in Article 19, paragraph (3) of the Law of 12 July 2013 relating to alternative investment fund managers.

For SICAVs which have no redemption rights exercisable during a period of five years from the date of the initial investments and which, in accordance with their core investment policy, generally do not invest in assets that must be held in custody in accordance with point a) of Article 19, paragraph (8) of the Law of 12 July 2013 relating to alternative investment fund managers or generally invest in issuers or non-listed companies in order to potentially acquire control over such companies in accordance with Article 24 of the aforementioned law, the depositary may also be an entity governed by Luxembourg law which has the status of a professional depositary of assets other than financial instruments within the meaning of Article 26*bis* of the amended Law of 5 April 1993 on the financial sector.

(3) The depositary's liability shall not be affected by the fact that it has entrusted to a third party all or some of the assets in its safe-keeping.

Art. 35

The depositary shall be liable in accordance with Luxembourg law to the investors for any loss suffered by them as a result of its failure to perform its obligations or its improper performance thereof.

Art. 36

The duties of the depositary regarding the SICAV shall cease respectively:

a) in the case of voluntary withdrawal of the depositary or of its removal by the SICAV; until it is replaced, which must happen within two months, the depositary must take all necessary steps for the good preservation of the interests of the investors;

b) where the SICAV or the depositary has been declared bankrupt, has entered into an arrangement with creditors, has obtained a suspension of payment, has been put under court-controlled management or has been the subject of similar proceedings or has been put into liquidation;

c) where the CSSF withdraws its authorisation of the SICAV or the depositary;

d) in all other cases provided for in the articles of incorporation or the partnership agreement.

Art. 37

In carrying out its role as depositary, the depositary must act solely in the interests of the investors.

Chapter 4. - Specialised investment funds which have not been constituted as common funds or SICAVS

Art. 38

This Chapter is applicable to all specialised investment funds subject to this Law which have not been constituted as common funds or SICAVs.

Art. 39

(1) The subscribed capital, increased by share premiums, of specialised investment funds falling within this Chapter, may not be less than one million two hundred and fifty thousand euros (EUR 1,250,000).

This minimum must be reached within a period of twelve months following their authorisation. A Grand-Ducal Regulation may increase such minimum amount up to a maximum of two million five hundred thousand euros (EUR 2,500,000).[12]

(2) If the capital has fallen below two thirds of the legal minimum, as defined in paragraph (1), the directors or managers must submit the question of the dissolution of the specialised investment fund to a general meeting for which no quorum shall be prescribed and which shall decide by simple majority of the securities or partnership interests represented at the meeting.

(3) If the capital has fallen below one quarter of the legal minimum, as defined in paragraph (1), the directors or managers must submit the question of the dissolution to a general meeting for which no quorum shall be prescribed; the dissolution may be resolved by investors holding one quarter of the securities represented at the meeting.

(4) The meeting must be convened so that it is held within a period of forty days as from the ascertainment that the capital has fallen below two thirds or one quarter of the minimum, as defined in paragraph (1), as the case may be.

(5) If the constitutive documents of the specialised investment fund do not provide for general meetings, the directors or managers must, if the subscribed capital of the specialised investment fund has fallen below two thirds of the legal minimum as defined in paragraph (1), inform the CSSF without delay. In the latter case, the CSSF may, having regard to the circumstances, require the directors or managers to liquidate the specialised investment fund.

(6) If the specialised investment fund is constituted under a statutory form, its capital must be entirely subscribed and at least 5% of each share or unit must be paid up in cash or by means of a contribution other than cash.

Art. 40

(1) Unless otherwise provided for in the constitutive documents, the valuation of the assets of the specialised investment fund shall be based on the fair value. This value must be determined in accordance with the rules set forth in the constitutive documents.

(2) Articles 26 (2) to (4), 28 (5), 33, 34, 35, 36 and 37 of this Law are applicable to specialised investment funds subject to this Chapter.

(3) The denomination of the specialised investment funds to which this Chapter 4 applies shall be completed by the words "specialised investment fund" or "SIF".

Chapter 5. - Authorisation and supervision

Art. 41

(1) The authority which is to carry out the duties provided for in this Law is the CSSF.

(2) The CSSF carries out its duties exclusively in the public interest.

(3) The CSSF ensures that the specialised investment funds subject to this Law and their directors, comply with the applicable legal and contractual rules.

[12] No such Regulation exists at this time.

Art. 42

(1) Specialised investment funds subject to this Law must, in order to carry out their activities, be previously authorised by the CSSF.

(2) An investment fund shall only be authorised if the CSSF has approved the constitutive documents and the choice of the depositary.

(3) The directors of the specialised investment fund and of the depositary must be of sufficiently good repute and be sufficiently experienced, also in relation to the type of specialised investment fund concerned. The identity of the directors of the specialised investment fund as well as of any person succeeding them in office, must be communicated forthwith to the CSSF. The appointment of directors, and of any person succeeding them in office, is subject to the approval of the CSSF.

"Directors" shall mean, in the case of public limited companies and in the case of cooperatives in the form of a public limited company, the members of the board of directors, in the case of partnerships limited by shares, the managing general partner(s), in the case of common limited partnerships, special limited partnerships, the manager(s) whether or not it(they) is(are) general partner(s), in the case of limited companies, the manager(s) and in the case of common funds, the members of the board of directors or the managers of the management company.

(4) In addition to the conditions of paragraphs (2) and (3), the authorisation pursuant to paragraph (1) is subject to the communication to the CSSF of the identity of the persons responsible for managing the investment portfolio. These persons must be of sufficiently good repute and have sufficient experience also in relation to the type of specialised investment fund concerned.

The appointment of the persons referred to in sub-paragraph (1) and of any person succeeding them in office is subject to the approval of the CSSF.

(5) The replacement of the management company or of the depositary and any amendment of the constitutive documents of the specialised investment fund are subject to the approval of the CSSF.

(6) The granting of the authorisation pursuant to paragraph (1) implies that specialised investment funds are obliged to notify the CSSF spontaneously in writing and in a complete, coherent and comprehensible manner of any change regarding the substantial information on which the CSSF based itself to examine the application for authorisation as well as of any change in respect of the directors referred to in paragraph (3) and the persons in charge of the management of the investment portfolio referred to in paragraph (4) of this Article.

Art. 42*bis*

(1) The specialised investment funds subject to this Law shall implement appropriate risk-management systems in order to detect, measure, manage and monitor in an appropriate manner the risk associated with the positions and their contribution to the overall risk profile of the portfolio.

(2) The specialised investment funds subject to this Law must, in addition, be structured and organised in such a way so as to minimise the risk of investors' interests being prejudiced by conflicts of interest between the specialised investment fund and, as the case may be, any person contributing to the activities of the specialised investment fund or any person linked directly or indirectly to the specialised investment fund. In case of potential conflicts of interest, the specialised investment fund shall ensure that the interests of investors are safeguarded.

(3) The implementing measures of paragraphs (1) and (2) are laid down by way of a regulation to be adopted by the CSSF[13].

Art. 42*ter*

The specialised investment funds subject to this Law are authorised to delegate to third parties, for the purpose of a more efficient conduct of their business, the exercise on their behalf of one or more of their functions. In this case, the following conditions shall be complied with:

a) the CSSF must be informed in an appropriate manner;

b) the mandate must not prevent the effectiveness of supervision over the specialised investment fund; and in particular, it must not prevent the specialised investment fund from acting, or the specialised investment fund from being managed, in the best interests of the investors;

c) when the delegation concerns investment portfolio management, the mandate may be given only to natural or legal persons who are authorised or registered for the purpose of the investment portfolio management and subject to prudential supervision; when this mandate is given to a natural or legal person from a third country subject to prudential supervision, cooperation between the CSSF and the supervisory authority of this country must be ensured;

d) when the conditions under point c) are not fulfilled, the delegation shall only become effective if the CSSF approves the choice of the natural or legal person to whom functions will be delegated; in the latter case, these persons must be of sufficiently good repute and have sufficient experience also in relation to the type of specialised investment fund concerned;

e) the directors of a specialised investment fund must be able to demonstrate that the natural or legal person to whom functions will be delegated is qualified and capable of exercising the functions in question and that sufficient diligence has been carried out in view of his/its selection;

f) measures exist which enable the directors of the specialised investment fund to monitor effectively at any time the delegated activity;

g) the mandate must not prevent the directors of the specialised investment fund from giving at any time instructions to the natural or legal person to whom functions have been delegated or from withdrawing the mandate with immediate effect in order to protect the interest of investors;

h) a mandate with regard to the core function of investment management shall not be given to the depositary;

i) the offering document of a specialised investment fund must list the delegated functions.

Art. 43

(1) Authorised specialised investment funds are entered by the CSSF on a list. This entry is tantamount to authorisation and is notified by the CSSF to the specialised investment fund concerned. Applications for entry on the list must be filed with the CSSF within the month following their constitution or formation. This list and any amendments made thereto are published in the *Mémorial*[14] by the CSSF.

(2) The entering and the maintaining on the list referred to in paragraph (1) shall be subject to observance of all the provisions of laws, regulations or agreements relating to the organisation

[13] See CSSF Regulation N° 15-07.

[14] The *Mémorial B, Recueil Administratif et Economique* is the part of the Luxembourg official gazette in which certain administrative publications are made.

and operation of the specialised investment funds subject to this Law and the distribution, placing or sale of their securities or partnership interests.

Art. 44

The fact that a specialised investment fund has been entered on the list referred to in Article 43, paragraph (1) shall not, under any circumstances, be described in any way whatsoever as a positive assessment made by the CSSF of the expedience, or of the economic, financial or legal structure of an investment in the specialised investment fund, of the quality of the securities or partnership interests or of the solvency of the specialised investment fund.

Art. 45

(1) The decisions to be adopted by the CSSF in implementation of this Law shall state in writing the reasons on which they are based and, unless the delay entails risks, they shall be adopted after preparatory proceedings at which all parties are able to state their case[15]. They shall be notified by registered letter or delivered by bailiff[16].

(2) The decisions by the CSSF concerning the granting, refusal or withdrawal of the authorisations provided for in this Law as well as the decisions of the CSSF concerning the administrative fines imposed in accordance with Article 51 of this Law may be referred to the administrative court[17] which will deal with the substance of the case. The appeal must be filed within one month from the notification of the contested decision, or else shall be time-barred.

(3) For the purposes of applying this Law, the CSSF is entrusted with all supervisory and investigative powers that are necessary for the exercise of its functions. The powers of the CSSF include the right to:

a) access any document in any form and receive a copy thereof;

b) require any person to provide information and, if necessary, to summon and question any person with a view to obtaining information;

c) carry out on-site inspections or investigations, by itself or by its delegates, of persons subject to its supervision under this Law;

d) require communication of the telephone exchanges and existing data;

e) require the cessation of any practice that is contrary to the provisions adopted in implementation of this Law;

f) request the freezing or the sequestration of assets by the president of the District Court of and in Luxembourg acting on request;

g) temporarily prohibit persons subject to its prudential supervision, as well as the members of administrative, governing and management bodies, employees and agents linked to these persons from exercising professional activities;

h) require authorised investment companies, management companies or depositaries to provide information;

i) adopt any type of measure to ensure that investment companies, management companies and depositaries continue to comply with the requirements of this Law;

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15 *instruction contradictoire*
16 *huissier* (court process server)
17 *tribunal administratif*

j) require the suspension of the issue, repurchase or redemption of securities or partnership interests in the interest of the investors or of the public;

k) withdraw the authorisation granted to a specialised investment fund, a management company or a depositary;

l) transmit information to the Public Prosecutor for criminal proceedings; and

m) instruct approved statutory auditors or experts to carry out verifications or investigations.

Chapter 6. - Dissolution and liquidation

Art. 46

The decision of the CSSF to withdraw a specialised investment fund subject to this Law from the list provided for in Article 43, paragraph (1) shall, as from the notification thereof to the specialised investment fund concerned and at its expense, until the day the decision has become final, ipso jure entail the suspension of any payment by this specialised investment fund and prohibition, on penalty of nullity, to take any measures other than protective measures, except with the authorisation of the supervisory commissioner[18]. The CSSF shall, ipso jure, hold the office of supervisory commissioner, unless at its request, the District Court dealing with commercial matters appoints one or more supervisory commissioners. The appeal, stating the reasons on which it is based and accompanied by supporting documents, shall be lodged for that purpose at the Registry of the District Court[19] in the district within which the specialised investment fund has its registered office.

The Court shall give its ruling within a short period of time.

If it considers that it has sufficient information, it shall immediately make an order in public session, without hearing the parties. If it deems it necessary, it shall convene the parties by notification from the Registrar[20] within three days from the lodging of the appeal at the latest. It shall hear the parties in chambers[21] and give its decision in public session. The written authorisation of the supervisory commissioners is required for all actions and decisions of the specialised investment fund and, failing such authorisation, they shall be void.

The Court may, however, limit the scope of operations subject to authorisation.

The commissioners may submit for consideration to the relevant bodies of the specialised investment fund any proposals which they consider appropriate. They may attend proceedings of the administrative, management, executive or supervisory bodies of the specialised investment fund.

The Court shall decide as to the expenses and fees of the supervisory commissioners; it may grant them advances.

The judgment provided for in paragraph (1) of Article 47 of this Law shall terminate the functions of the supervisory commissioner who must, within one month after his replacement, submit to the liquidators appointed in such judgment a report on the use of the specialised investment fund's assets together with the accounts and supporting documents.

If the withdrawal decision is amended on appeal in accordance with paragraph (2) of Article 45 above, the supervisory commissioner shall be deemed to have resigned.

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18 *commissaire de surveillance*
19 *greffe du tribunal*
20 *greffier*
21 *chambre du conseil*

Art. 47

(1) The District Court[22] dealing with commercial matters shall, at the request of the Public Prosecutor[23], acting on its own initiative or at the request of the CSSF, pronounce the dissolution and order the liquidation of the specialised investment funds subject to this Law, whose entry on the list provided for in Article 43, paragraph (1) has definitively been refused or withdrawn. The District Court dealing with commercial matters shall, at the request of the Public Prosecutor, acting on its own initiative or at the request of the CSSF, pronounce the dissolution and order the liquidation of one or more compartments of a specialised investment fund subject to this Law, in cases where the authorisation of this (these) compartment(s) has definitively been refused or withdrawn.

When ordering the liquidation, the Court shall appoint a reporting judge[24] and one or more liquidators. It shall determine the method of liquidation. It may render applicable as far as it may determine, the rules governing the liquidation. The method of liquidation may be changed by subsequent decision, either at the Court's own motion or at the request of the liquidator(s).

The Court shall decide as to the expenses and fees of the liquidators; it may grant advances to them. The judgment pronouncing dissolution and ordering liquidation shall be enforceable on a provisional basis.

(2) The liquidator(s) may bring and defend all actions on behalf of the specialised investment fund, receive all payments, grant releases with or without discharge, realise all the assets of the specialised investment fund and reemploy the proceeds therefrom, issue or endorse any negotiable instruments, compound or compromise all claims. They may alienate immovable property of the specialised investment fund by public auction.

They may also, but only with the authorisation of the Court, mortgage and pledge its assets and alienate its immovable property by private treaty.

(3) As from the day of the judgment, no legal actions relating to movable or immovable property nor any enforcement procedures relating to movable or immovable property may be pursued, commenced or exercised otherwise than against the liquidators.

The judgment ordering the liquidation shall terminate all seizures effected at the request of general creditors who are not secured by charges[25] on movable and immovable property.

(4) After payment or deposit of the sums necessary for the discharge of the debts, the liquidators shall distribute to the investors the sums or amounts due to them.

(5) The liquidators may convene at their own initiative and must convene at the request of investors representing at least one quarter of the assets of the specialised investment fund, a general meeting of investors for the purpose of deciding whether instead of an outright liquidation it would be appropriate to contribute the assets of the specialised investment fund in liquidation to another specialised investment fund. That decision shall be taken, provided that the general meeting is composed of a number of investors representing at least one half of the value of the amount constituting partnership interests or the capital, by a majority of two thirds of the votes of the investors present or represented.

(6) The Court's decisions pronouncing the dissolution and ordering the liquidation of a specialised investment fund shall be published in the *Recueil électronique des sociétés et associations*, in accordance with the provisions of Chapter V*bis* of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings and in two newspapers with adequate circulation specified by the Court, at least

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22 *Tribunal d'Arrondissement*
23 *Procureur d'Etat*
24 *Juge-commissaire*
25 *créanciers chirographaires et non-privilégiés*

one of which must be a Luxembourg newspaper. The liquidator(s) shall arrange for such publications.

(7) If there are no or insufficient assets, as ascertained by the reporting judge, the documents relating to the proceedings shall be exempt from any registry and registration duties and the expenses and fees of the liquidators shall be borne by the Treasury and paid as judicial costs.

(8) The liquidators shall be liable both to third parties and to the specialised investment fund for the discharge of their duties and for any faults committed in the conduct of their activities.

(9) When the liquidation is completed, the liquidators shall report to the Court on the use made of the assets of the specialised investment fund and shall submit the accounts and supporting documents thereof. The Court shall appoint *commissaires* (auditors) to examine the documents. After receipt of the auditors' report, a ruling shall be given on the management of the liquidators and the closure of the liquidation.

The closure of the liquidation shall be published in accordance with paragraph (6) above. That publication shall also indicate:

– the place designated by the Court where the books and records must be kept for at least five years;

– the measures taken in accordance with Article 50 with a view to the deposit[26] of the sums and assets due to creditors, investors or members to whom it has not been possible to deliver the same.

(10) Any legal actions against the liquidators of specialised investment funds, in their capacity as such, shall be prescribed five years after publication of the closure of the liquidation provided for in paragraph (9).

Legal actions against the liquidators in connection with the performance of their duties shall be prescribed five years after the date of the facts or, in the event of concealment thereof by wilful deceit, five years after the discovery thereof.

(11) The provisions of this Article shall apply equally to the specialised investment funds which have not applied to be entered on the list provided for in Article 43 within the time limit laid down therein.

Art. 48

(1) Specialised investment funds shall, after the dissolution, be deemed to exist for the purpose of their liquidation. In the case of a non-judicial liquidation, they shall remain subject to supervision by the CSSF.

(2) All documents issued by a specialised investment fund in liquidation shall indicate that it is in liquidation.

Art. 49

(1) In the event of a non-judicial liquidation of a specialised investment fund, the liquidator(s) must be approved by the CSSF. The liquidator(s) must provide all guarantees of good repute and professional skill.

(2) Where a liquidator does not accept its appointment or is not approved, the District Court dealing with commercial matters shall, at the request of any interested party or of the CSSF, appoint the liquidator(s). The judgment appointing the liquidator(s) shall be provisionally

[26] *consignation*

enforceable, on the production of the original thereof and before registration, notwithstanding any appeal or objection.

Art. 50

In the event of a voluntary or compulsory liquidation of a specialised investment fund within the meaning of this Law, the sums and assets payable in respect of securities or partnership interests whose holders failed to present themselves at the time of the closure of the liquidation, shall be paid to the public trust office[27] to be held for the benefit of the persons entitled thereto.

Art. 51

(1) The directors or members of the management board, as the case may be, managers and officers of specialised investment funds, of management companies, of depositaries as well as of any other undertaking contributing towards the business activity of the specialised investment fund subject to supervision by the CSSF as well as the liquidators in the case of voluntary liquidation of a specialised investment fund may have a fine of EUR 125 to 12,500 imposed upon them in the event of their refusing to provide the financial reports and the requested information or where such documents prove to be incomplete, inaccurate or false, and in the event of any violation of Article 52 of this Law.

(2) The same fine may be imposed upon any person who infringes the provisions of Article 44.

(3) The CSSF may make public any fine imposed in accordance with this Article, unless such a disclosure would seriously disturb the financial markets, be detrimental to the interests of investors or cause disproportionate damage to the parties concerned.

Chapter 7. - Establishment of an offering document and an annual report

Art. 52

(1) The investment company and the management company, for each of the common funds it manages, must establish:

– an offering document, and

– an annual report for each financial year.

(2) The annual report must be made available to investors within six months from the end of the period to which it relates.

(3) If a prospectus under the Law of 10 July 2005 concerning the prospectus for transferable securities has been published, there is no obligation to establish an offering document within the meaning of this Law.

(4) Notwithstanding paragraphs (1) and (2) of Articles 29 and 30 of the Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings, specialised investment funds subject to this Law prepare their annual report according to the annexed schedule. The annual report must include a balance sheet or a statement of assets and liabilities, a detailed income and expenditure account for the financial year, a report on the activities of the past financial year as well as any significant information enabling investors to make an informed judgment on the development of the activities and of the results of the specialised investment fund. However, Articles 56 and 57 of the Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings apply to specialised investment funds subject to Chapter 3 and Chapter 4 of this Law.

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[27] *Caisse de Consignation*

(5) Notwithstanding Article 309 of the amended Law of 10 August 1915 concerning commercial companies, specialised investment funds subject to this Law and their subsidiaries are exempt from the obligation to consolidate the companies owned for investment purposes.

(6) For specialised investment funds governed by this Law, contributions other than cash shall be, at the time of the contribution, subject to a report to be established by an approved statutory auditor. The conditions and method provided for in Article 26-1 of the Law of 10 August 1915 concerning commercial companies apply to the establishment of the report referred to in this Article, irrespective of the legal form adopted by the specialised investment fund concerned.

Art. 53

The offering document must include the information necessary for investors to be able to make an informed judgment of the investment proposed to them and, in particular, of the risks attached thereto.

Art. 54

The essential elements of the offering document must be kept up to date when additional securities or partnership interests are issued to new investors. Any amendment to the essential elements of the offering document is subject to the approval of the CSSF.

Art. 55

(1) Luxembourg specialised investment funds must have the accounting information given in their annual report audited by an approved statutory auditor.

The approved statutory auditor's report and, as the case may be, its qualifications, are set out in full in each annual report.

The approved statutory auditor must prove it has appropriate professional experience.

(2) The approved statutory auditor shall be appointed and remunerated by the specialised investment fund.

(3) The approved statutory auditor must report promptly to the CSSF any fact or decision of which he has become aware while carrying out the audit of the accounting information contained in the annual report of a specialised investment fund or any other legal task concerning a specialised investment fund, where this fact or decision is likely to

- constitute a serious breach of this Law or the regulations adopted for its execution, or
- affect the continuous functioning of the specialised investment fund, or
- lead to a refusal to certify the accounts or to the expression of qualifications thereon.

The approved statutory auditor likewise has a duty to promptly report to the CSSF, in the accomplishment of its duties referred to in the preceding sub-paragraph in respect of a specialised investment fund, any fact or decisions concerning the specialised investment fund and meeting the criteria referred to in the preceding sub-paragraph of which he has become aware while carrying out the audit of the accounting information contained in their annual report or of another legal task in relation to another undertaking having close links resulting from a control relationship with the specialised investment fund.

For the purpose of this Article, a close link resulting from a control relationship shall mean the link which exists between a parent undertaking and a subsidiary in the cases referred to in Article 77 of the amended Law of 17 June 1992 concerning the annual accounts and consolidated accounts of credit institutions, or as a result of a relationship of the same type between any individual or legal entity and an undertaking; any subsidiary undertaking of a subsidiary undertaking is also considered as a subsidiary of the parent undertaking which is at the head of those undertakings. A situation in which two or more individuals or legal persons

are permanently linked to one and the same person by a control relationship shall also be regarded as constituting a close link between such persons.

If, in the discharge of his duties, the approved statutory auditor ascertains that the information provided to investors or to the CSSF in the reports or other documents of the specialised investment fund does not truly describe the financial situation and the assets and liabilities of the specialised investment fund, he shall be obliged to inform the CSSF forthwith.

The approved statutory auditor shall moreover be obliged to provide the CSSF with all information or certificates required by the latter on any matters of which the approved statutory auditor has or ought to have knowledge in connection with the discharge of his duties. The same applies if the approved statutory auditor ascertains that the assets of the specialised investment fund are not or have not been invested according to the regulations set out by the Law or the offering document.

The disclosure in good faith to the CSSF by the approved statutory auditor of any fact or decision referred to in this paragraph shall not constitute a breach of professional secrecy or of any restriction on disclosure of information imposed by contract and shall not result in liability of any kind of the approved statutory auditor.

Each Luxembourg specialised investment fund subject to the supervision of the CSSF whose accounts have to be audited by an approved statutory auditor, must communicate to the CSSF spontaneously the reports and written comments of the approved statutory auditor in the context of its audit of the annual accounting documents.

The CSSF may regulate the scope of the mandate for the audit of annual accounting documents and the content of the reports and written comments of the approved statutory auditor referred to in the preceding sub-paragraph, without prejudice to the legal provisions governing the content of the independent auditor's[28] report.

The CSSF may request an approved statutory auditor to perform a control on one or several particular aspects of the activities and operations of a specialised investment fund. This control is performed at the expense of the specialised investment fund concerned.

(4) The CSSF shall refuse or withdraw the entry on the list of specialised investment funds whose approved statutory auditor does not satisfy the conditions or does not discharge the obligations prescribed in this Article.

(5) The institution of supervisory auditors[29] provided for by Articles 61, 109, 114 and 200 of the amended Law of 10 August 1915 concerning commercial companies, is repealed with respect to Luxembourg investment companies. The directors or managers are solely competent in all cases where the amended Law of 10 August 1915 concerning commercial companies provides for the joint action of the supervisory auditors[55] and the directors or managers.

The institution of supervisory auditors provided for by Article 151 of the amended Law of 10 August 1915 concerning commercial companies, is not applicable to Luxembourg investment companies. Upon completion of the liquidation, a report on the liquidation shall be drawn up by the approved statutory auditor. This report shall be tabled at the general meeting at which the liquidators report on the application of the corporate assets and submit the accounts and supporting documents. The same meeting shall resolve on the approval of the accounts of the liquidation, the discharge and the closure of the liquidation.

Art. 56

Specialised investment funds must send their offering document and any amendments thereto, as well as their annual report, to the CSSF.

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[28] *contrôleur légal des comptes*
[29] *commissaires aux comptes*

Art. 57

(1) The offering document and the last published annual report shall be supplied, on request, to subscribers free of charge.

(2) The annual report shall be supplied, on request, to investors free of charge.

Chapter 8. - Transmission of other information to the CSSF

Art. 58

The CSSF may request specialised investment funds to provide any information relevant to the fulfilment of its duties and may, for that purpose, itself or through appointees, examine the books, accounts, registers or other records and documents of specialised investment funds.

Chapter 9. - Protection of name

Art. 59

(1) No undertaking shall make use of designations or of a description giving the impression that its activities are subject to the legislation on specialised investment funds if it has not obtained the authorisation provided for in Article 43 of this Law.

(2) The District Court dealing with commercial matters of the place where the specialised investment fund is situated or of the place where the designation has been used, may, at the request of the Public Prosecutor issue an injunction, prohibiting anyone from using the designation as defined in paragraph (1), if the conditions provided for by this Law are not or no longer met.

(3) The final judgement or court decision which delivers this injunction, is published by the Public Prosecutor at the expense of the person convicted in two Luxembourg or foreign newspapers with adequate circulation.

Chapter 10. - Criminal law provisions

Art. 60

A penalty of imprisonment from one month to one year and a fine of five hundred to twenty-five thousand euros or either one of these penalties shall be imposed upon:

a) any person who has issued or redeemed or caused to be issued or redeemed units of a common fund in the cases referred to in Articles 11(2) and 20(3) of this Law;

b) any person who has issued or redeemed units of a common fund at a price other than that obtained by application of the criteria provided for in Article 8 of this Law;

c) any person who, as director, manager or auditor[30] of the management company or the depositary has made loans or advances on units of the common fund using assets of the said fund, or who has by any means at the expense of the common fund, made payments in order to pay up units or acknowledged payments to have been made which have not actually been so made.

Art. 61

(1) A penalty of imprisonment from one to six months and a fine of five hundred to twenty-five thousand euros or either of one of these penalties shall be imposed upon:

[30] *commissaire*

a) any director or manager of the management company who has failed to inform the CSSF without delay that the net assets of the common fund have fallen below two thirds and a quarter, respectively, of the legal minimum for the net assets of the common fund;

b) any director or manager of the management company who has infringed Article 9 of this Law.

(2) A fine of five hundred to twenty-five thousand euros shall be imposed upon any persons who, in violation of Article 59, use a designation or description giving the impression that they relate to the activities subject to the legislation on specialised investment funds if they have not obtained the authorisation provided for in Article 43 of this Law.

Art. 62

A penalty of imprisonment from one month to one year and a fine of five hundred to twenty-five thousand euros or either one of these penalties shall be imposed upon the founders, directors or managers of an investment company who have infringed the provisions of Articles 28 (2) and 28 (4).

Art. 63

A penalty of imprisonment of one month to one year and a fine of five hundred to twenty-five thousand euros or either one of these penalties shall be imposed upon the directors or managers of an investment company who have not convened the extraordinary general meeting in accordance with Article 30 of this Law and with Article 39 (2) to (4) of this Law or who have infringed the provisions of Article 39 (5) of this Law.

Art. 64

A penalty of imprisonment of three months to two years and a fine of five hundred to fifty thousand euros or either one of these penalties shall be imposed on anyone who has carried out or caused to be carried out operations involving the receipt of funds from investors if, for the specialised investment fund for which they acted, no application for entry on the list has been filed with the CSSF within the month following the constitution or formation of the specialised investment fund.

Art. 65

(1) A penalty of imprisonment from one month to one year and a fine of five hundred to twenty-five thousand euros or either one of these penalties shall be imposed on the directors of the specialised investment funds referred to in Article 38 who failed to observe the conditions imposed upon them by this Law.

(2) The same penalties or either one of them shall be imposed upon the directors of specialised investment funds who, notwithstanding the provisions of Article 46, have taken measures other than protective measures without being authorised for that purpose by the supervisory commissioner.

Chapter 11. - Tax provisions

Art. 66

(1) Apart from the capital duty[31] levied on the contribution of capital to civil and commercial companies and the subscription tax[32] mentioned in Article 68 below, no other tax shall be payable by the specialised investment funds referred to in this Law.

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[31] *droit d'apport*
[32] *taxe d'abonnement*

(2) Without prejudice to the provisions of the Law of 21 June 2005 implementing into Luxembourg law Directive 2003/48/EC on taxation of saving incomes in the form of interest payments, the amounts distributed by such specialised investment funds shall not be subject to a withholding tax. They are not taxable if received by non residents.

Art. 67

(…)[33]

Art. 68

(1) The rate of the annual subscription tax payable by the specialised investment funds referred to in this Law shall be of 0.01%.

(2) Exempt from the subscription tax are:

a) the value of the assets represented by units held in other undertakings for collective investment, provided that such units have already been subject to the subscription tax provided for by this Article or by Article 174 of the Law of 17 December 2010 relating to undertakings for collective investment or by Article 46 of the Law of 23 July 2016 relating to reserved alternative investment funds;

b) specialised investment funds as well as individual compartments of specialised investment funds with multiple compartments:

(i) whose sole objective is the collective investment in money market instruments and the placing of deposits with credit institutions, and

(ii) whose weighted residual portfolio maturity does not exceed 90 days, and

(iii) that have obtained the highest possible rating from a recognised rating agency;

c) specialised investment funds whose securities or partnership interests are reserved for (i) institutions for occupational retirement provision, or similar investment vehicles, set up on one or more employers' initiative for the benefit of their employees and (ii) companies of one or more employers investing funds they hold, in order to provide retirement benefits to their employees.

d) specialised investment funds as well as individual compartments of specialised investment funds with multiple compartments whose main objective is the investment in micro finance institutions.

(3) A Grand-Ducal Regulation shall determine the conditions necessary for the application of the exemption and determine the criteria with which the money market instruments referred to above must comply.[34]

(4) The taxable basis of the subscription tax shall be the aggregate net assets of the specialised investment funds valued on the last day of each quarter.

[33] Repealed by the Law of 19 December 2008 on the review of the regime applicable to certain corporate deeds in the field of registration fees.

[34] See Grand-Ducal Regulation of 27 February 2007 determining the conditions and criteria for the exemption from the subscription tax referred to in Article 68 of the Law of 13 February 2007.

(5) The provisions of paragraph (2) (c) apply *mutatis mutandis* to:

- individual compartments of a specialised investment fund with multiple compartments whose securities or partnership interests are reserved for (i) institutions for occupational retirement provision, or similar investment vehicles, set up on one or several employers' initiative for the benefit of their employees and (ii) companies of one or several employers investing the funds they hold, in order to provide retirement benefits to their employees, and

- individual classes created within a specialised investment fund or within a compartment of a specialised investment fund with multiple compartments whose securities or partnership interests are reserved for (i) institutions for occupational retirement provision, or similar investment vehicles, set up on one or several employers' initiative(s) for the benefit of their employees and (ii) companies of one or several employers investing the funds they own, in order to provide retirement benefits to their employees.

(6) A Grand-Ducal Regulation shall lay down the criteria which must be fulfilled by specialised investment funds as well as individual compartments of specialised investment funds with multiple compartments referred to in paragraph 2, (d).

(7) Any condition of pursuing a sole objective as laid down in this Article does not preclude the management of liquid assets on an ancillary basis or the use of techniques and instruments used for hedging or for purposes of efficient portfolio management.

Art. 69

The duties of the registration administration[35] include the fiscal control of specialised investment funds.

If, at any date after the constitution of the specialised investment funds referred to in this Law, the said administration ascertains that such specialised investment funds are engaging in operations which exceed the framework of the activities authorised by this Law, the tax provisions provided for in Articles 66 to 68 shall cease to be applicable.

Moreover, the registration administration may levy a fiscal fine of 0.2% on the aggregate amount of the assets of the specialised investment funds.

Chapter 12. - Special provisions in relation to the legal form

Art. 70

(1) Investment companies entered in the list provided for by Article 43, paragraph (1) may be converted into SICAVs and their constitutive documents may be harmonised with the provisions of Chapter 3 of this Law by resolution of a general meeting passed with a majority of two thirds of the votes of the shareholders or unitholders present or represented regardless of the portion of the capital represented.

(2) The common funds referred to in this Law may, under the same conditions as those laid down in paragraph (1) above, convert themselves into a SICAV governed by this Law.

Art. 71

(1) Specialised investment funds may be constituted with multiple compartments, each compartment corresponding to a distinct part of the assets and liabilities of the specialised investment fund.

[35] *Administration de l'Enregistrement*

(2) The constitutive documents of the specialised investment fund must expressly provide for that possibility and the applicable operational rules. The offering document must describe the specific investment policy of each compartment.

(3) The securities and partnership interests of the specialised investment fund with multiple compartments may be of different value with or without indication of a par value depending on the legal form which has been chosen.

(4) Common funds with multiple compartments may, by separate management regulations, determine the characteristics of and rules applicable to each compartment.

(5) The rights of investors and of creditors concerning a compartment or which have arisen in connection with the creation, operation or liquidation of a compartment are limited to the assets of that compartment, unless a clause included in the constitutive documents provides otherwise.

The assets of a compartment are exclusively available to satisfy the rights of investors in relation to that compartment and the rights of those creditors whose claims have arisen in connection with the creation, the operation or the liquidation of that compartment, unless a clause included in the constitutive documents provides otherwise.

For the purpose of the relations as between investors, each compartment will be deemed to be a separate entity, unless a clause included in the constitutive documents provides otherwise.

(6) Each compartment of a specialised investment fund may be liquidated separately without that separate liquidation resulting in the liquidation of another compartment. Only the liquidation of the last remaining compartment of the specialised investment fund will result in the liquidation of the specialised investment fund, as referred to in Article 49, paragraph (1) of this Law. In this case, where the specialised investment fund is in corporate form, as from the event giving rise to the liquidation of the specialised investment fund, and under penalty of nullity, the issue of units shall be prohibited except for the purposes of liquidation.

(7) The authorisation of a compartment of a specialised investment fund subject to this Law and the maintenance of this authorisation are subject to the condition that all legal, regulatory and contractual provisions relating to its organisation and operation are complied with. The withdrawal of authorisation of a compartment does not give rise to the withdrawal of the specialised investment fund from the list provided for in Article 43, paragraph (1).

(8) A compartment of a specialised investment fund may, subject to the conditions provided for in the offering document, subscribe, acquire and/or hold securities or partnership interests to be issued or issued by one or more other compartments of the same specialised investment fund without that specialised investment fund, when it is constituted by statute, being subject to the requirements of the Law of 10 August 1915 on commercial companies, with respect to the subscription, the acquisition and/or the holding by a company of its own shares, under the condition, however, that:

- the target compartment does not, in turn, invest in the compartment invested in this target compartment; and

- voting rights, if any, attaching to the relevant securities or partnership interests are suspended for as long as they are held by the compartment concerned and without prejudice to the appropriate processing in the accounts and the periodic reports; and

- in any event, for as long as these securities or partnership interests are held by the specialised investment fund, their value will not be taken into consideration for the calculation of the net assets of the specialised investment fund for the purposes of verifying the minimum threshold of the net assets imposed by this Law.

Chapter 13. - Amending provisions

Art. 72

Paragraph (3) of Article 129 of the amended Law of 20 December 2002 relating to undertakings for collective investment[36] is amended by the insertion, at the end of item a), of the words: "or by Article 68 of the Law of 13 February 2007 relating to specialised investment funds".

Art. 73

Article 44 paragraph 1, item d) of the amended Law of 12 February 1979 concerning value added tax, is amended by adding the words "and specialised investment funds" after the words ", including the SICAR".

Chapter 14. - Transitional and repealing provisions

Art. 74

The Law of 19 July 1991 concerning undertakings for collective investment whose securities are not intended to be placed with the public is repealed.

Art. 75

All references in legal and regulatory texts to "undertakings governed by the Law of 19 July 1991 concerning undertakings for collective investment whose securities are not intended to be placed with the public" shall be replaced by "undertakings governed by the Law of 13 February 2007 relating to specialised investment funds".

Art. 76

Undertakings governed by the Law of 19 July 1991 concerning undertakings for collective investment whose securities are not intended to be placed with the public are governed ipso jure by this Law.

For these undertakings, all references in the articles of incorporation and the sales documents to the Law of 19 July 1991 concerning undertakings for collective investment whose securities are not intended to be placed with the public shall be read as references to this Law.

Art. 76*bis*

Specialised investment funds created before the entry into force of the Law of 26 March 2012 amending the Law of 13 February 2007 on specialised investment funds will have until 30 June 2012 to comply with the provisions of Article 2, paragraph (3), and of Article 42*bis* of this Law. These specialised investment funds will have until 30 June 2013 to comply with the provisions of Article 42ter of this Law, insofar as these provisions are applicable to them.

Chapter 15. - Final provisions

Art. 77

This Law may, in abbreviation, be referred to as the "Law of 13 February 2007 relating to specialised investment funds".

Art. 78

This Law enters into force on 13 February 2007.

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[36] The amended Law of 20 December 2002 relating to undertakings for collective investment has been repealed and replaced by the Law of 17 December 2010 relating to undertakings for collective investment.

PART II - Specific provisions applicable to specialised investment funds managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers or under Chapter II of Directive 2011/61/EU

Chapter 1. - General provisions

Art. 79

This Part shall apply, by way of derogation from the general rules of Part I of this Law, to specialised investment funds managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers or under Chapter II of Directive 2011/61/EU.

Art. 80

(1) Any specialised investment fund subject to this Part must be managed by an AIFM, which may either be an AIFM established in Luxembourg authorised under Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers, or an AIFM established in another Member State or in a third country authorised under Chapter II of Directive 2011/61/EU, subject to the application of Article 66, paragraph (3) of the aforementioned directive where the specialised investment fund is managed by an AIFM established in a third country.

(2) The AIFM must be determined in accordance with the provisions of Article 4 of the Law of 12 July 2013 relating to alternative investment fund managers or in accordance with the provisions of Article 5 of Directive 2011/61/EU.

The AIFM is:

a) either an external AIFM, which is the legal person appointed by the specialised investment fund or on behalf of the specialised investment fund and which through this appointment, is responsible for managing this specialised investment fund; in case of appointment of an external AIFM, the latter must be authorised in accordance with the provisions of Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers or in accordance with the provisions of Chapter II of Directive 2011/61/EU;

b) or where the legal form of the specialised investment fund permits an internal management and where its governing body chooses not to appoint an external AIFM, the specialised investment fund itself.

An internally managed specialised investment fund within the meaning of this Article must, in addition to the authorisation required under Article 42, paragraph (1) of this Law, be authorised as an AIFM under Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers. The relevant specialised investment fund must ensure at all times compliance with all provisions of the aforementioned law, provided that those provisions are applicable to it.

Art. 81

(1) The assets of a specialised investment fund subject to this Part must be entrusted to a depositary for safe-keeping, appointed in accordance with the provisions of Article 19 of the Law of 12 July 2013 relating to alternative investment fund managers.

(2) The depositary must either have its registered office in Luxembourg or have a branch there if its registered office is in another Member State of the European Union.

(3) Without prejudice to the second sub-paragraph of this paragraph, the depositary must be a credit institution or an investment firm within the meaning of the amended Law of 5 April 1993 on the financial sector. An investment firm shall only be eligible as depositary to the extent that this investment firm also fulfils the conditions referred to in Article 19, paragraph (3) of the Law of 12 July 2013 relating to alternative investment fund managers.

For specialised investment funds subject to this Part which have no redemption rights exercisable during a period of five years from the date of the initial investments and which, in accordance with their core investment policy, generally do not invest in assets that must be held in custody in accordance with point a) of Article 19, paragraph (8) of the Law of 12 July 2013 relating to alternative investment fund managers or generally invest in issuers or non-listed companies in order to potentially acquire control over such companies in accordance with Article 24 of the aforementioned law, the depositary may also be an entity governed by Luxembourg law which has the status of a professional depositary of assets other than financial instruments within the meaning of Article 26-1 of the amended Law of 5 April 1993 on the financial sector.

(4) The depositary is required to provide the CSSF on request with all information that the depositary has obtained in the exercise of its duties and which is necessary to enable the CSSF to monitor compliance by the specialised investment fund with this Law.

(5) The duties and responsibilities of the depositary are defined in accordance with the rules laid down in Article 19 of the Law of 12 July 2013 relating to alternative investment fund managers.

Art. 82

Without prejudice to the application of the provisions of Articles 9, 28 (4) and 40 (1) of this Law, the valuation of the assets of a specialised investment fund subject to this Part is performed in accordance with the rules laid down in Article 17 of the Law of 12 July 2013 relating to alternative investment fund managers and in the delegated acts provided for in Directive 2011/61/EU.

Art. 83

By way of derogation from Article 52, paragraph (4) of this Law, the content of the annual report of specialised investment funds subject to this Part is governed by the rules laid down in Article 20 of the Law of 12 July 2013 relating to alternative investment fund managers and in the delegated acts provided for in Directive 2011/61/EU.

Art. 84

In relation to the information to be provided to investors, specialised investment funds subject to this Part must comply with the rules laid down in Article 21 of the Law of 12 July 2013 relating to alternative investment fund managers and in the delegated acts provided for in Directive 2011/61/EU.

Art. 85

The AIFM of a specialised investment fund falling within the scope of this Part is authorised to delegate to third parties the power to carry out on its behalf, one or more of its functions. In this case, the delegation of functions by the AIFM must comply with all the conditions provided for in Article 18 of the Law of 12 July 2013 relating to alternative investment fund managers in case of specialised investment funds managed by an AIFM for whom Luxembourg is the home Member State within the meaning of the Law of 12 July 2013 relating to alternative investment fund managers, subject to the application of Article 66, paragraph (3) of the aforementioned directive where the specialised investment fund is managed by a AIFM established in a third country.

Art. 86

The marketing by the AIFM in the European Union of securities or partnership interests of specialised investment funds subject to this Part as well as the management of these specialised investment funds in the European Union on a cross-border basis are governed by the provisions of Chapter 6 of the Law of 12 July 2013 relating to alternative investment fund managers in the case of specialised investment funds managed by an AIFM established in Luxembourg, or by the provisions of Chapters VI and VII of Directive 2011/61/EU, in the case of specialised investment funds managed by an AIFM established in another Member State or in a third country, subject to the application of Article 66, paragraph (3) of the aforementioned directive where the specialised investment fund is managed by an AIFM established in a third country.

Chapter 2. - Transitional provisions

Art. 87

(1) Without prejudice to the transitional provisions provided for in Article 58 of the Law of 12 July 2013 relating to alternative investment fund managers or, if it concerns an AIFM established in a third country, provided for in Article 45 of the Law of 12 July 2013 relating to alternative investment fund managers, specialised investment funds established before 22 July 2013, which are managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers or under Chapter II of Directive 2011/61/EU will have until 22 July 2014 to comply with the provisions of this Part.

(2) Without prejudice to the transitional provisions provided for in Article 58 of the Law of 12 July 2013 relating to alternative investment fund managers or, if it concerns an AIFM established in a third country, provided for in Article 45 of the Law of 12 July 2013 relating to alternative investment fund managers, specialised investment funds established between 22 July 2013 and 22 July 2014, which are managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers or under Chapter II of Directive 2011/61/EU shall qualify as AIFs within the meaning of the Law of 12 July 2013 relating to alternative investment fund managers from the date they are established. These specialised investment funds must comply with the provisions of Part II of this Law from the date they are established. By way of derogation from this principle, specialised investment funds established between 22 July 2013 and 22 July 2014, with an external AIFM which exercises the activities of AIFM before 22 July 2013, will have until 22 July 2014 at the latest to comply with the provisions of Part II of this Law.

(3) All specialised investment funds established after 22 July 2014, which are managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers or under Chapter II of Directive 2011/61/EU shall be, subject to the transitional provisions provided for in Article 45 of the Law of 12 July 2013 applicable to AIFMs established in a third country, *ipso jure* governed by Part II of this Law. These specialised investment funds which are managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers or under Chapter II of Directive 2011/61/EU or, where applicable, their AIFM, shall be *ipso jure* subject to the provisions of the Law of 12 July 2013 relating to alternative investment fund managers.

(4) Specialised investment funds established before 22 July 2013, managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers or under Chapter II of Directive 2011/61/EU, which qualify as AIFs of the closed-ended type within the meaning of the Law of 12 July 2013 relating to alternative investment fund managers and which do not make any additional investments after such date, do not need to comply with the provisions of this Part.

(5) Specialised investment funds managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers or under Chapter II of Directive 2011/61/EU, which qualify as AIFs of the closed-ended type within the meaning of the Law of 12 July 2013 relating to alternative investment fund managers whose subscription period for investors has closed prior to 22 July 2011 and which are established for a period of time expiring at the latest three years after 22 July 2013, do not need to comply with the provisions of the Law of 12 July 2013 relating to alternative investment fund managers, except for Article 20 and, where applicable, Articles 24 to 28 of the Law of 12 July 2013 relating to alternative investment fund managers, nor do they need to submit an application for authorisation under the Law of 12 July 2013 relating to alternative investment fund managers.

ANNEX

Information to be included in the annual report

I. Statement of assets and liabilities

- investments,
- bank balances,
- other assets,
- total assets,
- liabilities,
- net asset value

II. Number of units in circulation

III. Net asset value per unit

IV. Qualitative and/or quantitative information on the investment portfolio enabling investors to make an informed judgment on the development of the activities and the results of the specialised investment fund

V. Statement of the developments concerning the assets of the specialised investment fund during the reference period including the following:

- income from investments,
- other income,
- management charges,
- depositary's charges,
- other charges and taxes,
- net income,
- distributions and income reinvested,
- increase or decrease of capital accounts,
- appreciation or depreciation of investments,
- any other changes affecting the assets and liabilities of the specialised investment fund

VI. A comparative table covering the three financial years and including, for each financial year, at the end of the financial year:

- the total net asset value,
- the net asset value per unit.

5.

AMENDED LAW OF 15 JUNE 2004 RELATING TO THE INVESTMENT COMPANY IN RISK CAPITAL ("SICAR")

CONSOLIDATED VERSION AS OF 1 JUNE 2016

AMENDED LAW OF 15 JUNE 2004 RELATING TO THE INVESTMENT COMPANY IN RISK CAPITAL ("SICAR")

PART I - GENERAL PROVISIONS APPLICABLE TO INVESTMENT COMPANIES IN RISK CAPITAL

Chapter 1: General provisions

Art. 1

(1) For the purpose of this Law, an investment company in risk capital[1], in abbreviation "SICAR", shall be any company:

- that has adopted the legal form of a common limited partnership[2], a special limited partnership[3], a partnership limited by shares[4], a cooperative in the form of a public limited company[5], a limited company[6] or a public limited company[7] governed by Luxembourg law, and
- whose object is to invest its assets in securities representing risk capital in order to ensure for its investors the benefit of the result of the management of its assets in consideration for the risk which they incur, and
- the securities or partnership interests of which are reserved to well-informed investors as defined in Article 2 of this Law, and
- the articles of incorporation or the partnership agreement of which provide that it is subject to the provisions of this Law.

(2) Investment in risk capital means the direct or indirect contribution of assets to entities in view of their launch, development or listing on a stock exchange.

(3) The registered office and the head office of a Luxembourg SICAR must be situated in Luxembourg.

Art. 2

Within the meaning of this Law, a well-informed investor shall be an institutional investor, a professional investor or any other investor who meets the following conditions:

1) he has confirmed in writing that he adheres to the status of well-informed investor and

2) he invests a minimum of 125,000 euros in the company, or

3) he has been subject to an assessment made by a credit institution within the meaning of Directive 2006/48/EC, by an investment firm within the meaning of Directive 2004/39/EC or by a management company within the meaning of Directive 2009/65/EC certifying his expertise, his experience and his knowledge in adequately appraising an investment in risk capital.

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1 *société d'investissement en capital à risque*
2 *société en commandite simple*
3 *société en commandite spéciale*
4 *société en commandite par actions*
5 *société coopérative organisée sous forme de société anonyme*
6 *société à responsabilité limitée*
7 *société anonyme*

The conditions set forth in this Article do not apply to directors[8] and other persons taking part in the management of the SICAR.

Art. 2*bis*

The provisions of this Part shall apply to all SICARs, unless the specific provisions contained in Part II of this Law applicable to SICARs managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers or under Chapter II of Directive 2011/61/EU derogate therefrom.

Art. 3

(1) SICARs shall be subject to the general provisions applicable to commercial companies, insofar as this Law does not derogate therefrom.

When the articles of incorporation or the partnership agreement of a SICAR and any amendment thereto are recorded in a notarial deed, the latter is drawn up in French, German or English as the appearing parties may decide. By derogation from the provisions of the Decree of 24 Prairial, year XI, where this deed is in English, the requirement to attach a translation in an official language to this deed, when it is filed with the registration authorities, does not apply. This requirement does not apply either to all other deeds which must be recorded in notarial form, such as notarial deeds recording the minutes of meetings of shareholders or partners of a SICAR or of a merger proposal concerning a SICAR.

The place and the practical arrangements of a SICAR for providing the annual accounts as well as the report of the approved statutory auditor, the management report and, where applicable, the comments made by the supervisory board as well as any other information to be made available to investors are determined in the articles of incorporation or the partnership agreement of the SICAR or, failing this, in the convening notice to the annual general meeting. Each investor may request that these documents are sent to him.

The convening notices to general meetings of investors of a SICAR may provide that the quorum at the general meeting shall be determined according to the securities or partnership interests issued at midnight (Luxembourg time) on the fifth day prior to the general meeting (referred to as "Record Date"). The rights of investors to attend a general meeting and to exercise the voting right attaching to their securities or partnership interests are determined in accordance with the securities or partnership interests held by each investor at the Record Date.

(2) SICARs may include multiple compartments, each compartment corresponding to a distinct part of the SICAR's assets and liabilities.

(3) The constitutional documents of the SICAR must expressly provide for that possibility and the applicable operational rules. The prospectus must describe the investment policy of each compartment.

(4) The securities or partnership interests of SICARs with multiple compartments may be of different value with or without indication of a par value.

(5) The rights of investors and of creditors concerning a compartment or which have arisen in connection with the creation, operation or liquidation of a compartment are limited to the assets of that compartment unless a clause included in the constitutional documents provides otherwise.

[8] *dirigeants*

The assets of a compartment are exclusively available to satisfy the rights of investors in relation to that compartment and the rights of creditors whose claims have arisen in connection with the creation, the operation or the liquidation of that compartment unless a clause included in the constitutional documents provides otherwise.

For the purpose of the relations between investors, each compartment will be deemed to be a separate entity, unless a clause included in the constitutional documents provides differently.

(6) Each compartment of a SICAR may be separately liquidated without such separate liquidation resulting in the liquidation of another compartment. Only the liquidation of the last remaining compartment of a SICAR will result in the liquidation of the company as referred to in paragraph (1) of Article 21 of this Law.

Art. 4

(1) The subscribed capital of the SICAR, increased, where applicable, by the share premiums or the value of the amount constituting partnership interests, shall not be less than one million euros. This minimum must be reached within a period of twelve months following the authorisation of the company. A Grand-Ducal Regulation may increase this minimum amount up to a maximum of two million euros.

(2) Partnerships limited by shares, limited companies, public limited companies and cooperatives in the form of a public limited company covered by this Law may foresee in their articles of incorporation that the share capital amount is always equal to the total net assets. In such case, variations in the capital shall be effected ipso jure and without compliance with measures regarding publication and entry in the register of commerce and companies.

(…)[9]

Art. 5

(1) The SICAR can issue new securities or partnership interests in accordance with the conditions and procedures set forth in the articles of incorporation or the partnership agreement.

(2) The share capital of a partnership limited by shares, a public limited company, a limited company and a cooperative in the form of a public limited company, subject to this Law, must be entirely subscribed, and at least 5% of each share must be paid-up in cash or by means of a contribution other than cash.

(3) The valuation of the assets of the company is based on the fair value. Such value must be determined in accordance with the rules set forth in the articles of incorporation or the partnership agreement.

Art. 6

(1) SICARs shall not be obliged to create a legal reserve.

(2) Repayments and distribution of dividends to investors are not subject to any restrictions other than those set forth in the articles of incorporation or the partnership agreement.

(3) SICARs are not subject to any rules in respect of payment of interim dividends other than those set forth in their articles of incorporation or the partnership agreement.

[9] Repealed by the Law of 12 July 2013.

Art. 7

For companies falling within the scope of this Law, the denomination or the firm name of the company whether or not followed by the words "common limited partnership", "special limited partnership", "partnership limited by shares", "limited company", "public limited company" or "cooperative in the form of a public limited company" shall be supplemented by the words "investment company in risk capital", in abbreviated form: "SICAR".

Art. 7*bis*

(1) SICARs must be structured and organised in such a way so as to minimise the risk of investors' interests being prejudiced by conflicts of interest between the SICAR and, as the case may be, any person contributing to the activities of the SICAR or any person linked directly or indirectly to the SICAR. In case of potential conflicts of interest, the SICAR shall ensure that the interests of investors are safeguarded.

(2) The implementing measures of paragraph (1) are laid down by way of regulation to be adopted by the CSSF.

Chapter 2: The depositary

Art. 8

(1) The assets of a SICAR must be entrusted to a depositary for safe-keeping.

(2) The depositary must either have its registered office in Luxembourg or be established there if its registered office is located abroad.

(3) Without prejudice to the provision laid down in the second sub-paragraph of this paragraph, the depositary must be a credit institution or an investment firm within the meaning of the amended Law of 5 April 1993 on the financial sector. An investment firm shall only be eligible as depositary to the extent that this investment firm also fulfils the conditions referred to in Article 19 (3) of the Law of 12 July 2013 relating to alternative investment fund managers.

For SICARs which have no redemption rights exercisable during a period of five years from the date of the initial investments and that, in accordance with their core investment policy, generally do not invest in assets that must be held in custody in accordance with paragraph (8), point a) of Article 19 of the Law of 12 July 2013 relating to alternative investment fund managers or generally invest in issuers or non-listed companies in order to potentially acquire control over such companies in accordance with Article 24 of the aforementioned law, the depositary may also be an entity governed by Luxembourg law that has the status of a professional depositary of assets other than financial instruments within the meaning of Article 26-1 of the amended Law of 5 April 1993 on the financial sector.

(4) The depositary's liability shall not be affected by the fact that it has entrusted to a third party all or some of the assets in its safe-keeping.

Art. 9

(1) In carrying out its duties, the depositary must act independently and solely in the interest of the investors.

(2) The depositary shall be liable in accordance with Luxembourg law to the company and to investors for any loss suffered by them as a result of its failure to perform its obligations or its improper performance thereof.

(3) The liability to investors shall be invoked through the SICAR. Should the company fail to act despite a written notice to that effect from an investor within a period of three months following receipt of such a notice, the investor may directly invoke the liability of the depositary.

Art. 10

The duties of the depositary regarding the SICAR shall cease, respectively:

a) in the case of voluntary withdrawal of the depositary or of its removal by the company; until it is replaced, which must happen within two months, the depositary shall take all necessary steps for the good preservation of the interests of the investors;

b) where the SICAR or the depositary has been declared bankrupt, has entered into a composition with creditors, has obtained a suspension of payment, has been put under court-controlled management or has been the subject of similar proceedings or has been put into liquidation;

c) where the supervisory authority withdraws its authorisation of the SICAR or the depositary;

d) in all other cases provided for in the articles of incorporation or partnership agreement.

Chapter 3: Authorisation and supervision

Art. 11

(1) The authority which is to carry out the supervision of SICARs is the *Commission de Surveillance du Secteur Financier*, hereafter the "CSSF".

(2) The CSSF carries out its duties exclusively in the public interest.

(3) The CSSF ensures that SICARs and their directors[10] comply with the applicable legal and contractual rules.

Art. 12

(1) SICARs subject to this Law must, in order to carry out their activities, be authorised by the CSSF.

(2) A SICAR shall be authorised only if the CSSF has approved its constitutional documents and the choice of the depositary.

(3) The directors of the SICAR and of the depositary must be of sufficiently good repute and have sufficient experience for performing their functions. To that end, their identity must be notified to the CSSF. "Directors" shall mean, in the case of partnerships limited by shares, the managing general partner(s), in the case of common limited partnerships and special limited partnerships, the manager(s) whether or not it(they) is(are) general partner(s) and in the case of public limited companies and limited companies, the members of the board of directors and the manager(s), respectively.

(4) The replacement of the depositary or of a director and the amendment of the constitutional documents of the SICAR are subject to the approval by the CSSF.

(5) The authorisation is subject to justifying that the head office of the SICAR is situated in Luxembourg.

Art. 13

(1) Authorised SICARs shall be entered by the CSSF on a list. This entry shall be tantamount to authorisation and shall be notified by the CSSF to the SICAR concerned. Applications for entry must be filed with the CSSF within the month following the constitution or formation of the

[10] *dirigeants*

SICAR. The said list and any amendments made thereto shall be published in the Mémorial[11] by the CSSF.

(2) The entering and the maintaining on the list referred to in paragraph (1) shall be subject to observance of all legislative, regulatory or contractual provisions relating to the organisation and operation of the SICARs.

(3) (…)[12]

Art. 14

The fact that a SICAR has been entered on the list referred to in Article 13(1) shall not, under any circumstances, be described in any way whatsoever as a positive assessment made by the CSSF of the expedience, or of the economic, financial or legal structure, of an investment in the SICAR, of the quality of the securities or partnership interests or of the solvency of the SICAR.

Art. 15

(1) Any person who works or who has worked for the CSSF, as well as the approved statutory auditors[13] or experts instructed by the CSSF, shall be bound by the obligation of professional secrecy provided for by Article 16 of the amended Law of 23 December 1998 creating a commission for the supervision of the financial sector. Such secrecy implies that no confidential information which they may receive in the course of their professional duties may be divulged to any person or authority whatsoever, save in summary or aggregate form such that SICARs and depositaries cannot be individually identified, without prejudice to cases covered by criminal law.

(2) Paragraph (1) shall not prevent the CSSF from exchanging information with the supervisory authorities of the other Member States of the European Union within the limits provided by this Law.

The CSSF shall closely cooperate with the supervisory authorities of other Member States of the European Union for the purpose of the fulfilment of their duty of supervision of SICARs and other investment companies in risk capital and shall communicate for that sole purpose all required information.

The supervisory authorities of countries other than Member States of the European Union which are party to the Agreement on the European Economic Area are assimilated to the supervisory authorities of the Member States of the European Union within the limits provided by that Agreement and the instruments relating thereto.

(3) Paragraph (1) shall not prevent the CSSF from exchanging information with:

- authorities of third countries with public responsibilities for the supervision of investment companies in risk capital;
- the other authorities, bodies and persons referred to in paragraph (5), with the exception of central credit registers, when they are established in third countries;
- the authorities of third countries referred to in paragraph (6).

[11] The *Mémorial B, Recueil Administratif et Economique* is the part of the Luxembourg official gazette in which certain administrative publications are made.
[12] Repealed by the Law of 10 July 2005.
[13] *réviseurs d'entreprises agréés*

The communication of information by the CSSF authorised by this paragraph is subject to the following conditions:

- the transmitted information must be required for the purpose of performing the supervisory duty of the recipient authorities, bodies and persons;

- information received shall be subject to the professional secrecy of the recipient authorities, bodies or persons and the professional secrecy of such authorities, bodies or persons must offer guarantees at least equivalent to the professional secrecy of the CSSF;

- the authorities, bodies or persons which receive information from the CSSF may only use such information for the purposes for which it has been communicated to them and must be able to ensure that no other use can be made therewith;

- the authorities, bodies or persons which receive information from the CSSF grant the same right of information to the CSSF;

- the CSSF may only disclose information received from EU authorities responsible for the prudential supervision of investment companies in risk capital with the express agreement of such authorities and, where appropriate, solely for the purposes for which those authorities gave their agreement.

For the purpose of this paragraph third countries are countries other than those referred to in paragraph (2).

(4) Where the CSSF receives confidential information under paragraphs (2) and (3), the CSSF may use it only in the course of its duties:

- to check that the conditions governing the taking-up of the business of SICARs and depositaries are met and to facilitate the monitoring of the conduct of that business, of administrative and accounting procedures and of internal control mechanisms; or

- to impose sanctions; or

- in an administrative appeal against decisions taken by the CSSF; or

- in court proceedings initiated against decisions refusing or withdrawing an authorisation.

(5) Paragraphs (1) to (4) shall not preclude:

a) the exchange of information within the European Union between the CSSF and:

- authorities with public responsibility for the supervision of credit institutions, investment firms, insurance undertakings and other financial organisations and the authorities responsible for the supervision of financial markets;

- bodies involved in the liquidation, bankruptcy or other similar proceedings concerning investment companies in risk capital and depositaries;

- persons responsible for carrying out statutory audits of the accounts of credit institutions, investment firms, other financial institutions or insurance undertakings, in the performance of their functions.

b) the disclosure by the CSSF within the European Union to bodies, which administer investor compensation schemes or central credit registers, of information necessary for the performance of their functions.

The communication of information by the CSSF authorised by this paragraph is subject to the condition that such information is covered by the professional secrecy of the authorities, bodies or persons receiving the information and is only authorised to the extent the professional secrecy of such authorities, bodies or persons offers guarantees at least equivalent to the professional secrecy of the CSSF. In particular, authorities which receive information from the CSSF may only use such information for the purposes for which it has been communicated and must be able to ensure that no other use can be made therewith.

Countries other than Member States of the European Union which are party to the Agreement on the European Economic Area are assimilated to the Member States of the European Union within the limits provided by that Agreement and the instruments relating thereto.

(6) Paragraphs (1) and (4) do not prevent exchanges of information within the European Union between the CSSF and:

- the authorities responsible for overseeing the bodies involved in the liquidation, bankruptcy or other similar proceedings concerning credit institutions, investment firms, insurance undertakings, investment companies in risk capital and depositaries;

- the authorities responsible for overseeing persons entrusted with the carrying out of statutory audits of the accounts of credit institutions, investment firms, insurance undertakings and other financial institutions.

The communication of information by the CSSF authorised by this paragraph is subject to the following conditions:

- the transmitted information is intended to be used for the purpose of performing the supervisory duty of the authorities which receive the information;

- information received shall be subject to the professional secrecy of the authorities which receive the information and the professional secrecy of such authorities must offer guarantees at least equivalent to the professional secrecy of the CSSF;

- the authorities which receive information from the CSSF may only use such information for the purposes for which it has been communicated to them and must be able to ensure that no other use can be made therewith;

- the CSSF may only disclose information received from supervisory authorities referred to in paragraphs (2) and (3) with the express agreement of such authorities and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Countries other than Member States of the European Union which are party to the Agreement on the European Economic Area are assimilated to the Member States of the European Union within the limits provided by that Agreement and the instruments relating thereto.

(7) This Article shall not prevent the CSSF from transmitting to central banks and other bodies with a similar function in their capacity as monetary authorities information intended for the performance of their duties.

The communication of information by the CSSF authorised by this paragraph is subject to the condition that such information is covered by the professional secrecy of the authorities which receive the information and is only authorised to the extent the professional secrecy of such authorities offers guarantees at least equivalent to the professional secrecy of the CSSF. In particular, authorities which receive information from the CSSF may only use such information for the purposes for which it has been communicated and must be able to ensure that no other use can be made therewith.

This Article shall furthermore not prevent the authorities or bodies referred to in this paragraph from communicating to the CSSF such information as it may need for the purposes of paragraph (4). Information received by the CSSF shall be subject to its professional secrecy.

(8) This Article shall not prevent the CSSF from communicating the information referred to in paragraphs (1) to (4) to a clearing house or other similar body recognised under the law for the provision of clearing or contractual settlement services on one of the Luxembourg markets, if the CSSF considers it is necessary to communicate such information in order to ensure the proper functioning of those bodies in relation to defaults or potential defaults by a market participant.

The communication of information by the CSSF authorised by this paragraph is subject to the condition that such information is covered by the professional secrecy of the recipient bodies, and is only authorised to the extent the professional secrecy of such bodies offers guarantees at least equivalent to the professional secrecy of the CSSF. In particular, bodies which receive information from the CSSF may only use such information for the purposes for which it has been communicated and must be able to ensure that no other use can be made therewith.

The information received by the CSSF pursuant to paragraphs (2) and (3) may not be disclosed in the circumstances referred to in this paragraph without the express agreement of the supervisory authorities which have disclosed such information to the CSSF.

Art. 16

(1) The decisions to be adopted by the CSSF in implementation of this Law shall state in writing the reasons on which they are based and, unless the delay entails risks, they shall be adopted after preparatory proceedings at which all parties are able to state their case[14]. They shall be notified by registered letter or delivered by bailiff[15].

(2) The decisions by the CSSF concerning the granting, refusal or withdrawal of the authorisations provided for in this Law as well as the decisions of the CSSF concerning the administrative fines imposed in accordance with Article 17 of this Law may be referred to the administrative court which will deal with the substance of the case. The appeal must be filed within one month from the notification of the contested decision, or else shall be time-barred.

Art. 17

(1) The directors of SICARs, as well as the liquidators in the case of voluntary liquidation of a SICAR, may have imposed upon them by the said authority a fine of fifteen to five hundred euros in the event of their refusing to provide the financial reports and the requested information or where such documents prove to be incomplete, inaccurate or false, and in the event of any infringement of Article 23 of this Law or in the event of any other serious irregularity being discovered.

(2) The same fine may be imposed upon any person who infringes the provisions of Article 14.

Chapter 4: Dissolution and liquidation

Art. 18

The decision of the CSSF to withdraw a SICAR from the list provided for in Article 13 shall, as from the notification thereof to such company and at its expense, until the day the decision has become final, ipso jure entail for such company suspension of any payment by said company and prohibition, on penalty of nullity for such company to take any measures other than protective measures, except when taken with the authorisation of the supervisory commissioner[16]. The CSSF shall *ipso jure* hold

[14] *instruction contradictoire*
[15] *huissier*
[16] *commissaire de surveillance*

the office of supervisory commissioner, unless at its request, the District Court dealing with commercial matters appoints one or more supervisory commissioners. The appeal, stating the reasons on which it is based and accompanied by supporting documents, shall be lodged for that purpose at the Registry of the District Court[17] in the district within which the undertaking has its registered office.

The Court shall give its ruling within a short period of time.

If it considers that it has sufficient information, it shall immediately make an order in public session, without hearing the parties. If it deems necessary, it shall convene the parties by notification from the Registrar at the latest within three days from lodging the appeal. It shall hear the parties in chambers and give its decision in public session.

The written authorisation of the supervisory commissioners is required for all actions and decisions of the SICAR and, failing such authorisation, they shall be void.

The Court may, however, limit the scope of operations subject to authorisation.

The commissioners may submit for consideration to the relevant bodies of the SICAR any proposals which they consider appropriate. They may attend proceedings of the administrative, management, executive or supervisory bodies of the SICAR.

The Court shall decide as to the expenses and fees of the supervisory commissioners; it may grant them advances.

The judgement provided for in paragraph (1) of Article 19 of this Law shall terminate the functions of the supervisory commissioner who must, within one month after his replacement, submit to the liquidators appointed in such judgement a report on the use of the SICAR's assets together with the accounts and supporting documents.

If the withdrawal decision is amended on appeal in accordance with paragraphs (2) and (3) above, the supervisory commissioner shall be deemed to have resigned.

Art. 19

(1) The District Court[18] dealing with commercial matters shall, at the request of the Public Prosecutor, acting on its own initiative or at the request of the CSSF, pronounce the dissolution and order the liquidation of the SICARs, whose entry on the list provided for in Article 13, paragraph (1) has definitively been refused or withdrawn.

When ordering the liquidation, the Court shall appoint a reporting judge[19] and one or more liquidators. It shall determine the method of liquidation. It may render applicable to such extent as it may determine the rules governing the liquidation. The method of liquidation may be changed by subsequent decision, either of the Court's own motion or at the request of the liquidator(s).

The Court shall decide as to the expenses and fees of the liquidators; it may grant advances to them. The judgment pronouncing dissolution and ordering liquidation shall be enforceable on a provisional basis.

(2) The liquidator(s) may bring and defend all actions on behalf of the SICAR, receive all payments, grant releases with or without discharge, realise all the transferable securities of the SICAR and reemploy the proceeds therefrom, issue or endorse any negotiable instruments, compound or compromise any dispute. They may alienate immovable property of the SICAR by public auction.

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17 *greffe du tribunal*
18 *tribunal d'arrondissement*
19 *juge-commissaire*

They may also but only with the authorisation of the Court, mortgage and pledge its assets and alienate its immovable property by private treaty.

(3) As from the day of the judgment, no legal actions relating to movable or immovable property or any enforcement procedures relating to movable or immovable property may be pursued, commenced or exercised otherwise than against the liquidators.

The judgment ordering the liquidation shall terminate all seizures effected at the instance of general creditors who are not secured by charges[20] on movable and immovable property.

(4) After payment or payment into court of the sums necessary for the discharge of the debts, the liquidators shall distribute to investors the sums or amounts due to them.

(5) The liquidators may convene at their own initiative, and must convene at the request of investors representing at least one fourth of the assets of the SICAR, a general meeting of investors for the purpose of deciding whether instead of an outright liquidation it is appropriate to contribute the assets of the SICAR in liquidation to another SICAR. That decision shall be taken, provided that the general meeting is composed of a number of investors representing at least one half of the value of the amount constituting partnership interests or capital, by a majority of two thirds of the votes of the investors present or represented.

(6) The Court's decisions pronouncing the dissolution and ordering the liquidation of a SICAR shall be published in the *Recueil électronique des sociétés et associations*[21] and in two newspapers with adequate circulation specified by the Court, at least one of which must be a Luxembourg newspaper. The liquidator(s) shall arrange for such publications.

(7) If there are no or insufficient assets, as ascertained by the reporting judge, the documents relating to the proceedings shall be exempt from any registry and registration duties and the expenses and fees of the liquidators shall be borne by the Treasury and paid as judicial costs.

(8) The liquidators shall be liable both to third parties and to the SICAR for the discharge of their duties and for any faults committed in the conduct of their activities.

(9) When the liquidation is completed, the liquidators shall report to the Court on the use made of the assets of the SICAR and shall submit the accounts and supporting documents thereof. The Court shall appoint auditors[22] to examine the documents.

After receipt of the auditors' report, a ruling shall be given on the management of the liquidators and the closure of the liquidation.

The closure of the liquidation shall be published in accordance with paragraph (6) above.

Such publication shall also indicate:

- the place designated by the Court where the books and records must be kept for at least five years;

- the measures taken in accordance with Article 22 with a view to the payment into court[23] of the sums and funds due to creditors or to investors to whom it has not been possible to deliver the same.

(10) Any legal actions against the liquidators of SICARs, in their capacity as such, shall be prescribed five years after publication of the closure of the liquidation provided for in paragraph (9).

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[20] *créanciers chirographaires et non privilégiés*

[21] The *Recueil électronique des sociétés et associations* is the central electronic platform of official publication.

[22] *commissaires*

[23] *consignation*

Legal actions against the liquidators in connection with the performance of their duties shall be prescribed five years after the date of the facts or, in the event of concealment thereof by wilful misconduct, five years after the discovery thereof.

(11) The provisions of this Article shall equally apply to the SICARs which have not applied to be entered on the list provided for in Article 13 within the time limit laid down therein.

Art. 20

(1) After their dissolution, SICARs shall be deemed to exist for the purpose of their liquidation. In the case of a non-judicial liquidation, they shall remain subject to the supervision of the CSSF.

(2) All documents issued by a SICAR in liquidation shall indicate that it is in liquidation.

Art. 21

(1) In the event of a non-judicial liquidation of a SICAR, the liquidator(s) must be approved by the CSSF. The liquidator(s) must provide all guarantees of good repute and professional skill.

(2) Where a liquidator does not accept office or is not approved, the District Court dealing with commercial matters shall, at the request of any interested party or of the CSSF, appoint the liquidator(s). The judgment appointing the liquidator(s) shall be provisionally enforceable, on the production of the original thereof and before registration, notwithstanding any appeal or objection.

Art. 22

In the event of a voluntary or compulsory liquidation of a SICAR within the meaning of this Law, the sums and assets payable in respect of securities or partnership interests whose holders failed to present themselves at the time of the closure of the liquidation, shall be paid to the public trust office[24] to be held for the benefit of the persons entitled thereto.

Chapter 5: Publication of a prospectus and an annual report

Art. 23

(1) The SICAR shall draw up a prospectus and an annual report for each financial year.

(2) The annual reports together with the report of the statutory auditor[25] shall be made available to the investors within 6 months from the end of the period these reports refer to.

Art. 24

(1) The prospectus must include the information necessary for investors to be able to make an informed judgement on the investment proposed to them and the risks attached thereto.

(2) The annual report must include a balance sheet or a statement of assets and liabilities, an income and expenditure account for the financial year, a report on the activities of the past financial year, as well as any significant information enabling investors to make an informed judgment on the development of the activities and the results of the SICAR.

(3) Notwithstanding Article 309 of the amended Law of 10 August 1915 on commercial companies, the SICAR shall be exempt from the obligation to prepare consolidated accounts.

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[24] *Caisse de Consignation*
[25] *réviseur d'entreprises*

Art. 25

(1) The constitutional documents of the SICAR shall form an integral part of the prospectus and must be annexed thereto.

(2) However, the documents referred to in paragraph (1) need not be annexed to the prospectus, provided that the investor is informed that at his request, he will either be sent those documents or be apprised of the place where he may consult them.

Art. 26

The essential elements of the prospectus must be up to date when new securities or partnership interests are issued to new investors.

Art. 27

(1) The SICARs must have the accounting information provided in their annual report audited by an approved statutory auditor[26].

The report of the approved statutory auditor and its qualifications, if any, are set out in full in each annual report.

The approved statutory auditor must establish that he has appropriate professional experience.

(2) The approved statutory auditor shall be appointed and remunerated by the SICAR.

(3) The approved statutory auditor must report promptly to the CSSF any fact or decision of which he has become aware while carrying out the audit of the accounting information contained in the annual report of a SICAR or any other legal task concerning a SICAR, where such fact or decision is liable to:

- constitute a material breach of this Law or the regulations adopted for its execution, or
- affect the continuous functioning of the SICAR, or
- lead to a refusal to certify the accounts or to the expression of reservations thereon.

The approved statutory auditor shall likewise have a duty to promptly report to the CSSF, in the accomplishment of its duties referred to in the preceding sub-paragraph in respect of a SICAR, any fact or decisions concerning the SICAR and meeting the criteria referred to in the preceding sub-paragraph of which he has become aware while carrying out the audit of the accounting information contained in the annual report of another undertaking having close links resulting from a control relationship with the SICAR or while carrying out any other legal task concerning such other undertaking.

For the purposes of this Article, a close link resulting from a control relationship shall mean the link which exists between a parent undertaking and a subsidiary in the cases referred to in Article 77 of the amended Law of 17 June 1992 concerning the annual accounts and consolidated accounts of credit institutions, or as a result of a relationship of the same type between any individual or legal entity and an undertaking; any subsidiary undertaking of a subsidiary undertaking is also considered as a subsidiary of the parent undertaking which is at the head of those undertakings. A situation in which two or more individuals or legal persons are linked to one and the same person by a control relationship on a long term basis shall also be regarded as constituting a close link between such persons.

[26] *réviseur d'entreprises agréé*

If, in the discharge of his duties, the approved statutory auditor ascertains that the information provided to investors or to the CSSF in the reports or other documents of the SICAR does not truly describe the financial situation and the assets and liabilities of the SICAR, he shall be obliged to inform the CSSF forthwith.

The approved statutory auditor shall moreover be obliged to provide the CSSF with all information or certificates required by the latter on any matters of which the approved statutory auditor has or ought to have knowledge in connection with the discharge of his duties. The same applies if the approved statutory auditor ascertains that the assets of the SICAR are not or have not been invested according to the regulations set out by the law or the prospectus.

The disclosure in good faith to the CSSF by the approved statutory auditor of any fact or decision referred to in this paragraph shall not constitute a breach of professional secrecy or of any restriction on disclosure of information imposed by contract and shall not result in liability of any kind for the approved statutory auditor.

Each SICAR subject to the supervision of the CSSF whose accounts have to be audited by an approved statutory auditor, must communicate to the CSSF spontaneously the reports and written comments of the approved statutory auditor in the context of its audit of the annual accounting documents. The CSSF may regulate the scope of the mandate for the audit of annual accounting documents and the content of the reports and written comments of the approved statutory auditor referred to in the preceding sub-paragraph, without prejudice to the legal provisions governing the content of the independent auditor's[27] report.

The CSSF may request an approved statutory auditor to perform a control on one or several particular aspects of the activities and operations of a SICAR. This control is performed at the expense of the SICAR concerned.

(4) The CSSF shall refuse or withdraw the entry on the list of SICARs whose approved statutory auditor does not satisfy the conditions or does not discharge the obligations prescribed in this Article.

(5) The institution of supervisory auditors[28] provided for by Articles 61, 109, 114 and 200 of the amended Law of 10 August 1915 on commercial companies, is repealed with respect to Luxembourg SICARs. The directors are solely competent in all cases where the amended Law of 10 August 1915 on commercial companies provides for the joint action of the supervisory auditors and the directors.

The institution of auditors[29] provided for by Article 151 of the amended Law of 10 August 1915 on commercial companies is not applicable to SICARs. Upon completion of the liquidation, a report on the liquidation shall be drawn up by the approved statutory auditor. This report shall be tabled at the general meeting at which the liquidators report on the application of the corporate assets and submit the accounts and supporting documents. The same meeting shall resolve on the approval of the accounts of the liquidation, the discharge and the closure of the liquidation.

Art. 28

The SICAR must send its prospectus and any amendments thereto, as well as its annual reports, to the CSSF.

Art. 29

(1) The prospectus currently in force and the latest annual report must be offered free of charge to subscribers before the conclusion of the contract.

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27 *contrôleur légal des comptes*
28 *commissaires aux comptes*
29 *commissaires*

(2) The annual reports shall upon request be supplied free of charge to investors.

Chapter 6: Publication of other information

Art. 30

(…)[30]

Art. 31

Any invitation to purchase securities or partnership interests of a SICAR must indicate that a prospectus exists and the places where it may be obtained.

Chapter 7: Transmission of other information to the CSSF

Art. 32

The CSSF may request SICARs to provide any information relevant to the fulfilment of its duties and may, for that purpose, itself or through appointees, examine the books, accounts, registers or other records and documents of SICARs.

Chapter 8: Protection of name

Art. 33

(1) No SICAR shall make use of designations or of a description giving the impression that it is subject to this Law if it has not obtained the authorisation provided for in Article 12.

(2) The District Court dealing with commercial matters of the place where the SICAR is situated or of the place where the designation has been used, may at the request of the Public Prosecutor issue an injunction, prohibiting anyone from using the designation as defined in paragraph (1), if the conditions provided for by this Law are not or no longer met.

(3) The judgment or final court decision which delivers this injunction, is published by the Public Prosecutor and at the expense of the person sentenced in two Luxembourg or foreign newspapers with adequate circulation.

Chapter 9: Tax provisions

Art. 34

(1) The amended Law of 4 December 1967 on income tax is amended as follows:

a) Article 14, number 1, is completed by the following sentence: "The investment company in risk capital (SICAR) organised under the legal form of a common limited partnership shall however not be considered to be a commercial company;"

b) Number 3 of Article 147 is amended and completed as follows: "3. if the income is allocated by a Luxembourg holding company as defined by the Law of 31 July 1929 or by an undertaking for collective investment (UCI), including a Luxembourg investment company in risk capital (SICAR), without prejudice however to the taxation of the aforementioned income if received by residents."

c) Article 156, number 8, is completed by a point c) worded as follows: "c) However, the income resulting from the transfer of a participation in an investment company in risk capital (SICAR) is not covered by numbers 8a and 8b."

[30] Repealed by the Law of 24 October 2008.

d) Article 164*bis* is completed by the insertion, after indent 4, of a new indent 5 worded as follows: "(5) Investment companies in risk capital (SICAR) are excluded from the scope of this Article." The other indents are renumbered accordingly.

(2) Income resulting from securities as well as income resulting from the transfer, contribution or liquidation of these assets does not constitute taxable income of joint stock companies subject to this Law. Realised losses resulting from the transfer of transferable securities as well as unrealised losses accounted for upon the reduction of the value of these assets may not be deducted from the taxable income of the company.

(3) Income arising from funds held pending their investment in risk capital does not constitute taxable incomes for SICARs; this exemption is only applicable for a maximum period of twelve months preceding their investment in risk capital and where it can be established that the funds have effectively been invested in risk capital.

Art. 35

Number 5 of the first indent of paragraph 3 of the amended Law of 16 October 1934 on wealth tax is amended as follows:

"5. investment companies in risk capital (SICAR) organised under the form of a partnership limited by shares, a cooperative in the form of a public limited company, a limited company or a public limited company governed by Luxembourg law, except from the minimum wealth tax determined in accordance with the requirements of § 8, sub-paragraph 2."

Art. 36

The amended Law of 1 December 1936 on commercial communal tax is amended as follows:

a) Indent 2 of paragraph 2 is completed by the insertion of a number 4 worded as follows: "4. The provisions under number 3 are not applicable to investment companies in risk capital (SICAR) organised under the form of a common limited partnership."

b) Paragraph 9 is completed by a number 2b which states as follows: "2b. participating shares added pursuant to paragraph 8 number 4 to the operating profit of a partnership limited by shares, as long as they are included in the operating profit determined pursuant to paragraph 7."

Art. 37

(…)[31]

Art. 38

Paragraph 1, point d) of Article 44 of the amended Law of 12 February 1979 concerning value added tax is amended by adding the words ", comprising also SICAR" after the word "UCI".

Chapter 10: Criminal law provisions

Art. 39

A fine of five hundred to twenty-five thousand euros shall be imposed upon any person who in infringement of Article 33 purports to use a designation or description giving the impression that they relate to the activities subject to this Law if they have not obtained the authorisation provided for in Article 12.

[31] Repealed by the Law of 19 December 2008.

Art. 40

(…)[32]

Art. 41

A penalty of imprisonment of one month to one year and a fine of five hundred to twenty-five thousand euros or either of such penalties shall be imposed upon the founders or directors of a SICAR who have infringed the provisions of Articles 5(1) and 5(3) of this Law.

Art. 42

A penalty of imprisonment of three months to two years and a fine of five hundred to fifty thousand euros or either of such penalties shall be imposed on anyone who has carried out or caused to be carried out operations involving the receipt of savings from investors concerned if the SICAR for which they acted was not entered on the list provided for in Article 13.

Art. 43

A penalty of imprisonment of one month to one year and a fine of five hundred to twenty-five thousand euros or either of such penalties shall be imposed on the directors of SICARs who, notwithstanding the provisions of Article 18, have taken measures other than protective measures without being authorised for that purpose by the supervisory commissioner.

Chapter 11: Final provision

Art. 44

This Law may, in abbreviation, be referred to as the "Law of 15 June 2004 relating to the investment company in risk capital (SICAR)".

Chapter 12: Modifying provision

Art. 45

Paragraph 3 of Article 129 of the amended Law of 20 December 2002[33] relating to undertakings for collective investment is completed by a point c) worded as follows:

"c) UCIs whose securities are reserved for i) institutions for occupational retirement provision, or similar investment vehicles, created on the initiative of a same group for the benefit of its employees and ii) undertakings of this same group investing funds they hold, to provide retirement benefits to their employees."

PART II - SPECIFIC PROVISIONS APPLICABLE TO SICARS MANAGED BY AN AIFM AUTHORISED UNDER CHAPTER 2 OF THE LAW OF 12 JULY 2013 RELATING TO ALTERNATIVE INVESTMENT FUND MANAGERS OR UNDER CHAPTER II OF DIRECTIVE 2011/61/EU

Art. 46

This Part shall apply, by way of derogation from the general rules of Part I of this Law, to SICARs managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers or under Chapter II of Directive 2011/61/EU.

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[32] Repealed by the Law of 24 October 2008.

[33] The amended Law of 20 December 2002 relating to undertakings for collective investment has been repealed and replaced by the Law of 17 December 2010 relating to undertakings for collective investment.

Art. 47

(1) Any SICAR subject to this Part must be managed by an AIFM, which may either be an AIFM established in Luxembourg authorised under Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers, or an AIFM established in another Member State or in a third country authorised under Chapter II of Directive 2011/61/EU, subject to the application of paragraph (3) of Article 66 of the aforementioned directive where the SICAR is managed by an AIFM established in a third country.

(2) The AIFM must be determined in accordance with the provisions of Article 4 of the Law of 12 July 2013 relating to alternative investment fund managers or in accordance with the provisions of Article 5 of Directive 2011/61/EU.

The AIFM is:

a) either an external AIFM, which is the legal person appointed by the SICAR or on behalf of the SICAR and which, through this appointment, is responsible for managing this SICAR; in case of appointment of an external AIFM, the latter must be authorised in accordance with the provisions of Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers or in accordance with the provisions of Chapter II of Directive 2011/61/EU, respectively;

b) or where the governing body of the SICAR chooses not to appoint an external AIFM, the SICAR itself.

An internally managed SICAR within the meaning of this Article must, in addition to the authorisation required under Article 12 of this Law, be authorised as an AIFM under Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers. The relevant SICAR must ensure at all times compliance with all provisions of the aforementioned law, provided that such provisions are applicable to it.

Art. 48

(1) The assets of a SICAR subject to this Part must be entrusted to a depositary for safe-keeping appointed in accordance with the provisions of Article 19 of the Law of 12 July 2013 relating to alternative investment fund managers.

(2) The depositary must either have its registered office in Luxembourg or have a branch there if its registered office is in another Member State of the European Union.

(3) Without prejudice to the second sub-paragraph of this paragraph, the depositary must be a credit institution or an investment firm within the meaning of the amended Law of 5 April 1993 on the financial sector. An investment firm shall only be eligible as depositary to the extent that this investment firm also fulfils the conditions referred to in paragraph (3) of Article 19 of the Law of 12 July 2013 relating to alternative investment fund managers.

For SICARs which have no redemption rights exercisable during a period of five years from the date of the initial investments and which, in accordance with their core investment policy, generally do not invest in assets that must be held in custody in accordance with paragraph (8), point a) of Article 19 of the Law of 12 July 2013 relating to alternative investment fund managers or generally invest in issuers or non-listed companies in order to potentially acquire control over such companies in accordance with Article 24 of the aforementioned law, the depositary may also be an entity governed by Luxembourg law which has the status of a professional depositary of assets other than financial instruments within the meaning of Article 26-1 of the amended Law of 5 April 1993 on the financial sector.

(4) The depositary is required to provide the CSSF on request with all information that the depositary has obtained in the exercise of its duties and which is necessary to enable the CSSF to monitor compliance by the SICAR with this Law.

(5) The duties and responsibilities of the depositary are defined in accordance with the rules laid down in Article 19 of the Law of 12 July 2013 relating to altemative investment fund managers.

Art. 49

Without prejudice to the application of the provisions of paragraph (3) of Article 5 of this Law, the valuation of the assets of a SICAR subject to this Part is performed in accordance with the rules laid down in Article 17 of the Law of 12 July 2013 relating to alternative investment fund managers and in the delegated acts provided for in Directive 2011/61/EU.

Art. 50

By way of derogation from paragraph (2) of Article 24 of this Law, the content of the annual report of SICARs subject to this Part is governed by the rules laid down in Articles 20 and 26 of the Law of 12 July 2013 relating to alternative investment fund managers and in the delegated acts provided for under Directive 2011/61/EU.

Art. 51

In relation to the information to be provided to investors, SICARs subject to this Part shall comply with the rules laid down in Article 21 of the Law of 12 July 2013 relating to alternative investment fund managers and in the delegated acts provided for in Directive 2011/61/EU.

Art. 52

The CSSF may request SICARs subject to this Part to provide any information referred to in Article 24 of Directive 2011/61/EU.

Art. 53

The marketing by the AIFM in the European Union of securities or partnership interests of SICARs subject to this Part as well as the management of these SICARs in the European Union on a cross-border basis are governed by the provisions of Chapter 6 of the Law of 12 July 2013 relating to alternative investment fund managers in the case of SICARs managed by an AIFM established in Luxembourg or by the provisions of Chapters VI and VII of Directive 2011/61/EU, respectively in the case of SICARs managed by an AIFM established in another Member State or in a third country, subject to the application of paragraph (3) of Article 66 of the aforementioned directive where the SICAR is managed by an AIFM established in a third country.

PART III - TRANSITIONAL PROVISIONS

Art. 54

SICARs established before 22 July 2013 shall have until 22 July 2014 to comply with Article 7*bis* of this Law.

Art. 55

(1) Without prejudice to the transitional provisions provided for in Article 58 of the Law of 12 July 2013 relating to alternative investment fund managers or, if it concerns an AIFM established in a third country, provided for in Article 45 of the Law of 12 July 2013 relating to alternative investment fund managers, SICARs established before 22 July 2013, which are managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013relating to alternative investment fund managers or under Chapter II of Directive 2011/61/EU, must comply with the provisions of Part II of this Law from 22 July 2014 at the latest.

(2) Without prejudice to the transitional provisions provided for in Article 58 of the Law of 12 July 2013 relating to alternative investment fund managers or, if it concerns an AIFM established in a third country, provided for in Article 45 of the Law of 12 July 2013 relating to alternative investment fund managers, SICARs established between 22 July 2013 and 22 July 2014,

which are managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers or under Chapter II of Directive 2011/61/EU, shall qualify as AIFs within the meaning of the Law of 12 July 2013 relating to alternative investment fund managers from the date they are established. These SICARs must comply with the provisions of Part II of this Law from the date they are established. By way of derogation from this principle, SICARs established between 22 July 2013 and 22 July 2014, with an external AIFM which exercises the activities of AIFM before 22 July 2013, must comply with the provisions of Part II of this Law from 22 July 2014 at the latest.

(3) All SICARs established after 22 July 2014, which are managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers or under Chapter II of Directive 2011/61/EU shall be, subject to the transitional provisions provided for in Article 45 of the Law of 12 July 2013 applicable to AIFMs established in a third country, ipso jure governed by Part II of this Law. These SICARs which are managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers or under Chapter II of Directive 2011/61/EU or, where applicable, their AIFM, shall be ipso jure subject to the provisions of the Law of 12 July 2013 relating to alternative investment fund managers.

(4) SICARs established before 22 July 2013, managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers or under Chapter II of Directive 2011/61/EU, which qualify as AIFs of the closed-ended type within the meaning of the Law of 12 July 2013 relating to alternative investment fund managers and which do not make any additional investments after such date, do not need to comply with the provisions deriving from Part II of this Law.

(5) SICARs managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers or under Chapter II of Directive 2011/61/EU, which qualify as AIFs of the closed-ended type within the meaning of the Law of 12 July 2013 relating to alternative investment fund managers whose subscription period for investors has closed prior to 22 July 2011 and which are established for a period of time expiring at the latest three years after 22 July 2013, do not need to comply with the provisions of the Law of 12 July 2013 relating to alternative investment fund managers, except for Article 20 and, where applicable, Articles 24 to 28 of the Law of 12 July 2013 relating to alternative investment fund managers, nor do they need to submit an application for authorisation under the Law of 12 July 2013 relating to alternative investment fund managers.

6.

EXTRACT OF THE GRAND-DUCAL REGULATION OF 28 OCTOBER 2013

RELATING TO FEES TO BE LEVIED BY THE CSSF

Extract of the Grand-Ducal Regulation of 28 October 2013 relating to fees to be levied by the CSSF

Art. 1. Lump-sum fees

The fees to be levied by the CSSF to cover the operating costs for the supervision of the financial sector and for the public oversight of the audit profession in execution of Article 24 of the Law of 23 December 1998 creating a commission for the supervision of the financial sector are fixed as follows:

[…]

C. Undertakings for collective investment.

1) A single lump sum for the examination of each authorisation request of a Luxembourg undertaking for collective investment as referred to in Part I (hereafter "UCITS") of the Law of 17 December 2010 relating to undertakings for collective investment (hereafter "Law of 17 December 2010") in accordance with the rates shown in the table in paragraph 2) below.

   For the purpose of application of this paragraph, a specific rate is provided for investment companies in transferable securities subject to Part I of the Law of 17 December 2010 which have not designated a management company subject to Chapter 15 of this law (hereafter "SIAG").

2) A single lump sum for the examination of each authorisation request of a Luxembourg undertaking for collective investment as referred to in Part II of the Law of 17 December 2010 (hereafter "UCI") and of a specialised investment fund as referred to in Part I and Part II, respectively (hereafter "SIF" and "SIF-AIF"), of the Law of 13 February 2007 relating to specialised investment funds (hereafter "Law of 13 February 2007") in accordance with the rates shown in the table below.

   For the purpose of application of this paragraph, a specific rate is provided for investment companies in transferable securities under the scope of Part II of the Law of 17 December 2010 (hereafter "internally managed UCI") and for SIFs under the scope of Part II of the Law of 13 February 2007 (hereafter internally managed "SIF-AIF") in relation to which the governing body has not appointed an external AIFM within the meaning of the Law of 12 July 2013 relating to alternative investment fund managers (hereafter "Law of 12 July 2013") and which request authorisation as AIFM under Chapter 2 of the Law of 12 July 2013:

	Examination charges
Stand-alone UCITS and UCI	3,500 euros
UCITS and UCI with multiple compartments	7,000 euros
Stand-alone SIAG or with multiple compartments	10,000 euros
Internally managed stand-alone UCI or internally managed UCI with multiple compartments	10,000 euros
Stand-alone SIF and SIF-AIF	3,500 euros
SIF and SIF-AIF with multiple compartments	7,000 euros
Internally managed stand-alone SIF-AIF or internally managed SIF-AIF with multiple compartments	10,000 euros

3) a single lump sum for each UCITS from an EU Member State marketing its units in Luxembourg when the CSSF receives from the competent authorities of the home Member State of the UCITS the documents referred to in Article 60 (1) of the Law of 17 December 2010, for the examination of each authorisation request of a foreign undertaking for collective investment as referred to in Article 100 (1) of the above law (hereafter "foreign UCI within the meaning of Article 100 (1)") as well as for the marketing in Luxembourg of each foreign alternative investment fund as referred to in Article 100 (2) of the same law (hereafter "foreign AIF within the meaning of Article 100 (2)") in accordance with the rates shown in the following table:

	Examination charges
Stand-alone UCITS from an EU Member State	2,650 euros
UCITS from an EU Member State with multiple compartments	5,000 euros
Stand-alone foreign UCI within the meaning of Article 100 (1)	2,650 euros
Foreign UCI with multiple compartments within the meaning of Article 100 (1)	5,000 euros
Stand-alone foreign AIF within the meaning of Article 100 (2)	2,650 euros
Foreign AIF with multiple compartments within the meaning of Article 100 (2)	5,000 euros

4) a single lump sum of 3,500 euros for each request for conversion of a stand-alone UCITS/UCI to a UCITS/UCI with multiple compartments;

5) a single lump sum of 3,500 euros for each request for conversion of a stand-alone SIF or SIF-AIF to a SIF or a SIF-AIF with multiple compartments;

6) a single lump sum for each request for conversion of a stand-alone UCI or SIF mentioned below under a) to e) and for which the CSSF has given its approval, in accordance with the following rates:

   a) 10,000 euros for each request for conversion of a UCI or SIF to a UCITS established in the form of a SIAG;

   b) 3,500 euros for each request for conversion of a UCI falling within the scope of Part II of the Law of 17 December 2010 (1) to a UCITS falling within the scope of Part I of the Law of 17 December 2010, other than a SIAG, or (2) to a SIF other than an internally managed SIF-AIF;

   c) 3,500 euros for each request for conversion of a SIF (1) to a UCITS falling within the scope of Part I of the Law of 17 December 2010, other than a SIAG, or (2) to a UCI falling within the scope of Part II of the Law of 17 December 2010 other than an internally managed UCI;

   d) 10,000 euros for each request for conversion of an existing UCI within the scope of Part II of the Law of 17 December 2010 (1) to an internally managed UCI or (2) to an internally managed SIF-AIF;

   e) 10,000 euros for each request for conversion of an existing SIF or a SIF-AIF within the scope of Part I or Part II of the Law of 13 February 2007 (1) to an internally managed SIF-AIF or (2) to an internally managed UCI;

7) a single lump sum for each request for conversion of a UCI with multiple compartments or a SIF with multiple compartments mentioned below in a) to e) and for which the CSSF has given its approval, in accordance with the following rates:

a) 10,000 euros for each request for conversion of a UCI or a SIF to a UCITS established in the form of a SIAG;

b) 7,000 euros for each request for conversion of a UCI falling within the scope of Part II of the Law of 17 December 2010 (1) to a UCITS falling within the scope of Part I of the Law of 17 December 2010, other than a SIAG, or (2) to a SIF other than an internally managed SIF-AIF;

c) 7,000 euros for each request for conversion of a SIF (1) to a UCITS falling within the scope of Part I of the Law of 17 December 2010, other than a SIAG, or (2) to a UCI falling within the scope of Part II of the Law of 17 December 2010 other than an internally managed UCI.

d) 10,000 euros for each request for conversion of an existing UCI within the scope of Part II of the Law of 17 December 2010 (1) to an internally managed UCI or (2) to an internally managed SIF-AIF;

e) 10,000 euros for each request for conversion of an existing SIF or a SIF-AIF within the scope of Part I or Part II of the Law of 13 February 2007 (1) to an internally managed SIF-AIF or (2) to an internally managed UCI.

8) an annual lump sum to be paid by each UCI and each SIF according to the rates shown in the following table:

	Annual lump sum
Stand-alone UCITS, UCI, SIF and SIF-AIF	3,000 euros
UCITS, UCI, SIF and SIF-AIF with multiple compartments	
1 to 5 compartments	6,000 euros
6 to 20 compartments	12,000 euros
21 to 50 compartments	20,000 euros
more than 50 compartments	30,000 euros

For UCITS, UCI, SIF and SIF-AIF with multiple compartments, the rates are fixed according to the number of compartments authorised by the CSSF listed in the prospectus as at 31 December prior to the billing year. For UCITS, UCI, SIF and SIF-AIF with multiple compartments which are authorised by the CSSF during the year, the rates are fixed according to the number of compartments at the time of inclusion on the official list;

9) an annual lump sum to be paid by each UCITS from an EU Member State, by each foreign UCI within the meaning of Article 100 (1) of the Law of 17 December 2010 and by each foreign AIF within the meaning of Article 100 (2) of the same law, in accordance with the rates shown in the following table:

	Annual lump sum
Stand-alone UCITS from an EU Member State	2,650 euros
UCITS from an EU Member State with multiple compartments	5,000 euros
Stand-alone foreign UCI within the meaning of Article 100 (1)	3,950 euros
Foreign UCI with multiple compartments within the meaning of Article 100 (1)	5,000 euros
Stand-alone foreign AIF within the meaning of Article 100 (2)	2,650 euros
Foreign AIF with multiple compartments within the meaning of Article 100 (2)	5,000 euros

10) the fee due under section M to be paid by foreign undertakings for collective investment of the closed-ended type for which the Grand Duchy of Luxembourg is the home Member State, for examination of each authorisation request and approval of their prospectus; not payable by Luxembourg closed-ended undertakings for collective investment or by Luxembourg SICARs;

11) an annual lump sum of 3,000 euros to be paid by each UCI in non-judicial liquidation and by each SIF in non-judicial liquidation. This lump sum is due for each financial year in which the non-judicial liquidation has not been closed, except the financial year during which the UCI and SIF were withdrawn from the official list.

D. Management companies and alternative investment fund managers.

I. Management companies

1) A single lump sum for the examination of each authorisation request of a new management company subject to the Law of 17 December 2010 depending on the chapter of the Law to which it is subject; a specific rate is provided for Chapter 15 management companies and for those subject to Chapter 16 of the Law of 17 December 2010 which, besides the authorisation required as a management company based on the chapter of the law to which they are subject, request authorisation as an AIFM based on Chapter 2 of the Law of 12 July 2013:

Chapter of the Law of 17 December 2010	Examination fee
Chapter 15 management company	10,000 euros
Chapter 15 management company and AIFM	10,000 euros
Chapter 16 management company (Article 125-1 of the Law of 17 December 2010)	5,000 euros
Chapter 16 management company (Article 125-2 of the Law of 17 December 2010)	10,000 euros
Chapter 17 management company	5,000 euros

2) a single lump sum of 7,500 euros for each request for conversion of a management company authorised pursuant to Article 125-1 of Chapter 16 of the Law of 17 December 2010 to a management company subject to Chapter 15 of the same law; the same single lump sum is due for each request for conversion of a management company authorised pursuant to Article 125-1 of Chapter 16 of the same law to a management company subject to Chapter 15 of the same law which is authorised as an AIFM pursuant to Chapter 2 of the Law of 12 July 2013;

3) a single lump sum of 2,500 euros for each request for conversion of a management company authorised pursuant to Article 125-2 of Chapter 16 of the Law of 17 December 2010 to a management company subject to Chapter 15 of the same law and authorised as AIFM pursuant to Chapter 2 of the Law of 12 July 2013;

4) a single lump sum of 2,500 euros for each request to extend the authorisation of an existing management company authorised pursuant to Chapter 15 of the Law of 17 December 2010 to the authorisation as an AIFM pursuant to Chapter 2 of the Law of 12 July 2013;

5) a single lump sum of 7,500 euros for each request to extend the authorisation of an existing management company authorised pursuant to Article 125-1 of Chapter 16 of the Law of 17 December 2010 to the authorisation as an AIFM pursuant to Chapter 2 of the Law of 12 July 2013 (management company referred to in Article 125-2 of the Law of 17 December 2010);

6) an annual lump sum to be paid by each management company subject to the Law of 17 December 2010 depending on the chapter of the Law to which it is subject; a specific rate is provided for management companies subject to Chapter 15 and for those subject to Chapter 16 of the Law of 17 December 2010 which, in addition, have been authorised as an AIFM based on the Chapter 2 of the Law of 12 July 2013:

Chapter of the Law of 17 December 2010	Annual lump sum
Chapter 15 management company	20,000 euros
Chapter 15 management company and AIFM	25,000 euros
Chapter 16 management company (Article 125-1 of the Law of 17 December 2010)	15,000 euros
Chapter 16 management company (Article 125-2 of the Law of 17 December 2010)	25,000 euros
Chapter 17 management company	15,000 euros

7) an additional annual lump sum of 2,000 euros to be paid by each management company subject to Chapter 15 of the Law of 17 December 2010 for each branch established abroad by any such company;

8) an additional annual lump sum of 2,000 euros to be paid by each management company subject to Chapter 16 of the Law of 17 December 2010 and authorised as an AIFM based on Chapter 2 of the Law of 12 July 2013 (management company referred to in Article 125-2 of the Law of 17 December 2010) for each branch established abroad under the said Law of 12 July 2013;

9) an annual lump sum of 5,000 euros to be paid by each foreign management company subject to Article 6 of Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 having opened a branch in Luxembourg.

II. Alternative investment fund managers

1) A single lump sum of 10,000 euros for the examination of each authorisation request of an AIFM under the Law of 12 July 2013;

2) a single lump sum of 5,000 euros for each application for registration of an AIFM under the Law of 12 July 2013, where it manages exclusively AIF that are not subject to authorisation and prudential supervision by an official supervisory authority in Luxembourg;

3) an annual lump sum of 25,000 euros to be paid by each AIFM authorised under the Law of 12 July 2013;

4) an additional annual lump sum of 5,000 euros to be paid by each AIFM under the Law of 12 July 2013 for each branch established abroad.

E. Investment companies in risk capital (SICAR).

1) A single lump sum of 3,500 euros for the examination of each authorisation request of a Luxembourg SICAR; this fee amounts to 7,000 euros in the case of an investment company in risk capital with multiple compartments; this fee amounts to 10,000 euros for SICAR-AIF within the scope of Part II of the Law of 15 June 2004 relating to the investment company in risk capital (SICAR) which have not appointed an external AIFM within the meaning of the Law of 12 July 2013 and which request authorisation as AIFM under Chapter 2 of the Law of 12 July 2013.

2) an annual lump sum of 3,000 euros to be paid by each Luxembourg SICAR; this fee amounts to 6,000 euros in the case of a SICAR with multiple compartments;

3) a single lump sum of 3,500 euros for each request for conversion of a SICAR to a SICAR with multiple compartments;

4) an annual lump sum of 3,000 euros to be paid by each SICAR in non-judicial liquidation. This lump sum is due for each financial year in which the non-judicial liquidation has not been closed, except the financial year during which the SICAR was withdrawn from the official list.

[…]

Art. 3. Collectability

(1) The fees referred to in Article 1 are fully payable upon first request. Non-payment may result in the imposition of administrative sanctions.

(2) The annual lump-sum fees referred to in Article 1 are due in full for a whole calendar year, even if the entity liable for payment was subject to the supervision of the CSSF for only part of the calendar year. […]

(3) The single lump-sum fees for examination of an application referred to in Article 1 are payable at the time the application is submitted. Without prejudice to the statutory deadlines prescribed for the examination of an application, the request will be dealt with only after the fee has been paid.

[…]

Art. 4. Entry into force and repealing provision

This regulation is applicable from the 1 November 2013. It repeals the Grand-Ducal Regulation of 29 September 2012 relating to fees to be levied by the Commission for the Supervision of the Financial Sector.

[…]

7.

GRAND-DUCAL REGULATION OF 27 FEBRUARY 2007

DETERMINING THE CONDITIONS AND CRITERIA FOR THE EXEMPTION FROM THE SUBSCRIPTION TAX REFERRED TO IN ARTICLE 68 OF THE LAW OF 13 FEBRUARY 2007 RELATING TO SPECIALISED INVESTMENT FUNDS

Grand-Ducal Regulation of 27 February 2007 determining the conditions and criteria for the exemption from the subscription tax referred to in Article 68 of the Law of 13 February 2007 relating to specialised investment funds

Art. 1.

"Money market instruments" within the meaning of the provisions of Article 68, paragraph (2), of the Law of 13 February 2007 relating to specialised investment funds, means all debt securities and instruments, irrespective of whether they are transferable securities or not, including bonds, certificates of deposits, deposit receipts and all other similar instruments, provided that, at the time of their acquisition by the relevant investment fund, their initial or residual maturity does not exceed twelve months, taking into account the financial instruments connected therewith, or the terms and conditions governing those securities provide that the interest rate applicable thereto is adjusted at least annually on the basis of market conditions.

Art. 2.

In order to obtain an exemption from the subscription tax[1] on the value of the assets represented by units of other undertakings for collective investment which are already subject to the subscription tax provided for by Article 129 of the Law of 20 December 2002, the specialised investment funds which hold such units must declare their value separately in the periodic declarations they file with the *Administration de l'Enregistrement et des Domaines*.

Art. 3.

Our Ministry of the Treasury and Budget[2] is responsible for the execution of the present regulation which will be published in the *Mémorial*.

1 *taxe d'abonnement*
2 *Ministère du Trésor et du Budget*

8.

GRAND-DUCAL REGULATION OF 14 APRIL 2003

DETERMINING THE CONDITIONS AND CRITERIA FOR THE APPLICATION OF THE SUBSCRIPTION TAX REFERRED TO IN ARTICLE 129 OF THE LAW OF 20 DECEMBER 2002 RELATING TO UNDERTAKINGS FOR COLLECTIVE INVESTMENT

Grand-Ducal Regulation of 14 April 2003 determining the conditions and criteria for the application of the subscription tax referred to in Article 129 of the Law of 20 December 2002 relating to undertakings for collective investment

Art. 1.

"Money market instruments" as referred to in the provisions of Article 129, paragraph (2), of the Law of 20 December 2002 relating to undertakings for collective investment, means any debt securities and instruments, irrespective of whether they are transferable securities or not, including bonds, certificates of deposits, deposit receipts and all other similar instruments, provided that, at the time of their acquisition by the relevant undertaking, their initial or residual maturity does not exceed twelve months, taking into account the financial instruments connected therewith, or the terms and conditions governing those securities provide that the interest rate applicable thereto is adjusted at least annually on the basis of market conditions.

Art. 2.

The *Commission de Surveillance du Secteur Financier* establishes a list of undertakings for collective investment governed by the Law of 20 December 2002, which fulfill the conditions required to benefit from the reduced rate, for the purpose of calculating the annual subscription tax. The inscription on the appropriate list is carried out at the request of the undertakings concerned which are undertakings the exclusive object of which either is the collective investment in money market instruments and the placing of deposits with credit establishments or is the collective placing of deposits with credit establishments. This inscription is subject to the condition that the prospectus of the applying undertaking specifically indicates its investment policy.

The provisions of the preceding paragraph apply *mutatis mutandis* to the individual compartments of an undertaking for collective investment with multiple compartments.

Art. 3.

In order to obtain application of the exemption from the subscription tax in respect of the value of the assets represented by units of other undertakings for collective investment which are already submitted to the subscription tax provided for by Article 129 of the Law of 20 December 2002, the undertakings which hold such units must declare their value separately in the periodical declarations they file with the *Administration de l'Enregistrement et des Domaines.*

Art. 4.

The amended Grand-Ducal Regulation of 14 April 1995 adopted pursuant to the amended Law of 30 March 1988 relating to undertakings for collective investment is repealed effective 13 February 2007.

Art. 5.

Our Ministry of the Treasury and Budget is responsible for the execution of the present regulation which will be published in the *Mémorial*.

9.

CSSF REGULATION NO. 16-07

RELATING TO THE OUT-OF-COURT RESOLUTION OF COMPLAINTS

CSSF Regulation No. 16-07 relating to the out-of-court resolution of complaints

The Executive Board of the *Commission de Surveillance du Secteur Financier*;

Having regard to Article 108*bis* of the Constitution;

Having regard to Articles 2(5) and 9(2) of the Law of 23 December 1998 creating a commission for the supervision of the financial sector;

Having regard to Article 58 of the Law of 5 April 1993 on the financial sector;

Having regard to Article L.224-26(1) of the Consumer Code;

Having regard to Article 106 of the Law of 10 November 2009 on payment services;

Having regard to Article 133(3) of the Law of 17 December 2010 relating to undertakings for collective investment;

Having regard to Article 58(3) of the Law of 13 July 2005 on institutions for occupational retirement provision in the form of pension savings companies with variable capital (SEPCAVs) and pension savings associations (ASSEPs);

Having regard to Regulation (EU) No. 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No. 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR);

Having regard to Article 36 (4) of the Law of 23 July 2016 concerning the audit profession;

Having regard to Book 4 of the Consumer Code;

Having regard to the opinion of the Consultative Committee for prudential regulation;

Adopts:

Article 1
Definitions

For the purposes of this Regulation, the following definitions shall apply:

(1) "consumer": pursuant to Article L. 010-1 of the Consumer Code, any natural person who acts for purposes which are outside his/her commercial, industrial, artisanal or professional activity:

(2) "CSSF": the Commission de Surveillance du Secteur Financier;

(3) "request": request for the out-of-court resolution of a complaint submitted to the CSSF in accordance with this Regulation;

(4) "applicant": any natural or legal person having submitted a request to the CSSF;

(5) "procedure": out-of-court complaint resolution procedure before the CSSF;

(6) "professional": any natural or legal person falling under the prudential supervision of the CSSF;

(7) "complainant": any natural or legal person having filed a complaint with a professional;

(8) "complaint": complaint filed with a professional to recognise a right or to redress a harm.

(9) "Regulation on consumer ODR": Regulation (EU) No. 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No. 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR);

(10) "durable medium": any instrument which enables a person or an entity to store information addressed to him/her/it personally in a way easily accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored.

Section 1
Provisions relating to the procedure before the CSSF

Article 2
Object and scope

(1) This section aims at defining the rules applicable to the requests for the out-of-court resolution of complaints filed with the CSSF. It shall apply to requests filed in accordance with the following legal provisions:

1. any request filed in accordance with Article 58 of the Law of 5 April 1993 on the financial sector;

2. any request filed in accordance with the first sub-paragraph of Article L.224-26(1) of the Consumer Code;

3. any request filed in accordance with the second sub-paragraph of Article L.224-26(1) of the Consumer Code;

4. any request filed in accordance with Article 106(1) of the Law of 10 November 2009 on payment services;

5. any request filed in accordance with Article 106(2) of the Law of 10 November 2009 on payment services;

6. any request filed in accordance with Article 133(3) of the Law of 17 December 2010 relating to undertakings for collective investment;

7. any request filed in accordance with Article 58(3) of the Law of 13 July 2005 on institutions for occupational retirement provision in the form of pension savings companies with variable capital (SEPCAVs) and pension savings associations (ASSEPs);

8. any request filed in accordance with Article 36(4) of the Law of 23 July 2016 concerning the audit profession.

(2) Without prejudice to the provisions of the Regulation on consumer ODR, this Regulation shall also apply to requests referred to in paragraph (1) and filed through the European ODR platform, as defined in the Regulation on consumer ODR.

Article 3
Purpose and principles of the procedure

The procedure for handling the requests referred to in Article 2 aims at facilitating the resolution of complaints against professionals without judicial proceedings. The CSSF may end the procedure at any time if it finds that any of the parties uses the procedure for purposes other than the search for an amicable settlement of the complaint.

The procedure is not a mediation procedure within the meaning of the Law of 24 February 2012 introducing mediation in civil and commercial matters.

The CSSF's intervention shall be subject to the principles of impartiality, independence, transparency, expertise, effectiveness and fairness, referred to in Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR).

The reasoned conclusions of the CSSF referred to in Article 5(5) are not binding on the parties.

The conclusions of the CSSF may notably be based on legal provisions or on equity considerations.

Article 4
Admissibility of the requests

A request shall be filed with the CSSF under the conditions of Article 5.

A request shall not be admissible in the following cases:

- the complaint has previously been or is currently being examined by another alternative dispute resolution body, arbitrator, arbitration tribunal or a court, in Luxembourg or abroad;
- the complaint concerns the business policy of the professional;
- the complaint concerns a non-financial product or service;
- the request is unreasonable, frivolous or vexatious;
- the complaint has not previously been submitted to the relevant professional in accordance with Article 5(1) of this Regulation;
- the complainant has not filed a request with the CSSF within one year after he/she filed a request with the professional;
- the handling of the request would seriously impair the efficient functioning of the CSSF.

Article 5
Procedure

(1) Prior complaint to the professional

The opening of the procedure is subject to the condition that the complaint has previously been dealt with by the relevant professional in accordance with Section 2.

In this respect, the complaint must have previously been sent in writing to the person responsible for complaint handling at the level of the management of the professional concerned by the complaint and the complainant must not have received an answer or a satisfactory answer from that person within one month of sending the complaint.

(2) Referral to the CSSF

Where the complainant has not received an answer or a satisfactory answer within the period referred to in the preceding paragraph, he/she may file his/her request with the CSSF within one year after he/she has filed his/her complaint with the professional.

The request must be filed with the CSSF in writing, either by regular mail at the address of the CSSF (as published on its website), or by fax addressed to the CSSF (to the number published on its website), or by email (to the address as published on its website), or online on the CSSF's website. In order to facilitate the filing of a request, the CSSF publishes a form on its website.

The request must be substantiated and accompanied by the following documents:

- a detailed and chronological statement of the facts underlying the complaint and the steps already taken by the applicant;
- a copy of the prior complaint referred to in paragraph (1);
- a copy of the answer to the prior complaint or the confirmation by the applicant that he/she did not receive an answer one month after he/she sent his/her prior complaint;
- the statement of the applicant that he/she did not refer the matter to a court, an arbitrator or another out-of-court complaint resolution body in Luxembourg or abroad;
- the applicant's agreement concerning the conditions for the involvement of the CSSF as the body responsible for the out-of-court resolution of his/her complaint;
- the express authorisation of the applicant so that the CSSF can transmit its request (including the attachments) as well as any future correspondence or information to the professional concerned by the request;
- in the case where a person acts on behalf of an applicant in accordance with paragraph (7) or on behalf of a legal person, a document showing that the person is legally entitled so to act;
- a copy of a valid ID document of the applicant (natural person) or, where the applicant is a legal person, of the natural person representing this legal person.

The CSSF may request the production of any other document or information, in any form whatsoever, which it considers useful for handling the request.

Where the CSSF receives a request that meets all the conditions referred to in Article 4 and in paragraphs (1) to (3), it transmits a copy thereof to the professional, with the request to take a position within a period up to one month from the date the file was sent. The CSSF informs the applicant of such transmission.

As soon as the CSSF is in possession of all the documents or relevant information, it confirms to the applicant and to the professional in writing, or by way of a durable medium, that it has received the complete request and the date of receipt thereof.

Within three weeks following receipt of the complete request, the CSSF, in case it is not in a position to process the request, provides the two parties with a detailed explanation as to the reasons why it has not accepted to process the request. Within the same period of three weeks, the CSSF informs the parties if it accepts to process the request.

(3) Languages

The request shall be filed in Luxembourgish, German, English or French. The procedure will, in principle, be conducted in whichever of the aforementioned languages the request was filed with the CSSF.

(4) Analysis by the CSSF of the file relating to the request

The analysis of the file relating to the request starts when the CSSF receives the complete request in accordance with paragraph (2).

While analysing the file relating to the request, the CSSF may request the professional and the applicant to provide it with additional information, documents or explanations, in any form whatsoever, and to take a position on the facts or opinions as presented by the other party within a reasonable period that cannot exceed three weeks.

(5) Reasoned conclusion of the CSSF

Where the analysis of the file relating to the request is completed, the CSSF sends a conclusion letter to the parties, containing the reasons for the position taken. Where it concludes that the request is totally or partly justified, it asks the parties to contact each other to settle their dispute in view of the reasoned conclusion and to inform it of the follow-up actions taken.

Where the CSSF reaches the conclusion that the positions of the parties are irreconcilable or unverifiable, it informs the parties thereof in writing.

The parties are informed that the conclusions reached by the CSSF after the analysis of the request may be different from the order of a court applying legal provisions.

The parties are also informed that, the reasoned conclusions of the CSSF not being binding on the parties, they are free to accept or refuse to follow them. In the conclusion letter, the parties' attention is also drawn to the possibility to appeal through judicial proceedings, in particular if the parties fail to reach an agreement after the CSSF issued its reasoned conclusion.

The CSSF requests, in its reasoned conclusion, that the parties inform it within a reasonable period set out in the letter if they have decided to accept, refuse or follow the solution proposed by the CSSF.

(6) Duration of the procedure

As regards the requests referred to in Article 2 (1), points 1, 2, 4, 6 and 7, the CSSF issues a reasoned conclusion within 90 days.

The 90-day period begins when the CSSF receives a complete request that meets the conditions of paragraph (2). The written confirmation referred to in paragraph (2) informs the parties of the date at which the 90-day period begins.

The 90-day period may be extended in the case of highly complex files. In this event, the CSSF informs the parties of the approximate necessary extension, as soon as possible and at the latest before the end of the 90-day period.

(7) Representation and assistance

The parties have access to the procedure without having to resort to a lawyer or legal counsel. However, the parties to the procedure may seek an independent opinion or be represented or assisted by a third party at all stages of the procedure.

(8) Written procedure and retention of documents

The procedure shall be in writing. However, if the CSSF deems it necessary for the examination of the file, it may convene one or more meetings with the parties.

The parties shall attach to their correspondence copies of documents which are useful for the examination of their request and shall keep the original versions of these documents.

(9) Closing of the procedure

The procedure ends:

– by sending a reasoned conclusion letter within the meaning of the first sub-paragraph of paragraph (5), or by sending a letter within the meaning of the second sub-paragraph of paragraph (5) in which the CSSF communicates the outcome of the procedure to the parties;

- by reaching an amicable agreement between the professional and the applicant during the procedure of which the CSSF has been informed;

- in case of a written withdrawal by one of the parties, which may occur at any time during the procedure and which must be notified to the other party and to the CSSF within a reasonable period, in writing or by way of a durable medium;

- where the right on which the complaint is based is prescribed and where the professional claims that the time period for exercising that right has expired;

- where the complaint has been submitted to a Luxembourg or foreign court or arbitrator;

- where the complaint has been submitted to an out-of-court complaint resolution body, other than the CSSF, in Luxembourg or abroad;

- where the applicant does not provide the additional documents, information, explanations or positions requested by the CSSF within the period set by the CSSF, which cannot exceed three weeks.

(10) Specific provisions as regards the requests referred to in points (3) and (5) of Article 2 (1) (requests submitted by any other interested party, including consumer associations and users of payment services).

(11) Paragraphs (1) (prior complaint to the person responsible for the handling of complaints at the level of the management of the professional referred to in the complaint) and (6) (handling of the requests by the CSSF within 90 days) above do not apply to the requests referred to in points 3 and 5 of Article 2 (1).

Article 6
Data protection

The CSSF takes the necessary measures to ensure that the processing of personal data complies with the rules in force for the protection of personal data.

Article 7
Confidentiality

The parties to the procedure before the CSSF undertake to maintain the confidentiality of the communications and documents exchanged during the procedure.

The agents in charge of handling requests for the out-of-court resolution of complaints within the CSSF are bound by the obligation of professional secrecy referred to in Article 16 of the Law of 23 December 1998 creating a commission for the supervision of the financial sector.

Article 8
Agents in charge of handling the requests

(1) The agents in charge of handling requests for the out-of-court resolution of complaints within the CSSF have the necessary knowledge, skills and experience to do so.

(2) The agent shall immediately inform the CSSF of any circumstance likely to affect or to be considered as affecting his/her independence and his/her impartiality, or likely to give rise to conflicts of interest with either party to the dispute which he/she is in charge of resolving. The obligation to communicate these circumstances is a continuing obligation throughout the process.

(3) If, within the context of the examination of a request, the agents find that a question of a prudential nature arises, the scope of which goes beyond that of the request, they transmit the required information internally for that purpose and the CSSF may act on it as part of its prudential supervision.

Any action taken by the CSSF as part of its prudential supervision cannot be disclosed to the parties due to its obligation of professional secrecy.

The procedure continues regardless of the development of any potential case concerning prudential supervision.

Article 9
Cost of the procedure

Out-of-court complaint resolution before the CSSF is free of charge. Moreover, no charges will be reimbursed to the parties.

Article 10
Prescription period

Unless the law provides otherwise, in particular where the request concerns a consumer dispute within the meaning of point (5) of Article L. 411-1(1) of the Consumer Code, recourse to the procedure does not suspend the prescription period under common law in relation to the subject matter of the request.

Article 11
Referral to the courts

The parties shall at all times reserve the right to refer the subject matter of the complaint to the courts.

Article 12
International cooperation

Within the context of the out-of-court resolution of cross-border complaints, the CSSF cooperates with the competent foreign bodies, in accordance with the laws and regulations governing this cooperation.

The CSSF cooperates in particular with FIN-NET, the European network of which the CSSF is a member, in order to facilitate access for consumers to out-of-court procedures for complaints and to the settlement of cross-border cases.

Article 13
Annual report

The CSSF's annual report describes its activities as regards the out-of-court resolution of complaints.

Section 2
Provisions applicable to professionals

Article 14
Purpose

The purpose of this section is to specify certain obligations incumbent on professionals in relation to the handling of complaints.

Article 15

Complaint handling by professionals and disclosure requirements

(1) Each professional shall have a complaint management policy that is defined, endorsed and implemented by the management of the professional.

The complaint management policy shall be set out in a written document and shall be formalised in an internal complaint resolution procedure made available to all relevant staff.

This procedure shall be efficient and transparent, with a view to the reasonable and prompt handling of complaints in full compliance with the provisions of this Regulation. It shall reflect the concern for objectivity and for ascertaining the truth.

It shall also enable the identification and mitigation of any potential conflicts of interests.

(2) Where the complainant did not obtain an answer or a satisfactory answer at the level at which he/she submitted his/her complaint in the first instance, the internal procedure shall give him/her the opportunity to raise the complaint to the level of the professional's management. In this respect, the professional shall provide the contact details of a person responsible at that level.

(3) The person responsible at management level is in charge of the implementation and the efficient operation of a structure as well as the internal procedure for complaint handling referred to in paragraph (1). Subject to prior information of the CSSF on the arrangements for ensuring that the full application of the provisions of this section remains assured, the person responsible at management level may delegate the management of the complaints internally.

The professional shall ensure that each complaint as well as each measure taken to handle it is properly registered.

Moreover, he/she shall ensure that each complainant is informed of the name and contact details of the person in charge of his/her file.

(4) The professionals shall provide clear, comprehensible, precise and up-to-date information on their complaint-handling procedures, including:

(i) details of how to complain (type of information to be provided by the complainant, identity and contact details of the person or of the department to whom the complaint should be directed, etc.);

(ii) the procedure that will be followed to handle the complaint (the moment when the professional acknowledges receipt thereof, an indicative timetable for handling the complaint, the existence of the procedure for out-of-court resolution of complaints before the CSSF, where appropriate, the commitment of the professional to resort to the out-of-court complaint resolution procedure, etc.).

The professionals shall publish the details of their complaint resolution procedure and the information on the CSSF acting as an out-of-court complaint resolution body in a clear, comprehensible and easily accessible manner via their website, if any, and, where appropriate, in brochures, leaflets, contractual documents.

A written acknowledgement of receipt will be provided to the complainant within a period which shall not exceed 10 business days after receipt of the complaint, unless the answer itself is provided to the complainant within this period.

The professionals shall keep the complainants informed of the development of their complaints.

The professionals shall:

(i) seek to gather and to investigate all relevant evidence and information on each complaint;

(ii) seek to communicate in a plain and easily comprehensible language;

(iii) provide an answer without undue delay and in any case within a period which cannot exceed one month between the date of receipt of the complaint and the date at which the answer to the complainant was sent. Where an answer cannot be provided within this period, the professional shall inform the complainant of the causes of the delay and indicate the date at which its examination is likely to be achieved.

(5) Where the complaint handling at the level of the responsible person referred to in paragraph (2) has not resulted in a satisfactory answer for the complainant, the professional shall provide him/her with a full explanation of his/her position as regards the complaint.

The professional shall inform the complainant on paper or on another durable medium of the existence of the out-of-court complaint resolution procedure at the CSSF.

Where appropriate, the professional confirms his/her decision to have recourse to the out-of-court complaint resolution procedure to resolve the dispute.

Where the professional has undertaken to resort to the out-of-court complaint handling procedure with the CSSF, he/she shall send to the complainant a copy of this Regulation or the reference to the CSSF website, as well as the different means of contacting the CSSF to file a request.

The professional shall inform the complainant, on paper or on any other durable medium that he/she can file a request with the CSSF and that, in this case, his/her request must be filed with the CSSF within one year after he/she has filed his/her complaint with the professional.

In the case of complaints within the meaning of point (5) of Article L. 411-1(1) of the Consumer Code, evidence of the existence and accuracy of the information provided and the date at which it was provided is incumbent on the professional.

(6) The professionals shall analyse the data relating to the complaint handling, on a permanent basis, in order to enable the identification and treatment of any recurring or systemic problem, as well as any potential legal and operational risks, for example:

(i) by analysing the causes of the individual complaints in order to identify the common origin of certain types of complaints;

(ii) by considering whether these origins may also affect other processes or products, including those to which the complaints do not relate directly; and

(iii) by correcting these origins, if it is reasonable to do so.

Article 16
Communication of information to the CSSF

(1) The internal procedure for complaint handling at each professional shall also cover the communication with the CSSF within this general framework as well as within the framework of the procedure at the CSSF, as described in particular in the first section.

(2) The professionals are required to provide the CSSF with an as comprehensive as possible answer and cooperation within the context of the handling of complaints and requests.

(3) The responsible person referred to in Article 15(3) is required to communicate to the CSSF, on an annual basis, a table including the number of complaints registered by the professional, classified by type of complaints, as well as a summary report of the complaints and of the measures taken to handle them.

To this end, the internal procedure of the professional shall organise the communication to the responsible person referred to in the preceding sub-paragraph of all necessary data in respect of the complaints received.

Section 3
General provisions

Article 17
Repeal and entry into force

CSSF Regulation No. 13-02 relating to the out-of-court resolution of complaints is repealed and replaced by this Regulation.

This Regulation shall enter into force with its publication in the *Mémorial*.

Article 18
Publication

This Regulation shall be published in the *Mémorial* and on the CSSF website.

Luxembourg, 26 October 2016

10.

CSSF REGULATION NO. 15-08

ADOPTING THE IMPLEMENTING MEASURES OF ARTICLE 7*BIS* OF THE LAW OF 15 JUNE 2004 ON SICARs AS REGARDS THE REQUIREMENTS IN RESPECT OF THE MANAGEMENT OF CONFLICTS OF INTEREST FOR SICARs WHICH ARE NOT COVERED BY THE SPECIFIC PROVISIONS OF PART II OF THIS LAW

CSSF Regulation No. 15-08 adopting the implementing measures of Article 7*bis* of the Law of 15 June 2004 on SICARs as regards the requirements in respect of the management of conflicts of interest for SICARs which are not covered by the specific provisions of Part II of this law

The Executive Board of the Commission for the Supervision of the Financial Sector,

Having regard to Article 108*bis* of the Constitution;

Having regard to the Law of 23 December 1998 creating a commission for the supervision of the financial sector and especially its Article 9, paragraph (2);

Having regard to the Law of 15 June 2004 on the investment company in risk capital (SICAR);

Adopts:

CHAPTER I
SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1
Subject matter

This Regulation adopts the implementing measures of the first paragraph of Article 7*bis* of the Law of 15 June 2004 on SICARs regarding the structures and organisational requirements intended to minimise the risks of conflicts of interest.

Article 2
Scope

This Regulation applies to SICARs within the meaning of Article 1 of the Law of 15 June 2004 on SICARs which are not covered by the specific provisions which apply under Part II of this law to SICARs managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013 on alternative investment fund managers or under Chapter II of Directive 2011/61/EU.

Article 3
Definitions

For the purposes of this Regulation, the following definitions shall apply in addition to those set out in the Law of 15 June 2004 on SICARs:

1) "directors"[1] means the persons referred to in Article 12 (3) of the Law of 15 June 2004 on SICARs;

2) "relevant person" means any person contributing towards the business activities of the SICAR or any person directly or indirectly linked to the SICAR.

[1] *dirigeants*

CHAPTER II
CONFLICTS OF INTEREST

Article 4
Criteria for the identification of conflicts of interest

1. For the purposes of identifying the types of conflicts of interest that may arise in the course of providing services and activities, and whose existence may damage the interests of SICARs, SICARs shall take into account, by way of minimum criteria, the question of whether a relevant natural or legal person is in any of the following situations, whether as a result of providing collective portfolio management activities or otherwise:

   a) that person is likely to make a financial gain, or avoid a financial loss which gives rise to a conflict of interest at the expense of the SICAR;

   b) that person has an interest in the outcome of a service or an activity provided to the SICAR or another client or of an activity performed for their benefit or of a transaction carried out on behalf of the SICAR or another client, which is distinct from the SICAR's interest in that outcome;

   c) that person has a financial or other incentive to favour the interests of another client or group of clients over the interests of the SICAR;

   d) that person carries on the same activities for the SICAR and for another client or clients which are not SICARs;

   e) that person receives or will receive from a person other than the SICAR an inducement in relation to collective portfolio management activities provided to the SICAR, in the form of monies, goods or services other than the standard commission or fee for that service.

2. SICARs shall take into account, when identifying the types of conflicts of interest, the interests of the SICAR, including those deriving from their belonging to a group or from the performance of services or activities, the interests of the clients and the duty of the SICAR towards its investors.

Article 5
Conflicts of interest policy

1. SICARs shall establish, implement and maintain an effective conflicts of interest policy. That policy shall be set out in writing and shall be appropriate to the size and organisation of the SICAR and the nature, scale and complexity of its business.

   SICARs shall also establish, implement and maintain a policy in order to prevent each relevant person from entering into personal transactions which may give rise to a conflict of interest.

   SICARs shall develop an adequate policy to prevent or manage each conflict of interest resulting from the exercise of voting rights attaching to the instruments held.

   Where the SICAR is a member of a group, the policy shall also take into account any circumstances which may give rise to a conflict of interest resulting from the structure and business activities of other members of the group.

2. The conflicts of interest policy established in accordance with paragraph (1) shall include the following:

   a) the identification of, with reference to the collective portfolio management activities carried out by or on behalf of the SICAR, the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interests of the SICAR;

b) procedures to be followed and measures to be adopted in order to manage such conflicts.

3. SICARs must, as part of their authorisation file, confirm to the CSSF the implementation of a conflicts of interest policy.

Article 6
Independence in conflicts management

1. The procedures and measures provided for in Article 5, paragraph (2) point b) of this Regulation shall be designed to ensure that the relevant persons engaged in different business activities involving a conflict of interest carry on those activities at a level of independence appropriate to the size and activities of the SICAR and of the group to which it belongs and to the materiality of the risk of damage to the interests of the SICAR.

2. The procedures to be followed and measures to be adopted in accordance with Article 5, paragraph (2) point b) of this Regulation shall include the following where necessary and appropriate for the SICAR to ensure the requisite degree of independence:

a) effective procedures to prevent or control the exchange of information between relevant persons engaged in collective portfolio management activities involving a risk of a conflict of interest where the exchange of that information may harm the interests of the SICAR;

b) the separate supervision of relevant persons whose principal functions involve carrying out collective portfolio management activities on behalf of, or providing services to, clients or to investors whose interests may conflict, or who otherwise represent different interests that may conflict with the interests of the SICAR;

c) the removal of any direct link between the remuneration of relevant persons principally engaged in one activity and the remuneration of, or revenues generated by, different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities;

d) measures to prevent or limit any person from exercising inappropriate influence over the way in which a relevant person carries out collective portfolio management activities;

e) measures to prevent or control the simultaneous or sequential involvement of a relevant person in separate collective portfolio management activities where such involvement may impair the proper management of conflicts of interest.

Where the adoption or the practice of one or more of those measures and procedures does not ensure the requisite degree of independence, SICARs shall adopt such alternative or additional measures and procedures as will be necessary and appropriate for those purposes.

Article 7
Management of activities giving rise to detrimental conflicts of interest

1. SICARs shall keep and regularly update a record of the types of collective portfolio management activities undertaken by or on behalf of the SICAR in which a conflict of interest entailing a material risk of damage to the interests of the SICAR has arisen or, in the case of an ongoing collective portfolio management activity, may arise.

2. Where the organisational or administrative arrangements made by the SICAR for the management of conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the SICAR or of its investors will be prevented, the directors shall be promptly informed in order for them to take any necessary decision to ensure that in any case the SICAR acts in the best interests of the SICAR and of its investors.

3. SICARs shall report situations referred to in paragraph (2) to investors by any appropriate durable medium and give reasons for their decision.

Article 8
Publication

This Regulation will be published in the *Mémorial* as well as on the website of the CSSF.

This Regulation enters into force on the first day of the month following its publication in the *Mémorial*.

SICARs already in existence at the moment of the entry into force of this Regulation have until 31 March 2016 at the latest to comply with the provisions of this Regulation.

Luxembourg, 31 December 2015

11.

CSSF REGULATION NO. 15-07

ADOPTING THE IMPLEMENTING MEASURES OF ARTICLE 42*BIS* OF THE LAW OF 13 FEBRUARY 2007 ON SPECIALISED INVESTMENT FUNDS AS REGARDS THE REQUIREMENTS IN RESPECT OF RISK MANAGEMENT AND CONFLICTS OF INTEREST FOR SPECIALISED INVESTMENT FUNDS WHICH ARE NOT COVERED BY THE SPECIFIC PROVISIONS OF PART II OF THIS LAW

CSSF Regulation No. 15-07 adopting the implementing measures of Article 42*bis* of the Law of 13 February 2007 on specialised investment funds as regards the requirements in respect of risk management and conflicts of interest for specialised investment funds which are not covered by the specific provisions of Part II of this law

The Executive Board of the Commission for the Supervision of the Financial Sector,

Having regard to Article 108*bis* of the Constitution;

Having regard to the Law of 23 December 1998 creating a commission for the supervision of the financial sector and especially its Article 9, paragraph (2);

Having regard to the Law of 13 February 2007 on specialised investment funds;

Adopts:

CHAPTER I
SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1
Subject matter

This Regulation adopts the implementing measures of paragraphs (1) and (2) of Article 42*bis* of the Law of 13 February 2007 on specialised investment funds;

1) concerning the appropriate risk management systems as referred to in Article 42*bis*, paragraph (1) of the Law of 13 February 2007 on specialised investment funds and, in particular, the criteria for assessing the adequacy of the risk management systems employed by specialised investment funds;

2) concerning the structures and organisational requirements referred to in Article 42*bis*, paragraph (2) of the Law of 13 February 2007 on specialised investment funds intended to minimise the risks of conflicts of interest.

Article 2
Scope

This Regulation applies to specialised investment funds within the meaning of Article 1 of the Law of 13 February 2007 on specialised investment funds which are not covered by the specific provisions which apply under Part II of this law to specialised investment funds managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013 on alternative investment fund managers or under Chapter II of Directive 2011/61/EU.

Article 3
Definitions

For the purposes of this Regulation, the following definitions shall apply in addition to those set out in the Law of 13 February 2007 on specialised investment funds:

1) "counterparty risk" means the risk of loss for the specialised investment fund resulting from the fact that the counterparty to a transaction may default on its obligations prior to the final settlement of the transaction's cash flow;

2) "liquidity risk" means the risk that a position in the specialised investment fund's portfolio cannot be sold, liquidated or closed at limited cost in an adequately short time frame and that the ability of the specialised investment fund to comply at any time with the conditions and procedures set forth in the management regulations or in the articles of incorporation in

accordance with Articles 8 and 28, paragraph (2) of the Law of 13 February 2007 on specialised investment funds is thereby compromised;

3) "market risk" means the risk of loss for the specialised investment fund resulting from fluctuation in the market value of positions in the specialised investment fund's portfolio attributable to changes in market variables, such as interest rates, foreign exchange rates, equity and commodity prices or an issuer's creditworthiness;

4) "operational risk" means the risk of loss for the specialised investment fund resulting from inadequate internal processes and failures in relation to people and systems or from external events, and includes legal and documentation risk and risk resulting from the trading, settlement and valuation procedures operated on behalf of the specialised investment fund;

5) "directors"[1] means the persons referred to in Article 42 (3) of the Law of 13 February 2007 on specialised investment funds;

6) "relevant person" means any person contributing towards the business activities of the specialised investment fund or any person directly or indirectly linked to the specialised investment fund.

CHAPTER II
RISK MANAGEMENT

Article 4
Organisation of the risk management system

1. Specialised investment funds shall establish and maintain a risk management function.

2. The risk management function referred to in paragraph (1) shall be hierarchically and functionally independent from operating units.

   However, the CSSF may allow a specialised investment fund to derogate from that obligation of independence where the derogation is appropriate and proportionate in view of the nature, scale, complexity and structure of that specialised investment fund's business.

   A specialised investment fund shall be able to demonstrate that appropriate safeguards against conflicts of interest have been adopted so as to allow an independent performance of risk management activities, and that its risk management system satisfies the requirements of Article 42*bis*, paragraph (1) of the Law of 13 February 2007 on specialised investment funds.

3. The risk management function shall have the necessary authority and access to all relevant information necessary to fulfil its duties.

4. Specialised investment funds may delegate all or part of the activity of the risk management function to third parties, provided that the third party has the necessary competence and capacity to perform the activities of the risk management function reliably, professionally and efficiently in accordance with the applicable legal and regulatory requirements.

   The delegation to third parties neither relieves the directors of specialised investment funds in any way of their responsibility in relation to the adequacy and efficiency of the risk management system, nor does it relieve them in terms of monitoring the risks associated with the activities of the specialised investment fund referred to in Article 5 of this Regulation.

5. The directors shall adopt the risk management system of the specialised investment fund, and, thereafter, subject it to a regular and documented review.

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[1] *dirigeants*

6. Specialised investment funds must communicate to the CSSF, as part of their authorisation file, a description of the risk management system. Subsequently, any material change to their risk management system must be notified to the CSSF.

Article 5
Risk management function

1. The risk management function shall:

   a) implement and maintain an adequate and documented risk management policy intended to detect, measure, manage and monitor appropriately the exposure to market, liquidity and counterparty risks, and the exposure to all other risks, including operational risks, which may be material for the activities of the specialised investment fund;

   b) ensure compliance with the specialised investment fund's risk limitation system.

2. For the purposes of paragraph (1), specialised investment funds shall take into account the nature, scale and complexity of the business as well as the structure of the specialised investment fund.

CHAPTER III
CONFLICTS OF INTEREST

Article 6
Criteria for the identification of conflicts of interest

1. For the purposes of identifying the types of conflicts of interest that may arise in the course of providing services and activities, and whose existence may damage the interests of specialised investment funds, specialised investment funds shall take into account, by way of minimum criteria, the question of whether a relevant person is in any of the following situations, whether as a result of providing collective portfolio management activities or otherwise:

   a) that person is likely to make a financial gain, or avoid a financial loss, at the expense of the specialised investment fund;

   b) that person has an interest in the outcome of a service or an activity provided to the specialised investment fund or another client or of an activity performed for their benefit or of a transaction carried out on behalf of the specialised investment fund or another client, which is distinct from the specialised investment fund's interest in that outcome;

   c) that person has a financial or other incentive to favour the interests of another client or group of clients over the interests of the specialised investment fund;

   d) that person carries on the same activities for the specialised investment fund and for another client or clients which are not specialised investment funds;

   e) that person receives or will receive from a person other than the specialised investment fund an inducement in relation to collective portfolio management activities provided to the specialised investment fund, in the form of monies, goods or services other than the standard commission or fee for that service.

2. Specialised investment funds shall take into account, when identifying the types of conflicts of interest, the interests of the specialised investment fund, including those deriving from their belonging to a group or from the performance of services or activities, the interests of the clients and the duty of the specialised investment fund towards its unitholders.

Article 7
Conflicts of interest policy

1. Specialised investment funds shall establish, implement and maintain an effective conflicts of interest policy. That policy shall be set out in writing and shall be appropriate to the size and organisation of the specialised investment fund and the nature, scale and complexity of its business.

   Specialised investment funds shall also establish, implement and maintain a policy in order to prevent each relevant person from entering into personal transactions which may give rise to a conflict of interest.

   Specialised investment funds shall develop an adequate policy to prevent or manage each conflict of interest resulting from the exercise of voting rights attaching to the instruments held.

   Where the specialised investment fund is a member of a group, the policy shall also take into account any circumstances which may give rise to a conflict of interest resulting from the structure and business activities of other members of the group.

2. The conflicts of interest policy established in accordance with paragraph (1) shall include the following:

   a) the identification of, with reference to the collective portfolio management activities carried out by or on behalf of the specialised investment fund, the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interests of the specialised investment fund;

   b) procedures to be followed and measures to be adopted in order to manage such conflicts.

3. Specialised investment funds must, as part of their authorisation file, confirm to the CSSF the implementation of a conflicts of interest policy.

Article 8
Independence in conflicts management

1. The procedures and measures provided for in Article 7, paragraph (2) point b) of this Regulation shall be designed to ensure that the relevant persons engaged in different business activities involving a conflict of interest carry on those activities at a level of independence appropriate to the size and activities of the specialised investment fund and of the group to which it belongs and to the materiality of the risk of damage to the interests of the specialised investment fund.

2. The procedures to be followed and measures to be adopted in accordance with Article 7, paragraph (2) point b) of this Regulation shall include the following where necessary and appropriate for the specialised investment fund to ensure the requisite degree of independence:

   a) effective procedures to prevent or control the exchange of information between relevant persons engaged in collective portfolio management activities involving a risk of a conflict of interest where the exchange of that information may harm the interests of the specialised investment fund;

   b) the separate supervision of relevant persons whose principal functions involve carrying out collective portfolio management activities on behalf of, or providing services to, clients or to investors whose interests may conflict, or who otherwise represent different interests that may conflict with the interests of the specialised investment fund;

c) the removal of any direct link between the remuneration of relevant persons principally engaged in one activity and the remuneration of, or revenues generated by, different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities;

d) measures to prevent or limit any person from exercising inappropriate influence over the way in which a relevant person carries out collective portfolio management activities;

e) measures to prevent or control the simultaneous or sequential involvement of a relevant person in separate collective portfolio management activities where such involvement may impair the proper management of conflicts of interest.

Where the adoption or the practice of one or more of those measures and procedures does not ensure the requisite degree of independence, specialised investment funds shall adopt such alternative or additional measures and procedures as will be necessary and appropriate for those purposes.

Article 9
Management of activities giving rise to detrimental conflicts of interest

1. Specialised investment funds shall keep and regularly update a record of the types of collective portfolio management activities undertaken by or on behalf of the specialised investment fund in which a conflict of interest entailing a material risk of damage to the interests of the specialised investment fund has arisen or, in the case of an ongoing collective portfolio management activity, may arise.

2. Where the organisational or administrative arrangements made by the specialised investment fund for the management of conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the specialised investment fund or of its unitholders will be prevented, the directors shall be promptly informed in order for them to take any necessary decision to ensure that in any case the specialised investment fund acts in the best interests of the specialised investment fund and of its unitholders.

3. Specialised investment funds shall report situations referred to in paragraph (2) to investors by any appropriate durable medium and give reasons for their decision.

Article 10
Publication

This Regulation will be published in the *Mémorial* and on the website of the CSSF.

This Regulation enters into force on the first day of the month following its publication in the *Mémorial*.

This Regulation repeals and replaces CSSF Regulation No. 12-01 adopting the implementing measures of Article 42*bis* of the Law of 13 February 2007 on specialised investment funds as regards the requirements in respect of risk management and conflicts of interest.

Luxembourg, 31 December 2015

12.

CSSF REGULATION NO. 15-03

ADOPTING THE IMPLEMENTING PROVISIONS OF ARTICLE 46 OF THE LAW OF 12 JULY 2013 RELATING TO ALTERNATIVE INVESTMENT FUND MANAGERS REGARDING THE MARKETING OF FOREIGN LAW ALTERNATIVE INVESTMENT FUNDS TO RETAIL INVESTORS IN LUXEMBOURG

CSSF Regulation No. 15-03 adopting the implementing provisions of Article 46 of the Law of 12 July 2013 relating to Alternative Investment Fund Managers regarding the marketing of foreign law alternative investment funds to retail investors in Luxembourg

The Directorate of the Commission for the Supervision of the Financial Sector,

Having regard to Article 108*bis* of the Constitution;

Having regard to the Law of 23 December 1998 creating a commission for the supervision of the financial sector and notably its Article 9, paragraph (2);

Having regard to the Law of 12 July 2013 relating to alternative investment fund managers and notably its Article 46;

Adopts:

Article 1
Definitions

In addition to the definitions under Article 1 of the Law of 12 July 2013 on Alternative Investment Fund Managers which are applicable for the purposes of this Regulation, the term "foreign law alternative investment funds (AIFs)" means alternative investment funds (AIFs) within the meaning of Directive 2011/61/EU on Alternative Investment Fund Managers established in a Member State of the European Union other than Luxembourg or in a third country.

Article 2
Object

This Regulation adopts the implementing provisions of Article 46 of the Law of 12 July 2013 on alternative investment fund managers by defining the procedure and the conditions which apply to the marketing of foreign law AIFs to retail investors in Luxembourg.

Article 3
Scope

(1) Without prejudice to the provisions of paragraph (2), this Regulation applies to the marketing to retail investors in Luxembourg of:

a) foreign law AIFs managed by an alternative investment fund manager established in Luxembourg and authorised under Chapter 2 of the Law of 12 July 2013 on alternative investment fund managers;

b) foreign law AIFs managed by an alternative investment fund manager established in another Member State of the European Union and authorised under Chapter II of the Directive 2011/61/EU on alternative investment fund managers;

c) foreign law AIFs managed by an alternative investment fund manager established in a third country and authorised under Chapter II of Directive 2011/61/EU on Alternative Investment Fund Managers, subject to the application of Article 66, paragraph (3), of the said Directive.

(2) This Regulation does not refer to the marketing of foreign law AIFs which takes place in Luxembourg to:

- well-informed investors within the meaning of Article 2, paragraph (1), of the Law of 13 February 2007 on specialised investment funds and of Article 2 respectively of the Law of 15 June 2004 on investment companies with risk capital (SICARs);

- eligible investors under Regulation (EU) No. 345/2013 on European venture capital funds;

- eligible investors under Regulation (EU) No. 346/2013 on European social entrepreneurship funds;

- eligible investors under Regulation (EU) No. 2015/760 on European long-term investment funds.

Article 4
Marketing authorisation by the CSSF

(1) All foreign law AIFs, prior to the marketing of their units or shares to retail investors in Luxembourg, must obtain authorisation for such marketing which is granted by the CSSF in accordance with the provisions of this Regulation.

(2) Foreign law AIFs which are authorised to market their units or shares under this Regulation are registered by the CSSF on the "list of foreign law AIFs admitted for marketing to retail investors in Luxembourg pursuant to Article 46 of the Law of 12 July 2013 on alternative investment fund managers".

(3) The authorisation for marketing under this Regulation may not be granted before completion of the notification procedure required for marketing to professional investors, as provided for in the relevant provisions of the Law of 12 July 2013 on alternative investment fund managers and of the Directive 2011/61/EU on Alternative Investment Fund Managers respectively.

Without prejudice to the documents and information to be provided to the CSSF in the context of the notification procedure required for marketing to professional investors referred to in sub-paragraph 1, the application for marketing authorisation to retail investors in Luxembourg must also contain the additional elements provided for in Article 5 of this Regulation.

Article 5
Application for marketing authorisation

(1) The application for marketing authorisation to be presented to the CSSF under this Regulation must contain the following documents and information:

a) an attestation from the supervisory authorities of the home Member State of the foreign law AIF certifying that it is authorised and subject to ongoing supervision in its home Member State;

b) the addendum to the prospectus/offering document of the foreign law AIF containing specific information for marketing in Luxembourg;

c) the last annual report of the foreign law AIF;

d) the biographies of the directors of the foreign law AIF;

e) the draft agreement to be concluded between the foreign law AIF and the paying agent in Luxembourg;

f) if the foreign law AIF is a feeder AIF, information on the master AIF including details of the place where the master AIF is established, the constitutive documents of the master AIF as well as its prospectus/offering document.

The addendum referred to in point b) which will form part of the prospectus/offering document of the foreign law AIF must contain all information useful for investors in Luxembourg, so that they can invest in full knowledge of the facts. The information to be included in this addendum is as follows:

- appropriate information on the risks inherent in the investment policy of the foreign law AIF;

- information on the possible fees and charges which may be borne by the investors;

- the name, address and functions of the paying agent in Luxembourg to which investors may apply to subscribe, redeem and convert their units or shares;

- the place where the latest prospectus/offering document of the foreign law AIF , its constitutive documents and latest annual reports are made available;

- details on the method of publication of the net asset value of the foreign law AIF;

- the name of the Luxembourg newspaper in which notices to investors are published.

(2) In addition to the documents and information mentioned under paragraph (1), the CSSF may request any additional documents and information that it deems necessary for its examination of the authorisation application.

Article 6
Conditions for granting the marketing authorisation

(1) In addition to complying with the provisions of Article 46 of the Law of 12 July 2013 on alternative investment funds, the CSSF will only grant authorisation to a foreign law AIF to market its units or shares to retail investors in Luxembourg on condition that the AIF concerned is managed by a sole AIFM, which may be either an AIFM established in Luxembourg authorised under Chapter 2 of the Law of 12 July 2013 on alternative investment fund managers, or an AIFM authorised under Chapter II of the Directive 2011/61/EU and established in another Member State or in a third country, subject to the application of Article 66, paragraph (3) of the said Directive.

The management of the foreign law AIF in accordance with all the provisions under Directive 2011/61/EU on Alternative Investment Fund Managers must be permanently ensured.

(2) Where the foreign law AIF is a feeder AIF, the marketing authorisation referred to in paragraph (1) is also conditional upon the master AIF being subject to ongoing supervision in its home Member State by a competent authority provided for by law for the purpose of ensuring the protection of investors. In this case, cooperation between the CSSF and the supervisory authority of the master AIF must also be ensured.

(3) The granting of the marketing authorisation implies the obligation for the foreign law AIF to inform the CSSF of any substantial amendments with regard to the documents and information transmitted in accordance with Article 5 of this Regulation on which the CSSF based the granting of the authorisation.

Article 7
Types of foreign law AIFs which may be admitted for marketing to retail investors in Luxembourg

(1) Subject to the application of paragraph (2) of this Article, for a foreign law AIF to be eligible for marketing to retail investors in Luxembourg, they must comply with the following rules:

a) The frequency at which the issue and redemption prices of units or shares of the foreign law AIF must be determined:

The foreign law AIF must determine the issue and redemption prices of its units or shares at sufficiently close and fixed intervals, but at least once a month.

b) Risk spreading:

The foreign law AIF must demonstrate sufficient risk spreading.

In general, the CSSF considers that the principle of sufficient risk spreading is respected if the investment restrictions of a foreign law AIF comply with the following guidelines:

A. Securities

1. The foreign law AIF may not invest more than 10% of its assets in securities that are not listed on a stock exchange or not dealt in on another market that is regulated, operates regularly and is open to the public.

2. The foreign law AIF may not acquire more than 10% of securities of the same kind issued by the same issuer.

3. The foreign law AIF may not invest more than 20% of its assets in securities of the same issuer.

The restrictions set out in points 1, 2 and 3 above do not apply to:

- investments in securities issued or guaranteed by a Member State of the OECD or by its local authorities or by supranational institutions and organisations of a community, regional or worldwide nature;

- investments in target UCIs subject to risk-spreading requirements at least comparable to those provided for UCIs governed by Part II of the Law of 17 December 2010 on undertakings for collective investment.

B. Borrowings

The foreign law AIF may not borrow an amount exceeding 25% of its net assets, without prejudice to point D. of this paragraph.

C. Use of financial derivative instruments

When using financial derivative instruments, the foreign law AIF must ensure an appropriate risk spreading at the level of the underlying assets.

Furthermore, the foreign law AIF concerned must be subject to risk spreading and investment restriction rules that are comparable to those provided for UCIs governed by Part II of the Law of 17 December 2010 on undertakings for collective investment which pursue so-called alternative investment strategies.

D. Real estate assets

To ensure minimal risk spreading, the foreign law AIF may not invest more than 20% of its assets in one single property.

Furthermore, the aggregate amount of the foreign law AIF's borrowings may not exceed on average 50% of the assessed value of all the properties.

(2) The CSSF may grant exemptions to the rules laid down in paragraph (1) on the basis of adequate justification according to the specific investment policy of any given foreign law AIF.

Article 8

Provisions governing payments to investors, redemptions and subscriptions of units or shares and the dissemination of information

(1) A foreign law AIF which is authorised to market its units or shares to retail investors in Luxembourg pursuant to this Regulation must appoint a credit institution so that payments to investors as well as redemptions and subscriptions of units or shares are ensured in Luxembourg.

(2) A foreign law AIF which markets its units or shares to retail investors in Luxembourg must also take appropriate measures to ensure that the information and documents for which it is responsible are available to investors in Luxembourg.

The information and documents referred to in the preceding sub-paragraph must be provided to investors in Luxembourg in either French, German, English or Luxembourgish. The information in question may also be provided via a website.

Article 9

Marketing rules in force in Luxembourg

Without prejudice to Article 8 of this Regulation, the provisions laid down in the following laws must be observed in the event of marketing of securities to investors in Luxembourg:

- The amended Law of 8 April 2011 introducing a consumer code.

Article 10

Termination of marketing

The CSSF must be informed when a foreign law AIF decides to cease marketing its units or shares to retail investors in Luxembourg on the basis of Article 46 of the Law of 12 July 2013 on alternative investment fund managers. The AIF in question will consequently be removed from the list referred to in Article 4, paragraph (2) of this Regulation.

Article 11

Publication

This Regulation will be published in the *Mémorial* as well as on the website of the CSSF.

The Regulation will enter into force on the first day of the month after its publication in the *Mémorial*.

Foreign law UCIs other than UCITS which have been authorised for marketing to retail investors in Luxembourg are considered by operation of law as authorised under this Regulation at the moment of its entry into force.

Luxembourg, 26 November 2015

13.

CSSF CIRCULAR 15/633

RELATING TO THE FINANCIAL INFORMATION TO BE FORWARDED QUARTERLY BY INVESTMENT FUND MANAGERS AND THEIR BRANCHES

CSSF Circular 15/633 relating to the financial information to be forwarded quarterly by investment fund managers and their branches

Luxembourg, 29 December 2015

To all investment fund managers

CSSF CIRCULAR 15/633

Re: Financial information to be provided quarterly by investment fund managers and their branches

Ladies and Gentlemen,

1. The purpose of this Circular is to extend the submission of financial information to all investment fund managers ("IFM") as defined in point 2 below. Indeed, until now, only management companies subject to Chapter 15 of the Law of 17 December 2010 on undertakings for collective investment have had to transmit financial information quarterly to the CSSF based on CSSF Circular 10/467.

2. The term "IFM" includes the following entities:

   a) management companies under Chapter 15 of the Law of 17 December 2010 on undertakings for collective investment (hereafter "15 MC");

   b) management companies under Articles 125-1 and 125-2 of Chapter 16 of the Law of 17 December 2010 on undertakings for collective investment (hereafter "16 MC");

   c) IFMs approved for external management under the Law of 12 July 2013 relating to alternative investment fund managers (hereafter "AIFM").

3. From 2016, all IFM, including their branches, must submit a range of financial information to the CSSF. This financial information will be used by the CSSF for the purposes of prudential supervision of IFMs.

4. IFMs must submit the financial tables to the CSSF on a quarterly basis which may be downloaded from the CSSF website under the heading "Legal Reporting" for the different types of IFM (http://www.cssf.lu/surveillance/vgi/sg15/reporting-legal/).

5. It should be noted that the financial tables must be submitted only once by an IFM with several authorisations (for example an IFM that has been authorised for the management of UCITS and AIFs).

6. **Reference dates:** All tables should be drawn up on a quarterly basis. The reference dates are the last day of each calendar quarter, namely 31 March, 30 June, 30 September and 31 December.

7. **Deadline for transmission:** The financial tables must be submitted to the CSSF by the 20th of the month following the reference date.

8. CSSF Circular 10/467 introduced an obligation to provide definitive tables which accurately reflect the figures audited by the approved statutory auditor at the end of each financial year. These definitive tables have to be transmitted to the CSSF within one month after the annual general meeting having approved the annual accounts.

9. **Transmission of data to the CSSF:**

a) 15 MCs shall continue to send the tables electronically following the technical instructions given in CSSF Circular 10/467. **Consequently, the current system of transmission remains unchanged.**

b) 16 MCs shall also send the tables electronically following the technical instructions given in CSSF Circular 10/467.

c) AIFMs must send the downloaded tables exclusively to the address aifm_reporting@cssf.lu. For the time being, they may not transmit the tables electronically as provided by CSSF Circular 10/467.

With regard to the completion of the tables by the AIFMs, the following guidelines should be respected:

- Line 13 of the sheet "Reporting MC" shall not be filled in;

- The AIFMs making the filing shall respect the same nomenclature as that provided by CSSF Circular 10/467. However, at reporting entity level, ANNNN should be indicated in place of SNNNN. The identification number NNNN can be found in the following file: http://www.cssf.lu/downloads/IDENTIFIANTS_AIFM.zip.

10. **Repeal provision:** This Circular repeals Chapter VI "Prudential supervision of a management company as referred to in Chapter 15 of the 2010 Law" of CSSF Circular 12/546.

11. **Entry into force:** This Circular enters into force with immediate effect. The first data to be transmitted by 16 MCs and AIFMs is the data as per 31 December 2015 to be filed on 29 February 2016 at the latest.

15 MCs shall continue to submit the tables within the timeframe mentioned in point 7 above.

14.

CSSF CIRCULAR 15/612

RELATING TO THE INFORMATION TO BE SUBMITTED TO THE CSSF IN RELATION TO UNREGULATED ALTERNATIVE INVESTMENT FUNDS (ESTABLISHED IN LUXEMBOURG, IN ANOTHER MEMBER STATE OF THE EUROPEAN UNION OR IN A THIRD COUNTRY) AND/OR REGULATED ALTERNATIVE INVESTMENT FUNDS ESTABLISHED IN A THIRD COUNTRY

CSSF Circular 15/612 relating to the information to be submitted to the CSSF in relation to unregulated alternative investment funds (established in Luxembourg, in another Member State of the European Union or in a third country) and/or regulated alternative investment funds established in a third country

Luxembourg, 5 May 2015

To all alternative investment fund managers subject to the Law of 12 July 2013 on alternative investment fund managers

CSSF CIRCULAR 15/612

Re: Information to be submitted to the CSSF in relation to unregulated alternative investment funds (established in Luxembourg, in another Member State of the European Union or in a third country) and/or regulated alternative investment funds established in a third country

Ladies and Gentlemen,

This Circular is applicable to alternative investment fund managers ("AIFMs") which have been registered within the meaning of Article 3 of the Law of 12 July 2013 on alternative investment fund managers (the "Law")[1] and to AIFMs which have been authorised within the meaning of Article 5 of the Law[2]. Its object is the transmission of information to the CSSF for each Luxembourg AIFM which has been registered or authorised when it begins to manage an additional alternative investment fund ("AIF") in the case where this AIF is either an unregulated AIF or a regulated AIF established in a third country[3].

It does not apply to regulated AIFs established in another Member State of the European Union and managed by a Luxembourg AIFM given that this AIFM is obliged to communicate the said information to the CSSF as part of the notification procedure as defined in Article 32 of the Law.

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1 Art. 3 (3) of the Law: "The AIFMs referred to in paragraph (2) must (…) be registered with the CSSF". These managers are "a) AIFMs established in Luxembourg which either directly or indirectly, through a company with which the AIFM is linked by common management or control, or by a substantive direct or indirect holding, manage portfolios of AIFs whose assets under management including any assets acquired through use of leverage, in total do not exceed a total threshold of EUR 100,000,000; or b) AIFMs established in Luxembourg which either directly or indirectly, through a company with which the AIFM is linked by common management or control, or by a substantive direct or indirect holding, manage portfolios of AIFs whose assets under management in total do not exceed a threshold of EUR 500,000,000 when the portfolios of AIFs consist of AIFs that are unleveraged and have no redemption rights exercisable during a period five years following the date of initial investment in each AIF."

2 Art. 5 (1) of the Law: "(1) No person referred to in paragraph (1) of Article 2 may exercise in Luxembourg the activity of AIFM responsible for the management of AIFs unless it is authorised in accordance with this Chapter." Article 2 (1) provides that the Law shall apply "to every legal person governed by Luxembourg law, the regular business of which is to manage one or more AIFs irrespective of whether these AIFs are AIFs established in Luxembourg, AIFs established in another Member State of the European Union or AIFs established in third countries, the AIF belongs to the open-ended or closed-ended type and whatever the legal form of the AIF or the legal structure of the AIFM."

3 See definitions of "additional AIF", "unregulated AIF" and "AIF regulated in a third country" under point 2 below.

1. Context

The CSSF in its capacity as competent authority in respect of the supervision of AIFMs must be in a position to know exhaustively and at any time all the AIFs managed by AIFMs established in Luxembourg. However, it transpires that the obligations relating to the transmission of information as defined in the Law (Article 22, paragraphs 2 to 5, for authorised AIFMs) and in the Delegated Regulation (EU) No. 231/2013 of the European Commission of 19 December 2012 (Article 5(5) for registered AIFs) do not always allow the CSSF to have an up-to-date global overview of the AIFs managed by these AIFMs. This is notably the case when AIFMs established in Luxembourg begin to manage unregulated AIFs or regulated AIFs established in a third country.

Furthermore, the CSSF must, at least on a quarterly basis, communicate to the European Securities and Markets Authority ("ESMA") the list of all AIFs managed by AIFMs established in Luxembourg as well as additional information relating to the management and the marketing of these AIFs in order to keep the European register of AIFMs up to date.

2. Definitions

2.1. "Unregulated AIF"

An unregulated AIF should be understood as an AIF which is not subject to prior authorisation and/or prudential supervision by a supervisory authority. These AIFs may be established in Luxembourg, in another Member State of the European Union or in a third country.

2.2. "Additional AIF"

Any unregulated AIF and any regulated AIF established in a third country which has not been notified to the CSSF either during the review of the AIFM's authorisation or registration file or during an update of the said file qualifies as an additional AIF.

In addition, in the case where an AIF comprises several compartments, the obligations in respect of information are applicable at the level of each new compartment of the AIF.

2.3. "AIF regulated in a third country"

Any AIF which is subject to prior authorisation and/or prudential supervision by a supervisory authority in a country outside the European Union is to be considered as an AIF regulated in a third country.

3. Information to be transmitted to the CSSF

In order to enable the CSSF to have up-to-date information, the AIFMs must complete the form in Annex I (a or b) for each additional AIF which they undertake to manage.

The form to be used for this purpose can be downloaded from the following address: http://www.cssf.lu/surveillance/vgi/gfia-aifm/formulaires/. If the AIF does not have multiple compartments, form Ia should be used; otherwise form Ib should be filled out. The form, together with the additional documents, must be transmitted by email to the following address only: aifm@cssf.lu.

Furthermore, AIFMs must also inform the CSSF as soon as they cease to manage an unregulated AIFM or a regulated AIF established in a third country. This information must also be sent by email only to the address aifm@cssf.lu using the form in Annex II.

4. Period for transmitting the information

The additional information must be submitted to the CSSF within 10 working days following the date at which the AIFM concerned begins to manage an additional AIF. It should be noted that the CSSF considers that an AIFM takes on the role of manager at the latest at the date of the signing, or at the effective date of the management agreement appointing the AIFM as the manager of the additional AIF concerned, it being understood that the additional AIF may not yet have been launched.

In the event of the termination of the management mandate for the AIF referred to in this Circular, the AIFM must inform the CSSF of this termination within a period of ten working days.

Please address any question concerning this Circular by email only to the following address: aifm@cssf.lu

Annex 1: Form I.a

Information to be provided by a Luxembourg AIFM which manages an unregulated AIF or a regulated AIF established in a third country (AIF without compartments):

1) Information on the AIFM and the AIF:

1	CSSF code of the AIFM	Y	A
2	Name of the AIFM	Y	
3	Name of the AIF	Y	
4	Nationality of the AIF	Y	
5	National code of the AIF	N	
6	LEI code of the AIF	N	
7	Date of establishment of the AIF	Y	
8	Address of the AIF	Y	
9	Regulated AIF	Y	
10	Name and address of the supervisory authority		
11	Reference currency of the AIF	Y	
12	Name and address of the depositary bank	Y	
13	Type(s) of unit (share(s)) (National code, ISIN code, name of the type of unit/share)	Y	
14	Date from which the AIFM manages the AIF (in the format DD/MM/YYYY)	Y	
15	Countries in which the AIF is marketed to professional investors	Y	
16	Strategy of the AIF	Y	Tick one strategy only in the table at the end of this Annex

Instructions for filling in the information required in the various fields which are contained in the preceding table:

- With the exception of item 10 which must only be filled in in the case of a regulated AIF, all the fields in the right-hand column of the preceding table must be filled in if the field is preceded by the letter "Y" in the previous column. The fields which are preceded by the letter "N" must be filled in when the information is available.

- Item 1: The CSSF code of the AIFM is the identifier which the CSSF has attributed to the AIFM. It is made up of the letter A and eight numbers. The CSSF code of the AIF may be consulted on the CSSF's website under the following URL:

  http://supervisedentities.cssf.lu/index.html?language=fr&type=AIF#AdvancedSearch

- Item 5: The national code refers to the code which the supervisory authority has attributed to the AIF when it is supervised. If the AIF is not regulated, it is necessary to indicate the registration number or other similar number. For unregulated Luxembourg AIFs, the trade and companies register number must be indicated.

- Item 16: It is necessary to indicate the strategy which best describes the strategy applied by the AIF. The strategies appearing in the table at the end of this Annex are the 35 strategies provided for in Annex IV of the Delegated Regulation (EU) No. 231/2013 of the Commission of 19 December 2012 and which have been included in table 3 of Annex II of ESMA's final report on reporting obligations under Articles 3(3)(d) and 24(1), (2) and (4) of the AIFM directive (document ESMA/2013/1339 (revised) of 15/11/2013). For practical purposes, the strategies, their abbreviations and their types of corresponding AIFs appear […][1*] at the end of this document. As a reminder, it is mandatory to choose only one strategy (place a cross in the last column of this strategy).

2) Information on the master AIF, if the AIF is a feeder AIF:

If the AIF is a feeder AIF, the following information on the master AIF must be filled in:

17	Name of the master AIF	Y	
18	Nationality of the master AIF	Y	
19	National code of the master AIF	N	
20	LEI code of the master AIF	N	
21	Date of establishment of the master AIF	Y	
22	Address of the master AIF	Y	
23	Name of the AIFM of the master AIF	Y	

In addition to the form, the following documents must be submitted:

1) the most recent version of the articles of association, if the CSSF is not in possession of it;

2) an offering document, if such document exists;

3) the most recent annual report of the AIF ("annual accounts") in the event that such a report has already been prepared.

The Ia form is to be sent together with the documents listed above to the following email address **only**: aifm@cssf.lu

[*] The French original of the Circular also refers to French translations.

AIF strategies				
AIF type code	AIF type label	AIF strategy code	AIF strategy label	AIF type – strategy of the AIF
HFND	Hedge fund strategies	EQTY_LGBS	Equity: Long Bias	hedge fund – equity: long bias
HFND	Hedge fund strategies	EQTY_LGST	Equity: Long/Short	hedge fund – equity: long/short
HFND	Hedge fund strategies	EQTY_MTNL	Equity: Market neutral	hedge fund – equity: market neutral
HFND	Hedge fund strategies	EQTY_STBS	Equity: Short Bias	hedge fund – equity: short bias
HFND	Hedge fund strategies	RELV_FXIA	Relative Value: Fixed Income Arbitrage	hedge fund – relative value: fixed income arbitrage
HFND	Hedge fund strategies	RELV_CBAR	Relative Value: Convertible Bond Arbitrage	hedge fund – relative value: convertible bond arbitrage
HFND	Hedge fund strategies	RELV_VLAR	Relative Value: Volatility Arbitrage	hedge fund – relative value: volatility arbitrage
HFND	Hedge fund strategies	EVDR_DSRS	Event Driven: Distressed/Restructuring	hedge fund – event driven: distressed / restructuring
HFND	Hedge fund strategies	EVDR_RAMA	Event Driven: Risk Arbitrage/Merger Arbitrage	hedge fund – event driven: risk arbitrage/merger arbitrage
HFND	Hedge fund strategies	EVDR_EYSS	Event Driven: Equity Special Situations	hedge fund – event driven: equity special situations
HFND	Hedge fund strategies	CRED_LGST	Credit Long/Short	hedge fund – credit: long/short
HFND	Hedge fund strategies	CRED_ABLG	Credit Asset Based Lending	hedge fund – credit: asset based lending
HFND	Hedge fund strategies	MACR_MACR	Macro	hedge fund – macro
HFND	Hedge fund strategies	MANF_CTAF	Managed Futures/CTA: Fundamental	hedge fund – managed futures/CTA: fundamental
HFND	Hedge fund strategies	MANF_CTAQ	Managed Futures/CTA: Quantitative	hedge fund – managed futures/CTA: quantitative
HFND	Hedge fund strategies	MULT_HFND	Multi-strategy hedge fund	hedge fund – multi-strategy
HFND	Hedge fund strategies	OTHR_HFND	Other hedge fund strategy	hedge fund – other type of strategy
PEQF	Private equity strategies	VENT_CAPL	Venture Capital	private equity – venture capital
PEQF	Private equity strategies	GRTH_CAPL	Growth Capital	private equity – growth capital
PEQF	Private equity strategies	MZNE_CAPL	Mezzanine Capital	private equity – mezzanine capital

PEQF	Private equity strategies	MULT_PEQF	Multi-strategy private equity fund	private equity – multi-strategy
PEQF	Private equity strategies	OTHR_PEQF	Other private equity fund strategy	private equity – other type of strategy
REST	Real estate strategies	RESL_REST	Residential real estate	real estate – residential real estate
REST	Real estate strategies	COML_REST	Commercial real estate	real estate – commercial real estate
REST	Real estate strategies	INDL_REST	Industrial real estate	real estate – industrial real estate
REST	Real estate strategies	MULT_REST	Multi-strategy real estate fund	real estate – multi-strategy
REST	Real estate strategies	OTHR_REST	Other real estate strategy	real estate – other type of strategy
FOFS	Fund of fund strategies	FOFS_FHFS	Fund of hedge funds	fund of fund – fund of hedge funds
FOFS	Fund of fund strategies	FOFS_PRIV	Fund of private equity	fund of fund – fund of private equity
FOFS	Fund of fund strategies	OTHR_FOFS	Other fund of funds	fund of fund – other type of fund of funds
OTHR	Other Strategy	OTHR_COMF	Commodity fund	other – commodity fund
OTHR	Other Strategy	OTHR_EQYF	Equity fund	other – equity fund
OTHR	Other Strategy	OTHR_FXIF	Fixed income fund	other – fixed income fund
OTHR	Other Strategy	OTHR_INFF	Infrastructure fund	other – infrastructure fund
OTHR	Other Strategy	OTHR_OTHF	Other fund	other – other fund

Annex 2: Form I.b

Information to be provided by a Luxembourg AIFM which manages an unregulated AIF or a regulated AIF established in a third country (AIF with multiple compartments):

1) Information on the AIFM and the AIF:

1	CSSF code of the AIFM	Y	A
2	Name of the AIFM	Y	
3	Name of the AIF	Y	
4	Nationality of the AIF	Y	
5	National code of the AIF	N	
6	LEI code of the AIF	N	
7	Date of establishment of the AIF	Y	
8	Address of the AIF	Y	
9	Regulated AIF	Y	
10	Name and address of the supervisory authority		
11	Reference currency of the AIF	Y	
12	Name and address of the depositary bank	Y	

Instructions for filling in the information required in the various fields which are contained in the preceding table:

- With the exception of item 10 which must only be filled in in the case of a regulated AIF, all the fields in the right-hand column of the preceding table must be filled in if the field is preceded by the letter "Y" in the previous column. The fields which are preceded by the letter "N" must be filled in when the information is available.

- Item 1: The CSSF code of the AIFM is the identifier which the CSSF has attributed to the AIFM. It is made up of the letter A and eight figures. The CSSF code of the AIF may be consulted on the CSSF's website under the following URL:

  http://supervisedentities.cssf.lu/index.html?language=fr&type=AIF#AdvancedSearch

- Item 5: The national code refers to the code which the supervisory authority has attributed to the AIF when it is supervised. If the AIF is not regulated, it is necessary to indicate the registration number or other similar number. For unregulated Luxembourg AIFs, the trade and companies register number must be indicated.

2) Information to be provided for each additional compartment of the AIF which is managed by the AIFM:

(Please copy the tables under this item for each additional compartment which you submit)

13	Name of the compartment	Y	

	of the AIF		
14	National code of the compartment of the AIF	N	
15	LEI code of the AIF compartment	N	
16	Reference currency of the compartment of the AIF	Y	
17	Type(s) of unit (share(s)) marketed (National code, ISIN code, name of the type of unit/share) of the compartment of the AIF	Y	
18	Date from which the AIFM manages the compartment of the AIF (in the format DD/MM/YYYY)	Y	
19	Countries in which the compartment of the AIF is marketed to professional investors	Y	
20	Strategy of the AIF compartment	Y	Tick one strategy only in the table at the end of this Annex

AIF strategies				
AIF type code	AIF type label	AIF strategy code	AIF strategy label	AIF type – strategy of the AIF
HFND	Hedge fund strategies	EQTY_LGBS	Equity: Long Bias	hedge fund – equity: long bias
HFND	Hedge fund strategies	EQTY_LGST	Equity: Long/Short	hedge fund – equity: long/short
HFND	Hedge fund strategies	EQTY_MTNL	Equity: Market neutral	hedge fund – equity: market neutral
HFND	Hedge fund strategies	EQTY_STBS	Equity: Short Bias	hedge fund – equity: short bias
HFND	Hedge fund strategies	RELV_FXIA	Relative Value: Fixed Income Arbitrage	hedge fund – relative value: fixed income arbitrage
HFND	Hedge fund strategies	RELV_CBAR	Relative Value: Convertible Bond Arbitrage	hedge fund – relative value: convertible bond arbitrage
HFND	Hedge fund strategies	RELV_VLAR	Relative Value: Volatility Arbitrage	hedge fund – relative value: volatility arbitrage
HFND	Hedge fund strategies	EVDR_DSRS	Event Driven: Distressed/Restructuring	hedge fund – event driven: distressed / restructuring
HFND	Hedge fund strategies	EVDR_RAMA	Event Driven: Risk Arbitrage/Merger Arbitrage	hedge fund – event driven: risk arbitrage/merger arbitrage
HFND	Hedge fund strategies	EVDR_EYSS	Event Driven: Equity Special Situations	hedge fund – event driven: equity special situations
HFND	Hedge fund strategies	CRED_LGST	Credit Long/Short	hedge fund – credit: long/short
HFND	Hedge fund strategies	CRED_ABLG	Credit Asset Based Lending	hedge fund – credit: asset based lending
HFND	Hedge fund strategies	MACR_MACR	Macro	hedge fund – macro
HFND	Hedge fund strategies	MANF_CTAF	Managed Futures/CTA: Fundamental	hedge fund – managed futures/CTA: fundamental
HFND	Hedge fund strategies	MANF_CTAQ	Managed Futures/CTA: Quantitative	hedge fund – managed futures/CTA: quantitative
HFND	Hedge fund strategies	MULT_HFND	Multi-strategy hedge fund	hedge fund – multi-strategy
HFND	Hedge fund strategies	OTHR_HFND	Other hedge fund strategy	hedge fund – other type of strategy
PEQF	Private equity strategies	VENT_CAPL	Venture Capital	private equity – venture capital
PEQF	Private equity strategies	GRTH_CAPL	Growth Capital	private equity – growth capital
PEQF	Private equity strategies	MZNE_CAPL	Mezzanine Capital	private equity – mezzanine capital

PEQF	Private equity strategies	MULT_PEQF	Multi-strategy private equity fund	private equity – multi-strategy
PEQF	Private equity strategies	OTHR_PEQF	Other private equity fund strategy	private equity – other type of strategy
REST	Real estate strategies	RESL_REST	Residential real estate	real estate – residential real estate
REST	Real estate strategies	COML_REST	Commercial real estate	real estate – commercial real estate
REST	Real estate strategies	INDL_REST	Industrial real estate	real estate – industrial real estate
REST	Real estate strategies	MULT_REST	Multi-strategy real estate fund	real estate – multi-strategy
REST	Real estate strategies	OTHR_REST	Other real estate strategy	real estate – other type of strategy
FOFS	Fund of fund strategies	FOFS_FHFS	Fund of hedge funds	fund of fund – fund of hedge funds
FOFS	Fund of fund strategies	FOFS_PRIV	Fund of private equity	fund of fund – fund of private equity
FOFS	Fund of fund strategies	OTHR_FOFS	Other fund of funds	fund of fund – other type of fund of funds
OTHR	Other Strategy	OTHR_COMF	Commodity fund	other – commodity fund
OTHR	Other Strategy	OTHR_EQYF	Equity fund	other – equity fund
OTHR	Other Strategy	OTHR_FXIF	Fixed income fund	other – fixed income fund
OTHR	Other Strategy	OTHR_INFF	Infrastructure fund	other – infrastructure fund
OTHR	Other Strategy	OTHR_OTHF	Other fund	other – other fund

If the compartment of the AIF is a feeder AIF, the following information on the master AIF must be filled in:

21	Name of the master AIF	Y	
22	Nationality of the master AIF	Y	
23	National code of the master AIF	N	
24	LEI code of the master AIF	N	
25	Date of incorporation of the master AIF	Y	
26	Address of the master AIF	Y	
27	Name of the AIFM of the master AIF	Y	

3) Additional documents:

In addition to the form Ib, the following documents must be submitted:

1) the most recent version of the articles of association, if the CSSF is not in possession of it;

2) an offering document, if such document exists;

3) the most recent annual report of the AIF ("annual accounts") in the event that such a report has already been prepared.

The Ib form is to be sent together with the documents listed above to the following email address **only**: aifm@cssf.lu

Annex II

Information to be provided to the CSSF by a Luxembourg AIFM when it ceases to manage an unregulated AIF or a regulated AIF established in a third country:

1	CSSF code of the AIFM (ANNNNNNNN)	A
2	Name of the AIFM	
3	Name of the AIF	
4	CSSF code of the AIF (VMMMMMMMM)	V
5	Date from which the AIFM no longer manages the AIF (date in DD/MM/YYYY format)	

Instructions for filling in the information required in the various fields which are contained in the above table:

- All the fields in the right-hand column of the preceding table must be filled in.
- Item 1: The CSSF code of the AIFM is the identifier which the CSSF has attributed to the AIFM. It is made up of the letter A and eight numbers. The CSSF code of the AIF may be consulted on the CSSF's website under the following URL:

  http://supervisedentities.cssf.lu/index.html?language=fr&type=AIF#AdvancedSearch
- Item 4: The CSSF code of the AIF is the identifier which the CSSF has attributed to the AIF. It is made up of the letter "V" and eight numbers.
- The form is to be sent to the following email address **only**: aifm@cssf.lu

15.

CSSF CIRCULAR 14/598

RELATING TO THE OPINION OF THE EUROPEAN SECURITIES AND MARKETS AUTHORITY (ESMA) ON THE REVIEW OF "CESR'S GUIDELINES ON A COMMON DEFINITION OF EUROPEAN MONEY MARKET FUNDS" (CESR/10-049)

CSSF Circular 14/598 relating to the opinion of the European Securities and Markets Authority (ESMA) on the review of "CESR's Guidelines on a common definition of European money market funds" (CESR/10-049)

Luxembourg, 2 December 2014

To all Luxembourg undertakings for collective investment and to all Luxembourg specialised investment funds, as well as to those involved in the operation and monitoring of these undertakings

CSSF CIRCULAR 14/598

Re: Opinion of the European Securities and Markets Authority (ESMA) on the review of "CESR's Guidelines on a common definition of European money market funds" (CESR/10-049)

Ladies and Gentlemen,

The purpose of this circular is to implement the amendments introduced by ESMA's Opinion (the "Opinion") of 22 August 2014 (Ref. ESMA/2014/1103) concerning "CESR's Guidelines on a common definition of European money market funds" (Ref. CESR/10-049) (the "MMF Guidelines") into the Luxembourg regulatory framework governing undertakings for collective investment subject to the Law of 17 December 2010 ("UCIs") and specialised investment funds subject to the Law of 13 February 2007 ("SIFs").

As a reminder, the MMF Guidelines were published on 19 May 2010 by the Committee of European Securities Regulators (now ESMA) and were implemented in the Luxembourg regulatory framework through CSSF Circular 11/498. These guidelines, in application of Box 1, apply to all UCIs or SIFs labelling or marketing themselves as money market funds.

ESMA's Opinion meets the requirements of Article 5(b)1. of Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies (the "Regulation"), as amended by Regulation (EU) No 462/2013 of the European Parliament and of the Council of 21 May 2013, according to which the European Supervisory Authorities shall review and remove, where appropriate, all references to credit ratings in existing guidelines and recommendations where such references have the potential to trigger sole or mechanistic reliance on these credit ratings.

In accordance with the aforementioned amended Regulation, ESMA reviewed the MMF Guidelines and came to the conclusion that there were references to credit ratings that have the potential to trigger sole or mechanistic reliance on credit ratings in relation to the assessment of the credit quality of money market instruments in which money market funds may invest.

Consequently, ESMA is of the view that point 4 of Box 2 of the MMF Guidelines relating to short-term money market funds, point 2 of Box 3 relating to money market funds and the explanatory texts relating thereto should be amended.

These amendments provide notably that management companies (or investment companies which have not designated a management company) shall apply an internal documented assessment of the credit quality of money market instruments allowing them to determine whether a money market instrument is of high quality.

More specifically, the points of the Guidelines referred to above were replaced by the following:

a) Point 4 of Box 2:

"4. For the purposes of point 3a), ensure that the management company performs its own documented assessment of the credit quality of money market instruments that allows it to consider a money market instrument as high quality. Where one or more credit rating agencies registered and supervised by ESMA have provided a rating of the instrument, the management company's internal assessment should have regard to, inter alia, those credit ratings. While there should be no mechanistic reliance on such external ratings, a downgrade below the two highest short-term credit ratings by any agency registered and supervised by ESMA that has rated the instrument should lead the manager to undertake a new assessment of the credit quality of the money market instrument to ensure it continues to be of high quality."

b) Point 2 of Box 3:

"2. May, as an exception to the requirement of point 4 of Box 2, hold sovereign issuance of a lower internally-assigned credit quality based on the MMF manager's own documented assessment of credit quality. Where one or more credit rating agencies registered and supervised by ESMA have provided a rating of the instrument, the management company's internal assessment should have regard to, inter alia, those credit ratings. While there should not be mechanistic reliance on such external ratings, a downgrade below investment grade or any other equivalent rating grade by any agency registered and supervised by ESMA that has rated the instrument should lead the manager to undertake a new assessment of the credit quality of the money market instrument to ensure it continues to be of appropriate quality. 'Sovereign issuance' should be understood as money market instruments issued or guaranteed by a central, regional or local authority or central bank of a Member State, the European Central Bank, the European Union or the European Investment Bank."

This circular enters into force with immediate effect.

The Opinion, which includes the revised version of the guidelines, is annexed to this circular. It is also available on ESMA's website at http://www.esma.europa.eu/.

Annex 1: *ESMA Opinion: Review of the CESR guidelines on a Common Definition of European Money Market Funds (Ref. ESMA/2014/1103)*

16.

CSSF CIRCULAR 14/591

RELATING TO THE PROTECTION OF INVESTORS IN CASE OF A SIGNIFICANT CHANGE TO AN OPEN-ENDED UNDERTAKING FOR COLLECTIVE INVESTMENT

CSSF Circular 14/591 relating to the protection of investors in case of a significant change to an open-ended undertaking for collective investment

Luxembourg, 22 July 2014

To all Luxembourg undertakings for collective investment subject to the Law of 17 December 2010

CSSF CIRCULAR 14/591

Re: Protection of investors in case of a significant change to an open-ended undertaking for collective investment

Ladies and Gentlemen,

According to an existing well-established supervisory practice, the CSSF requires for each significant change affecting investors' interests in an open-ended undertaking for collective investment ("UCI") governed by the Luxembourg Law of 17 December 2010 relating to UCIs (the "Law of 2010") that sufficient time is provided to these investors in order for them to make an informed decision on the envisaged change and that, in the event of disagreement, they are given the possibility to request redemption or conversion of their shares/units free of redemption or conversion charges. The purpose of this Circular is to expressly lay down this administrative practice and to provide written clarifications.

1. Background

According to Article 151 (1) of the Law of 2010, the prospectus shall include the information necessary for investors to be able to make an informed judgement on the investment proposed to them. In this context, the CSSF assesses whether an envisaged change to the prospectus requires additional measures to protect the interests of the investors in the UCI. It is understood that this will not be the case for every change, but given that, *inter alia*, investors in UCIs are essentially retail investors, the CSSF is of the view that they have to be given sufficient time to make an informed decision about a change which is significant enough to potentially affect the investors' interests and have an impact on the basis on which they made their existing investment.

2. Process

When considering a significant change to their structure, organisation or operations, UCIs should question whether there is a high probability that an investor, informed of such a change, would reconsider its investment in the UCI. A UCI should therefore analyse the potential impact of any envisaged change on its investors (i.e. compare the investors' interests/situation before and after implementation of the change) and submit the proposed change, together with appropriate explanations for the change, to the CSSF. This should be done well in advance of the relevant change becoming effective.

The CSSF reserves the right, on a case-by-case basis, to determine, based on the information provided, whether any envisaged change at the level of a UCI should be considered significant and, as the case may be, to request a notification to investors. A significant change may, in principle, only be implemented after the expiry of the notification period.

In conformity with the CSSF's current administrative practice, the minimum period for notifying investors of a significant change to the UCI they are invested in should be **one (1) month**.

During this one-month period before the entry into force of the significant change, investors have the right to request the repurchase or redemption of their units without any repurchase or redemption charge. In addition to the possibility to redeem units free of charge, the UCI may also (but is not obliged to) offer the option to investors to convert their units into units of another UCI (or, in case the change affects only one sub-fund, into units of another sub-fund of the same UCI) without any conversion charges.

The CSSF may nevertheless agree, by way of a duly justified prior request for derogation, not to impose such a notification period with the possibility for investors to redeem or convert their units free of charge (for example where all the investors of the relevant UCI agree with the envisaged change). Similarly, the CSSF may agree only to impose a notification period for duly informing the investors of the relevant change before it becomes effective, but without the possibility for investors to redeem or convert their units free of charge.

For the sake of completeness, the notification period referred to in this Circular is without prejudice to the prior notice period(s) required by law for investors to approve such events. The content of the Circular is also without prejudice to the specific requirements of other competent authorities in jurisdictions (inside and outside of the European Union) where the UCI is registered for distribution.

3. Entry into force

This Circular is immediately applicable as from the date of its publication.

17.

CSSF CIRCULAR 14/589

RELATING TO THE DETAILS CONCERNING CSSF REGULATION NO. 13-02 OF 15 OCTOBER 2013 RELATING TO THE OUT-OF-COURT RESOLUTION OF COMPLAINTS

CSSF Circular 14/589 relating to the details concerning CSSF Regulation No. 13-02 of 15 October 2013 relating to the out-of-court resolution of complaints

Luxembourg, 27 June 2014

To all professionals subject to the prudential supervision of the CSSF

CSSF CIRCULAR 14/589

Re: Details concerning CSSF Regulation No. 13-02 of 15 October 2013 relating to the out-of-court resolution of complaints

Ladies and Gentlemen,

This CSSF circular aims to clarify the implementation of CSSF Regulation No. 13-02 relating to the out-of-court resolution of complaints ("CSSF Regulation No. 13-02") by the supervised institutions.

CSSF Regulation No. 13-02 was published in Mémorial A – No. 187 of 28 October 2013. Sections 1 and 3, which include provisions on the handling of requests for the out-of-court resolution of complaints filed with the CSSF, entered into force on 1 January 2014.

Section 2 of CSSF Regulation No. 13-02, which specifies certain obligations incumbent upon professionals regarding the handling of complaints, will enter into force on 1 July 2014. As from this date, professionals of the financial sector will have to adapt their internal procedures to the requirements of the new CSSF Regulation.

CSSF Regulation No. 13-02 aims to implement a clearly defined regulatory framework for complaint handling in order to serve the best interest of the complainants and to ensure efficient complaint management within the supervised institutions.

Out-of-court complaint resolution has been dealt with so far in Circular IML 95/118 relating to customer complaint handling. CSSF Regulation No. 13-02 was drafted in order to modernize the framework of said Circular and in order to specify certain obligations incumbent upon professionals with the aim to ensure adequate internal handling of complaints received by professionals.

CSSF Regulation No. 13-02 already takes into account, pending their transposition into national law, the principles of Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC, as well as the (ninth) Principle on "Complaints Handling and Redress" included in the Ten G20 High-Level Principles on Financial Consumer Protection drafted by the OECD and published in October 2011 and the "Guidelines for handling consumer complaints in the securities (ESMA) and banking sectors (EBA)" drafted by the European Securities and Markets Authority (ESMA) and the European Banking Authority (EBA).

1. Procedure for complaint handling at professionals

The professionals under the prudential supervision of the CSSF shall have a complaint management policy that is set out in a written document and formalised in an internal complaint settlement procedure. This procedure shall be efficient and transparent, in view of the reasonable and prompt complaint handling. It shall include all aspects of complaint handling within the institution and specify the terms and conditions applicable where the

complaints are handled at the level of the professional and where the CSSF is involved in the handling of a request for the out-of-court resolution of a complaint, respectively.

The professionals shall ensure that each complaint as well as the measure(s) taken to handle them are properly registered. The registration arrangements are left to be determined by each professional, with respect to the number of complaints received. However, the registration shall be at least computerised and secured.

It is essential that a good internal organisation of complaint handling is put in place in order to ensure full compliance with all the provisions of CSSF Regulation No. 13-02.

In this respect, Articles 15 and 16 of CSSF Regulation No. 13-02 include a description of the conduct to be followed by professionals within the context of the handling of the complaints submitted to it. Each complaint shall, at all times, be properly handled and within a reasonable time, in view of the nature of the problem raised in the best interest of the complainants. No complaint shall remain unanswered by the professional. The measures referred to in Article 15 and 16 of CSSF Regulation No. 13-02 are not exhaustive and should be completed when this proves necessary in the light of the number or the complexity of the complaints. This may include the establishment of a telephone hotline/call centre dedicated to complaints.

2. Director in charge of the complaints - Details on Article 15

The professional's management is in charge of implementing, within the institution, the policy and procedures relating to the provisions of CSSF Regulation No. 13-02. The policies and procedures shall be laid down in writing. The professional's management shall ensure the correct application of these policies and procedures. It entrusts one of its members with the task of handling complaints.

The director in charge shall inform the relevant staff of its institution of the policies and procedures required by CSSF Regulation No. 13-02 and any change thereto.

The director in charge shall determine the human and technical means required to properly implement the policies and the procedures in question. S/he shall ensure that compliance with these policies and relevant procedures is checked by the compliance function of the professional and its internal audit function on a regular basis.

The internal procedure of the professional shall organise the communication to the director in charge of all the necessary data on the complaints received at all levels. In particular, these data shall describe the problems identified, the corrective measures taken and the follow-up on these measures.

When, in view of the nature, the number or complexity of the complaints, the professional considers that it is appropriate to designate one or several persons in charge of the complaints, the director in charge may delegate the management of these complaints internally provided that the CSSF is notified on the arrangements to ensure the full implementation of the provisions of Section 2 of CSSF Regulation No. 13-02 beforehand. However, the director in charge shall keep ongoing knowledge and control of the handling of the complaints internally. Vis-à-vis the CSSF, the director in charge remains the sole contact person.

Moreover, the professionals shall ensure that each complainant is informed of the name and contact information of the person in charge of his/her file. As far as possible, that person will be the contact person of the complainant throughout the internal handling procedure as regards his/her complaint.

3. Communication of information to the CSSF

Article 16 of CSSF Regulation No. 13-02 provides that the manager in charge is required to communicate to the CSSF, on an annual basis, a table including the number of complaints registered by the professional, classified by type of complaints, as well as a summary report of the complaints and of the measures taken to handle them.

In accordance with CSSF Regulation No. 13-02, a complaint shall mean a "complaint filed with a professional to recognise a right or to redress a harm". Thus, simple requests for information or clarification cannot be considered as complaints.

The CSSF provides professionals with a sample form allowing satisfying the requirement to communicate a table including the number of complaints registered by the professional, classified by type of complaints. That form is attached to this circular. Professionals may, where appropriate, use another table model if the latter better suits their situation.

As Article 16 of CSSF Regulation No. 13-02 enters into force on 1 July 2014, the first documents (table and report) shall be transmitted to the CSSF (to the attention of the relevant prudential supervision department) at the latest on 1 March 2015 and shall cover the period from 1 July 2014 to 31 December. Eventually, the documents (table and report) shall be communicated no later than 1 March of each year and shall cover the previous calendar year. As regards the management companies referred to in Article 2 of CSSF Regulation No. 10-04, this communication should be received by the CSSF at the latest one month after the ordinary general meeting having approved the annual accounts of the management company.

4. Repeal of Circular IML 95/118 concerning customer complaint handling

Circular IML 95/118 concerning customer complaint handling is hereby repealed.

ANNEX

Commission de Surveillance du Secteur Financier
Postal address: L-2991 Luxembourg

Address (Head office):
110, route d'Arlon
L-1150 Luxembourg

Table listing the claims registered by the professional (sub-paragraph 1 of Article 16(3) of CSSF Regulation No. 13-02 relating to the out-of-court resolution of complaints)

1. GENERAL DATA ON YOUR INSTITUTION

1.1 Name of the institution	_____
1.2 Identification number*	
1.3 Name of the director in charge of complaint handling	_____

2 COMPLAINTS REGISTERED BY YOUR INSTITUTION

2.1. General information on complaints

2.1.1. Reference period	From _____ to _____
2.1.2. Total number of complaints received by your institution during the reference period	_____

2.2. Number of complaints by category

Categories	Number of complaints
Complaints that do not relate to a specific product or service	
Staff behaviour	_____
Banking secrecy	_____
Provision of documents (statements, etc.)	_____
Others (please specify)_____	_____
_____	_____
TOTAL	_____
Accounts and payment services	
Account opening refusal	_____
Account termination	_____
Account blocking	_____
Dispute of a transaction	_____
Pricing	_____
Others (please specify)_____	_____
_____	_____
TOTAL	_____

* Including letter "B" (Bank), "P" (PFS), etc. indicating the type of activity of the institution

Savings products	
Savings account termination	_____
Yield	_____
Others (please specify)_____	_____
_____	_____
TOTAL	_____
Consumer credits	
Loan refusal	_____
Loan termination	_____
Request for debt restructuring	_____
Early repayment	_____
Interest rate	_____
Pricing	_____
Others (please specify)_____	_____
_____	_____
TOTAL	_____
Mortgage loans	
Loan refusal	_____
Loan termination	_____
Request for debt restructuring	_____
Early repayment	_____
Interest rate	_____
Pricing	_____
Others (please specify)_____	_____
_____	_____
TOTAL	_____
Home loan and savings accounts	
Contract termination	_____
Yield	_____
Early repayment	_____
Pricing	_____
Others (please specify)_____	_____
_____	_____
TOTAL	_____

Payment cards	
Card refusal	_____
Card withdrawal	_____
Unauthorised use	_____
Pricing	_____
Others (please specify)_____	_____
_____	_____
TOTAL	_____
Web Banking	
Service unavailable	_____
Technical failure	_____
Others (please specify)_____	_____
TOTAL	_____
Safe	
Access to safe	_____
Pricing	_____
Others (please specify)_____	_____
_____	_____
TOTAL	_____
Investment activities	
Conflict of interests	_____
Dispute on order execution	_____
Quality of advice	_____
Non-observance of the client's investment profile	_____
Non-compliance with the management agreement	_____
Pricing/Fees	_____
Others (please specify)	_____
_____	_____
TOTAL	_____
Undertakings for collective investment	
Prospectus	_____
Investment policy	_____
Subscription/Redemption of shares/units	_____
Advertising document	_____
Others (please specify)	_____
_____	_____
TOTAL	_____

	Other categories of complaints (please specify)	
_____		_____
_____		_____
_____		_____
_____		_____
TOTAL		_____
	Other categories of complaints (please specify)	
_____		_____
_____		_____
_____		_____
_____		_____
TOTAL		_____
	Other categories of complaints (please specify)	
_____		_____
_____		_____
_____		_____
_____		_____
TOTAL		_____

18.

CSSF CIRCULAR 13/557

RELATING TO THE REGULATION (EU) NO 648/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 4 JULY 2012 ON OTC DERIVATIVES, CENTRAL COUNTERPARTIES AND TRADE REPOSITORIES

CSSF Circular 13/557 relating to the Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories

Luxembourg, 23 January 2013

CSSF CIRCULAR 13/557

Re: Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories

Ladies and Gentlemen,

We refer to the Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (hereafter, "EMIR")[1], published in the Official Journal of the European Union No L 201/1 of 27 July 2012 and which has entered into force on 16 August 2012.

The purpose of EMIR is to introduce new requirements to improve transparency and reduce the risks associated with the derivatives market. EMIR also establishes common organisational, conduct of business and prudential standards for central counterparties as well as organisational and conduct of business standards for trade repositories.

As those rules take the legislative form of a Regulation of the European Parliament and the Council, they are legally binding and directly applicable in all Member States without transposition into national law, as from the day of entry into force. Thus, the EMIR framework is binding in its entirety and directly applicable.

However, a number of provisions must still be clarified through additional regulations by the European Commission (delegated and implementing acts based on technical standards to be drafted by the European Securities Markets Authority ESMA and the European Banking Authority EBA). These technical standards have been adopted by the European Commission on 19 December 2012 except for the specific point of colleges for central counterparties. In line with the relevant Union acts, the European Parliament and the Council still have a one-month scrutiny period (extendable by one month) within which they may object to any of these technical standards.

The actual date of application of these provisions will depend on the date of entry into force of these additional regulations. Further details thereto are available under

http://www.esma.europa.eu/page/European-Market-Infrastructure-Regulation-EMIR.

[1] This document is available under:
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:201:0001:0059:EN:PDF. (English version)
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:201:0001:0059:FR:PDF. (French version)

1. Scope of application and definitions

EMIR applies to all financial and non-financial counterparties established in the EU that enter into derivative contracts[2]. It applies indirectly to non-EU counterparties trading with EU parties.

EMIR also lays down uniform requirements for the performance of activities of central counterparties ("CCPs") and trade repositories ("TRs").

Article 2(5) of EMIR defines '**derivative**' or 'derivative contract' as a financial instrument as set out in points (4) to (10) of Section C of Annex I to Directive 2004/39/EC as implemented by Article 38 and 39 of Regulation (EC) No 1287/2006;

Article 2(7) of EMIR defines '**OTC derivative**' or 'OTC derivative contract' as a derivative contract the execution of which does not take place on a regulated market as within the meaning of Article 4(1)(14) of Directive 2004/39/EC or on a third-country market considered as equivalent to a regulated market in accordance with Article 19(6) of Directive 2004/39/EC;

Article 2(8) of EMIR defines **'financial counterparty'** as an *investment firm* authorised in accordance with Directive 2004/39/EC, a *credit institution* authorised in accordance with Directive 2006/48/EC, *an insurance undertaking* authorised in accordance with Directive 73/239/EEC, *an assurance undertaking* authorised in accordance with Directive 2002/83/EC*, a reinsurance undertaking authorised* in accordance with Directive 2005/68/EC, *a UCITS* and, where relevant, its *management company,* authorised in accordance with Directive 2009/65/EC, *an institution for occupational retirement* provision within the meaning of Article 6(a) of Directive 2003/41/EC and *an alternative investment fund managed by AIFMs* authorised or registered in accordance with Directive 2011/61/EU;

'Non-financial counterparty' is defined in Article 2(9) of EMIR as "an undertaking established in the Union other than CCPs and financial counterparties".

'CCP' means a legal person that interposes itself between the counterparties to the contracts traded on one or more financial markets, becoming the buyer to every seller and the seller to every buyer.

'Trade repository' means a legal person that centrally collects and maintains the records of derivatives.

2. What are the requirements?

2.1. Clearing obligation (Article 4)

EMIR requires all financial counterparties, and those non-financial counterparties above the clearing threshold, to clear **all OTC derivative contracts** with a CCP authorised under Article 14 or recognised under Article 25 of EMIR pertaining to a class of OTC derivatives that has been declared subject to the clearing obligation in accordance with Article 5(2).

The clearing obligation will take effect once a CCP is authorised by the competent authority of the EU Member State where it is established (or recognised by ESMA in case of a CCP from a third country) to clear under the EMIR regime.

For that purpose, a counterparty shall become a clearing member, a client, or shall establish indirect clearing arrangements with a clearing member, provided that those arrangements do not increase counterparty risk and ensure that the assets and

[2] Article 1.1. of EMIR: "This Regulation lays down clearing and bilateral risk- management requirements for over-the-counter ('OTC') derivative contracts, reporting requirements for derivative contracts and uniform requirements for the performance of activities of central counterparties ('CCPs') and trade repositories."

positions of the counterparty benefit from protection with equivalent effect to that referred to in Articles 39 (segregation and portability) and 48 (default procedures).

The classes of OTC derivatives subject to the clearing obligation, the CCPs that are authorised or recognised for the purpose of the clearing obligation as well as the dates from which the clearing obligation takes effect, including any phased-in implementation, the classes of OTC derivatives identified by ESMA in accordance with Article 5(3); the minimum remaining maturity of the derivative contracts referred to in Article 4(1)(b)(ii); the CCPs that have been notified to ESMA by the competent authority for the purpose of the clearing obligation and the date of notification of each of them will be published in the public register on ESMA's website.

For non-financial counterparties, the clearing thresholds for the different classes of derivatives are specified in the technical standards on the clearing obligation.

Basically, non-financial counterparties are subject to the clearing obligation if their OTC derivative positions are large enough and are not directly reducing risks related to the commercial activity or the treasury financing activity.

2.2. Risk mitigation techniques for OTC derivative contracts not cleared by a CCP (Article 11)

Contracts not cleared by a CCP will be subject to operational risk management requirements and bilateral collateral requirements.

2.2.1. *Operational risk management requirements (Article 11.1)*

All financial counterparties and all non-financial counterparties (including those below the clearing threshold (as explained under point 2.1.) that enter into an OTC derivative contract not cleared by a CCP are required to comply with risk management requirements.

They shall ensure, exercising due diligence, that appropriate procedures and arrangements are in place to measure, monitor and mitigate operational risk and counterparty credit risk, including at least: (a) the timely confirmation of the terms of the relevant OTC derivative contract; (b) portfolio reconciliation, (c) dispute resolution and (d) portfolio compression. They shall mark-to-market on a daily basis the value of outstanding contracts. Where market conditions prevent marking-to-market, reliable and prudent marking-to-model shall be used.

2.2.2. Exchange of collateral (Article 11.3)

Financial counterparties shall have risk-management procedures that require the timely, accurate and appropriately segregated exchange of collateral with respect to OTC derivative contracts that are entered into on or after 16 August 2012.

Financial counterparties shall hold an appropriate and proportionate amount of capital to manage the risk not covered by appropriate exchange of collateral.

Non-financial counterparties shall have risk-management procedures that require the timely, accurate and appropriately segregated exchange of collateral with respect to OTC derivative contracts that are entered into on or after the clearing threshold is exceeded.

Basically, non-financial counterparties are subject to bilateral collateral requirements if their OTC derivative positions are large enough and are not directly reducing risks related to the commercial activity or the treasury financing activity.

This requirement of bilateral collateral exchange is applicable from the entry into force of the Regulation. However, the precise level and exact type of collateral to be exchanged will be specified by further regulatory technical standards which will be drafted jointly by ESMA, EBA and EIOPA and adopted by the European Commission by the way of EU regulations.

Before those technical standards enter into force, counterparties have the freedom to apply their own rules on collateral in accordance with the conditions laid down in Article 11(3). As soon as the aforementioned EU regulations enter into force, counterparties will have to change their rules to the extent necessary in order to comply with the rules laid down in the EU regulations. The latter will apply to relevant contracts concluded as of the date that they enter into force.

2.3. Reporting obligation (Article 9)

EMIR requires all financial and non-financial counterparties (including those below the clearing threshold) to report details of their **derivative contracts, whether traded OTC[3] or not,** to a trade repository.

The reporting obligation applies to derivative contracts which:

a) were entered into before 16 August 2012 and remain outstanding on that date;

b) are entered into on or after 16 August 2012.

Counterparties and CCPs have to report the details of any derivative contracts they have concluded and of any modification or termination of the contract to a trade repository authorised or recognised under the EMIR regime.

These details must be reported no later than the working day following the conclusion, modification or termination of the contract. Counterparties shall ensure that the details of their derivative contracts are reported without duplication.

A counterparty or a CCP which is subject to the reporting obligation may delegate the reporting of the details of the derivative contract.

Counterparties shall keep a record of any derivative contract they have concluded and any modification for at least five years following the termination of the contract.

Where a trade repository is not available to record the details of a derivative contract, counterparties and CCPs shall ensure that such details are reported to ESMA.

3. Exemptions

3.1. Exemptions from the clearing obligation for pension scheme arrangements (Article 89.1 and 89.2)

For three years after the entry into force of EMIR, pension scheme arrangements as defined in Article 2(10) are exempted from the clearing obligation for OTC derivative contracts that are objectively measurable as reducing investment risks directly relating to their financial solvency. The transitional period also applies to entities established for the purpose of providing compensation to members of pension scheme arrangements in case of a default.

No notification or prior approval is needed.

[3] OTC derivative contracts as defined in Article 2(7) of EMIR (See point 1 above).

However, the OTC derivative contracts entered into by the above-mentioned entities during this period shall be subject to the risk mitigation techniques for OTC derivative contracts not cleared by a CCP, as specified in Article 11.

In relation to pension scheme arrangements referred to in Article 2(10) (c) and (d), the exemption from the clearing obligation shall be granted by the relevant competent authority for types of entities or types of arrangements after consultation with ESMA.

3.2. Intragroup exemption from the clearing obligation and risk-mitigation techniques for OTC derivative contracts not cleared by a CCP

3.2.1 Intragroup exemption *from the clearing obligation (Article 4.2)*

Intragroup transactions in OTC derivatives contracts as described in Article 3 are not subject to the clearing obligation. The entity wishing to use this exemption has first to notify its competent authority (the CSSF for financial counterparties established in Luxembourg and under its supervision) in writing of its intent to make use of the exemption for the OTC derivative contracts concluded, not less than 30 calendar days before the use of the exemption.

Within 30 calendar days after receipt of that notification, the CSSF (in the case of financial counterparties established in Luxembourg and under its supervision) may object to the use of this exemption if the transactions between the counterparties do not meet the conditions laid down in Article 3, without prejudice to the right of the CSSF to object after that period of 30 calendar days has expired where those conditions are no longer met.

3.2.2 Intragroup exemption from the exchange of collateral (Article 11.5 – Article 11.11)

(a) Intragroup transactions between counterparties established in the same Member State

Intragroup transactions referred to in Article 3 that are entered into by counterparties which are both established in Luxembourg are exempted from the exchange of collateral provided that there is no current or foreseen practical or legal impediment to the prompt transfer of own funds or repayment of liabilities between counterparties. No notification or prior approval is needed.

(b) Intragroup transactions between financial counterparties established in Luxembourg and another EU Member State

Intragroup transactions referred to in Article 3(2)(a), (b) or (c) are exempted totally or partially from the exchange of collateral on the basis of the prior approval of both the competent authority in the other EU Member State and the competent authority in Luxembourg (the CSSF for financial counterparties established in Luxembourg and under its supervision), provided that the following conditions are fulfilled:

i) the risk-management procedures of the counterparties are adequately sound, robust and consistent with the level of complexity of the derivative transaction;

ii) there is no current or foreseen practical or legal impediment to the prompt transfer of own funds or repayment of liabilities between the counterparties.

(c) Intragroup transactions between non-financial counterparties established in Luxembourg and another EU Member State

Intragroup transactions referred to in Article 3(1) are exempted from the exchange of collateral on the basis of a notification of their intention to apply the exemption to the designated competent authority responsible for supervising the application of the clearing obligation by non-financial counterparties.

The exemption conditions are the same as under point 3.2.2(b)(i) and (ii) above.

(d) Intragroup transactions between a counterparty established in Luxembourg and a counterparty established in a third country jurisdiction, other than intragroup transactions covered by (e).

An intragroup transaction referred to in Article 3(2)(a) to (d) is exempted totally or partially from the exchange of collateral, on the basis of the prior approval of the competent authority in Luxembourg (the CSSF for financial counterparties established in Luxembourg and under its supervision), under the conditions of point 3.2.2 (b)(i) and (ii) above.

(e) Intragroup transactions between a non-financial counterparty established in Luxembourg and a counterparty established in a third country jurisdiction

An intragroup transaction referred to in Article 3(1) is exempted from the exchange of collateral on the basis of a notification by the non-financial counterparty established in Luxembourg of its intention to apply the exemption to the designated competent authority responsible for supervising the application of the clearing obligation by non-financial counterparties.

The exemption conditions are the same as under point 3.2.2(b)(i) and (ii) above.

(f) Intragroup transactions between a financial counterparty and a non-financial counterparty one of which is established in Luxembourg and the other in another EU Member State

Intragroup transactions referred to in Article 3(1) are exempted totally or partially from the exchange of collateral, on the basis of the prior approval of the relevant competent authority responsible for supervision of the financial counterparty (the CSSF for financial counterparties established in Luxembourg and under its supervision), under the conditions of point 3.2.2(b)(i) and (ii) above.

The counterparty of an intragroup transaction which has been exempted from the exchange of collateral has to publicly disclose information on the exemption.

4. CCPs

EMIR introduces conditions and procedures for the authorisation of a CCP as well as organisational, conduct of business, and prudential requirements, and requirements related to interoperability arrangements, for CCPs.

4.1. Authorisation and supervision of a CCP (Articles 14 – 22)

CCPs are authorised and supervised by the authority competent for CCP supervision in the EU member state where the CCP is established, in collaboration with a college of the concerned competent authorities.

Once the authorisation is granted, it is effective for the entire territory of the European Union. The extension of services and activities not covered by the initial authorisation is subject to a request for extension to the CCP's competent authority.

4.2. Requirements for CCPs (Articles 26 – 50)

The articles mentioned in the heading relate among others to the organisational requirements of a CCP such as the setting up of a risk committee, record keeping, organisational and administrative arrangements to identify and manage any potential conflict of interest, business continuity policy and disaster recovery plan as well as outsourcing conditions. They also cover conduct of business rules, segregation and portability as well as prudential requirements.

As CCPs are systemic entities, they should have a sound risk-management framework to manage credit risks, liquidity risks, operational and other risks, including the risks that they bear or pose to other entities as a result of interdependencies. A CCP should have adequate procedures and mechanisms in place to deal with the default of a clearing member. In order to minimise the contagion risk of such a default, the CCP should have in place stringent participation requirements, collect appropriate initial margins, maintain a default fund and other financial resources to cover potential losses. In order to ensure that they benefit from sufficient resources on an ongoing basis, the CCP should establish a minimum amount below which the size of the default fund is not to fall under any circumstances.

5. Registration and supervision of trade repositories

EMIR also lays down conditions and procedures for registration of trade repositories, requirements for trade repositories including the duty to make certain data available to the public and the competent authorities listed under Article 81.3.

5.1. Authorisation and supervision of trade repositories (Articles 55 – 77)

Trade repositories are authorised and supervised by ESMA.

A legal person that intends to carry out trade repository activities and provide trade repository services has to submit an application for registration to ESMA. Once the authorisation is granted, it is effective for the entire territory of the Union.

5.2. Requirements for trade repositories (Articles 78 – 81)

A trade repository shall have robust governance arrangements, maintain and operate effective written organisational and administrative arrangements to identify and manage any potential conflicts of interest, maintain and operate an adequate organisational structure to ensure continuity and orderly functioning of the trade repository in the performance of its services and activities. (Article 78)

In case a trade repository offers ancillary services such as trade confirmation, trade matching, credit event servicing, portfolio reconciliation or portfolio compression services, the trade repository shall maintain those ancillary services operationally separate from the trade repository's function of centrally collecting and maintaining records of derivatives. (Article 78)

A trade repository shall have objective, non-discriminatory and publicly disclosed requirements for access by undertakings subject to the reporting obligation under Article 9. It has to publicly disclose the prices and fees associated with services provided under EMIR. (Article 78)

A trade repository shall have systems in place to identify operational risks, have an adequate business continuity policy and recovery plan and ensure orderly substitution including the transfer of data to other trade repositories and the redirection of reporting flows to other trade repositories in case of withdrawal of its registration. (Article 79)

It shall ensure the confidentiality, integrity and protection of the information received under Article 9 and shall record the information received under Article 9 for at least 10 years following the termination of the relevant contracts. (Article 80)

A trade repository shall collect and maintain data and shall ensure that the entities listed under paragraph 3 of Article 81 have direct and immediate access to the details of derivatives contracts they need to fulfill their respective responsibilities and mandates. It shall publish aggregate positions by class of derivatives on the contracts reported to it. (Article 81)

6. What should counterparties to derivative contracts do now?

Financial and non-financial counterparties should assess their EMIR readiness. Below are some questions which need to be considered:

- Which trade repository can you report to for the types of derivatives you trade?
- Will you report directly to the trade repository or delegate reporting to your counterparty or a third party?
- Which CCPs accept to clear the types of OTC derivatives you trade? Will you access clearing directly as a 'clearing member'? If not, you will need to be a client of a clearing member.
- Are your existing systems and processes adequate to implement the new operational risk mitigation requirements set out in EMIR?
- Do you have collateral agreements in place and sufficient collateral available to collateralise non-cleared OTC derivative trades?

7. When can entities start applying for exemptions from EMIR to the CSSF?

For intragroup exemptions, counterparties may start applying for exemption when technical standards relevant to the intragroup exemptions enter into force. ESMA and the national competent authorities are still developing the most appropriate process for applications.

Templates for the notifications and applications for exemption will be published on the CSSF's website.

Further information will be made available on the CSSF website as appropriate.

8. Useful links

The European Commission has published an FAQ on EMIR which is available under:

http://ec.europa.eu/internal_market/financial-markets/docs/derivatives/emir-faqs_en.pdf

ESMA has set up a dedicated EMIR page on its website which is available under http://www.esma.europa.eu/page/European-Market-Infrastructure-Regulation-EMIR

19.

CSSF CIRCULAR 12/540

RELATING TO THE NON-LAUNCHED COMPARTMENTS, COMPARTMENTS AWAITING REACTIVATION AND COMPARTMENTS IN LIQUIDATION

CSSF Circular 12/540 relating to the non-launched compartments, compartments awaiting reactivation and compartments in liquidation

Luxembourg, 9 July 2012

To all Luxembourg undertakings for collective investment

CSSF CIRCULAR 12/540

Re: Non-launched compartments, compartments awaiting reactivation and compartments in liquidation

Ladies and Gentlemen,

This Circular concerns undertakings for collective investment ("UCIs") subject to the Law of 17 December 2010 on undertakings for collective investment or the Law of 13 February 2007 on specialised investment funds. Its purpose is to provide clarification regarding, on one hand, the compartments of UCIs that have been approved by the CSSF but which have not yet been launched following their approval and which have become inactive after their launch or which are in liquidation and, on the other hand, the information to be transmitted to the CSSF in this regard.

Please note that the information refers only to compartments of UCIs and not to classes of units within the compartments.

1. Scope

1.1. Compartment not launched since its approval ("non-launched compartment")

A compartment is considered as non-launched since its approval by the CSSF if that approval is not promptly followed by an issue of its units. If the compartment appears in the current prospectus/offering document of the UCI concerned, it may remain therein, subject to the conditions under point 2 below.

1.2. Compartment launched but having become inactive (compartment "awaiting reactivation")

A compartment launched and functioning may become inactive following the full redemption of its units by the UCI if the compartment is not followed by a prompt reactivation and new subscriptions and issues of units. It is thus kept without assets (cash and securities) and may remain in the prospectus/offering document of the UCI concerned, subject to the condition under point 2 below.

1.3. Closed compartments/compartments in liquidation

If the board of directors of an investment company or a management company decides to liquidate a compartment of a UCI, the compartment must be removed from the prospectus/offering document of the UCI concerned at its next update, which must take place at the latest 6 months following the date of the decision of the liquidation. It is specified that the decision of a board of directors of an investment company or of a management company to close a compartment by realising and distributing all the assets to investors is to be considered as a liquidation and the procedure mentioned above has to apply.

2. Clarification on the period of existence of "non-launched" compartments and compartments "awaiting reactivation"

The CSSF wishes to clarify that a "non-launched" compartment or a compartment "awaiting reactivation" will have **eighteen months** (i) starting from the date of the CSSF's approval letter of the relevant compartment to be launched, or (ii) starting from the date on which it became inactive to be reactivated.

The compartments existing and "non-launched" or "awaiting reactivation" at the date of the publication of this Circular will also have **eighteen months** from the date of publication either to activate or reactivate the compartment, as appropriate.

The CSSF distinguishes between two situations where, at the end of that period of eighteen months (the "**Due Date**"), a "non-launched" compartment has not been launched or a compartment "awaiting reactivation" has not been reactivated:

a. If the compartment is not contained in the current prospectus/offering document of the UCI concerned, the CSSF will consider the proposed launching of this compartment as abandoned.

b. If the compartment is contained in the current prospectus/offering document of the UCI concerned, it must be removed from this prospectus/offering document at its next update (the update must take place no later than 6 months following the Due Date) and the marketing documents must be adapted.

3. Information to be transmitted to the CSSF ("unique reporting")

In order to allow the CSSF to be in possession of current information on the approved compartments of a UCI, UCIs are required to complete the form published for this purpose on the website of the CSSF indicating (all) the compartment(s) approved but non-launched and the compartment(s) awaiting reactivation and the compartment(s) still contained in the prospectus/offering document but whose liquidation/closure has been decided or which have been closed. UCIs which do not have compartments which are "non-launched", "awaiting reactivation" or in liquidation are required to indicate this on the same form.

The form to be used for this purpose may be downloaded from the following address: http://www.cssf.lu/fileadmin/files/Formulaires/compartimentsinactifs.xls. The form must be transmitted by e-mail to the e-mail address comp@cssf.lu or via one of the electronic channels authorised by the CSSF.

This unique reporting form must be submitted to the CSSF by **Monday, 15 October 2012** at the latest and must refer to the **situation at the end of the month of September 2012**.

Moreover, it should be noted that this unique reporting must be transmitted in addition to the communication of the financial information regarding the approved and activated compartments which must be provided pursuant to IML Circular 97/136 "Financial information for the IML and Statec" and CSSF Circular 07/310 "Financial information to be provided by specialised investment funds", as amended by CSSF Circular 08/348.

For any question regarding this Circular please contact Mr Nico Barthels (telephone: 26 25 12 49, e-mail: nico.barthels@cssf.lu).

20.

CSSF CIRCULAR 08/372

RELATING TO THE GUIDELINES FOR DEPOSITARIES OF SPECIALISED INVESTMENT FUNDS ADOPTING ALTERNATIVE INVESTMENT STRATEGIES, WHERE THOSE FUNDS USE THE SERVICES OF A PRIME BROKER

CSSF Circular 08/372 relating to the Guidelines for depositaries of specialised investment funds adopting alternative investment strategies, where those funds use the services of a prime broker

Luxembourg, 5 September 2008

To all specialised investment funds and their depositaries

CSSF CIRCULAR 08/372

Re: Guidelines for depositaries of specialised investment funds adopting alternative investment strategies, where those funds use the services of a prime broker

Ladies and Gentlemen,

This Circular is specifically intended for all specialised investment funds (hereafter "SIF") which, in the context of the use of derivatives or implementing alternative investment strategies, utilise the services of a prime broker in accordance with market practice.

To illustrate, the role of the prime broker generally consists in the provision of the following services to SIFs:

- custody of the SIF's assets;
- execution of transactions and netting operations on behalf of the SIF;
- actions relating to margin deposits;
- setting up credit facilities to finance overdrafts;
- securities lending and borrowing or share repurchase transactions.

The choice of prime broker, as well as its official appointment through a contract formalising the appointment and defining the duties and responsibilities of the prime broker, is, depending on the legal form of the SIF, the decision and the responsibility of the management board in charge (if the SIF is a legal entity) or of the management company (if the SIF is organised as common fund).

Under the Law of 13 February 2007, the assets of all SIFs must be entrusted to a depositary for safe-keeping. This is a general requirement insofar as it applies equally to all SIFs, whatever their legal form or investment policy.

The concept of "safe-keeping", as used to describe the role of the depositary, should be taken in the sense of "supervision". For the purposes of this Circular, the duty of "supervision" is fulfilled if the provisions of points 1 and 2 below are met.

Due to the prime broker's role in the custody of the SIF's assets and because of the necessary interaction of the prime broker with the depositary in connection with the services provided by the prime broker in the safe-keeping of the SIF's assets, it is necessary for the depositary to accept the SIF's choice of prime broker under the conditions described below. In fact, the depositary of a SIF

must organise its relationship with both the SIF and the prime broker in such a way that it is in a position to fulfil its task of supervision of the SIF's assets.

The purpose of this Circular is to set out the guidelines enabling the depositary of a SIF using the services of a prime broker to perform its supervisory tasks in accordance with the provisions of the Law of 13 February 2007.

1. Agreement to the depositary's choice of prime broker

The depositary must agree to the SIF's choice of prime broker given that the depositary has to organise its relationship with the SIF and the prime broker so as to be able to fulfil its duty of supervision of the assets.

Agreeing to the SIF's choice of prime broker is, for the depositary, limited to ensuring that the prime broker fulfils the following criteria:

- The prime broker is a financial institution regulated by a supervisory authority in a State in which the supervisory regime is recognised as being equivalent to that laid down in Community law.

- The prime broker is a recognised financial institution specialising in this type of transaction.

2. Organisation of the relationship between the depositary and the prime broker

The depositary shall ensure that it organises its relationship with the prime broker in such a way that the depositary is in a position to know the composition of the SIF's assets.

In order to enable the depositary to fulfil its supervisory tasks satisfactorily, as laid down in this Circular, the depositary must ensure that it has the right to be informed of the composition of the SIF's assets entrusted to the prime broker. This right to information can arise from appropriate instructions given by the SIF to the prime broker in the prime brokerage contract entered into between the SIF and the prime broker or from a direct contractual relationship between the depositary and the prime broker.

On this basis, the depositary will be able to obtain information from the prime broker at any time on the composition and the value of the SIF's assets entrusted to the prime broker.

The depositary shall also have the right to intervene in relation to the SIF's assets entrusted to the prime broker if the depositary considers itself to be no longer able to fulfil its supervisory tasks. This right to intervene can arise from appropriate instructions given by the SIF to the prime broker in the prime brokerage contract entered into between the SIF and the prime broker or from a direct contractual relationship between the depositary and the prime broker.

The depositary does not need to have information about the correspondents with which the prime broker holds the SIF's assets.

3. Additional tasks of the depositary

The Law of 13 February 2007 requires the depositary to carry out all transactions regarding the day-to-day administration of the assets of a common fund. This means that the depositary has to deal in particular with the collection of dividends, interest and matured securities, the exercise of option rights and, in general, any other transaction relating to the day-to-day administration of securities and liquid assets forming part of the fund. Insofar as the assets have been entrusted to a prime broker, the prime broker may be contractually bound to carry out these day-to-day administrative transactions.

4. Investor information

The offering document of a SIF which uses the services of a prime broker, must contain an adequate description of the involvement of the prime broker and of any potential related risks, including the counterparty risk.

21.

CSSF CIRCULAR 08/356

RELATING TO THE RULES APPLICABLE TO UNDERTAKINGS FOR COLLECTIVE INVESTMENT WHEN THEY EMPLOY CERTAIN TECHNIQUES AND INSTRUMENTS RELATING TO TRANSFERABLE SECURITIES AND MONEY MARKET INSTRUMENTS

CSSF Circular 08/356 relating to the rules applicable to undertakings for collective investment when they employ certain techniques and instruments relating to transferable securities and money market instruments

Luxembourg, 4 June 2008

To all Luxembourg undertakings for collective investment ("UCIs") subject to the amended Law of 20 December 2002 relating to undertakings for collective investment and to those who act in relation to the operation and supervision of such undertakings

CSSF CIRCULAR 08/356

Re: Rules applicable to undertakings for collective investment when they employ certain techniques and instruments relating to transferable securities and money market instruments

Ladies and Gentlemen,

The purpose of this circular is to clarify the conditions and limits under which an undertaking for collective investment in transferable securities ("UCITS") is authorised to employ techniques and instruments relating to transferable securities and to money market instruments. The techniques and instruments covered by this circular are securities lending transactions, sale with right of repurchase transactions[1] and reverse repurchase transactions/repurchase transactions[2].

The conditions and limits stated hereafter apply, in principle, also to other undertakings for collective investment ("UCIs").

These techniques and instruments must be used for the purpose of efficient portfolio management, which supposes that they must fulfil the following criteria:

a) they are economically appropriate in that they are realised in a cost-effective way;

b) they are entered into for one or more of the following specific aims:

   i) reduction of risk;

   ii) reduction of cost;

   iii) generation of additional capital or income for the UCITS with a level of risk which is consistent with the risk profile of the UCITS and the risk diversification rules applicable to it;

c) their risks are adequately captured by the risk management process of the UCITS.

1 *opérations à réméré*
2 *opérations de prise/mise en pension*

In no case may the use of these operations by the UCITS result in a change of its investment objectives as laid down in its management regulations/its constitutional documents, its prospectus, or result in additional risk higher than its risk profile as described in its sales documents.

When a UCITS wants to make use of the techniques and instruments described hereafter, it must mention this specifically in its prospectus. The prospectus must indicate the different types of transactions considered and clarify the purpose of these transactions as well as the conditions at and limits within which they are conducted. If the UCITS intends to reinvest cash received as a guarantee[3] as a result of its transactions, the UCITS' prospectus must specify the conditions and limits applicable to these reinvestments. If need be, the prospectus must contain a description of the risks inherent to the envisaged operations.

The UCITS must make sure that the principles of corporate governance comprise provisions, as regards the transactions referred to in this circular, for a period during which is held an annual shareholders' meeting of the issuing company of the securities lent or temporarily sold.

I. Techniques and instruments that may be used by UCITS

The techniques and instruments that may be used by UCITS are more fully described hereafter.

A. Securities lending transactions

A UCITS may enter into securities lending transactions provided it complies with the following rules:

1. Rules intended to ensure the proper completion of the securities lending transactions

- The UCITS may lend the securities included in its portfolio to a borrower either directly or through a standardised lending system organised by a recognised clearing institution or through a lending system organised by a financial institution subject to prudential supervision rules considered by the CSSF as equivalent to those prescribed by Community law and specialised in this type of transactions.

  In all cases, the counterparty to the securities lending agreement (i.e. the borrower) must be subject to prudential supervision rules considered by the CSSF as equivalent to those prescribed by Community law. In case the aforementioned financial institution acts on its own account, it is to be considered as counterparty in the securities lending agreement.

  If the UCITS lends its securities to entities that are linked to the UCITS by common management or control, specific attention has to be paid to the conflicts of interest which may result therefrom.

- The UCITS must receive, previously or simultaneously to the transfer of the securities lent, a guarantee which complies with the requirements expressed under section II b) of this circular. At maturity of the securities lending transaction, the guarantee will be remitted simultaneously or subsequently to the restitution of the securities lent.

[3] See footnote 8 below.

In case of a standardised securities lending system organised by a recognized clearing institution or in case of a lending system organised by a financial institution subject to prudential supervision rules considered by the CSSF as equivalent to those prescribed by Community law and specialised in this type of transactions, securities lent may be transferred before the receipt of the guarantee if the intermediary in question assures the proper completion of the transaction. Such intermediary may, instead of the borrower, provide to the UCITS a guarantee in compliance with the requirements expressed under section II b) hereafter.

2. Limits to securities lending transactions

The UCITS must ensure that the volume of the securities lending transactions is kept at an appropriate level or that it is entitled to request the return of the securities lent in a manner that enables it, at all times, to meet its redemption obligations and that these transactions do not jeopardise the management of the UCITS' assets in accordance with its investment policy.

3. Periodical information of the public

In its financial reports, the UCITS must disclose the global valuation of the securities lent on the date of reference of these reports.

B. Sale with right of repurchase transactions

a) Purchase of securities with a repurchase option[4]

Acting as buyer, the UCITS may agree to purchase securities with a repurchase option. These transactions consist of the purchase of securities with a clause reserving for the seller (counterparty) the right to repurchase the securities sold from the UCITS at a price and time agreed between the two parties at the time when the contract is entered into.

Its involvement in such transactions is, however, subject to the following rules:

1. Rules intended to ensure the proper completion of the purchase with a repurchase option transactions

The UCITS may enter into these transactions only if the counterparties to these transactions are subject to prudential supervision rules considered by the CSSF as equivalent to those prescribed by Community law.

2. Limits applicable to the purchase with a repurchase option transactions

During the duration of a purchase with a repurchase option agreement, the UCITS may not sell the securities which are the subject of the contract, before the counterparty has exercised its option or until the deadline for the repurchase has expired, unless the UCITS has other means of coverage.

The UCITS must ensure to maintain the value of the purchase with repurchase option transactions at a level such that it is able, at all times, to meet its redemption obligations towards unitholders/shareholders.

4 *achat de titres à réméré*

Securities that are the subject of purchase with a repurchase option transaction are limited to:

(i) short term bank certificates or money market instruments such as defined within the 2007/16/EC Directive of 19 March 2007 implementing Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to certain UCITS as regards the clarification of certain definitions,

(ii) bonds issued or guaranteed by a Member State of the OECD or by their local public authorities or by supranational institutions and undertakings with EU, regional or world-wide scope,

(iii) shares or units issued by money market UCIs calculating a daily net asset value and being assigned a rating of AAA or its equivalent,

(iv) bonds issued by non-governmental issuers offering an adequate liquidity,

(v) shares quoted or negotiated on a regulated market of a European Union Member State or on a stock exchange of a Member State of the OECD, on the condition that these shares are included in a main index.

The securities purchased with a repurchase option must be in accordance with the UCITS' investment policy and must, together with the other securities that the UCITS holds in its portfolio, globally comply with the UCITS' investment restrictions.

3. Periodical information of the public

In its financial reports, the UCITS must provide separate information on securities purchased with a repurchase option, disclosing the total amount of the open transactions on the date of reference of these reports.

b) Sale of securities with a repurchase option[5]

Acting as the seller, the UCITS may agree to sell securities with a repurchase option. These transactions consist of the sale of securities with a clause reserving for the UCITS the right to repurchase the securities from the purchaser (counterparty) at a price and at a time agreed between the two parties at the time when the contract is entered into.

Its involvement in such transactions is, however, subject to the following rules:

1. Rules intended to ensure the proper completion of the sale with repurchase option transactions

The UCITS may enter into these transactions only if the counterparties to these transactions are subject to prudential supervision rules considered by the CSSF as equivalent to that prescribed by Community law.

[5] *vente de titres à réméré*

2. Limits applicable to the sale with repurchase option transactions

The UCITS must ensure that, at maturity of the repurchase option, it holds sufficient assets to be able to settle, if applicable, the amount agreed for the restitution of the securities to the UCITS.

3. Periodical information of the public

In its financial reports, the UCITS must provide separate information on securities sold with a repurchase option, disclosing the total amount of the open transactions on the date of reference of these reports.

C. Reverse repurchase and repurchase agreement transactions

a) Reverse repurchase agreement transactions[6]

The UCITS may enter into reverse repurchase agreement transactions, which consist of a forward transaction at the maturity of which the seller (counterparty) has the obligation to repurchase the asset sold and the UCITS the obligation to return the asset received under the transaction.

Its involvement in such transactions is, however, subject to the following rules:

1. Rules intended to ensure the proper completion of the reverse repurchase agreement transactions

The UCITS may enter into these transactions only if the counterparties to these transactions are subject to prudential supervision rules considered by the CSSF as equivalent to those prescribed by Community law.

2. Limits applicable to reverse repurchase agreement transactions

During the duration of the reverse repurchase agreement, the UCITS may not sell or pledge/give as security the securities purchased through this contract, except if the UCITS has other means of coverage.

The UCITS must take care to ensure that the value of the reverse repurchase agreement transactions is kept at a level such that it is able, at all times, to meet its redemption obligations towards unitholders/shareholders.

Securities that may be purchased in reverse repurchase agreements are limited to:

(i) short-term bank certificates or money market instruments such as defined within the 2007/16/EC Directive of 19 March 2007 implementing Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to certain UCITS as regards the clarification of certain definitions,

6 *opérations de prise en pension*

(ii) bonds issued or guaranteed by a Member State of the OECD or by their local public authorities or by supranational institutions and undertakings with EU, regional or world-wide scope,

(iii) shares or units issued by money market UCIs calculating a daily net asset value and being assigned a rating of AAA or its equivalent,

(iv) bonds issued by non-governmental issuers offering an adequate liquidity,

(v) shares quoted or negotiated on a regulated market of a European Union Member State or on a stock exchange of a Member State of the OECD, on the condition that these shares are included within a main index.

The securities purchased through a reverse repurchase agreement transaction must conform to the UCITS' investment policy and must, together with the other securities that the UCITS holds in its portfolio, globally respect the UCITS' investment restrictions.

3. Periodical information of the public

In its financial reports, the UCITS must provide separate information on securities purchased under reverse repurchase agreements, disclosing the total amount of the open transactions on the date of reference of these reports.

b) Repurchase agreement transactions[7]

The UCITS may enter into repurchase agreement transactions, which consist of a forward transaction at the maturity of which the UCITS has the obligation to repurchase the asset sold and the buyer (the counterparty) the obligation to return the asset received under the transaction.

Its involvement in such transactions is, however, subject to the following rules:

1. Rules intended to ensure the proper completion of the repurchase agreement transactions

The UCITS may enter into these transactions only if the counterparties to these transactions are subject to prudential supervision rules considered by the CSSF as equivalent to those prescribed by Community law.

2. Limits applicable to repurchase agreement transactions

The UCITS must ensure that, at maturity of the agreement, it has sufficient assets to be able to settle the amount agreed with the counterparty for the restitution to the UCITS.

The UCITS must take care to ensure that the volume of the repurchase agreement transactions is kept at a level such that it is able, at all times, to meet its redemption obligations towards unitholders/shareholders.

[7] *opérations de mise en pension*

3. Periodical information of the public

In its financial reports, the UCITS must provide separate information on securities sold under repurchase agreements, disclosing the total amount of the open transactions on the date of reference of these reports.

II. Limitation of the counterparty risk and receipt of an appropriate guarantee[8]

a) Limitation of the counterparty risk

For each securities lending transaction, the UCITS must receive, in accordance with the fourth paragraph of section I. A. 1) of this circular, a guarantee the value of which is, during the lifetime of the lending agreement, at least equivalent to 90% of the global valuation (interests, dividends and other eventual rights included) of the securities lent.

The risk exposure to a single counterparty of the UCITS arising from one or more securities lending transactions, sale with right of repurchase transactions and/or reverse repurchase/ repurchase transactions may not exceed 10% of its assets when the counterparty is a credit institution referred to in article 41, paragraph (1) (f) of the Law of 20 December 2002 or 5% of its assets in other cases.

UCITS may take into account a guarantee conforming to the requirements set out under section II b) below in order to reduce the counterparty risk in sale with right of repurchase transactions and/or reverse repurchase and repurchase transactions.

b) Receipt of an appropriate guarantee

The UCITS must proceed on a daily basis to the valuation of the guarantee received.

The agreement concluded between the UCITS and the counterparty must include provisions to the effect that the counterparty must provide additional guarantees at very short term in case the value of the guarantee already granted appears to be insufficient in comparison with the amount to be covered. Furthermore, the aforementioned agreement must, if appropriate, provide for safety margins that take into consideration exchange risks or market risks inherent to the assets accepted as guarantee.

The guarantee must normally take the form of:

(i) liquid assets,

liquid assets include not only cash and short term bank certificates, but also money market instruments such as defined within the 2007/16/EC Directive of 19 March 2007 implementing Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to certain UCITS as regards the clarification of certain definitions. A letter of credit or a guarantee at first-demand given by a first class credit institution not affiliated to the counterparty are considered as equivalent to liquid assets,

(ii) bonds issued or guaranteed by a Member State of the OECD or by their local public authorities or by supranational institutions and undertakings with EU, regional or world-wide scope,

(iii) shares or units issued by money market UCIs calculating a daily net asset value and being assigned a rating of AAA or its equivalent,

[8] *sûreté* (the term "guarantee" used in this translation is to be understood as "collateral" where appropriate).

(iv) shares or units issued by UCITS investing mainly in bonds/shares mentioned in (v) and (vi) below,

(v) bonds issued or guaranteed by first class issuers offering an adequate liquidity, or

(vi) shares admitted to or dealt in on a regulated market of a Member State of the European Union or on a stock exchange of a Member State of the OECD, on the condition that these shares are included in a main index.

The guarantee given under any form other than cash or shares/units of a UCI/UCITS must be issued by an entity not affiliated to the counterparty.

The guarantee given in the form of cash may expose the UCITS to a credit risk vis-à-vis the trustee of this guarantee. If such risk exists, the UCITS must take it into consideration for the purpose of the limits on deposits prescribed by article 43 (1) of the amended Law of 20 December 2002 concerning undertakings for collective investment. As a principle, the guarantee given must not be safekept by the counterparty, except if it is legally protected from consequences of default of the latter.

The guarantee given in a form other than cash must not be safekept by the counterparty, except if it is adequately segregated from the latter's own assets.

The UCITS must make sure that it is able to claim its rights on the guarantee in case of the occurrence of an event requiring the execution thereof. Therefore, the guarantee must be available at all times, either directly or through the intermediary of a first class financial institution or a wholly-owned subsidiary of this institution, in such a manner that the UCITS is able to appropriate or realise the assets given as guarantee, without delay, if the counterparty does not comply with its obligation to return the securities.

Also, the UCITS must make sure that its contractual rights relating to the relevant transactions permit, in case of a liquidation, of a reorganisation[9] or in any other situation of equal ranking[10], to discharge its obligation to return the assets received as a guarantee, if and to the extent that the restitution cannot be undertaken on the terms initially agreed.

During the duration of the agreement the guarantee cannot be sold or given as a security or pledged, except when the UCITS has other means of coverage.

III. Reinvestment of cash provided as a guarantee

If the guarantee was given in the form of cash, such cash may be reinvested by the UCITS in:

a. shares or units in money market UCIs calculating a daily net asset value and being assigned a rating of AAA or its equivalent,

b. short-term bank deposits,

c. money market instruments as defined in Directive 2007/16/EC of 19 March 2007,

d. short-term bonds issued or guaranteed by a Member State of the European Union, Switzerland, Canada, Japan or the United States or by their local authorities or by supranational institutions and undertakings with EU, regional or world-wide scope,

[9] *mesure d'assainissement*.
[10] *toute autre situation de concours*.

e. bonds issued or guaranteed by first class issuers offering an adequate liquidity, and

f. reverse repurchase agreement transactions according to the provisions described under section I (C) a) of this circular.

Financial assets other than bank deposits and units or shares of UCIs acquired by means of reinvestment of cash received as a guarantee, must be issued by an entity not affiliated to the counterparty.

Financial assets other than bank deposits must not be safekept by the counterparty, except if they are segregated in an appropriate manner from the latter's own assets. Bank deposits must in principle not be safekept by the counterparty, unless they are legally protected from consequences of default of the latter.

Financial assets may not be pledged/given as a guarantee, except when the UCITS has sufficient liquid assets enabling it to return the guarantee by a cash payment.

Short-term bank deposits, money market instruments and bonds referred to in (b) through (d) above must be eligible investments within the meaning of Article 41 (1) of the Law of 20 December 2002.

The reinvestment of cash received as a guarantee is not subject to the diversification rules generally applicable to UCITS, provided however, that the UCITS must avoid an excessive concentration of its reinvestments, both at issuer level and at instrument level. Reinvestments in assets referred to in (a) and (d) above are exempt from this requirement.

If the short-term bank deposits referred to in (b) are likely to expose the UCITS to a credit risk vis-à-vis the trustee, the UCITS must take this into consideration for the purpose of the limits on deposits prescribed by article 43 (1) of the amended Law of 20 December 2002 concerning undertakings for collective investment.

The reinvestment must, in particular if it creates a leverage effect, be taken into account for the calculation of the UCITS' global exposure. Any reinvestment of a guarantee provided in the form of cash in financial assets providing a return in excess of the risk free rate[11], is subject to this requirement.

Reinvestments must be specifically mentioned with their respective value in an appendix to the financial reports of the UCITS.

[11] *procurant un rendement supérieur au taux sans risque*.

22.

CSSF CIRCULAR 07/309

RELATING TO THE RISK-SPREADING IN THE CONTEXT OF SPECIALISED INVESTMENT FUNDS ("SIF")

CSSF Circular 07/309 relating to the risk-spreading in the context of specialised investment funds ("SIF")

Luxembourg, 3 August 2007

To all specialised investment funds

CSSF CIRCULAR 07/309

Re: risk-spreading in the context of specialised investment funds ("SIF")

Dear Sir or Madam,

Article 1 of the Law of 13 February 2007 on SIFs provides that for the purpose of the application of the law, specialised investment funds shall be any undertakings for collective investment situated in Luxembourg:

- whose exclusive object is the collective investment of their funds in assets in order to spread the investment risks and to ensure for the investors the benefit of the results of the management of their assets, and
- whose securities are reserved to one or more well-informed investors, and
- whose constitutive or offering documents provide that they are subject to the provisions of that law.

The Law of 13 February 2007 thus provides that the collective investment of funds must be made in securities "in order to spread the investment risks". The law and the commentary of the articles[1] do not include any additional provisions to define or interpret the notion of risk-spreading.

Compared with the Law of 1991 concerning undertakings for collective investment whose securities are not intended to be placed with the public, the Law of 13 February 2007 extends the concept of eligible investors to include other than institutional investors, professional investors and other "well-informed investors", in accordance with the criteria further specified in article 2 of this law. This means that SIFs are open to private clients in the form of "sophisticated" natural persons. The legislator thereby created a lighter regulatory framework for SIFs. Similarly, the CSSF considers that the concept of risk-spreading can be interpreted in a flexible way.

All investors in specialised investment funds being institutional, professional or other well-informed investors, are deemed to have sufficient experience to assess the concept of risk-spreading by themselves and the information they need to form their opinion. Those investors do not require the same level of protection as investors in UCIs governed by the Law of 20 December 2002.

Pursuant to article 53 of the Law of 13 February 2007, the offering document must include the information necessary for investors to be in a position to make a well-informed judgment on the investment proposed to them. The CSSF considers that the offering document must include quantifiable restrictions evidencing the fulfilment of the principle of risk-spreading.

In general, the CSSF considers that the risk-spreading principle is complied with where the investment restrictions of a SIF adhere to the following guidelines:

[1] contained in the Parliamentary documents.

1. In principle, a SIF may not invest more than 30% of its assets or commitments to subscribe securities of the same type issued by the same issuer. This restriction does not apply to:

   - investments in securities issued or guaranteed by an OECD member state or by its public local authorities or by EU, regional or global supranational institutions and bodies;

   - investments in target UCIs that are subject to risk-spreading requirements at least comparable to those applicable to SIFs.

     For the purpose of the application of this restriction, every sub-fund of a target umbrella UCI is to be considered as a separate issuer provided that the principle of segregation of liabilities among the various sub-funds *vis-à-vis* third parties is ensured.

2. Short sales may not in principle result in the SIF holding a short position in securities of the same type issued by the same issuer representing more than 30% of its assets.

3. When using financial derivative instruments, the SIF must ensure, via an appropriate diversification of the underlying assets, a similar level of risk-spreading. Similarly, the counterparty risk in an OTC transaction must, where applicable, be limited having regard to the quality and qualification of the counterparty.

In principle, these guidelines apply to all SIFs. The CSSF may grant exemptions upon appropriate justification. Moreover, in case of specific investment policies, the CSSF may require the SIF to comply with additional investment restrictions.

The SIF initiator shall submit to the CSSF the necessary information and documents to enable the CSSF to verify whether the guidelines above have been respected.

23.

CSSF CIRCULAR 06/241

CONCERNING THE CONCEPT OF RISK CAPITAL AS USED IN THE LAW OF 15 JUNE 2004 WITH REFERENCE TO RISK CAPITAL INVESTMENT COMPANIES (SICAR)

CSSF Circular 06/241 relating to the concept of risk capital as used in the Law of 15 June 2004 with reference to risk capital investment companies (SICAR)

Luxembourg, 5 April 2006

To all risk capital investment companies[1] (SICAR)[2]

CSSF CIRCULAR 06/241

Re: Concept of risk capital as used in the Law of 15 June 2004 with reference to risk capital investment companies (SICAR)

Dear Sir or Madam,

The purpose of this Circular is to provide a general description of the concept of risk capital within the meaning of the Law of 15 June 2004 relating to the investment company in risk capital (SICAR) (hereafter referred to as the "SICAR Law") and the criteria applied by the CSSF to evaluate the acceptability of the investment policies proposed for SICARs.

I. CONCEPT OF RISK CAPITAL

The **purpose** of the SICAR Law is to promote the pooling of funds, in specialised risk capital investment vehicles, contributed by well-informed investors, accepting in full knowledge of the facts and in expectation of higher returns, the increased risks more frequently associated with risk capital, such as lower liquidity, higher price volatility and lower credit quality.

Article 1, paragraph 2, of the SICAR Law outlines the **evaluation criteria** of the risk capital concept which it defines as the direct or indirect contribution of funds to entities in view of their launch, development or listing on a stock exchange.

The concept of risk capital as understood by the SICAR Law is generally defined as the combination of two elements: a higher level of risk and the intention to the development of the target entities. The intention to the development of the target entities is deemed to be inherent to contributions of capital to businesses, with a view to their launch and listing on a stock exchange.

Applications submitted to the CSSF for approval shall include a description of "risk" and "development" aspects related to the SICAR project. The purpose of this section is to further specify the criteria applied by the CSSF to determine whether a planned investment policy is eligible under the SICAR Law.

The parliamentary documents indicate that the concept of "**risk capital**" notably applies to *venture capital* and *private equity* financing.

Venture capital generally refers to capital made available to newly launched undertakings ("*start-ups*") or entities operating in sectors with high development potential.

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1 *société d'investissement en capital à risque*
2 Abbreviation of the French term mentioned in footnote 1.

The concept of private equity is to be understood in the broad sense. Private equity entails an inherent risk which is essentially due to lack of liquidity. It can be described, in contrast to listed securities, as any investment in a non-listed private company, often of limited size and with a significant risk profile.

The SICAR's primary objective must be, in accordance with the legislator's intention, to contribute to the development of the entities in which it is investing.

The **concept of development** is understood in the broad sense as the adding of value to the target entities. This adding of value can take different forms.

In general, investments made by the SICAR represent a contribution in development capital into the target entities. However, the contribution of new capital into the target entities is not always mandatory; the acquisition of risk capital securities on the secondary market is also eligible.

In order to maximise profits from investments for the SICAR's shareholders, the SICAR will often take an active management role in the target entities by advisory activities or by being represented in the target company's management organisation in order to add value to the company by implementing restructuring and modernisation measures and promoting any measures likely to result in better allocation of resources.

An active involvement of the SICAR in order to create value in the target entities is however not always mandatory when other factors indicate that it is a risk capital investment, such as the method of financing which is used, the type of participants involved, or the form of their remuneration. However, when the SICAR invests in a single target entity, active management involvement is important.

With regard to the different **forms** that risk capital investments may take or the objective pursued by these investments, the parliamentary documents specify that the scope of the law covers all types of *private equity* investments. Private equity risk capital investments typically take the form of Buy-Offs, Leveraged Buy-Outs, Management Buy-Out and Management Buy-In and venture capital investments may take the form of Start-up and Early Stage. Moreover, the manner in which the SICAR will exit from its investment, either through an over-the-counter sale of assets or equity, or through an Initial Public Offering (IPO), is not set down in the law, so it is up to the management of the SICAR to determine the most appropriate disinvestment procedure from a legal and fiscal perspective.

Similarly, no **form of financing** of target entities is *a priori* excluded. In principle, all forms of financing are eligible, either in the form of contribution of capital, bond loans, bridge finance or similar financing, mezzanine-type financing, or convertible loans, provided that the financing constitutes a "risk capital" type of contribution.

The SICAR Law does not require a **spreading of risk** across the investments selected. Consequently it is quite conceivable that some SICARs might limit their investments to one or more undertakings operating in particularly narrow niches or sharply defined sectors.

Finally it should be noted that as a risk capital investment company, the declared intention of the SICAR shall generally be to acquire financial assets in order to sell them with a profit, as opposed to a holding company which acquires assets for the purpose of holding them. In this respect the "**holding period**" is an important criterion to determine whether an investment is eligible or not.

It will therefore be a matter of standard practice to take a number of features into account (number and type of target entities, their level of development, development projects, planned holding period of the investment, etc.) to ascertain whether an investment strategy is eligible under the SICAR Law.

The particular case of real estate investments

Whilst the provisions of the law do not permit SICARs to hold real estate directly, indirect investment is possible via entities investing in or holding real estate assets representing risk capital (private equity real estate), as well as the contribution of capital into real estate companies.

Applications of SICARs intending to invest in the real estate sector shall include a proposal seeking to demonstrate that the proposed investments actually constitute risk capital as defined by the SICAR Law.

Private equity real estate investments shall in all cases have the purpose of introducing "**development**" (i.e. creation of added value) to the underlying real estate object. The fact that real estate objects may entail a particularly high level of risk, or are located in countries with a certain level of political risk, is not in itself sufficient to constitute a risk capital characteristic.

This creation of value at the level of underlying real estate objects can be understood in the broad sense as a change of existing conditions. It can take several forms, such as upgrading the real estate through renovation works, renegotiation of contracts, renewal of tenants, or restructuring of the portfolio.

For an investment to qualify as "private equity" real estate, as opposed to straightforward real estate, it shall be demonstrated that the underlying real estate objects represent a **specific risk**, above the normal level of real estate risk on any given market.

A specific risk may consist, for example, in the fact that the real estate may not be rented out easily, or is located on a run-down or neglected development area. Whilst it may not in itself be sufficient, political risk could also be a determining factor. On the other hand, price risk arising from a rapid rise in prices on certain real estate markets is not a sufficient criterion, as opposed to the transfer risk or legal risk resulting from the geographical location of the underlying real estate.

Finally, in line with the general approach described above, it is also important to emphasise, that in particular in the filed of real estate investments, the SICAR's purpose as an investment company shall be to buy with the intention of selling for a profit. The establishment of a SICAR whose policy would be limited to the holding and management, through a SICAR, of family, corporate or group properties, is not eligible.

Consequently the "risk capital" criterion with regard to real estate investments is evaluated on a basis of combining a number of factors, such as:

- Investments with high appreciation potential because of the specific risks associated with the underlying real estates
- Development / value-creation projects on the underlying real estate
- High level of risk/expected return
- Identity of the managers, their nature of remuneration and selection criteria of the real estate assets
- The managers' / founders' financial participation in the project
- Active management of the underlying real estate assets, limited holding/investment period
- In general, absence of regular rental income

– Financing types: often with significant leverage effect, mezzanine, distressed or non-performing or CBO financing.

By reference to the common financial terminology used in real estate matters, an 'opportunistic' investment strategy is in general acceptable. The characteristics of 'opportunistic' real estate investment are, in particular, the absence of rental, conversion of premises or the construction of new premises.

II. A PRUDENT APPROACH

The purpose of this section is to inform on the prudential approach adopted in certain cases.

Indirect investments

In general, the law allows indirect investment in assets representative of risk capital, without imposing restrictions on the type or legal form of the intermediary companies.

In particular, indirect investment through an undertaking for collective investment[3] or through another private equity investment vehicle is acceptable provided that the investment policy of these vehicles limits their scope of investment to assets eligible as risk capital, as defined by the SICAR Law.

The same approach applies to investment in real estate funds.

On the other hand, hedge funds are usually not eligible instruments for SICARs, as they do not pursue the objective to add value to their target companies.

Political risk

The criterion of geographic location of target entities may not be sufficient to qualify as risk capital. Approval applications are analysed on a case-by-case basis by examining the proposals put forward, which should seek to prove the risk capital characteristic by showing the political risk on the one hand and in addition other specific risk characteristics on the other hand.

Investment in companies located in regions exposed to political risk seems to be possible, provided that a development which creates value at the level of the target company can be proven.

The same applies in real estate matters, where the fact that underlying real estate objects are located in countries with a certain level of political risk may not qualify the investment as risk capital.

Mezzanine loans (primary & secondary market) and distressed debt

Mezzanine financing is an eligible form of financing in so far as the target entity benefiting from the contribution of funds meets the risk capital eligibility criteria, for example in the case of a non-listed company. This does not apply if the beneficiary of the mezzanine financing is a listed company, unless the financing has been made in respect of a specific development project, such as a de-listing of the company, for example.

Investments in existing mezzanine securities and/or distressed debt securities also qualify as private equity investments, where the purpose is to increase the value of the investments by restructuring the companies concerned.

[3] *Organisme de Placement Collectif.*

Use of derivatives

A SICAR may use derivative instruments for hedging purposes, or if required for the realisation of its investment policy. However, investment in derivative instruments cannot constitute the object of its policy.

Investment in quoted securities

The SICAR is a specialised company whose sole purpose is to invest in assets presenting a risk capital within the meaning of the SICAR Law.

The criterion of capital risk is not necessarily brought into question in the case of investments in listed securities, for example where securities are listed on a stock exchange which does not meet the requirements of regulated markets, or where securities, although listed on a regulated market, have been issued by an entity representing risk capital in the meaning of the SICAR Law. Similarly, investment in certain listed securities may qualify in specific cases where it is associated with a specific development project of the target company or is aimed at a de-listing of the securities. Listed, small cap investments for instance may qualify for a SICAR and the listing of these companies does not necessarily put an end to the investment.

Finally, the investment policy of a SICAR may provide that liquidities pending investment may be invested temporarily in liquid listed securities not representing risk capital.

24.

CSSF CIRCULAR 04/146

RELATING TO THE PROTECTION OF UNDERTAKINGS FOR COLLECTIVE INVESTMENT AND THEIR INVESTORS AGAINST *LATE TRADING* AND *MARKET TIMING* PRACTICES

CSSF Circular 04/146 relating to the protection of undertakings for collective investment and their investors against *Late Trading* and *Market Timing* practices

Luxembourg 17 June, 2004

To all credit institutions, professionals of the financial sector, Luxembourg undertakings for collective investment and all parties involved in the operation and supervision of such undertakings

CSSF CIRCULAR 04/146

Re: Protection of undertakings for collective investment and their investors against *Late Trading* and *Market Timing* practices

Ladies and Gentlemen,

The purpose of this Circular is to protect undertakings for collective investment (UCIs) and their investors against the *Late Trading* and *Market Timing* practices described hereafter.

To that end, it clarifies the protective measures to be adopted by UCIs and certain of their service providers. These measures take into account the particularities of Luxembourg UCIs which are frequently invested and distributed through all time zones and the marketing of which is frequently undertaken by intermediaries subject to the supervision of a foreign authority.

This Circular further fixes more general rules of conduct to be complied with by all professionals subject to the supervision of the CSSF.

Finally, it extends the role of the auditor of the UCI, as described in CSSF Circular 02/81, as regards the verification of the procedures and controls established by the UCI to protect the UCI against *Late Trading* and *Market Timing* practices.

Late Trading is to be understood as the acceptance of a subscription, conversion or redemption order after the time limit fixed for accepting orders (*cut-off time*) on the relevant day and the execution of such order at the price based on the net asset value (NAV) applicable to such same day.

Through *Late Trading*, an investor may take advantage of being aware of events or information published after the cut-off time, but which events or information are not yet reflected in the price which will be applied to such investor. This investor is therefore privileged compared to the other investors who have complied with the official cut-off time. The advantage of this practice to the investor is increased even more if he is able to combine *Late Trading* with *Market Timing.*

The *Late Trading* practice is not acceptable as it violates the provisions of the prospectuses of the UCIs which provide that an order received after the cut-off time is dealt with at a price based on the next applicable NAV.

The acceptance of an order is not to be considered as a *Late Trading* transaction, where the intermediary in charge of the marketing of the UCI transmits to the transfer agent of the UCI after the official cut-off time to still be dealt with at the NAV applicable on such day, if such order has effectively been issued by the investor before the cut-off time. To limit the risk of abuse, the transfer agent of the UCI must ensure that such order is transmitted to him within a reasonable timeframe.

The acceptance of an order dealt with or corrected after the cut-off time by applying the NAV applicable on such day is also not to be considered as a *Late Trading* transaction, if such order has effectively been issued by the investor before the cut-off time.

Market Timing is to be understood as an arbitrage method through which an investor systematically subscribes and redeems or converts units or shares of the same UCI within a short time period, by taking advantage of time differences and/or imperfections or deficiencies in the method of determination of the NAV of the UCI.

Opportunities arise for the *market timer* either if the NAV of the UCI is calculated on the basis of market prices which are no longer up to date (stale prices) or if the UCI is already calculating the NAV when it is still possible to issue orders.

The *Market Timing* practice is not acceptable as it may affect the performance of the UCI through an increase of the costs and/or entail a dilution of the profit.

As *Late Trading* and *Market Timing* practices are likely to affect the performance of the UCI and are likely to harm investors, the preventive measures recommended hereafter have to be applied with great care.

I. Prevention of Late Trading and Market Timing practices

a) protective measures to be adopted by the UCI and by certain of its service providers

The investor must, in principle, subscribe, redeem or convert the units or shares of a UCI at an unknown NAV. This implies that the cut-off time must be fixed in a manner to precede or to be simultaneous to the moment when the NAV, on which the applicable price is based ("*forward pricing*"), is calculated. A non-precise cut-off time such as, for example, "until the close of business" is to be avoided. The prospectus must specifically mention that subscriptions, redemptions and conversions are dealt with at an unknown NAV and must indicate the cut-off time.

The transfer agent of the UCI shall ensure that subscription, redemption and conversion orders are received before the cut-off time as set forth in the UCI's prospectus in order to process them at the price based on the NAV applicable on that day. In respect of orders received after such cut-off time, the transfer agent applies the price based on the next applicable NAV. The transfer agent shall ensure that he receives within a reasonable time period the orders which have effectively been issued by investors before the cut-off time but which have been forwarded to the transfer agent by intermediaries in charge of the marketing of the UCI after such time limit only.

In order to be able to ensure the compliance with the cut-off time, the transfer agent of the UCI must adopt appropriate procedures and undertake to perform the necessary controls. The transfer agent undertakes either to provide the UCI on an annual basis with a confirmation from its auditor on its compliance with the cut-off time or to authorise the auditor of the UCI to perform its own controls on the compliance of the cut-off time.

If intermediaries in charge of the marketing of the UCI have been appointed by the UCI to ensure the collection of orders and the control of the cut-off time with regard to the acceptance of the orders, the UCI shall ensure that it obtains from each intermediary concerned a contractual undertaking pursuant to which the intermediaries undertake towards the UCI to transmit to the transfer agent of the UCI, for the processing at the NAV applicable on such day, only such orders which it has received before such cut-off time.

The cut-off time, the time at which the securities prices which are taken into account for the calculation of the NAV are fixed[1] and the time at which the NAV is calculated must be combined in a manner so as to minimise any arbitrage possibilities arising from time differences and/or imperfections/deficiencies in the method of determination of the NAV of the UCI.

UCIs which, due to their structure, are exposed to Market Timing practices must put in place adequate measures of protection and/or control to prevent and avoid such practices. The introduction of appropriate subscription, redemption and conversion charges, an increased monitoring of dealing transactions and the valuation of the portfolio securities at "fair value" may constitute possible solutions for such UCIs.

The board of directors of the UCI analyses such solutions with care and will implement them or make certain that they are implemented.

The UCI shall ensure not to permit transactions which it knows to be, or it has reasons to believe to be, related to *Market Timing* and uses its best available means to avoid such practices.

If there exist formal contractual relationships between the UCI and intermediaries in charge of its marketing, the UCI shall ensure to obtain from the intermediary concerned a contractual undertaking from the intermediary not to permit transactions which the intermediary knows to be, or has reasons to believe to be, related to market timing.

The prospectus of the UCIs concerned must include a statement indicating that the UCI does not permit practices related to *Market Timing* and that the UCI reserves the right to reject subscription and conversion orders from an investor who the UCI suspects of using such practices and to take, if appropriate, the necessary measures to protect the other investors of the UCI.

Particular attention has to be paid to subscription, conversion or redemption orders from employees of the service providers acting for the UCI or from any person who holds or is likely to hold privileged information (e.g.: knowledge on the exact composition of the portfolio of the UCI … etc). Accordingly, adequate measures have to be taken by the service providers of the UCIs to avoid the risk that any such person can take advantage of his privileged situation either directly or through another person.

b) rules of conduct to be followed by all professionals subject to the supervision of the CSSF

The CSSF prohibits any express or tacit agreement which permits certain investors to undertake *Late Trading* or *Market* Timing practices.

The CSSF requires that any professional subject to its supervision refrains from using *Late Trading* or *Market Timing* practices when investing in a UCI or from processing a subscription or conversion order of units or shares of a UCI which he knows to be, or he has reasons to believe to be, related to *Late Trading* or *Market Timing*.

The CSSF requires that any professional subject to its supervision that detects or is aware of a case of *Late Trading* or *Market* Timing, informs as soon as possible the CSSF by providing to the latter the necessary information to enable it to make a judgement on the situation.

[1] Note from the translator: sometimes referred to as "valuation point".

II. Protection of the UCI and investors in case of the occurrence of *Late Trading* and/or *Market Timing* transactions

Any person who is guilty of knowingly undertaking or supporting *Late Trading* or *Market Timing* practices as defined by this circular exposes himself to sanctions or, in addition, to the obligation of repairing the damage caused to the UCI.

III. Additional provisions to CSSF Circular 02/81 on the guidelines concerning the task of the auditors of UCIs

The auditor of the UCI checks the procedures and controls put in place by the UCI so as to protect itself from *Late Trading* practices and describes these in its long form report. For UCIs which, due to their structure, are likely to be subject to *Market Timing* practices, the auditor checks the measures and/or controls put in place by the UCI to protect itself by the best possible means against such practices and describes such measures and/or controls in its long form report.

If the auditor of the UCI, during the performance of its duties, becomes aware of a case of *Late Trading* or *Market Timing*, he must indicate it in its long form report.

In case of indemnification of investors harmed by *Late Trading* or *Market Timing* practices during the accounting year, the auditor must give, in the long form report, its opinion whether investors have been adequately indemnified.

25.

CSSF CIRCULAR 03/97

RELATING TO THE PUBLICATION BY UNDERTAKINGS FOR COLLECTIVE INVESTMENT IN THE REFERENCE DATABASE ("*RÉFÉRENTIEL DE LA PLACE*") OF THE SIMPLIFIED PROSPECTUSES AND THE FULL PROSPECTUSES AS WELL AS THE ANNUAL AND SEMI-ANNUAL REPORTS

CSSF Circular 03/97 relating to the publication by undertakings for collective investment in the reference database ("*référentiel de la place*") of the simplified prospectuses and the full prospectuses as well as the annual and semi-annual reports

Luxembourg, 28 February 2003

To all Luxembourg undertakings for collective investment and to those who act in relation to the operation and supervision of such undertakings.

CSSF CIRCULAR 03/97

Re: Publication by undertakings for collective investment in the reference database ("*référentiel de la place*") of the simplified prospectuses and the full prospectuses as well as the annual and semi-annual reports

Ladies and Gentlemen,

The purpose of this circular is to clarify the method of publication of simplified prospectuses and full prospectuses as well as the annual and semi-annual reports which undertakings for collective investment (UCIs) must publish for the benefit of their investors pursuant to chapter 17 of the Law of 20 December 2002 relating to undertakings for collective investment (the "Law of 20 December 2002").

That Law provides in its Article 114 that:

(1) UCIs must send their simplified and full prospectuses and any amendments thereto, as well as the annual and semi-annual reports, to the CSSF.

(2) The CSSF may publish or cause the publication of the aforesaid documents by such means as it shall consider adequate.

To take into account the evolution of information technology, a reference database has been put in place by the *Centrale de Communication Luxembourg S.A.* (CCLux) in order to create an infrastructure which permits investors and professionals of the industry to have access, by electronic means, to all prospectuses and annual and semi-annual reports of Luxembourg UCIs.

This platform is in line with the new European trends aiming at facilitating the distribution and the inspection of prospectuses and annual and semi-annual reports by means of electronic support such as the Internet.

The CSSF considers that this reference database strengthens the transparency of the information relating to UCIs subject to Luxembourg law and facilitates the access to such information for investors.

On the basis of Article 114 (2) of the Law of 20 December 2002, the simplified prospectus and the full prospectus, as well as the annual and semi-annual reports of the UCIs subject to the aforesaid law must be published in the reference database. This compulsory publication is not applicable to UCIs subject to the Law of 19 July 1991 relating to UCIs the securities of which are not intended to be placed with the public.

It is strongly recommended that UCIs subject to the Law of 30 March 1988 relating to undertakings for collective investment (the "Law of 30 March 1988") also comply with this obligation of publication in the reference database.

The publication of the prospectus must be made once the latter has been approved by the CSSF. To the extent notified by a UCI to the CSSF, the publication of the prospectus is postponed until, at the latest, the start date of the distribution of the units of the UCI.

The annual and semi-annual reports must be published within the deadlines set forth in Article 109 (2) of the Law of 20 December 2002 and in Article 85 (2) of the Law of 30 March 1988.

The CSSF may, on the basis of an adequate justification, grant a derogation in relation to the obligation to publish the prospectuses and the annual and semi-annual reports in the reference database.

A separate circular will be issued at the time when the reference database will become operational and will deal with the methods of transmission of the prospectuses and the annual and semi-annual reports of UCIs to the CSSF and to CCLux.

26.

CSSF CIRCULAR 03/88

RELATING TO THE CLASSIFICATION OF UNDERTAKINGS FOR COLLECTIVE INVESTMENT SUBJECT TO THE PROVISIONS OF THE LAW OF 20 DECEMBER 2002 RELATING TO UNDERTAKINGS FOR COLLECTIVE INVESTMENT

CSSF Circular 03/88 relating to the classification of undertakings for collective investment subject to the provisions of the Law of 20 December 2002 relating to undertakings for collective investment

Luxembourg, 22 January 2003

To all Luxembourg undertakings for collective investment and to those who act in relation to the operation and supervision of such undertakings.

CSSF CIRCULAR 03/88

Re: Classification of undertakings for collective investment subject to the provisions of the Law of 20 December 2002 relating to undertakings for collective investment

Ladies and Gentlemen,

The purpose of this circular is to clarify the classification of undertakings for collective investment (UCIs) which are subject to the Law of 20 December 2002 which entered into force on 1 January 2003. The main changes introduced by the Law of 20 December 2002 are described in CSSF Circular 03/87.

The amended Law of 30 March 1988 relating to UCIs (hereafter the "Law of 30 March 1988") will remain in force until 13 February 2007 and, as a consequence, until such date two distinct laws will, on a parallel basis, regulate matters regarding UCIs.

Pursuant to the transitional provisions set forth in the Law of 20 December 2002, the following UCIs established under the Law of 30 March 1988 must comply with the new legal provisions by 13 February 2004 at the latest:

- UCITS subject to Part I of the Law of 30 March 1988 established between 13 February 2002 and 1 January 2003;

- UCITS within the meaning of Article 1 of the Law of 30 March 1988, excluding those referred to in Article 2 of such law, established between 1 January 2003, and 13 February 2004, which in a first stage had elected to be governed by the Law of 30 March 1988;

- UCIs existing on 1 January 2003, subject to Part II of the Law of 30 March 1988 which qualify as UCITS under Part I of the Law of 20 December 2002;

- UCIs existing on 1 January 2003, subject to Part II of the Law of 30 March 1988 which qualify as UCIs subject to Part II of the Law of 20 December 2002;

- UCIs established between 1 January 2003 and 13 February 2004, which qualify either as UCITS under Part I of the Law of 20 December 2002 or as UCIs under Part II of the Law of 20 December 2002 and which in a first stage elected to be governed by the Law of 30 March 1988 (Part II).

All undertakings for collective investment established on and after 13 February 2004 are subject, by operation of law, to the Law of 20 December 2002 and must comply with the provisions thereof as from the date of their establishment.

UCITS subject to Part I of the Law of 30 March 1988 established prior to 13 February 2002 may elect, until 13 February 2007, either to remain subject to the Law of 30 March 1988 or to be governed by the Law of 20 December 2002.

I. General considerations

A UCI shall be deemed to be situated in Luxembourg if the registered office of the management company of the common fund or the registered office of the investment company is situated in Luxembourg.

Depending on their characteristics, Luxembourg UCIs governed by the Law of 20 December 2002 will be subject either to Part I or to Part II of such Law.

This classification permits to distinguish between:

- undertakings within the meaning of Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), as amended;

- the other undertakings which do not fall within the scope of application of directive 85/611/EEC, as amended.

II. Definition of UCIs governed by Part I of the Law of 20 December 2002

Part I of the Law of 20 December 2002 applies to all UCIs the exclusive object of which is the investment in transferable securities and/or the other liquid financial assets referred to in Article 41 (1) of the Law.

Considering this aforementioned definition, the criteria which determines whether a UCI is subject to Part I or Part II of the Law of 20 December 2002 is the intended investment objective. If the UCI invests in transferable securities and/or the other liquid financial assets referred to in the aforesaid Article 41 (1) of the Law of 20 December 2002, it is subject to Part I save for the exceptions commented in section III. below.

UCITS subject to Part I of the Law of 20 December 2002 are of the open-ended type since the rules to which they are subject provide that they directly or indirectly redeem their units or shares at the request of the investors.

Due attention must be given to the abovementioned transitional provisions of the Law of 20 December 2002 and, in particular, to Article 134 (5) concerning UCIs which exist on the date of the entry into force of such law and which are capable of becoming UCITS subject to Part I as a result of the extension of the concept of eligible assets.

Accordingly, a UCI which is presently governed byPart II of the Law of 30 March 1988 may have to submit itself, because of its investment policy, by 13 February 2004 at the latest to the provisions of Part I of the Law of 20 December 2002, unless it is excluded from Part I pursuant to Article 3 of such Law.

III. Definition of UCIs subject to Part II of the Law of 20 December 2002

Part II of the Law of 20 December 2002 applies to all UCIs the principal object of which is the investment in securities other than transferable securities and/or the other liquid financial assets referred to in Article 41 (1) of the Law, as well as to all UCITS excluded from Part I.

In its Article 3, the Law of 20 December 2002 provides for exceptions to the basic rule reproduced in section II. above by excluding from the scope of application of Part I certain categories of UCITS.

The cases of exclusion, which relate to the four categories described below, are identical to those provided for by the Law of 30 March 1988. They were described in detail in IML Circular 91/75. The first three categories described hereafter remain fundamentally identical to their description in IML Circular 91/75. The fourth category has been adjusted to take account of the extension of the concept of eligible assets of UCITS as a result of which certain UCIs which were excluded from Part I of the Law of 30 March 1988 are no longer excluded from Part I of the Law of 20 December 2002.

UCITS excluded from Part I of the Law of 20 December 2002 relate to the four following categories:

1. UCITS of the closed-ended type. These UCITS can be defined by distinguishing them from open-ended UCITS which, directly or indirectly, redeem their units or shares at the request of investors.

   The reimbursement to investors after a decision of the UCITS is not tantamount to a redemption if such reimbursement occurred without any request from investors pursuant to a redemption right.

   If the securities of a UCITS of the closed-ended type are redeemed at the request of investors after a certain date, such UCITS shall fall within the scope of application of Part I of the Law from such date onwards, unless it belongs to one of the other categories of UCITS referred to in paragraphs 2. to 4. hereafter. In case this feature is established at inception, the prospectus must, from the outset, draw the investors' attention to that fact and to the possible consequences arising therefrom, including those relating to the investment policy.

2. UCITS which raise capital without promoting the sale of their units or shares to the public within the European Union ("EU") or any part of it.

   The exclusion from Part I of the Law does not dispense the UCITS concerned from the condition of the collection of public savings which all undertakings must comply with in order to qualify as UCI; it simply prohibits the UCITS concerned to engage in any promotional activity within the EU as this concept is defined in each Member State. In Luxembourg, the concept of "promotional activity" refers in particular to the use of advertisements methods such as the press, radio, television or advertisement circulars. It does however not refer to offers of subscription which are addressed to a limited, particularly knowledgeable circle of investors.

   It follows from the above that the UCITS concerned hereby are those which, even though they are addressed to the public, renounce to any promotional activity within the EU.

3. UCITS the units or shares of which may, under their constitutional documents, only be sold to the public in countries which are not members of the European Union.

   The exclusion only applies under the condition that the management regulations or the articles of incorporation of these UCITS expressly provide that the sale of their units or shares is limited to the public of countries which are not members of the European Union and of the European Economic Area.

   Are also covered by this category, UCITS the units or shares of which are listed on the Luxembourg Stock Exchange and which market those units or shares solely outside the European Union and the European Economic Area.

4. Categories of UCITS determined by the CSSF for which the rules laid down in Chapter 5 of the Law of 20 December 2002 are inappropriate in view of their investment and borrowing policies.

UCITS covered by this exclusion belong to one of the following categories:

4.1. UCITS the investment policy of which permits the investment of 20% or more of their net assets in securities other than in transferable securities and/or other liquid financial assets referred to in Article 41 (1) of the Law of 20 December 2002.

4.2. UCITS the investment policy of which permits the investment of 20% or more of their net assets in venture capital. Investment in venture capital shall be taken to mean investment in securities of companies which have been recently formed or which are still in the course of development.

4.3. UCITS the investment policy of which permits the borrowing, on a permanent basis and for investment purposes, of amounts representing at least 25% of their net assets.

4.4. Multiple compartment UCITS, one compartment of which is not subject to Part I of the Law of 20 December 2002 by reason of its investment or borrowing policy.

27.

CSSF CIRCULAR 02/81

RELATING TO THE GUIDELINES CONCERNING THE TASK OF AUDITORS OF UNDERTAKINGS FOR COLLECTIVE INVESTMENT

CSSF Circular 02/81 relating to the guidelines concerning the task of auditors of undertakings for collective investment

Luxembourg, 6 December 2002

To all Luxembourg undertakings for collective investment

CSSF CIRCULAR 02/81

Re: Guidelines concerning the task of auditors of undertakings for collective investment.

Ladies and Gentlemen,

The purpose of this circular it to set out the rules concerning the scope of the audit of the annual accounting documents and the content of the audit reports to be drawn up in this context, pursuant to the Law of 30 March 1988 relating to undertakings for collective investment ("UCIs"), as amended by the Law of 17 July 2000.

This circular intends to define the role and task of the auditor in the context of the audit of the accounting documents provided for by law. The task of the auditor is not limited to the audit of the accounting documents but also covers the analysis of the operation and procedures of the UCI.

It is understood that the task of the auditor may vary depending on the risks existing in the markets in which the UCI is active and the quality of the control mechanisms implemented at the level of the UCI.

This circular does not amend the contents of the reports on the annual accounts to be established pursuant to Schedule B as provided for by the law, but aims to specify the subjects which need to be developed in the Long form report[1] because that report constitutes, together with the report on the annual accounts and the management letter, an important source of information for the CSSF in the performance of its supervisory functions.

[1] The Circular uses the term "report on the audit of the activities of the UCI" but the term used in the industry is "long form report" and that term will be used in this translation.

SUMMARY

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V. Final provisions

I. Mandate

The auditor is appointed by the general meeting of shareholders of the UCI. For common funds, the auditor is appointed by the board of directors of the management company. The board of directors of the UCI or of the management company of the UCI must subsequently specify in writing the terms of engagement which shall contain at least the following provisions:

1. The audit of the annual accounts has to be undertaken in accordance with the working recommendations of the Luxembourg Auditors' Institute ("*Institut des Réviseurs d'Entreprises luxembourgeois*" (IRE)). In this context, the IRE provides for the application of the International Standards on Auditing ISAs) published by IFAC ("International Federation of Accountants"), adapted or completed, if needed, by national legislation or practice.

2. The audit has to cover all categories of operations of the UCI whether these operations are accounted for on the balance sheet or are recorded off-balance sheet. The mandate given to the auditor cannot exclude from its scope a category of operations or a specific operation. The audit must also cover all risks incurred by the UCI.

3. The audit must cover all aspects of the organisation and verification of the procedures which apply to the UCI. The analysis must *inter alia* cover the procedures concerning compliance with the investment restrictions, control of the calculation of the NAV and reconciliations as well as the procedures relating to the valuation methods. The audit must indeed enable all information to be provided which is required for the report on the annual accounts and the long form report.

4. The mandate for the annual audit must specifically include the following tasks:

   - to check compliance with the principles established by the circulars of the supervisory authority concerning the fight against money laundering, including in particular circular IML 94/112 concerning the fight against money laundering and the prevention of the use of the financial sector for money laundering purposes and its supplements, Circulars BCL 98/153, CSSF 00/21, CSSF 01/40 and CSSF 02/78, as well as the correct application of internal procedures for the prevention of money laundering;

   - to check compliance with all other circulars applicable to UCIs.

5. The audit of the annual accounts as defined hereabove has to be documented on the one hand by a report on the annual accounts (see chapter II. hereunder) and on the other hand by a Long form report (see chapter III. hereunder).

   In general, the UCI must immediately inform the CSSF in case the auditor resigns from its mandate before the end of the term or if the auditor envisages not to seek a re-appointment.

   In the same way, the UCI must notify the CSSF, with an indication of the reasons, of its intention to terminate the appointment of the auditor. The CSSF will in respect of each request for replacement of the auditor analyse the reasons for the proposed change and will assess if the UCI has, in the procedure for the appointment of a new auditor, given due regard to the competence and resources of the latter in view of the type and volume of the activities of the UCI.

II. Report on the annual accounts

The report on the annual accounts contains the auditor's attestation (*attestation du réviseur d'entreprises, Bestätigungsvermerk*) and is to be published in accordance with Article 85 (1) of the Law of 30 March 1988 relating to undertakings for collective investment.

In the report on the annual accounts, the auditor issues its attestation in accordance with the ISA 700[2] standards as adopted by IRE.

In accordance with Article 86 (2) of the Law of 30 March 1988 relating to undertakings for collective investment, the report on the annual accounts has to contain a balance sheet or a statement of assets and liabilities, a detailed income and expenditure account for the financial year, a report on the activities of the financial year and the other information provided for in Schedule B annexed to the prementioned law, as well as any significant information which will enable investors to make an informed judgement on the development of the activities and the results of the UCI.

In case the auditor announces to the UCI that it will issue a qualified attestation or that it will refuse to certify the accounts, the UCI concerned must immediately inform the CSSF (see also chapter IV. "Reporting to the CSSF pursuant to Article 89 (3) of the Law relating to UCIs" hereunder).

The report on the annual accounts has in any case to be submitted to the CSSF within a period of four months from the end of the period to which such report relates.

III. Long Form Report

A. General principles

The purpose of the long form report is to report on the findings of the auditor in the course of its audit concerning the financial and organisational aspects of the UCI comprising *inter alia* its relationship with the central administration, the custodian and the other intermediaries (the investment managers, the transfer agents, the distributors, etc.).

The long form report must be concise, clear and critical.

It is not intended to be made available to the public. It is issued for the exclusive use by the board of directors of the UCI or the management company of the UCI as well as the CSSF.

It must detail for every item listed under III.B., the verifications which are essential to permit a precise and informed judgement on the organisation and the financial statements of the UCI.

The auditor must, in the context of its usual audits carried out in accordance with recommendations RRC n° 21[3] of IRE, give its opinion on the compliance with the investment restrictions set out by law and/or regulations and must also obtain the assurance that the systems which have been put into place permit a proper calculation of the net asset value.

The auditor has to indicate the NAV calculation errors and the infringements to the investment restrictions which it will have ascertained during its audit and which have nevertheless not been notified to the CSSF in accordance with CSSF Circular 02/77.

In the long form report, the auditor must also analyse the NAV calculation errors and the failures to comply with investment rules which have been the subject of a notification in application of CSSF Circular 02/77, but for which the amount of indemnification did not exceed EUR 25,000 and for which the amount to be reimbursed to any one shareholder did not exceed EUR 2,500 as set out in CSSF Circular 02/77.

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2 International Standard on Auditing n° 700: The Auditor's report on financial statements.

3 Recommendation on accounting audit n° 21: The audit of the financial statements of the UCIs.

The auditor has to communicate in detail the weaknesses and the areas to be improved which it will have ascertained during its audit. This communication can be made in the context of the long form report or through a letter of recommendation[4] addressed to the board of directors of the UCI or the management company of the UCI. The findings of the auditor must mandatorily be supplemented by comments of the board of directors of the UCI or the management company of the UCI. In case a management letter is drawn up, it must be annexed to the long form report. If the auditor does not issue a management letter, this must be expressly noted in the long form report.

In accordance with chapter P of circular IML 91/75 of 21 January 1991[5], the UCI must immediately communicate to the CSSF, without having been invited to do so, all other documents issued by the auditor in the context of its annual audit as referred to hereabove.

The long form report has to be remitted to the CSSF within a period of four months from the end of the period to which the report refers.

B. Structure of the long form report

The long form report must be drawn up in accordance with the lay out featured below. The layout corresponds to the minimum information to be detailed by the auditor in its report. However, the layout of the report can be adapted to the volume and the complexity of the activity and to the structure of the UCI. If appropriate, the auditor will have to supplement the layout set out below by those items which it will find necessary. If one particular item of the layout does not apply to a UCI, the auditor will have to explicitly mention this fact under the item concerned.

1. Organisation of the UCI

1.1. Central administration

1.1.1. Situation where the auditor of the UCI relies on the audit report of the auditor of the central administration

1.1.2. Situation where the audit and verifications are made by the auditor of the UCI

1.1.2.1. Assessment of procedures

1.1.2.2. Computer systems

1.2. Custodian

1.2.1. Situation where the auditor of the UCI relies on the audit report of the auditor of the custodian

1.2.2. Situation where the audit and verifications are made by the auditor of the UCI

1.2.2.1. Assessment of procedures

1.2.2.2. Computer systems

1.2.2.3. Result of the reconciliations

[4] Commonly referred to as a "management letter".

[5] Circular IML 91/75 relating to the revision and remodeling of the rules to which undertakings for collective investment governed by the Law of 30 March 1988 on undertakings for collective investment are subject to.

1.3. Relationship with the management company

1.4. Relationship with other intermediaries

2. Audit of the operations of the UCI

2.1. Control of anti-money laundering rules

2.2. Valuation methods

2.3. Audit of the risk management system

2.4. Specific audits

2.5. Assets and liabilities and profit and loss account

2.6. Publication of the NAV

3. Internet

4. Complaints from investors

5. Follow-up on problems identified in preceding long form reports

6. General conclusion

C. Explanatory comments on the structure of the long form report

1. Organisation of the UCI

The operations of a UCI require the recourse to specialised service providers in Luxembourg and abroad.

Under the provisions of the Law of 30 March 1988 relating to undertakings for collective investment (as amended), the central administration of the UCI must be located in Luxembourg. The prementioned law also provides that the custodian of a UCI must be established in Luxembourg. The entities which exercise one or several functions in relation with the central administration and/or the custody for the UCI play a significant role in the operation of a UCI.

To the extent that the custodian and the professional of the financial sector which carries out the central administration duties for the UCI have been subjected by their auditor to an audit on the activities exercised for UCIs which covers at least the items detailed under paragraphs 1.1.2 and 1.2.2 herebelow, the auditor of the UCI may refer to the long form reports of the auditor of the custodian or the professional of the financial sector on dealing with the services provided to undertakings for collective investment.

In case the auditor of the UCI does not make use of that possibility and considering the important role in the organisation of the UCI assumed by the entities which carry out the function of central administration and/or custodian, the auditor must itself undertake the verifications and controls detailed in the pre-mentioned paragraphs. In that case the auditor of the UCI will have to advise the board of directors of the UCI or the management company of the UCI that it needs to have access to certain information on the entity concerned in order to carry out the verifications and audits required by this circular. The board of directors of the UCI or of the management company of the UCI must in that case request the entity concerned to provide access to the information which is necessary for the auditor of the UCI to accomplish its mission.

For common funds the management of which is performed by a management company, the auditor of the UCI will have to carry out certain audits and verifications as defined under paragraph 1.3. hereafter. The auditor of the UCI may for these tasks refer to the long form report of the auditor of the management company if such report covers at least the items detailed under paragraph 1.3. In case it does not make use of that possibility, it must call upon the board of directors of the management company of the common fund. The board of directors of the management company must then make available to the auditor all information necessary in relation to the activities exercised by the management company for the common fund and, in case the management company has delegated certain important administration functions to a specialised entity, the board will have to request that entity to provide access to the information required.

It also must be noted, that in case the various central administration functions are performed by more than one professional of the financial sector, the auditor of the UCI must give its opinion on the procedures regarding the coordination and general supervision of the activities of the UCI.

In respect of the relationship of the UCI with other service providers established in Luxembourg and/or abroad, reference is made to paragraph 1.4. below.

1.1. Central administration

1.1.1. Situation where the auditor of the UCI relies on the audit report of the auditor of the central administration

The auditor of the UCI must, in its long form report, specify the audit report of the auditor of the central administration he has relied upon. He must in this context provide the following data:

- the name of the auditor of the central administration
- the date of the audit report
- if applicable, the audit report in accordance with international standard ISA 402, type B or in accordance with US standard SAS 70, type 2, or in accordance with any other equivalent standard, as well as the name of the auditor which has established that report.

In cases where the central administration functions are fulfilled by more than one entity, the auditor of the UCI has to indicate in its long form report the data mentioned hereabove in respect of each of these entities individually.

1.1.2. Situation where the audit and verifications are made by the auditor of the UCI

1.1.2.1. Assessment of procedures

In its long form report, the auditor must indicate the exact functions performed by the central administration on behalf of the UCI. In case these functions are split among more than one professional of the financial sector and/or management body of the fund, the auditor must in its report indicate the allocation of the tasks between the different parties.

The auditor must specify if the central administration or the different parties are in possession of a procedures manual describing the functions which they perform on behalf the UCI

and which are, *inter alia*, set forth in chapter D. of IML Circular 91/75.

In addition, the auditor has to verify if specific procedures have been established in connection with the following items:

a) internal control procedure on the origin of funds (anti-money laundering procedures),

b) valuation procedure of the portfolio by the accounting agent, distinguishing between the different types of investment and insisting in particular on unquoted and illiquid securities,

c) Internal control procedures on the investment policy and restrictions,

d) internal control procedure on the accuracy of the NAV calculation,

e) recording and settlement procedure of subscription/redemption orders of units/shares,

f) validation and recording procedure in relation to the acquisition and sale of securities.

The auditor must give its opinion on the adequacy of the procedures put in place.

Finally, the auditor must indicate if the human resources made available are sufficient to ensure a proper execution of the contractual obligations of the entity for the relevant UCI.

In case of splitting of the central administration functions, it goes without saying that, in addition, the auditor must give its opinion on the procedures regarding the coordination and the general supervision of the activities of the UCI.

1.1.2.2. Computer systems

As regards computer systems, the auditor will give a brief description of the software used by the central administration and of the functions for which the software is used.

The auditor must indicate whether, during the financial year under review, significant changes have occurred with respect to the computer system and whether problems were encountered at the time of migration from one system to another.

The auditor must also give its opinion on the adequacy of the computer system in consideration of the volume of the activities of the relevant UCI and, if applicable, in respect of pooling or co-management techniques.

With regard to the accounting system for the calculation of the NAV, the auditor will give its opinion on whether the accounting system is adequate in view of the type of investments made by the UCI. Manual accounting operations

and valuations and the internal control procedures relating thereto must be pointed out.

The auditor must also verify if appropriate measures to safeguard the confidentiality of information have been put into place.

In addition, the auditor must outline the general principles of the contingency plan in place which should permit the central administration to operate normally in case of a breakdown of its computer systems, including its Internet connections.

When use is made of an external processing unit, whether based in Luxembourg or abroad, the auditor must clearly indicate which functions have been sub-delegated and to whom.

The auditor must furthermore give its opinion on compliance with the provisions of item III.1. of chapter D. of IML Circular 91/75.

Generally, the auditor must highlight the significant deficiencies which it will have detected during its audit and must describe them in a detailed manner so that the CSSF can assess the situation.

1.2. Custodian

1.2.1. Situation where the auditor of the UCI relies on the audit report of the auditor of the custodian

The auditor of the UCI must in its long form report, specify the audit report of the auditor of the custodian he has relied upon. He must in this context provide the following data:

- the name of the auditor of the custodian
- the date of the audit report
- if applicable, the audit report in accordance with international standard ISA 402, type B, or in accordance with US standard SAS 70, type 2 or in accordance with any other equivalent standard, as well as the name of the auditor which has established the report.

The auditor of the UCI must in any case give its opinion on the result of the reconciliations between assets accounted for by the UCI and the assets deposited with the custodian as well as on the off-balance sheet operations of the UCI.

In case the auditor, during its audit, notes serious problems at the level of the reconciliation between the positions accounted for by the UCI and those registered with the custodian, it must make a detailed description of those problems in the long form report.

1.2.2. Situation where the controls and verifications are made by the auditor of the UCI

1.2.2.1. Assessment of procedures

The long form report indicates if the entity is in possession of a procedures manual describing the duties of the custodian and whether this manual includes general procedures and specific procedures relating to the activities undertaken.

The long form report will describe in particular the correspondent bank network. The long form report will describe the policy of the entity as regards the selection criteria of those counterparties. The auditor will give an outline of the third parties with which the entity has entered into a relationship and it will indicate if these counterparties have been retained in accordance with the policy of the entity.

In case the custodian exercises also part or all of the central administration functions, the long form report has to provide explanations on the separation of duties, specifically between custody and central administration duties.

In case the auditor notes deficiencies, the auditor will have to indicate exactly which obligation(s) the custodian has not complied with.

1.2.2.2. Computer Systems

As regards computer systems, the auditor will give a brief description of the software used by the custodian.

The auditor must indicate whether, during the financial year under review, significant changes have occurred with regard to the computer system and whether problems were encountered at the time of migration from one system to another.

The auditor must give its opinion on the adequacy of the computer system and the available human resources for ensuring the proper execution by the credit institution of its contractual obligations towards the UCI concerned.

1.2.2.3. Result of the reconciliations

The auditor must indicate whether the custodian has established procedures concerning the reconciliation of positions accounted for by the UCI and those registered with the custodian. It will also give an opinion on the adequacy of those procedures.

The auditor must give its opinion on the results of the reconciliation between the positions accounted for by the UCI and the positions registered with the custodian.

In case the auditor would during its audit identify serious problems as regards the reconciliation between the positions accounted for by the UCI and those registered with the custodian, the auditor must give a detailed description of the problems in the long form report.

1.3. Relationship with the management company

The auditor verifies whether the management company assumes its functions in compliance with legal and contractual obligations.

It indicates in its long form report which functions are performed by the management company on behalf of the UCI. To the extent that the management company performs all or part of the administration functions, the auditor has to proceed as provided for under item 1., paragraph 1.1.1. or 1.1.2. hereabove.

In case the auditor becomes aware of major problems, it has to provide a detailed description of those problems in the long form report.

1.4. Relationship with other intermediaries

In the context of the relationship of the UCI with other intermediaries, comprising *inter alia* the investment managers, the distributors, etc., the auditor must indicate in its long form report if the activity of the UCI has been hindered by major problems encountered in the course of the operations conducted with these other intermediaries.

If this is the case, the auditor must describe in a detailed manner the problem(s) encountered during its analysis in order to enable the CSSF to assess the situation.

2. Audit of the operations of the UCI

2.1. Audit of anti-money laundering rules

As the central administration of a UCI deals with subscription, redemption and transfer requests of units or shares of UCIs, it has to ensure compliance with the provisions set forth in the Circulars relating to the fight against money laundering, comprising Circulars IML 94/112, BCL 98/153, CSSF 00/21, CSSF 01/40 and CSSF 02/78.

IML Circular 94/112 has however taken into account the specific manner in which UCIs are marketed, by dispensing the central administration of a UCI in Luxembourg under certain conditions from the obligation to carry out itself the identification of investors in case it makes use of professionals of the financial sector subject to identification obligations equivalent to those provided for by Luxembourg law. In this context, it has to be reminded that in respect of all intermediaries participating in the placement of the units or shares of UCIs, the central administration has to systematically verify the conditions provided for by Circular IML 91/112 concerning equivalent identification. That verification has to cover *inter alia* the status of the intermediary and its submission to the FATF recommendations. If the conditions of an equivalent identification provided for by Circular IML 94/112 are not met, the central administration of the UCI in Luxembourg must itself carry out the identification of the investors in the UCI.

On the basis of the description provided by the central administration, the auditor must analyse the distribution channel of units or shares of the UCI in order to determine if the central administration complies with its obligations concerning the fight against money laundering.

In addition, the auditor must check whether the central administration supervises abnormal transactions.

In this context, the auditor has to indicate its method of selection of sample files checked and the percentage of the total transactions covered.

In case a non-compliance is noted, the auditor will have to provide precise indications to the CSSF enabling it to make an appreciation of the situation (number of files which are incomplete, detail of the failures noted, etc.).

In case the auditor of the UCI makes use of the possibility to base itself on the audit report of the auditor in charge of the review of the entity which is responsible for compliance with anti-money laundering rules, the long form report must provide the following details:

- name of the auditor of the entity in question

- date of the audit report

2.2. Valuation methods

The Law of 30 March 1988 provides that, unless otherwise provided for in the management regulations or the articles of incorporation, the valuation of the assets shall be based ‘in case of officially quoted security' on the latest known stock exchange quotations unless such quotations are not representative. For securities not so quoted and for securities which are so quoted but for which the latest quotation is not representative, these articles provide that the valuation must be based on the probable realisation value which must be estimated with care and in good faith.

The auditor will thus check if the valuation methods are applied in accordance with the procedures and the rules determined by the management regulations or the articles of incorporation and if these methods are also applied in a consistent manner.

The auditor must *inter alia* verify the application and the sincerity of the valuation rules of the securities portfolio, securities' lending/borrowing, [repurchase and reverse repurchase agreements, sale with right of repurchase agreements,] transactions, futures', swaps and options.

In connection with the valuation of portfolio securities, it must in particular insist n unquoted securities and illiquid securities.

In addition, the auditor will request the board of directors of the UCI or the management company of the UCI to provide details on the transactions undertaken by the UCI to enable the auditor to verify by sample tests if these transactions were undertaken at arm's length.

In case of non-compliance with the valuation methods described in the procedures or in the management regulations or the articles of incorporation, the auditor must provide detailed information enabling the CSSF to assess the situation.

2.3. Control of the risk management system

The board of directors of the UCI or of the management company of the UCI is supposed to have put into place the necessary controls to ensure compliance with the investment restrictions and policies of the UCI as well as the management of the risks encountered by the UCI. Either it assumes itself all or part of the above mentioned controls or it delegates this duty to one or several third parties.

The auditor must indicate the responsible persons/entities appointed by the board of directors of the UCI or the board of directors of the management company of the UCI which are entrusted with the control of the different risks for which the UCI is exposed. The auditor will also have to specify the frequency with which risk controls are made.

The long form report must indicate whether the control system put into place within those entities covers at least the risks inherent to the policy and the investment risks of the UCI concerned, such as:

- credit/counterparty risk
- market risk
- settlement risk
- foreign exchange risk

If appropriate:

- interest rate risk
- liquidity risk
- risk on derivative instruments

The long form report must provide an analysis and an assessment of the systems put in place by the UCI to control and manage the different risks to which the UCI is exposed when it carries out its activities.

If shortfalls are noted, the auditor must give precise indications enabling the CSSF to assess of the situation.

2.4. Specific audits

In the context of his mission, the auditor must also proceed to specific audits. These are the audit of the compliance with the investment policy and the investment restrictions and the audit of the calculation of the NAV.

The auditor must under this item analyse every NAV calculation error and every non-compliance with the investment rules for which the amount of indemnification did not exceed EUR 25,000 and for which the amount to be reimbursed to any one investor did not exceed EUR 2,500 as set out in CSSF Circular 02/77.

Under this item, the auditor must also indicate the following:

- material errors which the auditor has detected during its mission and which should have been notified in accordance with the provisions of CSSF Circular 02/77;
- cases of non-compliance which the auditor has detected during its mission and which should have been notified in compliance with the provisions of CSSF Circular 02/77.

In those cases, the auditor will in its long form report describe the material errors and the cases of non-compliance with investment rules identified during its audit and which have not been notified to the CSSF in compliance with CSSF Circular 02/77. The auditor will thereafter deal with these errors and

cases of non-compliance with the investment rules in accordance with the procedures set forth in CSSF Circular 02/77.

In case no significant NAV error or case of non-compliance with the investment policy will have been identified, the auditor must expressly state so in its long form report.

2.5. Assets and liabilities and profit and loss account

The auditor will comment the different items of the consolidated[6] balance sheet in a clear and precise manner. The auditor must check the existence of those items, their amounts and their adequate accounting treatment, as well as the consistent application of accounting principles.

In addition, the auditor must examine the sale and purchase transactions of securities made during the two weeks preceding and the two weeks following the end of the financial year (this period needs to be extended if suspicious operations have been detected), in order to determine whether transactions have been entered into for the purpose of "window dressing"

Furthermore, the auditor will have to collect statistics on portfolio turnover in order to make an appreciation whether transactions have been entered into for the purpose of "churning".

The auditor must also to comment on the various items of the combined profit and loss account. The auditor will have to check the existence of those items, their amounts and their adequate accounting treatment, as well as the consistent application of the accounting principles.

During its mission, the auditor will have to pay particular attention to the performance fees which may be payable to the investment managers.

The auditor will also have to receive from the board of directors of the UCI or of the management company of the UCI a confirmation to the effect that neither the investment managers nor any of their connected parties have received rebates from brokers and a confirmation on any arrangements concerning the payment of "soft commissions" in the context of the activities of the UCI. In case "soft commissions" are paid, the auditor will have to describe in the long form report the arrangements in relation thereto.

In addition, the auditor will need to receive from the board of directors of the UCI or the management company of the UCI a confirmation indicating whether there have been any commission rebates and, in the affirmative, describe the nature thereof.

Finally, the auditor will ask for a list of all costs, comprising transaction costs, which have been allocated to the UCI. It is recommended that this list refers where possible to the gross amount of the costs payable by the UCI. In relation to the most significant costs, the auditor will have to determine whether they have been calculated in compliance with the provisions of the applicable agreements.

In case of irregularities or shortfalls, the auditor will have to provide precise indications enabling the CSSF to assess the situation.

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[6] UCIs are not required to produce consolidated accounts. What is meant here is the combined balance sheet of the UCI multiple compartment UCIs consisting in the combination of the balance sheets of each compartment.

2.6. Publication of the NAV

The auditor shall indicate if the UCI has published its NAV in accordance with Article 92 of the Law of 30 March 1988.

In case of non-compliance with this legal requirement, the auditor will indicate in detail the origin of this shortfall.

3. Internet

The long form report will indicate whether the UCI makes directly use of the Internet as a communication or distribution channel.

4. Complaints from investors

The auditor will query with the board of directors of the UCI or of the management company of the UCI whether, during the course of the financial year under review, complaints have been received by the central administration in Luxembourg and to which the UCI had to respond.

If this is not the case, the auditor will specifically mention this in its long form report.

If complaints have been received, the auditor will indicate how many complaints have been received by the UCI in Luxembourg.

5. Follow-up on problems identified in preceding reports on the audit of the activities of the UCI

The auditor indicates in this part of its long form report the follow-up on irregularities and important weaknesses identified during its preceding auditors and which are detailed either in an earlier long form report or in a separate management letter addressed to the board of directors of the UCI or of the management company of the UCI (see also chapter III.A. "General Principles" hereabove).

6. General conclusion

In its general conclusion the auditor must give its opinion on all the important items of its control in order to give a general view on the situation of the UCI.

More specifically, the auditor must summarise the main comments and conclusions contained in the long form report. It will also indicate the main recommendations and observations made to the board of directors of the UCI or the management company of the UCI as well as the latter's response thereto. In case the auditor issues a separate management letter to the board of directors of the UCI or of the management company of the UCI, it is sufficient that the general conclusion refers, for this part, to that document which, in such case, must be annexed to the long form report (see also chapter III.A. "General Principles" hereabove).

IV. Reporting to the CSSF pursuant to article 89(3) of the law relating to UCIs

In compliance with paragraph (3) of article 89 as amended of the law on UCIs, introduced by the Law of 29 April 1999[7], the auditor must report to the CSSF any fact or decision it has

[7] Law of 29 April 1999
- implementing directive 95/26/EC concerning the reinforcement of prudential supervision into the Law of 5 April 1993 relating to the financial sector (as amended) and into the Law of 30 March 1988 on undertakings for collective investment (as amended);
- partially implementing Article 7 of Directive 93/6/EEC on the capital adequacy of investment firms and credit institutions into the Law of 5 April 1993 relating to the financial sector (as amended);

become aware while carrying out the audit of the accounting information contained in the annual report of an UCI or any other legal task concerning an UCI where such fact or decision is liable to:

- constitute a material breach of the provisions of the law on UCIs or the regulations adopted for its execution, or
- affect the continuous functioning of the UCI, or
- lead to a refusal to certify the accounts or to the expression of reservations therein.

The auditor shall likewise have the duty to report to the CSSF any fact or decision concerning the UCI and meeting the criteria mentioned hereabove of which it has become aware while carrying out the audit of the accounting information contained in the annual report of another undertaking having close links resulting from a control relationship with the UCI for which it carries out a legal task or while carrying out any other legal task concerning such other undertakings.

"Close link" resulting from a control relationship shall mean the link which exists between a parent undertaking and a subsidiary in the cases referred to in article 77 of the amended Law of 17 June 1992 relating to the annual accounts and the consolidated accounts of credit institutions or as a result of a relationship of the same type between any individual or legal entity and an undertaking; any subsidiary undertaking of a subsidiary undertaking is also considered a subsidiary of the parent undertaking which is at the head of those undertakings. A situation in which two or more individuals or legal persons are permanently linked to one and the same person by a control relationship shall also be regarded as constituting a close link between such persons.

In addition, if in the discharge of its duties the auditor ascertains that the information provided to investors or to the CSSF in the reports or other documents of the UCI does not truly describe the financial situation and the assets and liabilities of the UCI, it shall be obliged to inform the CSSF forthwith.

The auditor shall moreover be obliged to provide the CSSF with all information or certificates required by the latter on any matters of which the auditor has or ought to have knowledge in connection with the discharge of its duties. The same applies if the auditor ascertains that the assets of the UCI are not or have not been invested according to the regulations set out by the law or the prospectus.

In return for the duty to report to the CSSF, paragraph (3) also provides that any disclosure in good faith to the CSSF by the auditor of any fact or decision referred to in paragraph (3) does not constitute a breach of professional secrecy or of any restriction on disclosure of information imposed by contract and will not result in liability of any kind of the auditor.

V. Final provisions

The provisions of the present circular have to be complied with in their entirety for the annual accounts of the financial years ending on or after 31 December 2003.

- operating certain other amendments to the Law of 5 April 1993 relating to the financial sector (as amended);
- amending the Grand-Ducal Regulation of 19 July 1983 relating to fiduciary contracts of credit institutions.

28.

CSSF CIRCULAR 02/80

RELATING TO SPECIFIC RULES APPLICABLE TO LUXEMBOURG UNDERTAKINGS FOR COLLECTIVE INVESTMENT ("UCIs") PURSUING ALTERNATIVE INVESTMENT STRATEGIES

CSSF Circular 02/80 relating to specific rules applicable to Luxembourg undertakings for collective investment ("UCIs") pursuing alternative investment strategies

Luxembourg, 5 December 2002

To all persons and companies supervised by the CSSF

CSSF CIRCULAR 02/80

Re: Specific rules applicable to Luxembourg undertakings for collective investment ("UCIs") pursuing alternative investment strategies

Ladies and Gentleman,

Preamble

The Law of 30 March 1988 relating to UCIs does not comprise any provisions regarding restrictions applicable to UCIs governed by Part II of such law. Such restrictions are set out in the IML Circular 91/75 of 21 January 1991 applicable to UCIs. However, the UCIs who adopt alternative investment strategies are not specifically covered by the provisions of the above-mentioned circular. Therefore, in the past, the investment restrictions applicable to UCIs pursuing so called "alternative" investment strategies were dealt with by the Commission for the Supervision of the Financial Sector ("CSSF") on a case by case basis.

Considering the increasing number of applications for the creation and authorisation of Luxembourg UCIs which pursue investment strategies akin to those pursued by "hedge funds"[1] or "alternative investment funds"[2], the CSSF intends to clarify the legal and regulatory framework applicable to such UCIs.

This circular is issued in the context of the existing legal framework and its purpose is to clarify the specific rules applicable to Luxembourg UCIs which pursue so-called alternative investment strategies. In this context and due to the high investment risks which the investment strategies pursued by the UCIs concerned by this circular may entail, the CSSF will pay attention to the reputation, experience and financial standing of the promoters of such UCIs. Moreover, the CSSF considers that the professional qualification and the experience of the officers[3] of the management bodies, and, if applicable, of the investment managers and the investment advisers are particularly important in relation to such UCIs.

For the avoidance of doubt, it is to be understood that the rules laid down in chapter I of IML Circular 91/75 of 21 January 1991 applicable to UCIs other than UCITS and providing for specific rules for three types of specialised UCIs remain unchanged. Such rules are not applicable to UCIs concerned by this circular. UCIs which pursue so-called alternative investment strategies are subject to Part II of the Law of 30 March 1988 relating to UCI as the rules set forth in Chapter 5 of such Law are not appropriate for such UCIs.

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1 In English in the French text.
2 In English in the French text.
3 The French version of this Circular uses the terms "*dirigeant*" which term includes directors, managers and officers.

Although these UCIs have no obligation to borrow, their investment policy may provide for the possibility to borrow on a permanent basis for investment purposes.

Such UCIs have to comply with the provisions of this circular. However, the CSSF may grant derogations to the provisions set forth hereafter on the basis of an appropriate justification or impose additional investment restrictions.

A. Risk diversification rules regarding short sales.

A.1. Short sales may, in principle, not result in the UCI holding:

a) a short position on transferable securities which are not admitted to official stock exchange listing or dealt in on another regulated market, which operates regularly and is recognised and open to the public. However the UCI may hold short positions on transferable securities which are not quoted and not dealt in on a regulated market if such securities are highly liquid and do not represent more than 10% of the assets of the UCI;

b) a short position on transferable securities which represent more than 10% of the securities of the same type issued by the same issuer;

c) a short position on transferable securities of the same issuer, (i) if the sum of the prices at which the short sales can be covered represents more than 10% of the assets of the UCI or (ii) if the short position represents a commitment exceeding 5% of the assets.

A.2. The commitments arising from short sales on transferable securities at a given time correspond to the cumulative non-realised losses resulting, at that time, from the short sales made by the UCI. The non-realised loss resulting from a short sale is the positive amount resulting from the difference between the market price at which the short position can be covered and the price at which the relevant transferable security has been sold short.

A.3. The aggregate commitments of the UCI resulting from short sales may at no time exceed 50% of the assets of the UCI. If the UCI enters into short sales transactions, it must hold sufficient assets enabling it at any time to close the open positions resulting from such short sales.

A.4. The short sales of transferable securities for which the UCI holds adequate coverage do need to be considered in the calculation of the total commitments referred to above. For the avoidance of doubt, it is to be noted that the fact for a UCI to grant a security, of whatever nature, on its assets to third parties in order to secure its obligations towards such third parties, is not to be considered as adequate coverage for the UCI's commitments.

A.5. In connection with short sales on transferable securities, UCIs are authorised to enter, as borrower, into securities lending transactions with first class professionals specialised in this type of transactions. The counterparty risk resulting from the difference between (i) the value of the assets transferred by a UCI to a lender as security in the context of the securities lending transactions and (ii) the debt of the UCI owed to such lender may not exceed 20% of the assets of the UCI. For the avoidance of doubt, it is to be noted that UCIs may, in addition, give security by using security arrangements which do not result in a transfer of ownership or which limit the counterparty risk by other means.

B. Borrowings

UCIs concerned by this circular may borrow permanently and for investment purposes from first class professionals specialised in this type of transaction.

Such borrowings are limited to 200% of the net assets of the UCI. Consequently, the value of the assets of the UCI may not exceed 300% of its net assets. UCIs pursuing a strategy with a high level of correlation between long positions and short positions are authorised to borrow up to 400% of their net assets.

The counterparty risk resulting from the difference between (i) the value of the assets transferred by the UCI to a lender as security in the context of borrowing transactions and (ii) the debt of the UCI owed to such lender may not exceed 20% of the assets of the UCI. For the avoidance of doubt, it is to be noted that UCIs may, in addition, give security by using security arrangements which do not result in a transfer of ownership or which limit the counterparty risk by other means.

The counterparty risk resulting from the sum of (i) the difference between the value of the assets transferred as security in the context of securities lending transactions and the amounts due referred to under item A.5 above and (ii) the difference between the assets transferred as security and the amounts borrowed referred to above may not, in respect of a single lender, exceed 20% of the assets of the UCI.

C. Restrictions applicable to investments in UCIs ("target UCIs")

The UCIs referred to in this circular may, in principle, not invest more than 20% of their net assets in securities issued by the same target UCI. For the purpose of the application of this 20% limit, each compartment of a target UCI with multiple compartments is to be considered as a distinct target UCI on the condition provided that the principle of segregation of the commitments of the different compartments vis-à-vis third parties is ensured. The UCI may hold more than 50% of the units of a target UCI provided that, if the target UCI is a UCI with multiple compartments, the investment of the UCI concerned by this circular in the legal entity constituting the target UCI must represent less than 50% of the net assets of the UCI concerned by this circular.

These restrictions are not applicable to the acquisition of units of open-ended target UCIs if such target UCIs are subject to risk diversification requirements comparable to those applicable to UCIs which are subject to part II of the Law of 30 March 1988 and if such target UCIs are subject in their home country to a permanent supervision by a supervisory authority set up by law in order to ensure the protection of investors. This derogation may not result in an excessive concentration of the investments of the UCI in one single target UCI provided that for the purpose of this limitation, each compartment of a target UCI with multiple compartments is to be considered as a distinct target UCI on the condition that the principle of segregation of the commitments of the different compartments towards third parties is ensured.

UCIs which principally invest in other UCIs must make sure that their portfolio of target UCIs presents appropriate liquidity features to enable the UCI to meet its obligation to redeem its shares. Their investment policy must comprise an appropriate description in that respect.

D. Additional Investment Restrictions.

UCIs concerned by this circular shall, in principle, not:

a) invest more than 10% of their assets in transferable securities which are not admitted to official listing on a stock exchange or dealt in on another regulated market, which operates regularly and is recognised and open to the public,

b) acquire more than 10% of the securities of the same kind issued by the same issuer,

c) invest more than 20% of their assets in securities issued by the same issuer.

The restrictions set forth under a), b) and c) above are not applicable to securities issued or guaranteed by a Member State of the OECD or its local authorities or by public international bodes with EU, regional or worldwide scope.

The restrictions set forth under a), b) and c) above are not applicable to units or shares issued by target UCIs. The restrictions set forth in section C. above are applicable to investments in target UCIs.

E. Use of derivative financial instruments and other techniques

The UCIs concerned by this circular are authorised to employ the derivative financial instruments and use the techniques specified hereafter.

These derivative financial instruments may, amongst others, include options, financial futures and related options as well as swap contracts by private agreement on any type of financial instruments. In addition, such UCIs may employ techniques consisting in securities lending transactions as well as in sales with right of repurchase transactions and repurchase transactions[4]. UCIs which employ such derivative financial instruments and techniques must state in their prospectus the maximum leverage which may not be exceeded and include in their prospectus a description of the risks arising from the transactions which they intend to pursue. The derivative financial instruments must be dealt in on an organised market or contracted by private agreement with first class professionals specialised in this type of transactions.

The aggregate commitments resulting from short sales of transferable securities together with the commitments resulting from financial derivate instruments entered into by private agreement and, if applicable, the commitments resulting from financial derivate instruments dealt in on an organised market may not at any time exceed the value of the assets of the UCI.

E.1. Restrictions relating to derivative financial instruments

1. Margin deposits in relation to derivative financial instruments dealt on an organised market as well as the commitments arising from derivative financial instruments contracted by private agreement may not exceed 50% of the assets of the UCI. The reserve of liquid assets of such UCIs must represent an amount at least equal to the margin deposits made by the UCI. Liquid assets do not only comprise time deposits and regularly negotiated money market instruments the remaining maturity of which is less than 12 months, but also treasury bills and bonds issued by Member States of the OECD or their local authorities or by public international bodies with EU, regional or worldwide scope as well as bonds admitted to official listing on a stock exchange or dealt in on a regulated market, which operates regularly and is open to the public, issued by first class issuers and which are highly liquid.

2. The UCI may not borrow to finance margin deposits.

3. The UCI may not enter into contracts relating to commodities other than commodity future contracts. However, the UCI may acquire, for cash consideration, precious metals which are negotiable on an organised market.

4. The premiums paid for the acquisition of options outstanding are included in the calculation of the 50% limit referred to under item 1. above.

5. The UCI must ensure an adequate spread of investment risks by sufficient diversification.

6. The UCI may not hold an open position in anyone single contract relating to a derivative financial instrument dealt in on an organised market or in a single contract relating to a derivative financial instrument entered into by private

[4] The French text refers to "*opérations à réméré*" and "*opérations de mise en pension*". For the distinction between the two, see the description under E.3. below.

agreement for which the required margin or the commitment taken, respectively, represents 5% or more of its assets.

7. Premiums paid to acquire options outstanding having identical characteristics may not exceed 5% of the assets.

8. The UCI may not hold an open position in derivative financial instruments relating to a single commodity or a single category of financial futures for which the required margin (in relation to derivative financial instruments dealt in on an organised market) as well as the commitment (in relation to derivative financial instruments entered into by private agreement) represent 20% or more of the assets.

9. The commitment in relation to a transaction on a derivative financial instrument entered into by private agreement by the UCI corresponds to the non-realised loss resulting, at that time, from the relevant transaction.

E.2. Securities lending transactions.

The UCI may enter into securities lending transactions in accordance with the provisions set forth in IML Circular 91/75. However, the limitation that securities lending transactions may not extend beyond a period of 30 days is not applicable where the UCI has the right, at any time, to terminate the lending transaction and obtain the restitution of the securities lent.

E.3. Sale with right of repurchase transactions (réméré) and repurchase transactions (opérations de mise en pension).

The UCI may enter into sale with right of repurchase transactions (*operations à réméré*) which consist in the purchase and sale of securities where the terms reserve the right to the seller to repurchase the securities from the buyer at a price and at a time agreed between the two parties at the time when the contract is entered into. The UCI can also enter into repurchase transactions *("operations de mise en pension")* which consist in transactions where, at maturity, the seller has the obligation to take back the asset sold whereas the original buyer either has a right or an obligation to return the asset sold.

The UCI can either act as buyer or as seller in the context of the aforementioned transactions. Its participation in the relevant transactions is however subject to the following rules:

1. <u>Rules to bring the transactions to a successful conclusion</u>

The UCI may participate in sale with right of repurchase transactions and repurchase transactions only if the counterparties in such transactions are first class professionals specialised in this type of transactions.

2. <u>Conditions and limits of these transactions</u>

During the duration of a sale with right of repurchase agreement where the UCI acts as purchaser, it may not sell the securities which are the subject of the contract before the counterparty has exercised its right to repurchase the securities or until the deadline for the repurchase has expired, unless the UCI has other means of coverage. If the UCI is open for redemption, it must ensure that the value of such transactions is kept at a level such that it is at all time able to meet its redemption obligation. The same conditions are applicable in the case of a repurchase transaction on the basis of a purchase and firm re-sale agreement where the UCI acts as purchaser (transferee).

Where the UCI acts as seller (transferor) in a repurchase transaction, the UCI may not, during the whole duration of the repo, transfer the title to the security under the repo or pledge them to a third party, or repo them a second time, in whatever form. The UCI must at the maturity of the repurchase transactions hold sufficient assets to pay, if appropriate, the agreed upon repurchase price payable to the transferee.

3. Periodical information of the public

In its financial reports, the UCI must separately, for its sale with right of repurchase transactions and for its repurchase transactions, indicate the total amount of the open transactions at the date as of which the relevant report indicate, is issued.

F. Breach of investment limits otherwise than by investment decisions

If the percentage limits referred to above are exceeded for reasons other than investment decisions (market fluctuations, redemptions), the priority objective of the UCI must be to remedy the situation, taking due account of the interests of the investors.

G. Management and supervisory bodies

Concerning their professional qualification, the officers[5] of the management bodies and, if applicable, the investment managers and investment advisers, must have a confirmed experience in the area of the proposed investment policy.

H. Specific rules

H.1. The issue prospectus must contain a description of the investment strategy of the UCI concerned as well as a description of the specific risks inherent to its investment policy. The prospectus must, if applicable, provide that:

- the potential losses resulting from unsecured sales on transferable securities differ from the possible losses resulting from the investment of liquid assets in such transferable securities. In the first case, the loss may be unlimited whereas, in the second case, the loss is limited to the amount of liquid assets invested in the transferable securities concerned.

- leverage generates an opportunity for higher return and therefore more important income, but, at the same time, increases the volatility of the value of the assets of the UCI and, hence, the risk to lose capital. Borrowings generate interest costs which may be higher than the income and capital gains produced by the assets of the UCI.

- due to the limited liquidity of the assets of the UCI, it may not be in a position to meet the redemption requests of its units which may be presented to it by its investors.

H.2. In addition, the prospectus must state that the investment in the UCI entails an above-average risk and is only appropriate for persons who can take the risk to lose their entire investment. If appropriate, the issue prospectus must contain a description of the investment strategy in futures and options pursued by the UCI as well as the risks resulting from the investment policy. It must for example be mentioned that the futures and options markets are extremely

[5] The French version of this Circular uses the terms "*dirigeant*" which term includes directors, managers and officers.

volatile and that the risk to incur a loss in relation to such markets and/or in relation to uncovered sales is very high.

29.

CSSF CIRCULAR 02/77

RELATING TO THE PROTECTION OF INVESTORS IN CASE OF NAV CALCULATION ERROR AND CORRECTION OF THE CONSEQUENCES RESULTING FROM NON-COMPLIANCE WITH THE INVESTMENT RULES APPLICABLE TO UNDERTAKINGS FOR COLLECTIVE INVESTMENT

CSSF Circular 02/77 relating to the protection of investors in case of NAV calculation error and correction of the consequences resulting from non-compliance with the investment rules applicable to undertakings for collective investment

Luxembourg, 27 November 2002

All Luxembourg undertakings for collective investment and all parties involved in the operation and supervision of such undertakings

CSSF CIRCULAR 02/77

Re: Protection of investors in case of NAV calculation error and correction of the consequences resulting from non-compliance with the investment rules applicable to undertakings for collective investment

Ladies and Gentlemen,

The purpose of this circular is to set out the minimum rules of conduct to be followed by collective investment professionals in Luxembourg in case of errors in the administration or management of the undertakings for collective investment ("UCIs") for which they are responsible.

Errors which occur in practice are essentially those resulting from the incorrect calculation of the net asset value ("NAV") or from non-compliance with the investment rules applicable to UCIs. In most cases, non-compliance is caused either by investments which are not in compliance with the investment policy which the UCIs define in their prospectus or because of a breach of the investment or borrowing restrictions provided for by law or their prospectus.

It is the responsibility of the UCIs' promoters to ensure that any errors are correctly dealt with in strictest compliance with the rules of conduct specified in this circular. This is of a primordial importance not only because the interests of the UCIs and/or of the investors having suffered a loss need to be protected, but it must be ensured that investors maintain their trust in the integrity of collective management professionals which exercise their activities in Luxembourg and the effectiveness of the supervision exercised over UCIs.

The corrective and compensatory actions to be taken in case of NAV calculation errors or in case of non-compliance with the investment rules applicable to UCIs are separately dealt with under sections I. and II. hereafter. That presentation is necessary to take account of the fact that the circular takes a different approach to deal with losses in each of the two situations.

This Circular replaces and supersedes CSSF Circular 2000/8 of 15 March 2000.

I. The treatment of NAV calculation errors

1. Definition of a calculation error

It is reminded that the NAV per unit/share of UCIs is obtained by dividing the value of their net assets, meaning assets less liabilities, by the number of units/shares outstanding.

Unless provided differently in their constitutional documents, the valuation of the assets of UCIs, whose investment policy provides for the investment in transferable securities, must be based, in case of securities admitted to official stock exchange listing, on the last known price on such stock exchange, unless such price is not representative. Securities which are not so listed or securities which are so listed but of which the last price is not representative, are valued on the basis of the reasonably foreseeable sale's price which must be determined prudently and in good faith.

It is presumed that the NAV is correctly calculated where the rules provided for its determination in the constitutional documents and prospectus of the UCI are strictly applied, consistently and in good faith, on the basis of the most current and most reliable information available at the time of the calculation.

An error in the NAV calculation occurs as a result of one or more factors or circumstances which cause the calculation to yield an incorrect result. Generally, these factors and circumstances are related to inadequate internal control procedures, management shortfalls, imperfections or deficiencies in the operation of the IT, accounting or communication systems as well as to non-compliance with the valuation rules provided in the constitutional documents and the prospectus of UCIs.

2. The materiality concept in the context of the NAV calculation errors

It is generally recognised that the NAV calculation process is not an exact science and that the result of the calculation constitutes the closest possible approximation of the true market value of the assets of a UCI. The level of precision with which the NAV is calculated will indeed depend on a series of external factors more or less linked to the complexity of each particular UCI such as volatility of the markets on which an important part of the assets of the UCI are invested in, the availability at the appropriate time of up-to-date information on market prices and/or other elements relevant for the calculation of the NAV as well as the reliability of the price information sources used.

In consideration of these factors, it is accepted in the majority of the principal collective management industry centres that only those calculation errors, which have a material impact on the NAV and whose proportion compared to the NAV reaches or exceeds a certain threshold, referred to as the materiality or tolerance threshold, must be notified to the CSSF and corrected in order to protect the interests of the investors concerned. It is indeed considered that in all other cases, the immateriality of the errors does not justify the recourse to relatively long and costly administration procedures which must be put into place in order to recalculate incorrect NAVs and indemnify affected investors.

Following the use and practices adopted abroad, this circular introduces the materiality concept for Luxembourg UCIs whilst determining acceptable tolerance thresholds at different levels depending on the type of UCI concerned by the NAV calculation error. This differentiating approach is justified to the extent that the implicit level of imprecision in each NAV calculation can vary from one type of UCI to the next by virtue of the external factors referred to above and in particular market volatility. That factor is indeed of a primordial importance in this context as it is generally admitted that the volatility of a market depends to a large extent on the risks associated with the financial assets dealt on that market and that such volatility increases depending on whether those assets are money market instruments, bonds/debt securities or shares and other types of securities.

In conformity with that approach, different tolerance thresholds are provided for UCIs which invest in money market instruments and/or cash assets ("money market UCIs/cash funds"), UCIs which invest in debt obligations or similar debt instruments ("bond UCIs"), UCIs which invest in shares and/or financial assets other than those referred to above ("equity or other financial assets' UCIs") and UCIs which follow a mixed investment policy ("mixed UCIs").

For each of these types of UCIs the tolerance threshold is specified hereunder:

money market UCIs:	0.25% of NAV
bond UCIs:	0.50% of NAV
shares and other financial assets' UCIs:	1.00% of NAV
mixed UCIs:	0.50% of NAV.

The introduction of the materiality concept does not mean that UCI promoters will in case of calculation errors be obliged to apply the tolerance thresholds specified above. Promoters are on the contrary free to apply less high tolerance thresholds or even not apply any at all.

It is the responsibility of the governing bodies of Luxembourg UCIs whose units/shares of are admitted to distribution abroad to ensure that the tolerance thresholds they propose to adopt in case of NAV calculation errors are not in conflict with the requirements that may be applicable in those circumstances in the countries of distribution.

3. Procedures to be followed for the correction of calculation errors which have a material impact on the NAV.

The indications given under the points below relate to the principal stages of the correction process and fix the detail of the rules of conduct to be followed in the correction of the calculation errors whose impact on the NAV reaches or exceeds the acceptable tolerance threshold and which are thereby considered to constitute material errors. These rules of conduct concern in particular

- the information to be furnished to the promoter and the custodian of the UCI and to the CSSF ;
- the determination of the financial impact of the calculation errors ;
- the indemnification of the damages which result from the calculation errors for the UCI and/or its investors ;
- the implication of the independent auditor in the monitoring of the correction process ;
- the communications to be made to those investors which have to be indemnified.

Significant errors not only means isolated calculation errors which have a significant impact on the NAV but also non-correction processed simultaneous or successive calculation errors which each remain below the acceptable tolerance threshold but which if considered on an aggregate basis reach or exceed that threshold.

The correction procedures must form on integral part of the internal control procedures which the central administration of UCIs must put into place to limit as much as possible the risk for calculation errors and detect any errors that occur.

a) The information to be furnished to the promoter and the custodian of the UCI and to the CSSF

As soon as a significant calculation error is discovered, the central administration of the UCI must immediately advise the promoter and the custodian of the UCI as well as the CSSF of the occurrence of the error and submit to the promoter and the regulator a corrective action plan dealing with the steps which are proposed or have been taken to cure the problems which have caused the ascertained calculation error and to put into place the improvements to the administrative and control structures which are necessary to avoid the subsequent occurrence of the same problems.

The corrective action plan must also specify the steps which are proposed or which have been taken to

- identify way the different categories of investors who are affected by the errors in the most appropriate,
- recalculate the NAVs which have been applied to subscription and redemption requests received during the period starting on the date on which the error became significant and the date on which it was corrected ("the error period");
- determine, on the basis of the recalculated NAVs, the amounts which have to be repaid to the UCI and the amounts payable by way of indemnity to investors who have suffered a loss as result of the error;
- notify the error to the supervisory authorities of the countries in which the units/shares of the UCI are authorised for distribution, to the extent the latter so require;
- notify the error to the investors who have to be indemnified and inform them on the steps that will be put into place for indemnifying their losses.

If, following an NAV calculation error, the indemnification amount does not exceed EUR 25,000 and the amount to be reimbursed to an investor does not exceed EUR 2,500, no corrective action plan as detailed hereabove needs to be submitted to the CSSF. In that case the central administration must notify the occurrence of the material calculation error to the CSSF and must quickly take the measures necessary for correcting the calculation error and for arranging the indemnification of the damages incurred as provided in items b), c), and e) hereafter.

b) The determination of the financial impact of significant calculation errors

In case of a material calculation error, the central administration of the UCI must as quickly as possible take the steps necessary to correct the error. In particular it must recalculate the NAVs which have been determined during the error period and quantify the loss for the UCI and/or its investors on the basis of the corrected NAVs provided however that the recalculation of incorrect NAVs is required only in case subscription or redemption requests have been processed during the error period.

In determining the financial impact of calculation errors, the central administration of the UCI must fundamentally distinguish between

- investors which have joined the UCI before the error period and which have redeemed their units/shares during such period and

- investors which have joined the UCI during the error period and which continued to hold their units/shares after such a period,

provided that investors other than those belonging to the above categories may be affected depending on actual circumstances.

The indications below give an overview of the situation of the UCI and the concerned investors in the following cases:

Cases where the NAV is undervalued.

In that case

- investors which have joined the UCI during the error period and which have redeemed their units/shares during such period, must be indemnified of the difference between the recalculated NAV and the undervalued NAV which was applied to the redeemed units/shares ;

- the UCI must be indemnified of the difference between the recalculated NAV and the undervalued NAV which has been applied to units/shares subscribed to during the error period and which remained outstanding beyond that period.

In case the NAV is overvalued.

In that case

- the UCI must be indemnified of the difference between the overvalued NAV which was applied to units/shares redeemed during the error period but which were subscribed to before that period and the recalculated NAV ;

- investors which have joined the UCI during the error period and which have held their units/shares beyond such period must be indemnified of the difference between the overvalued NAV applied to the units/shares subscribed to and the recalculated NAV.

The investors having suffered a loss as a result of a calculation error may be indemnified out of the assets of the UCI in case the payments due to the relevant investors correspond to excess sums within the assets of the UCI and the payment of which can therefore not affect the interests of the other investors. It remains nevertheless that the central administration of the UCI or as the case may be its promoter may decide to themselves support the payments necessary to indemnify affected investors.

There is an open issue as to whether the UCI affected by a calculation error has the right to require investors who have involuntarily benefited from that error to subsequently pay to the UCI the amount not paid by them in respect of units/shares subscribed by them on the basis of an undervalued NAV or to repay the excess of the sums received by them in respect of units/shares redeemed at an overvalued NAV. Since this is a controversial issue to which no clear response can be given in the absence of a court precedent, it is not recommended to call upon the investors concerned to indemnify the UCI for its losses, unless the beneficiaries are institutional investors or other sophisticated investors who accept in full knowledge of the circumstances to cover the loss of the UCI.

In those circumstances, it is in principle the obligation of the central administration of the UCI or as the case may be of its promoter, to make the payments due to the UCI in lieu of the investors who have benefited from the error. This solution is particularly justified because any claim on the investors having benefited from the error could have a negative effect on the promoter's reputation and result therefore in a non negligible commercial prejudice for the promoter.

As soon as the operations consisting in the recalculation of the incorrect NAVs and the computation of the losses resulting from the calculation error for the UCI and/or its investors have been concluded, the central administration of the UCI must make the entries in the accounts of the UCI which are necessary to reflect the payments to be received and the payments to be made to the UCI.

c) The correction of the consequences for the UCI and/or its investors of calculation errors

The compensation for damages is only compulsory by reference to the specific dates on which NAV calculation errors were significant. Insofar as other dates are concerned, it is the responsibility of the governing bodies of the UCI to determine whether it is necessary to determine the financial impact of the error and establish an indemnification plan.

The central administration of the UCI must diligently put into place the measures provided for in the correction plan referred to in item a) above for the recalculation of the incorrect NAVs and the determination of the loss suffered by the UCI and/or the affected investors.

It must also act with diligence in the organisation of the indemnity payments due to the UCI and/or the affected investors provided however that these payments can only be made after the auditor has completed his special report referred to in item d) below.

In order to accelerate the process of calculation error correction, the central administration of the UCI can initiate the different stages of that process without having obtained the prior consent of the supervisory authority. It suffices in that case that the supervisory authority is informed of the steps taken subsequently thereto.

If, following an NAV calculation error, the total indemnification amount does not exceed EUR 25,000 and the amount to be reimbursed to an investor does not exceed EUR 2,500, the central administration must be diligent in operating the payment of the amounts due as indemnification to the UCI and/or to affected investors as soon as the sums payable as indemnification will have been determined.

It remains however that the CSSF can intervene in the correction process on a subsequent basis if it deems such intervention necessary in order to preserve the interests of the UCI and/or the affected investors.

In most of the main centres for collective management, UCIs are authorised by the supervisory authority to apply the *de minimis* rule to the amounts to which individual investors can pretend.

In accordance with that rule, the UCIs which benefit from such an authorisation may decide not to pay to individual investors sums which do not exceed a specific amount, the level of which is generally fixed as a lump sum figure, referred to as the *de minimis* amount. That lump sum figure is applied in order to avoid that investors who have a right to be paid lesser amounts,

end up with no real benefit because of the bank charges (cheque collection charges for cheques issued to their order or bank transfer charges) and other costs they have to bear.

For the reasons specified in the preceding paragraph, Luxembourg UCIs can also take advantage of the *de minimis* rule. This document does however not introduce a single lump sum for the *de minimis* amount Luxembourg UCIs can apply.

It is therefore the responsibility of each UCI to determine, with the approval of the CSSF, the lump sum of *de minimis* amount it intends to apply provided that in determining such lump sum it must take into account the level of bank charges and other costs which are charged to investors to whom payments are made. This approach is justified because a large majority of Luxembourg UCIs are distributed abroad and that the level of those charges can appreciably vary between UCIs depending on the geographic location of investors.

Concerning the indemnification of investors who already hold units/shares at the moment of payment of the amounts due to them, UCIs may decide the attribution to them of new units/shares (or, as the case may be, fractions of units or shares) instead of making a payment by cheque or bank transfer. For those investors, recourse to this particular method of indemnification is even recommended since such investors then avoid the bank charges which would otherwise be charged to them and since it additionally allows a complete indemnification without any consideration being given to the actual amounts they are entitled to, as in those circumstances there is no justification to apply a *de minimis* amount.

It is clear that UCIs which issue new units/shares to indemnify affected investors may not deduct commissions or other entry costs in respect to those units/shares.

Where affected investors have subscribed units/shares through a "nominee", the central administration of the UCI must remit to such "nominee" the amounts which are intended for the relevant investors. In such case, the "nominee" must commit to the central administration that it will forward the amounts received by it to the persons effectively entitled thereto.

The term "nominee" as used herein means an intermediary who intervenes between the investors and the UCI they have selected and who offers nominee services which the investors may use in the conditions set out in the prospectus of the UCI.

The *de minimis* rule can in no case be used to refuse payment to investors of amounts which are less than the *de minimis* amount applicable to such investors in case such investors expressly claim such payment.

d) The implication of the independent auditor in the monitoring of the correction process

At the same time as the central administration notifies the promoter and the custodian of the UCI and the CSSF of the occurrence of a significant calculation error, the central administration of the UCI also notifies the UCI's auditor and instructs him to report on the adequacy of the method it intends to use in order to

- identify the different categories of investors affected by the error;

- recalculate the NAVs applied to subscription and redemption requests received during the error period; and

- determine, on the basis of the recalculated NAVs, the amounts which must be repaid to the UCI and the amounts payable on an indemnity basis to investors who have suffered a significant loss because of the error.

The conclusions of the auditor on the proposed methods must be documented in writing and must be attached to the correction plan referred to in item a) above.

When the calculation error is discovered by the auditor, the auditor must immediately notify the central administration of the UCI thereof and request it to immediately inform the promoter, the custodian and the supervisory authority thereof. If the auditor realises that the central administration does not comply with that request, the auditor must notify this fact to the supervisory authority.

As soon as the central administration of the UCI has carried out the entries in the accounts of the UCI which are necessary to correct the calculation error, the auditor must draw up a special report in which he opines whether the correction process is appropriate and reasonable or not. This opinion must address the following:

- the methods referred to above,

- the incorrect NAVs which have been recalculated,

- the losses suffered by the UCI and/or its investors.

The central administration must forward a copy of the special audit report to the supervisory authority as well as to the supervisory authorities of those countries in which the units/shares of the UCI are admitted for distribution, in case such authorities so request.

Finally, the auditor must establish a confirmation in which he certifies that the amounts due on an indemnity basis to the UCI and/or affected investors have effectively been paid.

A copy of that confirmation must also be forwarded to the CSSF and, as the case may be, the foreign regulatory authorities referred to above.

In the context of an NAV calculation error for which the indemnification amount does not exceed EUR 25,000 and the amount to be reimbursed to an investor does not exceed EUR 2,500, the auditor must review the correction process in the course of its annual audit of the UCI. The auditor must in the report on its review state whether, in its opinion, the process of correction is or is not appropriate and reasonable. This statement must cover the following items:

- the methods referred to above;

- the incorrect NAVs which have been recalculated;

- the losses suffered by the UCI and/or its investors; and

- the payment of the amounts due as indemnification.

e) The communications to be made to those investors which have to be indemnified

Significant calculation errors must be brought to the attention of the investors who are to be indemnified.

If applicable, the communications which are made for that purpose through individual notices or by publication in the press must inter alia include particulars on the calculation error and the steps taken to correct it and to indemnify the UCI and/or the affected investors.

These communications must be submitted in draft form to the supervisory authority and, as the case may be, the supervisory authorities of those countries in which the units/shares of the UCI are admitted for distribution, in case such authorities so request.

4. Responsibility for the costs resulting from the correction operations of a calculation error

The costs caused by the correction operations of a calculation error, including the costs associated with the intervention of the auditor, cannot be charged to the assets of the UCI. These costs must be fully supported by the central administration of the UCI, failing which, by the promoter of the UCI, in each case irrespective of the impact of the error on the NAV.

The auditor will be responsible to ascertain within the framework of the audit of the accounting information contained in the annual reports of the UCI that the costs referred to herein will not be charged to the UCI.

II. The compensation of the consequences resulting from non-compliance with the investment rules applicable to UCIs

Promptly upon discovering a non-compliance with investment rules, the directors[1] of the UCI concerned must take the steps which are necessary to regularise the situation of the UCI caused by such non-compliance.

In case the ascertained non-compliance results from investments which do not comply with the investment policy defined in the prospectus, the UCI must realise those investments.

In case the investment restrictions provided for by law or by the prospectus are breached in circumstances other than those referred to in Article 46 of the Law of 30 March 1988 concerning undertakings for collective investment, the UCI must realise the excess positions.

Where the borrowing limits provided for by law or by the prospectus are breached, the UCI must reduce its borrowings to the authorised limit.

In the three circumstances referred to above, the UCI must be indemnified to the extent of any damage suffered.

In the first two circumstances, the damage must be determined in principle by reference to the loss of the UCI resulting from the realisation of the non-authorised investments. In the third circumstance, the UCI must in principle be indemnified to the extent of its interest and other charges resulting from the non-authorised portion of the borrowings.

In the presence of a number of simultaneous breaches of investment rules, the indemnity, if any, is to be calculated in respect of the net result of the corrective actions concerning all the breaches.

[1] The original Circular uses the term *"dirigeant"* which includes directors, managers and officers.

In case the corrective actions have a net positive result for the UCI, it will retain the benefit thereof. In those circumstances, it suffices for the central administration of the UCI to notify the supervisory authority and the auditor.

By exception to the preceding principle and to the extent there is adequate justification therefor, methods other than those described above may be used to determine the suffered damage including in particular the method which consists in determining the damage by reference to the performance which would have been realised if the non-authorised investment had been subject to the same fluctuations as the portfolio invested in compliance with the investment policy and the investment restrictions provided for by law or the prospectus.

Provided that the tolerance levels which are provided for NAV calculation errors cannot be applied to damages of UCIs resulting from non-compliance with investment rules.

Because they did not comply with their obligations **i**t is the responsibility of the persons who have caused the losses to ensure that such losses are repaid. In case this principle cannot be applied, the promoters will have to indemnify.

The principles which determine the procedures to be followed for the processing of NAV calculation errors and the treatment of NAV calculation errors for which the total indemnification amount does not exceed EUR 25,000 and the indemnification amount to be paid to one investor does not exceed EUR 2,500 will apply mutatis mutandis in all cases where an UCI suffers a loss as a result of non-compliance with investment rules. The principles referred to herein which have to be applied are in particular those concerning

- the information to be furnished to the promoter and the custodian of the UCI and to the CSSF;
- the identification of the categories of investors which are affected because of the loss suffered by the UCI;
- the determination of the financial impact of the loss for individual investors and the measures to be taken for their indemnification;
- the implication of the independent auditor in the monitoring of the correction process;
- the communications to be made to those investors which have to be indemnified.

As regards the procedures for indemnifying investors, the rules set out in Section **I.** (3) (c) of this Circular will apply.

III. Final Provisions

1. Repealment provision

CSSF Circular 2000/8 is repealed.

2. Entry into force

The provisions of this Circular are immediately applicable in their entirety.

30.

CIRCULAR IML 91/75 (as amended by CSSF Circular 05/177)

RELATING TO THE REVISION AND REMODELLING OF THE RULES TO WHICH LUXEMBOURG UNDERTAKINGS GOVERNED BY THE LAW OF 30 MARCH 1988 ON UNDERTAKINGS FOR COLLECTIVE INVESTMENT ("UCI") ARE SUBJECT

Circular IML 91/75 (as amended by CSSF Circular 05/177) relating to the revision and remodelling of the rules to which Luxembourg undertakings governed by the Law of 30 March 1988 on undertakings for collective investment ("UCI") are subject

Luxembourg, 21 January 1991

To all Luxembourg undertakings for collective investment and to all those that take part in the functioning and control of these undertakings

CIRCULAR IML 91/75

(as amended by CSSF Circular 05/177)

Re: Revision and remodelling of the rules to which Luxembourg undertakings governed by the Law of 30 March 1988 on undertakings for collective investment ("UCI") are subject.

Ladies and Gentlemen,

This Circular repeals and replaces IML Circular 88/48 of 8 April 1988 as well as the previous circulars which remained applicable to UCIs following the entry into force of the aforementioned Law of 30 March 1988.

The Circulars thus repealed, in addition to IML Circular 88/48 of 8 April 1988, are circulars VM/47 of 7 August 1978, VEF/48 of 7 November 1978, IML 84/12 of 8 March 1984, IML 84/13 of 9 March 1984, IML 84/15 of 30 March 1984, IML 85/23 of 25 March 1985 and IML 88/47 of 5 April 1988.

In accordance with its objective of clarification and simplification, the main purpose of this circular is to adapt and to clarify the rules of the repealed circulars in light of the experience acquired during the practical application thereof and to reproduce the rules thus revised in one single text according to the following summary:

SUMMARY

Chapter A. Purpose and scope of the Law of 30 March 1988.

Chapter B. Definition of the meaning of UCI.

I. Criteria by which the meaning of UCI is being defined.

II. Practical application of the criteria retained for the definition of the meaning of UCI.

Chapter C. Classification of UCIs situated in Luxembourg.

I. Definition of UCIs governed by Part I of the Law of 30 March 1988.

II. Definition of UCIs governed by Part II of the Law of 30 March 1988.

III. Status of UCITS (Part I) and other UCIs (Part II) in the European context.

Chapter D. Rules concerning the central administration of Luxembourg UCIs.

I. Definition of the meaning of central administration in Luxembourg.

II. Organisation of the central administration in Luxembourg.

III. Execution of the accounting and administrative duties as defined by the notion of central administration in Luxembourg.

Chapter E. Rules concerning the depositary of a Luxembourg UCI.

I. Conditions of admission to the activity of depositary.

II. General mission of the depositary.

III. Specific duties of the depositary.

IV. Liability of the depositary.

Chapter F. Rules applicable to UCITS governed by Part I of the Law of 30 March 1988.

I. Intervals at which the issue and redemption prices must be determined.

II. Redemption by UCITS of their units or shares.

III. Requirements in respect of the composition of assets.

IV. Borrowings.

V. Investment limits calculation method as established by Chapter 5 of the Law of 30 March 1988.

Chapter G. Rules applicable to UCITS subject to Part II of the Law of 30 March 1988.

I. Intervals at which the issue and redemption prices must be determined.

II. Investment limits.

III. Borrowings.

IV. Provisions applicable to UCITS which are subject to Chapter 11 of the Law of 30 March 1988.

Chapter H. Rules applicable to all UCITS.

I. Techniques and instruments relating to transferable securities.

II. Techniques and instruments intended to hedge currency risks to which UCITS are exposed within the context of portfolio management.

Chapter I. Rules applicable to UCIs other than UCITS.

I. Rules of the particular regime applicable to UCIs whose principal objective is investment in venture capital.

II. Rules of the particular regime applicable to UCIs whose principal objective is investment in futures contracts (commodity futures and/or financial futures) and/or in options.

III. Rules of the particular regime applicable to UCIs whose principal objective is investment in real estate.

Chapter J. Rules applicable to UCIs with multiple compartments.

I. General principle.

II. Common funds.

III. Investment companies.

IV. Common rules applicable to all UCIs with multiple compartments.

Chapter K. Contents of the file which must accompany the application for authorisation of UCIs.

Chapter L. Information and marketing material intended for investors.

I. Prospectus

II. […]

III. Financial reports.

IV. Use of the prospectus and periodical reports.

Chapter M. Financial information intended for the IML.

I. Reference date.

II. Reporting deadlines

III. Reporting currency and portfolio.

IV. Change in the net asset value per unit or per share.

V. UCIs with multiple compartments.

Chapter N. Rules applicable to management companies of common funds.

I. Information obligation of management companies vis-à-vis the IML.

II. Authorisation of the shareholders of a management company.

Chapter O. Distribution rules applicable in Luxembourg.

Chapter P. Obligation of UCIs to inform the IML of the audit performed by the *réviseur d'entreprises* (statutory auditor).

Chapter A. Purpose and scope of the Law of 30 March 1988.

The purpose of the Law of 30 March 1988 is the protection of the investor who is solicited by promoters whose activity is the raising of funds in order to invest them collectively in accordance with the principle of risk-spreading.

In accordance with its objective, the Law of 30 March 1988 determines the legal and regulatory frame in which this activity may be exercised and pursuant to which it is submitted to the supervision of the *Institut Monétaire Luxembourgeois* ("IML") which is the supervisory authority.

The exercise of the activity subject to the Law of 30 March 1988 is exclusively restricted to those undertakings which qualify as UCIs in accordance with the definition given in Chapter B. hereafter; it therefore follows that such an activity, if exercised in Luxembourg, must be considered as illegal where it is exercised outside the scope of this Law.

On the other hand, an undertaking which in practice, does not meet all conditions for application of the Law of 30 March 1988 may not claim the status of a UCI by voluntarily submitting to the provisions of the Law.

Chapter B. Definition of the meaning of UCI.

I. Criteria by which the meaning of UCI is being defined.

In order to qualify as an activity governed by the Law of 30 March 1988, it is required, and it suffices, that the following conditions are cumulatively met:

- the collective investment of savings;
- the savings used for collective investment must have been collected from the public; - the investment which forms the object of the collective investment must be made in accordance with the principle of risk-spreading.

Collective investment of savings shall be taken to mean the collective investment of funds collected individually from the public. This investment may be made in transferable securities or other assets. The objective is to obtain a yield or a capital gain. Hence the objective of UCIs is not to acquire an interest for a purpose beyond that of obtaining a yield, namely to secure influence or even control. Furthermore, the holding of such an interest entails a long-term holding objective, whereas for UCIs the retention of assets in the portfolio only depends upon the yield or the capital gains potential thereof. By way of exception, certain types of UCIs, such as those investing in venture capital, may sometimes acquire more substantial interests in companies of which they hold shares and even intervene in the management of such companies by the appointment of one or several representatives to the board of directors. Such involvement, however, does not have control as an objective but is dictated by the particular nature of the investments of such undertakings.

The public is solicited when the collection of funds, with the objective of collective investment, is not restricted to a small circle of persons only.

With respect to the principle of risk-spreading, the purpose of its application is to prevent an excessive concentration of the investments in the context of the collective investment.

The aforementioned definition criteria are common to all categories of UCIs provided for by the Law of 30 March 1988. Indeed, depending upon the category to which they belong, UCIs governed by the Law of 30 March 1988 only differ from one another by their legal form or by their collective investment objective.

II. Practical application of the criteria retained for the definition of the meaning of UCI.

In principle there is no problem to determine whether the conditions for application of the Law of 30 March 1988 are met in the cases of common funds ("FCP") and investment companies with variable capital ("SICAV"). In the case of undertakings which do not have the legal form of common fund or SICAV, it is however sometimes difficult in practice to determine whether the Law of 30 March 1988 is applicable to them or not. In such cases, the supervisory authority will in the first instance rely on the definition criteria set out in the preceding Section I. in order to determine whether such undertakings do or do not meet the required conditions for UCI qualification.

If the review of the application file based on these criteria is not sufficient to conclude with the necessary certainty as to whether the Law of 30 March 1988 is applicable, further elements will have to be taken into account such as the organisation and the general structure of such undertakings, i.e. the systematic redemption of shares, the existence of an investment advisory company, the charging of commissions both on the purchase of securities in such undertakings and for the management thereof.

Thus, in application of the preceding principles, financial investment companies set up with the purpose of control, are excluded from the scope of application of the Law of 30 March 1988 because their activity is not the collective investment of savings. The same applies to family holding companies and investment clubs which, even though their objective is the collective investment of savings, do not collect savings from the public.

Chapter C. Classification of UCIs situated in Luxembourg.

A UCI shall be deemed to be situated in Luxembourg if the registered office of the management company of the common fund or the registered office of the investment company is situated in Luxembourg. UCIs situated in Luxembourg will be referred to hereafter as Luxembourg UCIs.

Depending on their characteristics, Luxembourg UCIs will be subject to Part I or Part II of the Law of 30 March 1988.

This classification makes it possible to distinguish between

- undertakings within the meaning of Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (the "85/611/EEC Directive"); and

- the other undertakings which do not fall within the scope of application of the 85/611/EEC Directive.

The consequences of this distinction are described in more detail in section III. hereafter.

I. Definition of UCIs governed by Part I of the Law of 30 March 1988.

Part I of the Law of 30 March 1988 applies to all undertakings for collective investment in transferable securities ("UCITS") which are defined as being UCIs the exclusive object of which is the investment in transferable securities.

Considering this definition, the criterion which determines whether a UCI is subject to Part I or Part II of the Law of 30 March 1988 is the intended investment objective. If the undertaking invests in transferable securities, it is subject to Part I, apart from the exceptions referred to in Section II. hereafter.

UCITS subject to Part I of the Law of 30 March 1988 are of the open-ended type, since the rules to which they are subject provide for the obligation to directly or indirectly redeem their units or shares at the request of the investors.

II. Definition of UCIs governed by Part II of the Law of 30 March 1988.

Part II of the Law of 30 March 1988 applies to all UCIs the principal object of which is the investment in securities other than transferable securities and to all UCITS excluded from Part I.

In its Article 2, the Law of 30 March 1988 provides for exceptions to the basic rule reproduced in Section I. above, by excluding from the scope of application of Part I certain categories of UCITS. This is the transposition in national law of the corresponding provisions of the 85/611/EEC Directive.

The following types of UCITS are concerned by this exclusion:

1. UCITS of the closed-ended type.

These UCITS can be defined by distinguishing them from open-ended UCITS which directly or indirectly redeem their units or shares at the request of investors.

The reimbursement to investors after a decision of the management bodies is not tantamount to a redemption if such reimbursement occurred without any request from investors where such a request would have been based on a right to request redemption.

If the securities issued by UCITS of the closed-ended type are redeemed at the request of investors after a certain date, such an undertaking shall fall within the scope of application of Part I of the Law of 30 March 1988 from such date onwards, unless it belongs to one of the other categories of UCITS described in paragraph 2. to 4. hereafter. In case this feature is established at inception, the prospectus must from the outset draw the investors' attention to that fact and to the eventual consequences thereof, particularly on the investment policy.

A UCITS, the constitutional documents of which provide for the right of investors to request redemptions, cannot qualify as being of the closed-ended type and as such falls outside the scope of application of Part I of the Law of 30 March 1988, upon the grounds that it provides for limitations on the exercise of such a right. As a UCITS subject to the provisions of Part I, it must relinquish such limitations insofar as their purpose is to subject the exercise of the right to redeem to conditions and procedures which render redemptions practically impossible or unnecessarily and arbitrarily complicated or provide for unnecessary and arbitrary intervals.

2. <u>UCITS which raise capital without promoting the sale of their units or shares to the public within the European Economic Community ("EEC") or any part of it.</u>

The exclusion from Part I of the Law of 30 March 1988 does not dispense the UCITS concerned from the condition of the collection of public savings which all undertakings must comply with in order to qualify as a UCI; it simply prohibits the UCITS in question to engage in any promotional activity within the EEC; the term "promotional activity" refers in particular to the use of advertisement methods such as press, radio, television or advertisement circulars. It does not however refer to offers for subscription which are addressed to a limited, particularly knowledgeable circle of investors such as pension funds and insurance companies.

It follows from the above that the UCITS concerned hereby are those which, even though they are addressed to the public, refrain from performing any promotional activity within the EEC.

3. <u>UCITS whose units or shares, as restricted by their constitutional documents, may only be sold to the public in countries which are not members of the EEC.</u>

UCITS whose units or shares are listed on the Luxembourg Stock Exchange and whose units or shares are marketed solely outside the EEC fall into this category.

The supervisory authority does not intervene in the delimitation of the scope of application. The exclusion only operates subject to the condition that the management regulations or the articles of incorporation of these UCITS provide expressly that the sale of their units or shares is limited to the public of countries which are not members of the EEC.

4. Categories of UCITS determined by the supervisory authority for which the rules laid down in Chapter 5 of the Law of 30 March 1988 are inappropriate in view of their investment and borrowing policies.

UCITS covered by this exclusion belong to one of the following categories:

4.1. Undertakings the investment policy of which provides for the investment of 20% or more of their net assets in venture capital. Investment in venture capital shall be taken to mean investment in securities of companies which have been recently constituted or which are still in the early development stage.

4.2. Undertakings the investment policy of which provides for the investment of 20% or more of their net assets (other than liquid assets) in securities other than the transferable securities provided for in Article 40(1) of the Law of 30 March 1988.

4.3. Undertakings the investment policy of which provides for the permanent borrowing for investment purposes of at least 25% of their net assets.

4.4. Undertakings the investment policy of which provides for the investment of 20% or more of their net assets in other open-ended UCIs.

4.5. Undertakings the investment policy of which provides for the investment of 20% or more of their net assets in money market instruments and liquid assets (including any regularly negotiated money market instruments the residual maturity of which does not exceed 12 months) other than the transferable securities provided for in Article 40(1) of the Law of 30 March 1988.

4.6. Undertakings the investment policy of which provides for the investment of 50% or more of their net assets in liquid assets.

4.7. Multiple compartment undertakings, one compartment of which is not subject to Part I of the Law of 30 March 1988 by reason of its investment or borrowing policy.

III. Status of UCITS (Part I) and other UCIs (Part II) in the European context.

For the regulation of UCITS subject to it, Part I of the Law of 30 March 1988 takes as a basis the provisions of the 85/611/EEC Directive. Consequently, these UCITS conform to the entirety of the requirements of those provisions. They thus benefit from the status of EEC UCITS which gives them the right to freely market their units or shares in the whole of the territory of the EEC.

UCIs, other than UCITS governed by Part I of the Law of 30 March 1988, may not rely upon the marketing facilities provided for by the 85/611/EEC Directive since they are excluded from the scope of application thereof. Consequently, where such UCIs wish to market their units or shares in other countries of the EEC, they must comply with the specific conditions to which the authorities of the countries concerned may, as the case may be, subject the authorisation of UCIs which do not have the status of EEC UCITS.

Chapter D. Rules concerning the central administration of Luxembourg UCIs.

Under the provisions of the Law of 30 March 1988, the central administration of all Luxembourg UCIs must be situated in Luxembourg. This requirement ensures that the supervisory authority, the depositary and the réviseur d'entreprises (statutory auditor) may easily perform their respective legal duties.

I. Definition of the meaning of central administration in Luxembourg.

The legal requirement that central administration be situated in Luxembourg implies *inter alia* that:

- the accounts must be compiled, and the accounting documents must be available, in Luxembourg;
- issues and redemptions must be carried out in Luxembourg;
- the register of unitholders must be kept in Luxembourg;
- the prospectus, financial reports and all other documents intended for investors must be established in cooperation with the central administration in Luxembourg; - the correspondence, dispatch of financial reports and of all other documents intended for shareholders or unitholders must be carried out from Luxembourg and in all cases under the responsibility of the central administration in Luxembourg;
- the calculation of the net asset value must be carried out in Luxembourg.

It appears from the preceding list that the meaning of central administration in Luxembourg exclusively comprises accounting and administrative functions. It therefore neither excludes the possibility for Luxembourg UCIs to obtain assistance for the management of their assets from investment advisers established abroad nor does it prevent that the decisions in relation with that management (investment and disinvestment decisions) are made and executed elsewhere than in Luxembourg.

II. Organisation of the central administration in Luxembourg.

A Luxembourg UCI or its management company, where it takes the form of a common fund, is not obliged to perform itself the tasks relating to the accounting and administrative duties of the central administration in Luxembourg.

By means of a service contract, it may indeed entrust the exercise of those duties which essentially concern the execution of the tasks set out in section I. above to a third party established in Luxembourg. Upon the condition that a division of such tasks is not detrimental to the satisfactory performance of the central administration, this third party may delegate the execution of specific tasks to one or more other providers of services established in Luxembourg subject to it ensuring the coordination, general supervision and liability therefor.

It is also conceivable that a Luxembourg UCI may, by means of separate service agreements, organise itself the division of tasks connected to the duties of central administration amongst various providers of services established in Luxembourg provided that in such cases, it is in a position to coordinate and supervise itself the execution of such tasks unless it entrusts such a mission to a duly qualified third- party agent. Such a third-party agent then becomes the interlocutor of the IML in its relationship with the central administration of the relevant UCI.

In both cases, the division of tasks related to the duties of central administration must not result in an excessive fragmentation which renders the exercise of the coordination and general supervisory function difficult if not impossible or which unnecessarily increases costs by unjustified duplication.

For the reasons mentioned above, it is therefore recommended not to envisage constructions or structures that are too complicated or costly.

On the basis of the above, the IML considers that tasks as closely connected as the execution of issues and redemptions and the keeping of the register of unitholders may only be entrusted to one single provider of services. The IML considers furthermore that it is not conceivable to have different providers of services execute activities relating to the same task. Thus for instance, it is not admissible to have more than one provider of services perform the execution of the necessary tasks in relation with the keeping of the accounts.

In organising its relationship with the depositary of the UCI which it administers, the central administration in Luxembourg must, by the operation of appropriate procedures, ensure the proper functionning of information circuits and information flow necessary to obtain upon request from the depositary all information and data required in order to determine the value of the assets and liabilities of the UCI and to calculate the net asset value.

The UCI, in the case where it ensures itself the administration, or the providers of services which may be appointed therefor, must have the necessary infrastructure in Luxembourg i.e. sufficient human and technical means in order to accomplish the entirety of the tasks connected to the duties of central administration in Luxembourg. This implies the locating in Luxembourg of equipment and material used by the central administration as technical support for the execution of its duties.

III. Execution of the accounting and administrative duties as defined by the notion of central administration in Luxembourg.

1. Keeping of the accounts, calculation of the net asset value and availability of core documentation relating to the UCI and its operations.

Where the central administration in Luxembourg uses a remote-access computing network as technical support for the execution of the tasks connected to the keeping of the accounts and/or the calculation of the net asset value (such as operations necessary for the valuation of the portfolio of securities, the determination of the amount of income generated by that portfolio and the conversion in the currency of account of the UCI of assets denominated in another currency), the requirement to locate in Luxembourg the equipment and material necessary for the operation of such an administration does not exclude that the unit which is intended to ensure the processing of accounting and other information which is entered in the network may be situated elsewhere than in Luxembourg.

An eventual location abroad of the processing unit is however subject to the following conditions:

- the central administration must have at its disposal in Luxembourg necessary means to enter information in the processing unit of the remote-access computing network used and to withdraw such information. Its access to the information recorded in the network processing unit must be immediate and unlimited and must *inter alia* permit the instantaneous and full production of any data necessary for normal operations;

- the central administration must be aware of the operating conditions of the processing unit and must give its consent for alterations to its programme;

- the central administration must have the possibility to directly intervene in the processing of information stored in the processing unit;

- information stored in the processing unit must be transferred upon each valuation of the assets, at least once a week and, as the case may be, more frequently, if required for security reasons, on servers which are situated and which may be operated in Luxembourg;

- the promoters must have at their disposal the necessary means to enable the central administration to continue to operate normally in case of exceptional events such as the interruption of the means of communication with the processing unit or the failure thereof for an extended period;

- where the central administration uses the remote-access computing network together with other users which are not involved in the operations of the UCI, the central administration must ensure by the establishment of adequate protection measures that these users may not, at the level of the processing unit, have access to the information concerning the UCI, in order to prevent them from obtaining knowledge of that information or altering or deleting it.

The conditions set out under the first, second, third and last indents above apply *mutatis* mutandis where the network processing unit used is situated in Luxembourg.

In principle, it is the central administration's responsibility to proceed from Luxembourg, as the case may be in cooperation with the depositary, with the operational process necessary to enter the information relating to the operations of the UCI into the remote-access computing network used irrespective of where the processing unit of the network is situated. This does not exclude that portfolio managers established abroad may immediately access the relevant network and set in motion the accounting operations connected to the execution of the decisions taken by them within the scope of their management mandate. Furthermore, it does not exclude that other agents involved in the operations of the UCI may proceed in the same way.

Such intervention by *portfolio* managers and by other agents whose services are being used, is however subject to the following conditions:

- the central administration must ensure by the establishment of adequate protection measures that these agents may not access information other than that which is necessary for the execution of their respective duties notwithstanding the provisions concerning professional secrecy;

- the UCI must install, at management level, supervisory procedures which are able to ensure the regularity of the operations initiated by the portfolio managers with respect to the obligations to which it is subject under the Law of 30 March 1988 as well as under its constitutional documents and prospectus.

Since the central administration in Luxembourg assumes the ultimate liability for the accuracy of the financial information relating to the UCI, it alone is authorised to proceed with the allocations, apportionments and provisions necessary for finalising the calculation of the net asset value, these operations concerning in particular the charges, expenses and taxes borne by the UCI.

The central administration must have at its disposal in Luxembourg all accounting and other documents which constitute the essential documentation of the UCI and which are necessary for:

- the preparation of accounts and valuations;

- the drawing-up of certificates of title and of debt securities;

- the determination of the allocation of units or shares outstanding and

- the general protection of the interests of the UCI such as the depositary agreement, the agreements made with the portfolio managers as well as any other agreements with providers of services involved in the operations of the UCI.

The requirement as to availability in Luxembourg of the essential documentation of the UCI implies that the documents relating to transactions initiated from abroad must immediately be forwarded to Luxembourg.

2. Execution of issues and redemptions.

2.1. Role of the central administration in Luxembourg in connection with the execution of issues and redemptions.

The requirement for issues and redemptions to take place in Luxembourg implies that the performance of the tasks related to the processing of subscription and redemption orders for the securities issued by Luxembourg UCIs, is to be carried out by the central administration in Luxembourg of such UCIs. This means that it is in principle the responsibility of the central administration in Luxembourg to determine the prices at which the subscription and redemption orders must be calculated, to draw up the subscription or redemption contract notes and the certificates of title and to dispatch such documents to the individual investors.

The requirement relating to the execution in Luxembourg of issues and redemptions does not prohibit Luxembourg UCIs from appointing Luxembourg or foreign intermediaries as authorised financial agents and representatives for the issue and redemption of their units or shares.

Such intermediaries are then authorised to collect subscription and redemption orders for the units or shares of the UCIs by which they have been appointed. Subject to the conditions specified under heading 2.2. hereafter, they may participate in the issue and redemption operations either as distributors, nominees or market makers.

It is understood that recourse to the intermediaries referred to above may in no way restrict the ability of investors to deal directly with the UCI of their choice when placing their subscription and redemption orders. It is therefore necessary for UCIs to explicitly and prominently mention this possibility in their prospectus.

2.2. Conditions to which intermediaries are subject before they may participate in issue and redemption operations.

2.2.1. Conditions applicable to distributors.

Distributors are intermediaries who are part of the distribution process set up by the promoters whether they actively participate in the marketing of the securities issued by a UCI or whether they are appointed in the prospectus or in any other document as being authorised to receive subscription and redemption orders on behalf of that UCI.

For the purposes of the processing of the subscription and redemption orders collected by them, the distributors must forthwith transmit to the central administration in Luxembourg the data necessary for the timely completion of the entirety of the tasks related to the processing of such orders.

Where the subscription or redemption orders concern registered securities, it is evident that distributors shall provide the central administration in Luxembourg with the registration data necessary to accomplish on an individual basis the tasks referred to above.

Subject to the provisions of heading 2.3. below, this obligation does not exist in case where the issue and redemption orders relate to bearer securities. In such cases, distributors act in the capacity of subscribers *vis-à-vis* the central administration in Luxembourg. They may therefore aggregate individual subscription and redemption orders and transmit them in the form of a combined order to the central administration in Luxembourg. In doing so, the distributors may, where appropriate after netting, purchase or sell the combined total of all securities subscribed to or redeemed from investors to be followed by the subsequent allocation thereof according to the individual orders received.

It is not necessary for distributors to forward to the central administration in Luxembourg the documentation relating to subscription and redemption orders from investors. However, where such documentation is not forwarded to Luxembourg, the distributors must allow the central administration in Luxembourg to have access thereto without any restriction, in case of need.

Where the distributors are authorised to receive and make settlement payments in respect of the subscription and redemption orders collected by them, they may aggregate and set off individual payments in order to deal on a net basis with the central administration in Luxembourg. This possibility is available for orders relating to registered shares and for orders relating to bearer shares.

In order to facilitate delivery of certificates, a Luxembourg UCI and its depositary may enter into an agreement with the distributors pursuant to which the latter are authorised to hold a stock of unissued certificates. In such cases, the distributors must be duly authorised by an agreement to deliver bearer certificates to subscribers in accordance with the instructions from the central administration in Luxembourg.

2.2.2. Conditions applicable to nominees.

Nominees act as intermediaries between investors and the UCIs of their choice. Where the intervention of a nominee is an integral part of the distribution arrangement set up by the promoters, the relationship between the UCI, the nominee, the central administration in Luxembourg and the investors must be determined by contract which shall provide for their respective obligations. The promoters must nevertheless, ensure that the nominee presents sufficient guarantees for the proper execution of its obligations towards the investors who utilise its services. The intervention of a nominee is only authorised if the following conditions are met:

a) the role of the nominee must be adequately described in the prospectuses;

b) the investors must have the possibility to directly invest in the UCIs of their choice without using a nominee and prospectuses must expressly state this fact;

c) the agreements between the nominee and the investors must include a termination clause which gives the investors the right to claim, at any time, direct title to the securities subscribed through the nominee.

It is understood that the conditions set out under items b) and c) are not applicable in circumstances where the use of the services of a nominee is indispensable or even compulsory for legal, regulatory or compelling practical reasons.

2.2.3. Conditions applicable to market makers.

Market makers are intermediaries which participate for their own account and at their own risk in subscription and redemption transactions on securities issued by UCIs.

Where the organisation of a market by such intermediaries is an integral part of the distribution arrangement set up by the promoters, the relationship between the UCI, the central administration in Luxembourg and the market makers must be determined by contract.

Additionally, the following conditions must be met:

a) the role of the market makers must be adequately described in the prospectuses;

b) the market makers may not act as counterparties to subscription and redemption transactions without the specific approval of the investors initiating the relevant transactions;

c) market makers may not price subscription and redemption orders addressed to them on less favourable terms than those that would be applied to such orders had they been directly processed by the relevant UCIs;

d) market makers must regularly notify the central administration in Luxembourg of the orders executed by them which relate to registered securities, in order to ensure (i) that the data relating to investors is updated in the register of unitholders or shareholders and (ii) that the registered certificates or confirmations of investment may be forwarded from Luxembourg to the new investors.

2.3. Duties of the central administration in Luxembourg and of the marketing intermediaries in respect of the prevention of money laundering of drug trafficking proceeds.

Circular IML 89/57 of 15 November 1989 on the money laundering of drug trafficking proceeds is in principle applicable to Luxembourg UCIs.

When considering the particular way in which the UCI industry is operating, notably in the area of marketing, it appears that it is often extremely difficult for the central administration in Luxembourg to know the identity of investors for whom the subscription and redemption orders are collected by Luxembourg or foreign intermediaries.

Considering the above, certain derogations are permitted for subscription and redemption orders collected by intermediaries established, or whose activities in this respect are exercised in a country which belongs to the Financial Action Task Force on Money Laundering (FATF) established after the Summit of the Arch in June 1989 or which applies the recommendations issued by this Task Force.

The central administration in Luxembourg is not obliged to check the identity of investors, whose orders originate from such intermediaries, given that this control is being performed in the country where these orders are collected. The status of the foreign intermediary must however be verified and unusual transactions must be monitored.

In respect of subscriptions or redemption orders collected by intermediaries established in countries which do not apply the recommendations issued by the FATF, the central administration in Luxembourg is fully responsible for compliance with the rules specified in Circular IML 89/57.

3. Maintenance of the register of unitholders

The requirement for the register of unitholders to be kept in Luxembourg not only implies that such registers must be permanently available there, but also that the central administration in Luxembourg must perform the registrations, alterations or deletions necessary to ensure the regular update thereof.

Where the central administration in Luxembourg uses a remote-access computing network as technical support for the performance of these duties, it may, subject to applying the security and protection measures described under heading 1. above and whilst preserving the confidentiality required by legal and regulatory requirements, use the network to access and store in the processing unit the registration of personal data relating to unitholders. The processing unit therefore has the storage facility required for the maintenance of the register of unitholders.

Distributors who are connected to the remote-access computing network used may, through this network, transmit to the central administration in Luxembourg the information relating to the issue and redemption orders collected by them so that it can trigger the necessary procedures in the network to update the data of the unitholders' register stored in the processing unit.

4. Drawing-up of prospectuses, financial reports and other documents intended for investors.

The requirement for prospectuses, financial reports and other documents intended for investors to be drawn up in cooperation with the central administration in Luxembourg only relates to the intellectual tasks necessary for the drawing-up of these documents as opposed to the physical realisation thereof. For the performance of these tasks, this requirement does not exclude limited recourse to experts, advisers and other specialised providers of services established abroad.

Since technical or purely physical tasks are not addressed by this requirement, the central administration in Luxembourg may use the services of printers or other providers of services established abroad in connection with the physical production of the documents intended for investors.

5. Correspondence and dispatch of prospectuses, financial reports and other documents intended for investors.

The requirement for correspondence and dispatch of prospectuses, financial reports and other documents intended for investors to be made from Luxembourg is intended to safeguard the confidentiality of data relating to investors who directly apply to the central administration in Luxembourg to place their subscription orders or whose names appear in the register of unitholders.

Apart from the case specified below, only the central administration in Luxembourg may, in accordance with this objective, carry out from Luxembourg, the dispatches intended for the investors referred to above even where these dispatches concern documents printed abroad. As an exception to this rule, dispatches to the relevant investors may be carried out from abroad (e.g. from the printer's address) provided such dispatches are made under the supervision of the central administration in Luxembourg. It must then ensure by adequate measures of protection that non-authorised third parties may not access data relating to investors for whom the dispatches are intended.

Chapter E. Rules concerning the depositary of a Luxembourg UCI[1].

I. Conditions of admission to the activity of depositary.

The admission to the activity of depositary of a UCITS subject to Part I of the Law of 30 March 1988 is exclusively limited to banks incorporated under Luxembourg law or Luxembourg branches of banks established in an EEC Member State.

This also applies to the depositary of a UCI subject to Part II of the Law of 30 March 1988, however such a depositary may also be a Luxembourg branch of a bank established in a non-EEC Member State.

Pursuant to Article 71(2) of the Law of 30 March 1988, a UCI may only be authorised if the supervisory authority approves the choice of the depositary. This approval is only given if the proposed depositary can justify that it possesses the necessary infrastructure namely sufficient human and technical resources to perform the totality of the tasks relating to its duties.

II. General mission of the depositary.

Pursuant to the Law of 30 March 1988, the custody of the assets of each Luxembourg UCI must be entrusted to a depositary. This requirement is of general application insofar as it refers to all UCIs irrespective of their status or legal form.

Pursuant to the requirements of the articles of the Law of 30 March 1988, the concept of custody used to describe the general mission of the depositary should be understood not in the sense of "safekeeping", but in the sense of "supervision" which implies that the depositary must have knowledge at any time of how the assets of the UCI have been invested and where and how these assets are available.

In accordance with the meaning thus attributed to the concept of custody, the physical deposit of all or part of the assets may be made either with the depositary itself (which represents the most prudent solution) or with any professional designated by the UCI in agreement with the depositary.

Furthermore, this interpretation of the custody mission of a depositary does not preclude recourse to a fiduciary agreement entered into between the depositary and the UCI for the deposit of the latter's assets; this solution offers some considerable advantages since the depositary disposes of significant authority for the exercise of its duties.

In the context of its supervisory duties of the assets of the UCI, the depositary may communicate with foreign correspondents by using electronic means of communication developed or operated by third parties and possibly by locating computer equipment abroad, provided however that these means are used for the direct communication with the foreign correspondents without the intervention of a third party.

III. Specific duties of the depositary.

1. Specific duties of the depositary of a common fund subject to Part I of the Law of 30 March 1988.

The Law of 30 March 1988 provides that the depositary carries out all operations concerning day-to-day administration of the assets of the common fund.

[1] According to CSSF Circular 16/644 of 11 October 2016, Chapter E no longer applies to UCITS.

This means that the depositary is in particular responsible for the collection of dividends, interest and proceeds of matured securities, for the exercise of options and, in general, for any other operation concerning the day-to-day administration of the securities and liquid assets making up the fund.

To the extent that the operations referred to above involve assets that are not held by the depositary itself, it may entrust the execution thereof to third parties with whom the assets are actually deposited. In such cases and in order to comply with its obligation of supervision of the assets of the common fund, the depositary must organise its relationship with its correspondents so as to ensure that it is immediately informed of any operation executed by them as part of the day-to- day administration of the assets deposited with them.

In addition, the depositary is entrusted with the following supervisory and monitoring duties:

- to ensure that the sale, issue, redemption and cancellation of units executed on behalf of the fund or by the management company are carried out in accordance with the Law and the management regulations;

- to ensure that the value of units is calculated in accordance with the Law and the management regulations;

- to carry out the instructions of the management company, unless they conflict with the Law or the management regulations;

- to ensure that for transactions involving the assets of the fund, the proceeds are remitted to it within the usual time limits;

- to ensure that the income of the fund is allocated in accordance with the management regulations.

In connection herewith, it is not possible for the depositary to delegate to third parties the execution of tasks relating to the obligation "to ensure" the correct performance of the duties referred to above.

However, the term "to ensure" as used in the provisions of the Law of 30 March 1988 implies that the depositary need not "carry out" such tasks itself, but that it must verify the correct execution thereof. Thus for instance, it is conceivable that for objective reasons a depositary might set up a structure in which a foreign company assists in the settlement of portfolio transactions.

Finally, the provision pursuant to which the depositary must carry out the instructions of the management company unless they conflict with the Law or the management regulations, does not prevent the depositary to operate by way of mandate in case the management company entrusts the management of the fund's assets to portfolio managers established abroad.

In such cases, the relationship between the depositary and its representatives must be organised in such a way that the latter have at their disposal all the resources and data necessary to perform the preliminary verifications required for the appraisal of the conformity of a decision taken by the portfolio managers with the requirements of the Law or the management regulations.

Where in the cases referred to above the depositary does not have the possibility to perform these preliminary verifications itself or through its representatives, it must in conjunction with the central administration in Luxembourg, set up supervision procedures capable of ensuring the regularity of the transactions initiated by the portfolio managers with respect to the requirements of the Law or the management regulations.

The possibility for the depositary not to execute itself all duties incumbent upon it and to be assisted by or to delegate to third parties, must not lead to a situation where all duties are concentrated in the hands of one and the same third party. Such a situation would indeed be contrary to relevant legal provisions since its purpose would be to avoid the application thereof. Additionally, it would constitute a structure leading to unnecessary additional costs and could cast doubt on the Luxembourgish nationality of the common fund.

The prohibition of the concentration of duties to be executed by third parties in the hands of the same correspondent of the depositary does not apply to situations where one single correspondent has been chosen for technical reasons. This is *inter alia* the case (without being exhaustive) in situations where investments are made on a single market.

2. Specific obligations of the depositary of a common fund subject to Part II of the Law of 30 March 1988.

The depositary referred to herein has the same duties as the depositary of a common fund subject to Part I of the Law with the exception that it is not obliged to ensure that the calculation of the value of units is carried out in accordance with the Law and the management regulations.

Subject to the conditions specified under the preceding heading 1., it may, to the same extent as a depositary of a common fund subject to Part I, seek assistance from third parties for the execution of its tasks or entrust to its representatives the execution thereof.

3. Specific obligations of the depositary of a SICAV or any other UCI which has not been constituted as a common fund.

For this purpose no distinction is made between the depositary of a UCI subject to Part I and the depositary of a UCI subject to Part II of the Law of 30 March 1988.

In addition to its role of custodian of the assets entrusted to it, the depositary referred to herein must:

- ensure that the sale, issue, redemption and cancellation of units or shares executed by or on behalf of the UCI are carried out in accordance with the Law and the constitutional documents;

- ensure that for transactions involving the assets of the UCI, the proceeds are remitted to it within the usual time limits;

- ensure that the income of the UCI is allocated in accordance with the constitutional documents.

In light of the preceding requirements, it appears that the depositary of a SICAV or of any other UCI which has not been constituted as a common fund does not have supervisory and monitoring duties as extensive as those imposed upon other depositaries by the Law of 30 March 1988.

Thus, the depositary of a SICAV or of any other UCI which has not been constituted as a common fund is not obliged to verify whether the instructions of the management bodies are in accordance with the Law or the constitutional documents.

As for a depositary of a common fund subject to Part II of the Law of 30 March 1988 it is furthermore not obliged to ensure that the calculation of the value of units or shares is carried out in accordance with the Law and the constitutional documents.

Insofar as they refer to obligations which are shared by all depositaries, the provisions under item 1. above apply *mutatis mutandis* to the depositary of a SICAV or of any other UCI which has not been constituted as a common fund.

IV. Liability of the depositary.

As stated above, the concept of custody of UCI assets by the depositary is to be understood in the sense of supervision.

With respect to the full range of duties incumbent upon it under the provisions of the Law of 30 March1988, the depositary has a duty of supervision which implies a liability for its failure to perform its obligations or its wrongful improper performance thereof. Those who have suffered damages must prove the depositary's negligence in respect of its duty of supervision and the link between cause and effect.

This supervision by the depositary is in particular exercised over the third parties with whom the assets of the UCI have been deposited.

As regards the extent of the duty of supervision of the depositary, one can consider that the depositary has discharged its duty of supervision when it is satisfied from the outset and during the whole of the duration of the contract that the third parties with whom the assets of the UCI are on deposit are reputable and competent and have sufficient financial resources.

The duty of supervision of the assets of the UCI and consequently the liability for such supervision always resides with the depositary. Any provision of the management regulations and the articles or any other agreement aiming to exclude or limit this liability are null and void.

It follows from there that the depositary may, in no case, release itself from its duty of supervision. Therefore the depositary may in particular not argue that the deposit of the assets of the UCI has been carried out with its general or specific approval. The liability of the depositary is furthermore unaffected by the fact either that it has been assisted by third parties in the execution of its tasks or that it has entrusted the execution thereof to its agents.

The liability of the depositary in matters of custody is basically different from that in respect of a deposit agreement. Indeed, where the assets of the UCI are on deposit with the depositary itself, its liability is governed by the Law applicable to deposit agreements (Article 1915 and subsequent articles of the Civil Code).

In light of the above, depositary agreements containing liability provisions must distinguish between the following three liability regimes:

- liability of the depositary for the tasks incumbent upon it pursuant to the provisions of the Law of 30 March 1988 where the assets of the UCI are on deposit with third parties;
- liability of the depositary where the assets of the UCI are on deposit with the depositary itself;
- liability of the depositary for the tasks assigned to it by the depositary agreement where such tasks are not expressly referred to in the Law of 30 March 1988.

Chapter F. Rules applicable to UCITS governed by Part I of the Law of 30 March 1988.

I. Intervals at which the issue and redemption prices must be determined.

UCITS must determine the issue and redemption prices of their units or shares at sufficiently close and fixed intervals, being at least twice a month.

II. Redemption by UCITS of their units or shares.

As already mentioned in heading I. of Chapter C. above, UCITS are required to redeem their units or shares directly or indirectly at the request of investors.

In this connection, one has to recall that UCITS must avoid any restrictions whose object is to submit the exercise of the right to redeem to conditions and procedures which would render redemptions practically impossible or needlessly and arbitrarily complicated and less frequent.

It remains however that a UCITS may, subject to adequate justification of the necessity thereof, provide in its constitutional documents that the management bodies may, in particular circumstances (e.g. in the case of temporary liquidity shortage) or where redemption requests received in connection with the same dealing day exceed a certain proportion of the number of securities outstanding, either provide for a delay of settlement of redemptions during a pre-determined period of time, or for a proportional reduction of all redemption requests so that the threshold level is not exceeded. The latter is only permitted however provided that any proportion of a redemption request which is not honoured by virtue of this possibility, is treated as if the request had been made for the next following dealing day or days until full settlement of all of the original redemption requests.

III. Requirements in respect of the composition of assets.

1. Investment in transferable securities.

Subject to the exceptions provided for in Chapter 5 of the Law of 30 March 1988, the investment of the assets of UCITS must be exclusively made in transferable securities which are either admitted to an official stock exchange listing or traded on another regulated market which operates regularly and is recognised and open to the public.

It follows that the authorised investments of UCITS must simultaneously meet the following two essential conditions:

- firstly, they must qualify as transferable securities;
- secondly, these transferable securities must be admitted to an official stock exchange listing or traded on another regulated market which operates regularly and is recognised and open to the public.

Neither the Directive 85/611/EEC, nor the Law of 30 March 1988 provide a definition of the concept of "transferable securities".

A problem may therefore arise where in specific cases involving Luxembourg or foreign securities, it is not clear, *prima facie*, whether the securities qualify as transferable securities.

In the case of Luxembourg securities, the IML will continue to rely on the Luxembourg practice which adopted the interpretation according to which the words "transferable securities" mean quoted securities, that is securities which are capable of being quoted irrespective of whether their admission to an official stock exchange listing has effectively taken place or not. According to this precedent, a quotation is deemed possible where the determination of a single price may be envisaged; this is the case where securities do not significantly differ from one another either by their amount, maturity or in any other material respect.

The above criteria are not applied however for the qualification of foreign securities as transferable securities. In this case, it is the IML policy to align itself with the definition of the relevant securities made by the respective regulations of the countries concerned.

The terms "regulated, operating regularly, recognised and open to the public" as used to designate the definition criteria of the markets referred to above are defined neither by the Directive 85/611/EEC nor by the Law of 30 March 1988.

In the absence of such a definition, the IML considers that the following meaning should be given to these terms:

- regulated: the essential characteristic of a regulated market is the clearing which presupposes the existence of a central market organisation for the execution of orders. Such a market can be further distinguished by its multilateral order matching (general matching of bid and offers enabling the establishment of a single price), transparency (maximum distribution of information amongst buyers and sellers giving them the possibility to follow the evolution of the market so that they may ensure that their orders have been carried out at current conditions) and the neutrality of its organiser (the organiser's role must be limited to recording and supervision);

- recognised: the market must be recognised by a state or by a public authority which has been delegated by that state or by another entity which is recognised by that state or by that public authority, such as a professional association;

- operating regularly: securities admitted to this market must be traded at a certain fixed frequency (no sporadic trading);

- open to the public: the securities traded on this market must be accessible to the public.

2. Debt instruments which are treated as equivalent to transferable securities pursuant to Article 40(2)b) of the Law of 30 March 1988.

   Securities referred to here are regularly traded money market instruments whose residual maturity exceeds 12 months.

3. Investments in liquid assets.

   In addition to the investments authorised pursuant to heading 1. above, a UCITS may hold ancillary liquid assets.

   This term not only covers cash and short-term bank deposits, but also regularly traded money market instruments whose residual maturity does not exceed 12 months.

   The term "ancillary" means in this context that liquid assets may not in themselves constitute an investment objective, the exclusive object of UCITS being the investment of their assets in transferable securities. The Law of 30 March 1988 therefore does not prohibit a UCITS from holding a significant amount of liquid assets during a certain amount of time due to certain circumstances provided that such investment in liquid assets does not become the investment objective of the UCITS.

4. Investments in closed-ended UCIs.

The restrictions imposed by Article 44 of the Law of 30 March 1988 on the purchase of units of open-ended UCIs do not apply to the investment in units of closed-ended UCIs.

The units of closed-ended UCIs are indeed considered as being similar to any other transferable security and are therefore, with respect to investment rules, subject to the general rules applicable to transferable securities.

IV. Borrowings

The restrictions, to which the borrowings of UCITS are subject, do not prohibit a UCITS from acquiring foreign currency by way of a back to back loan. A "back to back" loan refers to the case whereby a UCITS borrows foreign currency in the context of the acquisition and safekeeping of foreign transferable securities and deposits with the lender, its agent or any other person designated by it, an amount in domestic currency equal to or greater than the amount borrowed.

V. Investment limits calculation method as established by Chapter 5 of the Law of 30 March 1988.

The investment limit percentages to be complied with by UCITS must be applied to the net assets of UCITS.

Chapter G. Rules applicable to UCITS subject to Part II of the Law of 30 March 1988.

I. Intervals at which the issue and redemption prices must be determined.

UCITS must determine the issue and redemption prices of their units or shares at sufficiently close and fixed intervals, being at least once a month, subject to the exceptions provided for by the Law of 30 March 1988.

II. Investment limits.

The purpose of the investment limits is to ensure that investments are sufficiently liquid and diversified. It is clear that certain of these limits do not apply to the categories of UCITS defined under heading II.4. of Chapter C. above insofar as they are incompatible with the investment policy defined for each of these categories. Subject to this exception UCITS may not in principle:

1. invest more than 10% of their assets in securities which are not listed on a stock exchange and are not traded on another regulated market which operates regularly and is recognised and open to the public;

2. acquire more than 10% of the same type of securities issued by the same issuing body;

3. invest more than 10% of their net assets in securities issued by the same issuing body.

The aforementioned restrictions are not applicable to securities issued or guaranteed by a Member State of the OECD or their local authorities or public international bodies with community, regional or global scope.

The restrictions mentioned under items a), b) and c) above are applicable to the purchase of units of UCIs of the open-ended type if such UCIs are not subject to risk diversification requirements comparable to those provided for by this circular for UCIs subject to Part II of the Law of 30 March 1988.

It is reminded that units of closed-ended UCIs are treated in the same way as other transferable securities and are therefore subject to the general rules applicable to transferable securities.

The possibility to invest in units of other UCIs must not be used to avoid the provisions of Article 70 of the Law of 30 March 1988.

If it is intended to make investments in other UCIs, the prospectus must expressly state this possibility. Should it be intended to make investments in other UCIs of the same promoter, the prospectus must also specify the nature of the fees and expenses which may arise out of such an investment.

III. Borrowings.

UCITS may borrow the equivalent of up to 25% of their net assets without restriction as to the intended use thereof. This limit does not apply to the category of UCITS defined in heading II.4.3. of Chapter C. above.

IV. Provisions applicable to UCITS which are subject to Chapter 11 of the Law of 30 March 1988.

1. Information to be provided in the constitutional documents. The constitutional documents must *inter alia* specify

   - the principles and methods of valuation of assets;
   - the time allowed for payment in respect of issues (and redemptions, if any);
   - the conditions which permit suspension of issues (and redemptions, if any).

2. Valuation of assets.

   Unless otherwise provided for in the constitutional documents, the valuation of the assets of UCITS referred to herein must be based, in the case of officially listed securities, on the last known stock exchange price, unless such a price is not representative. For securities which are not officially listed and for securities which are listed but for which the latest price is not representative, the valuation shall be based on the probable realisation value which must be estimated with prudence and in good faith.

3. Purchases and sales of securities held in the portfolio.

   The purchase and sale of securities held in the portfolio of the UCITS concerned can only be carried out at prices consistent with the valuation criteria specified in heading 2. above ("Valuation of assets").

Chapter H. Rules applicable to all UCITS.

Pursuant to Article 41 of the Law of 30 March 1988 UCITS are authorised

- to employ techniques and instruments relating to transferable securities provided that such techniques and instruments are used for the purpose of efficient portfolio management;

- to employ techniques and instruments intended to provide protection against exchange rate risks in the context of the management of their assets.

The techniques and instruments which UCITS are authorised to use under this provision are more fully described under headings I. and II. of this Chapter. The use of other techniques and instruments is in principle not permitted.

Where a UCITS wishes to use the techniques and instruments described below, this must be expressly mentioned in its prospectus. In such cases, the prospectus must list the types of transactions envisaged and specify the purpose thereof and the conditions and limits within which such transactions may be made. As the case may be, the prospectus must also include a description of the risks inherent in the transactions envisaged.

I. Techniques and instruments relating to transferable securities.

For the purpose of efficient portfolio management, a UCITS may participate in

- transactions relating to options;

- transactions relating to financial futures and options thereon;

- transactions relating to securities lending;

- repurchase agreements.

1. Transactions relating to options on transferable securities.

The purchase and writing of call and put options by a UCITS is permitted provided that such options are traded on a regulated market which is operating regularly, recognised and open to the public.

When entering into these transactions, the UCITS must comply with the following rules:

1.1. Rules applicable to the purchase of options.

The total premiums paid for the acquisition of call and put options outstanding and referred to herein may not, together with the total of the premiums paid for the purchase of call and put options outstanding and referred to in heading 2.3. below, exceed 15% of the net assets of the UCITS.

1.2. Rules to ensure the coverage of the commitments resulting from option transactions.

Upon the conclusion of contracts whereby call options are written, the UCITS must hold either the underlying securities, or equivalent call options or other instruments capable of ensuring adequate coverage of the commitments resulting from such contracts, such as warrants. The underlying securities related to call options written may not be disposed of as long as these options are in existence unless such options are covered by offsetting options or by other instruments that can be used for that purpose. The same restriction applies to equivalent call options or other instruments which the UCITS must

hold where it does not have the underlying securities at the time of the writing of such options.

As an exception to this rule, a UCITS may write call options on securities it does not hold when entering into the option contract provided that the following conditions are met:

- the aggregate exercise (strike) price of such uncovered call options written shall not exceed 25% of the net assets of the UCITS;

- the UCITS must at any time be able to ensure the coverage of the position taken as a result of the writing of such options.

Where it writes put options, the UCITS must be covered during the entire duration of the option contract by adequate liquid assets which may be used to pay for the securities which could be delivered to it should the put option be exercised by the counterparty.

1.3. Conditions and limits for the writing of call and put options.

The aggregate of the commitments arising from the writing of put and call options (excluding call options written in respect of which the UCITS has adequate coverage) and the aggregate of the commitments from the transactions referred to in heading 2.3. hereafter may not, at any time, exceed the value of the net assets of the UCITS.

In this context, the commitment on call and put options written is deemed to be equal to the aggregate of the exercise (striking) prices of those options.

1.4. Rules concerning regular information intended for the public.

In its financial reports, the UCITS must identify the portfolio securities which are the subject of an option and individually indicate every call option written on securities which are not held in the portfolio. It must also break down by category of options the aggregate of the exercise (strike) prices of options outstanding as at the reference date of the relevant reports.

2. Transactions relating to futures and option contracts on financial instruments.

Except for transactions by private agreement mentioned under heading 2.2. below, the transactions described herein may only relate to contracts that are traded on a regulated market which is operating regularly, recognised and open to the public.

Subject to the conditions specified below, these transactions may be made for hedging or other purposes.

2.1. Transactions whose purpose is to hedge risks associated with the evolution of stock markets.

A UCITS may sell stock index futures to provide general protection against the risk of an unfavourable evolution of the stock markets. For the same purpose, it may also write call options on stock indices or purchase put options thereon.

The hedging purpose of these transactions presupposes that there exists a sufficient correlation between the composition of the index used and the corresponding portfolio.

In principle, the aggregate commitments resulting from futures contracts and stock index options may not exceed the aggregate estimated market value of the securities held by the UCITS in the corresponding market.

2.2. Transactions whose purpose is the hedging of interest rate risk.

A UCITS may sell interest rate futures contracts for the purpose of achieving a global hedge against interest rate fluctuations. It may also for the same purpose write call options or purchase put options on interest rates or enter into Over The Counter (OTC) interest rate swap contracts with highly rated financial institutions specialised in this type of operation.

In principle, the aggregate of the commitments relating to futures contracts, options and swap transactions on interest rates may not exceed the aggregate estimated market value of the assets held by the UCITS which are to be hedged, expressed in the currency corresponding to those contracts.

2.3. Transactions whose purpose is other than hedging.

Besides option contracts on transferable securities and contracts on currencies, a UCITS may, for a purpose other than hedging, purchase and sell futures contracts and options on any kind of financial instruments provided that the aggregate commitments in connection with such purchase and sale transactions together with the amount of the commitments relating to the writing of call and put options on transferable securities does not exceed at any time the value of the net assets of the UCITS.

The call options written on transferable securities for which a UCITS has adequate coverage are excluded from the calculation of the aggregate amount of the commitments referred to above.

In this context, the concept of the commitments relating to transactions other than options on transferable securities is defined as follows:

- the commitment arising from futures contracts is deemed equal to the value of the underlying net positions payable on those contracts which relate to identical financial instruments (after netting all purchase and sale positions), without taking into account the respective maturity dates and

- the commitment deriving from options purchased and written is equal to the aggregate of the exercise (strike) prices including the net sales positions of each underlying asset without taking into account the respective maturity dates.

It is reminded that the aggregate amount of premiums paid for the acquisition of call and put options outstanding which are referred to herein, may not, together with the aggregate of the premiums paid for the acquisition of call and put options on transferable securities mentioned in heading 1.1. above, exceed 15% of the net assets of the UCITS.

2.4. Periodical information intended for the public.

In its financial reports, the UCITS must separately indicate for each of the categories of transactions mentioned in headings 2.1., 2.2. and 2.3. above the total amount of commitments deriving from operations outstanding as at the reference date of the relevant reports.

3. Securities lending transactions.

UCITS may enter into securities lending transactions provided the following rules are complied with:

3.1. Rules intended to ensure the correct execution of lending transactions.

A UCITS may only participate in securities lending transactions within a standardised lending system organised by a recognised securities clearing institution or by a highly rated financial institution specialised in this type of transaction.

In relation to its lending transactions, the UCITS must in principle receive collateral, whose value, at the conclusion of the lending agreement, must be at least equal to the overall value of the securities lent.

This collateral must be given in the form of cash and/or of securities issued or guaranteed by Member States of the OECD or by their local authorities or by supranational institutions and organisations with community, regional or global scope, and blocked in the name of the UCITS until termination of the lending contract.

3.2. Conditions and limits of lending transactions.

Lending transactions may not be carried out on more than 50% of the aggregate market value of the securities in the portfolio. This limit is not applicable where the UCITS has the right, at any time, to terminate the contract and obtain restitution of the securities lent.

Lending transactions may not be extended beyond a period of 30 days.

3.3. Periodical information intended for the public.

The UCITS must indicate in its financial reports the overall valuation of securities lent at the reference date of the relevant reports.

4. Repurchase agreements.

UCITS may enter into a repurchase agreement which consists of the purchase and sale of securities whereby the terms of the agreement entitle the seller to repurchase the securities from the purchaser at a price and at a time agreed to by the two parties at the conclusion of the agreement.

The UCITS may act either as purchaser or seller in repurchase transactions. Its entering into such agreements is however subject to the following rules:

4.1. Rules intended to ensure the correct execution of repurchase agreements.

The UCITS may purchase or sell securities in the context of a repurchase agreement only if its counterparty is a highly rated financial institution specialised in this type of transaction.

4.2. Conditions and limits of repurchase transactions.

During the lifetime of a repurchase agreement, the UCI may not sell the securities which are the object of the agreement either before the repurchase of the securities by the counterparty has been carried out or the repurchase period has expired.

Where the UCITS is open-ended, it must ensure that the sum of all repurchase agreements is limited such that it is able, at all times, to meet its obligations to redeem its own shares.

4.3. Periodical information intended for the public.

In its financial reports, the UCITS must separately indicate for purchases and sales subject to repurchase obligations, the total amount of repurchase agreements outstanding at the reference date of the relevant reports.

II. Techniques and instruments intended to hedge currency risks to which UCITS are exposed within the context of portfolio management.

In order to protect its assets against currency fluctuations, UCITS may enter into transactions the objects of which are currency forward contracts as well as the writing of call options and the purchase of put options on currencies. The transactions referred to herein may only concern contracts which are traded on a regulated market which is operating regularly, recognised and open to the public.

For the same purpose, the UCITS may also enter into forward sales of currencies or exchange currencies on the basis of Over The Counter (OTC) agreements with highly rated financial institutions specialised in this type of transaction.

The hedging objective of the aforementioned transactions presupposes the existence of a direct relationship between such transactions and the assets to be hedged. This implies that transactions made in one currency may in principle not exceed the valuation of the aggregate assets denominated in that currency nor exceed the period during which such assets are held.

In its financial reports, the UCITS must indicate, for the different types of transactions made, the aggregate amount of commitments relating to transactions outstanding as at the reference date of the relevant reports.

Chapter I. Rules applicable to UCIs other than UCITS.

The Law of 30 March 1988 does not provide for the collective investment objective of UCIs other than UCITS which means that such UCIs may carry out investments in assets other than transferable securities.

The detailed provisions which provide investors in traditional UCITS with certain safety guarantees may not be applied entirely as they stand to UCIs whose objective differs from that of UCITS, in particular with respect to the specific nature of the investment policy of the UCIs, which makes it impossible to apply certain operational rules which must be observed by traditional UCITS. UCIs whose objective differs from the objective of traditional UCITS must therefore be submitted to a certain extent to alternative regimes whose rules are differentiated according to the nature of their investments.

To date, the supervisory authority has set up separate rules for three types of specialised UCIs the principal object of which is either:

- the investment in venture capital which refers to the investment in securities of unlisted companies either because these companies have been recently established or because they are still in the course of development and therefore have not yet obtained the stage of maturity required to have access to stock markets; or

- the investment in commodity futures contracts and/or financial futures contracts and/or in options; or

- the investment in real estate.

The separate rules established by the supervisory authority for each of the three specialised types of UCIs do not replace the general rules which remain applicable, rather they only modify certain rules in order to adapt them to the particularities of each type of UCI.

The particular rules applicable to the UCIs referred to here are specified under headings I., II. and III. hereafter.

In specific cases, the IML may grant certain derogations from these rules on the basis of adequate justification.

I. <u>Rules of the particular regime applicable to UCIs whose principal objective is investment in venture capital.</u>

The rules provided for hereafter modify the rules of the general regime with respect to the following points:

1. <u>Management and supervisory bodies.</u>

With regard to the professional qualification, the directors of the management bodies and, where applicable, the investment advisers, must possess a specific experience in the field of investment in venture capital.

2. <u>Investment restrictions.</u>

The investment restrictions applicable to traditional UCITS do not apply to UCIs referred to in this section with the exception that the investment in venture capital must be diversified to such an extent that an adequate spread of the investment risk is ensured. In order to ensure a minimum spread of such risks, the UCIs concerned may not invest more than 20% of their net assets in any one company.

3. Issue and redemption of units or shares.

The date of determination of the issue and redemption prices will depend upon the frequency of the periods of issue and redemption of units or shares.

Where the investors have the right to redeem their units or shares, the UCI may impose certain restrictions on such a right. These restrictions must be clearly described in the prospectus.

4. Special requirements.

Apart from these general rules which are derived from those applicable to traditional UCITS, those UCIs whose principal object is the investment in venture capital must also comply with the following special requirements:

4.1. Type of securities.

The total of bearer and registered shares issued by the UCI must represent a number of shares or units whose value at the time of issue is at least equal to 500,000 francs.

4.2. Remuneration of investment management and advisory bodies.

If the remuneration of the investment management and advisory bodies is higher than that usually received by similar bodies from traditional UCITS, the prospectus must state whether the additional remuneration is also payable on assets which are not invested in venture capital.

4.3. Information for investors.

The annual and semi-annual reports of the UCI must contain information on the development of the companies in which it has invested. In the event of a sale of securities held in the portfolio, the UCI must publish separately for each investment the amount of profit or loss. In addition, the financial statements must mention where there is a potential conflict of interest between the interests of a director of the investment management or advisory bodies and the interests of the UCI.

4.4. Specific information to be disclosed in the prospectus.

The prospectus must contain a detailed description of the investment risks inherent in the investment policy of the UCI and of the nature of the conflicts of interest which could arise between the interests of a director of the investment management and advisory bodies and the interests of the UCI.

Furthermore, the prospectus must include a statement indicating that since an investment in such a UCI represents an above average risk, the UCI in question is only suitable for those persons who are able to assume such risks and that it is advisable for the average subscriber to invest therein only a part of the sum intended for long-term investment.

II. Rules of the particular regime applicable to UCIs whose principal objective is investment in futures contracts (commodity futures and/or financial futures) and/or in options.

The rules provided for hereafter modify the rules of the general regime with respect to the following points:

1. Management and supervisory bodies.

With regard to the professional qualification, the directors of the management bodies and, where applicable, the investment advisers must possess a specific experience in the field of investment in commodities, financial futures and options respectively.

2. Investment restrictions.

2.1. Margin deposits relating to commitments on long or short futures contracts, and call and put options written may not exceed 70% of the net assets of the UCI, the balance of 30% representing a liquidity reserve.

2.2. The UCI may only enter into futures contracts traded on an organised market. Futures contracts underlying options must also comply with this condition.

2.3. The UCI may not enter into commodity contracts other than commodity futures contracts. By way of derogation, the UCI may, with cash settlement, acquire precious metals which are negotiable on an organised market.

2.4. The UCI may only acquire call and put options which are traded on an organised market. Premiums paid for the acquisition of options outstanding are included in the 70% limit provided for under heading 2.1. above.

2.5. The UCI must ensure an adequate spread of investment risks by sufficient diversification.

2.6. The UCI may not hold an open forward position in any one futures contract for which the margin requirement represents 5% or more of net assets. This rule also applies to open positions resulting from options written.

2.7. Premiums paid to acquire options outstanding which have identical characteristics may not exceed 5% of net assets.

2.8. The UCI may not hold an open position in futures contracts concerning a single commodity or a single category of financial futures for which the margin required represents 20% or more of net assets. This rule also applies to open positions resulting from options written.

3. Borrowings.

The UCI may only borrow up to the equivalent of 10% of its net assets provided such borrowings may not be used for investment purposes.

4. Special requirements.

Apart from these general rules which are derived from those applicable to traditional UCITS, those UCIs whose principal object is the investment in futures contracts and/or options must also comply with the following special requirements:

4.1. Type of securities.

The total of bearer and registered shares issued by the UCI must represent a number of shares or units whose value is at least equal to 500,000 francs at the time of issue.

4.2. Remuneration of managers and investment advisers.

If the remuneration of the investment management and advisory bodies is higher than that usually received by similar bodies from traditional UCITS, the prospectus must state whether the additional remuneration is also payable on assets which are not invested in futures contracts and/or options.

4.3. Information for investors.

The annual and semi-annual reports of the UCI must contain information on the amount of profit or loss realised by the UCI, for each category of futures and option contracts that has been carried out. In addition, the financial statements must quantify the commissions paid to brokers and the fees paid to the investment management and advisory bodies.

4.4. Specific information to be disclosed in the prospectus.

The prospectus must contain a detailed description of the trading strategy followed by the UCI with respect to futures contracts and options as well as the investment risks inherent in the investment policy. In particular, mention must be made that the futures and options markets are extremely volatile and that the risk of loss is very high.

In addition, the prospectus must include a statement indicating that the UCI in question is only suitable for persons who are able to assume such risks since the investment in that UCI represents an above average risk.

III. Rules of the particular regime applicable to UCIs whose principal objective is investment in real estate.

By real estate assets this circular refers to:

– property consisting of land and/or buildings registered in the name of the UCI;

– share holdings in real estate companies (including debt securities of such companies) whose exclusive object and purpose is the acquisition, promotion and sale as well as the letting and agricultural lease of property, provided that these share holdings must be at least as liquid as the property rights held directly by the UCI; - property related long-term interests such as surface ownership, lease-holds and option rights on real estate assets.

The rules provided for hereafter modify the rules of the general regime with respect to the following points:

1. Management bodies.

With regard to the professional qualification, the directors of the management bodies and, where applicable, the investment advisers, must possess a specific experience in real estate assets.

2. Investment restrictions.

The investment restrictions applicable to traditional UCITS do not apply to UCIs referred to in this section. Nevertheless, the investment in real estate assets must be diversified to such an extent that an adequate spread of the investment risk is ensured. In order to achieve a minimum spread of such risks, the UCIs concerned may not invest more than 20% of their net assets in a single property, such a restriction being effective at the date of acquisition of the relevant property. Property whose economic viability is linked to another property is not considered a separate item of property for the purpose of this restriction.

This 20% rule does not apply during a start-up period which may not extend beyond four years after the closing date of the initial subscription period.

3. Issue and redemption of securities.

The net asset value on which the issue and redemption prices of the securities are based must be determined at least once a year, namely at the end of the financial year, as well as on each day on which shares or units are issued or redeemed. In respect of real estate assets, management may use the valuation established at the yearend throughout the following year unless there is a change in the general economic situation or in the condition of the properties which requires new valuations to be carried out under the same methods as those used for the annual valuation.

Where the investors have the right to redeem their units or shares, the UCI may impose certain restrictions thereon. In addition, where it is justified, notably with regard to a specific investment policy, the UCI has the obligation to restrict such a right of redemption. These restrictions must be clearly described in the prospectus. The UCI may in particular provide for deferred settlements for cases when it does not hold sufficient liquid assets to immediately honour the redemption requests received.

4. Special requirements.

Apart from these general rules which are derived from those applicable to traditional UCITS, UCIs whose principal object is the investment in real estate must also comply with the following special requirements:

4.1. Remuneration of investment management and advisory bodies.

If the remuneration of the investment management and advisory bodies is higher than that usually received by similar bodies from traditional UCITS, the prospectus must indicate whether such additional remuneration is also payable on assets which are not directly or indirectly invested in real estate assets.

4.2. Valuation of properties.

Management must appoint one or more independent property valuers with a specific experience in the field of property valuation.

At the end of the financial year, management must instruct the property valuer(s) to examine the valuation of all properties owned by the UCI or by its affiliated real estate companies.

In addition, properties may not be acquired or sold unless they have been valued by the property valuer(s), although a new valuation is unnecessary if the sale of the property takes place within six months after the last valuation thereof.

Acquisition prices may not be noticeably higher, nor sales prices noticeably lower, than the relevant valuation except in exceptional circumstances which are duly justified. In such cases, the managers must justify their decision in the next financial report.

4.3. Borrowings.

The aggregate of all borrowings of the UCI may not exceed on average 50% of the valuation of all its properties.

4.4. Financial statements.

The audit of the accounts of the UCI and of real estate companies which are more than 50% funded by the UCI either by way of equity or loans, must be carried out under the responsibility of one and the same *réviseur d'entreprises* (statutory auditor). The accounts of these entities must in principle be drawn up as per the same date.

At the end of each half year, the accounts of the UCI must be consolidated with those of the real estate companies referred to in the preceding paragraph subject to the relevant legal requirements.

Where the UCI holds minority interests in real estate companies whose securities are not listed on a stock exchange nor traded on another regulated market operating regularly, recognised and open to the public, the UCI must provide either for a partial consolidation at year end or for a valuation on the basis of the probable sale value estimated with prudence and in good faith by its management. For the valuation of minority shareholdings held in real estate companies whose securities are listed on a stock exchange or traded on another regulated market operating regularly, recognised and open to the public, the stock exchange or market value must be taken into consideration.

In its annual and semi-annual reports, the UCI must clearly explain the accounting principles applied for the consolidation of its own accounts with those of affiliated real estate companies.

The inventory of properties included in the annual and semi-annual reports must, for each category of property held by the UCI or its real estate companies, indicate the overall purchase or cost price, the insured value and the market value.

In the financial statements, properties must be shown at market value.

4.5. Specific information to be disclosed in the prospectus.

The prospectus must give a description of the investment risks inherent in the UCI's investment policy. In addition, the prospectus must provide details of the nature of the commissions, expenses and charges to be borne by the UCI and the methods used for their calculation and allocation.

Chapter J. Rules applicable to UCIs with multiple compartments.

I. General principle.

The Law of 30 March 1988 introduced into Luxembourg law the concept of UCIs with multiple compartments, commonly referred to as "umbrella funds".

These are UCIs set up as common funds or investment companies with several compartments within a single entity. These compartments are used for instance to invest in transferable securities denominated in different currencies or of different geographic regions or economic sectors. From a practical point of view, it proved to be useful to offer investors the possibility within a single entity to choose between several currencies or assets. Furthermore, after having invested in one compartment, the investor may easily switch to one or several other compartments. The conversion from one compartment to the other within the same UCI in principle does not incur the higher rates of commission associated with the case whereby the investor invests in legally separate and independent undertakings.

The Law of 30 March 1988 provides that a multiple compartment UCI constitutes a single legal entity. This implies that a multiple compartment UCI, where certain compartments would normally fall under Part I of the Law of 30 March 1988 whilst other compartments would fall under Part II, is to be considered to fall in its entirety under Part II because of the criterion of the "single legal entity".

Nevertheless, the Law of 30 March 1988 provides that the constitutional documents of multiple compartment UCIs may provide that in respect of the relations between unitholders, each compartment will be treated as a separate entity.

Considering that the multiple compartment UCI, existing as a single legal entity, consists of different compartments and that the investor may restrict his investment to one or the other compartment, it appears inevitable that the units or shares of this single legal entity can have different values. For this reason, the Law of 30 March 1988 provides in its Article 111 that the units and shares may be of different values with or without mention of value, depending on the legal form which has been chosen. This is a derogation clause relating to Article 37 of the Law of 10 August 1915 on commercial companies (as amended) which, in particular, provides that the capital of limited liability companies is divided into shares of equal value.

The experience obtained of multiple compartment UCIs has lead to the drawing up of the rules set out under headings II., III. and IV. hereafter.

II. Common funds.

In order to remain within the scope of Article 111(2) of the Law of 30 March 1988 which provides that multiple compartment UCIs constitute a single legal entity, the following conditions must be met:

- the different compartments of the fund must have a common generic denomination and a single management company which determines the investment policies and their application to the relevant compartments through a single board of directors of the management company;

- the custody of the assets of the different compartments of the fund must be ensured by a single depositary who may however use, to the same extent as those funds with a single portfolio, correspondents in different geographic regions;

- the fund must be governed by a single set of management regulations which form its legal basis. Subject to derogations which may be granted by the IML on the basis of adequate justification, the management regulations must notably determine for each compartment the same redemption conditions for each category of units and the same general valuation, suspension, redemption and investment restriction principles;

- the supervision of the fund must be carried out by a single *réviseur d'entreprises* (statutory auditor);

- the unitholders shall in principle, subject to reasonable limits, be able to switch from one compartment to the other without payment of commissions;

- the management regulations must indicate the currency in which the combined position of the fund is expressed and which is obtained by aggregating the financial positions of all the compartments in the fund.

In addition to the preceding more specific conditions, common funds with multiple compartments must also comply with the following conditions:

- the certificates or other documents evidencing the rights of unitholders may only differ with regard to the designation of the respective compartments for which they are issued;

- the issue and redemption of units attributable to each compartment must be carried out at a price arrived at by dividing the net asset value of the corresponding compartment by the number of outstanding units in that compartment;

- the investment and borrowing restrictions provided for by the Law of 30 March 1988 or by this circular must be complied with inside each compartment with the exception of those restricting the holding of securities of a single issuer which shall also apply to the aggregate of all of the different compartments.

As regards more particularly the condition of minimum net assets resulting from Article 22 of the Law of 30 March 1988, it is considered that this condition is complied with if a common fund with multiple compartments reaches minimum assets of 50 million francs in respect of the aggregate of all its compartments within a period of 6 months following its authorisation.

As a consequence of the above, the provisions of the first paragraph of Article 23 of the Law of 30 March 1988 only become applicable after the aggregate net assets of all the compartments of a multiple compartment common fund taken together have fallen below two thirds of the legal minimum of 50 million francs.

III. Investment companies.

The specific characteristics associated with the concept of multiple compartment investment companies call for the following observations:

1. In a multiple compartment investment company the net asset value of a share is calculated on the basis of the net assets of the compartment in respect of which the share is issued. The value of shares of the same company shall therefore necessarily differ from one compartment to the other.

   However, this difference in share value representing the share capital of a multiple compartment investment company has no impact on the voting rights attached to such shares. Indeed, each share gives the right to one vote within the context of the exercise of voting rights and all shares participate equally in the decisions to be taken in general meetings.

   For the sake of clarity, it is recommended that this equal treatment of shareholders in respect of the exercise of their voting rights is emphasised in the articles of incorporation of a multiple compartment investment company.

Furthermore, the articles should in addition distinguish between the decisions affecting all shareholders and which are to be considered in a single general meeting and the decisions only affecting the specific rights of shareholders of one compartment and which are therefore taken by the general meeting of one compartment.

2. Every company must have a share capital represented by shares.

The Law implies that there be

- a single share capital;
- denominated in a single currency;
- the nominal or accounting par value being expressed in that same currency;
- the annual accounts also being expressed in that same currency.

It follows from there that the share capital of a multiple compartment investment company must be denominated in a single reference currency. However, the net asset value of each compartment is denominated in the currency of the relevant compartment.

In the interests of a clear understanding of the operating mechanism of multiple compartment investment companies, it is recommended that the articles of these companies clearly indicate the preceding particularities.

3. The articles of a multiple compartment investment company, similarly to the articles of investment companies with a single portfolio, must indicate the circumstances of suspension of the calculation of the net asset value of the company and consequently the suspension of issues and redemptions of shares of that company.

The articles of a multiple compartment investment company must furthermore provide for the circumstances of suspension of the calculation of the net asset value (and consequently of issues and redemptions) of the individual compartments.

4. The investment and borrowing restrictions provided for by the Law of 30 March 1988 or by this circular must be complied with inside each compartment with the exception of those restricting the holding of securities of a single issuer which shall also apply to the aggregate of the different compartments.

IV. Common rules applicable to all UCIs with multiple compartments.

It must be clearly stated in the constitutional documents of multiple compartment UCIs irrespective of whether they are established in the form of common funds or in the form of investment companies, that for the purposes of the relations between unit- or shareholders, each compartment shall be treated as a single entity with its own funding, capital gains and losses, expenses etc...

The launch of a new compartment is subject to the authorisation of the IML and the update of the prospectus, where necessary, by means of an insert.

Chapter K. Contents of the file which must accompany the application for authorisation of UCIs.

In support of their application for entry on the list provided for by Article 72(1) of the Law of 30 March 1988, Luxembourg UCIs must submit to the IML an application file which, *inter alia*, contains the following:

a) Drafts of

- the constitutional documents (articles of incorporation of the management company and management regulations or articles of incorporation of the UCI),
- the prospectus and all other information and/or marketing material intended for investors,
- any agreements such as depositary and advisory agreements;

b) Indication of the name of the depositary in Luxembourg with a precise and detailed description of the human and technical resources at its disposal for the accomplishment of all the tasks related to its duties;

c) Indication of the name of the *réviseur d'entreprises* (statutory auditor);

d) Information on the organisation of the central administration of the UCI in Luxembourg with a precise and detailed description of the human and technical resources at its disposal for the accomplishment of all the tasks linked to its duties;

e) Information on the promoter(s) such as recent financial reports;

f) Biographical notices of administrators and managers;

g) Information on the method used to market the securities issued by the UCI, the countries of distribution and the targeted investors.

Where the information and documents mentioned in the preceding items b), d), e) and f) have already been submitted to the IML in respect of a previous application they must not be resubmitted provided that no change has occurred in the interim.

Chapter L. Information and marketing material intended for investors.

I. Prospectus.

1. Contents of the prospectus.

The prospectus must include the information necessary for investors to be able to make an informed judgment on the investment proposed to them.

It shall contain the information provided for in Schedule A annexed to the Law of 30 March 1988 insofar as such information does not already appear in the documents annexed to the prospectus in accordance with Article 87(1) of the same Law. In addition, it must carry a statement that no person is authorised to give any information other than that contained in the prospectus or in the documents referred to therein and which may be consulted by the public.

The IML may require the publication of all additional information it deems necessary in order to provide objective and complete information to the public.

Every prospectus must be dated and may be used only as long as the information contained therein remains accurate. The essential elements of the prospectus must be kept up to date. This could be achieved by inclusion in the periodical financial reports.

UCIs may in principle only enter into the transactions specifically mentioned in their prospectus. This particularly applies to the transactions concerned by Chapter H. above. Reference is made to the detailed provisions of that Chapter.

2. Specific rules applicable to multiple compartment UCIs.

In the interests of providing correct information to investors, it is recommended that the rules set out under headings II. to IV. of Chapter J. above should be stated clearly not only in the constitutional documents of multiple compartment UCIs, but also in the prospectuses of such UCIs.

Multiple compartment UCIs must provide for a single prospectus covering all of their compartments. In this prospectus, it must be specified that commitments in relation to a single compartment bind the whole of the UCI unless contrary arrangements have been agreed with the relevant creditors.

Besides this prospectus, multiple compartment UCIs may provide for the publication of separate prospectuses for each of their compartments. Where this facility is used, it is mandatory that the following information, clearly indicated, be included in the separate prospectuses:

- Indication that the compartment concerned, to which the separate prospectus relates, does not constitute a separate legal entity, rather that there exists other compartments which together with the compartment in question form a single entity;

- Indication that for the purposes of the relationship between unit- or shareholders, each compartment is considered a separate entity with its own funding, capital gains and losses, expenses etc.;

- Indication that commitments in respect of the compartment to which the separate prospectus relates, bind the whole UCI unless contrary arrangements have been agreed to with the relevant creditors;

- Indication that there exists a prospectus which includes a complete description of all the compartments of the UCI with an indication as to where that prospectus may be obtained.

3. Visa.

In order to ensure the correct identification of the prospectuses which have obtained the "*nihil obstat*" of the IML, such prospectuses are visa stamped by the IML and returned complete with visa to the person who submitted the file.

For this purpose, the IML must receive five copies of each prospectus when final with respect to both content and presentation. The visa stamp may in no circumstances be used for publicity purposes.

II. […][2]

III. Financial reports.

1. Periodicity and content of financial reports.

Every UCI must publish an annual report for each financial year and a semi-annual report covering the first six months of the financial year.

The financial year ends in principle on the last calendar day of a month.

The annual and semi-annual reports must be published within the following time limits with effect from the end of the period to which they relate:

- four months in the case of the annual report;
- two months in the case of the semi-annual report.

In respect of the content of the financial reports, reference is made to Article 86(2), (3) and (4) of the Law of 30 March 1988 as well as to Schedule B annexed to that Law. In the same context, it is reminded that the financial reports must include the information required by the provisions of Chapter H. above in respect of the transactions referred to in that Chapter.

The *réviseur d'entreprises'* (statutory auditor's) report provided for by Article 89(1) of the Law of 30 March 1988 must be included in the annual reports.

2. Specific rules applicable to multiple compartment UCIs.

Multiple compartment UCIs must include in their financial reports separate information on each of their compartments as well as aggregate information on all of their compartments. The information referred to hereby is provided for by Article 86(2), (3) and (4) of the Law of 30 March 1988 as well as in Schedule B annexed to that Law, provided that headings II., III., IV., VI. and VII. of that Schedule are not to be considered for the compilation of aggregate information.

The separate financial reports, which must be established for each of the compartments, must be expressed in their respective reference currency. For the purpose of the establishment of the aggregate situation of the UCI, these financial reports must be added together following conversion into the denomination of the share capital, where the UCI has been formed as an investment company, or into the currency determined for that purpose by the management company, where the UCI has been formed as a common fund.

[2] Repealed by CSSF Circular 05/177.

Alongside the full report to be established pursuant to these rules, multiple compartment UCIs may provide for the publication of separate financial reports for each of their compartments. Where this facility is used, the conditions to be respected for the publication of separate prospectuses are applicable by analogy to this case. Reference is made in this connection to heading I.2. above.

Where a separate annual report is established for each compartment of a multiple compartment UCI, the réviseur *d'entreprises'* (statutory auditor's) report provided for by Article 89(1) of the Law of 30 March 1988 must also be included in the relevant report unless the *réviseur d'entreprises* (statutory auditor) establishes separate reports for each compartment. If separate *réviseur d'entreprises'* (statutory auditor's) reports are established, they may be published in the separate annual reports of the relevant compartments in lieu of the report covering all the compartments which make up the UCI.

3. Publication of the financial reports and communication thereof to the IML.

The UCI must transmit to the IML two copies of its annual and semi-annual reports when final with respect to both contents and presentation, no later than at the moment of publication. It is not necessary to submit drafts to the IML prior to publication.

Financial reports are not subject to the visa formality.

Where periodical reports contain errors or omissions, the IML reserves the right to determine if an amended report must be published.

IV. Use of the prospectus and periodical reports.

Pursuant to the provisions of Article 91(1) of the Law of 30 March 1988 the prospectus and the latest annual report as well as the subsequent semi-annual report, if published, must be offered to subscribers free of charge before the conclusion of a subscription contract.

In this respect, the question arises whether, before the conclusion of a subscription contract, the above-mentioned documents must be provided to the subscriber upon his request only or whether they must be provided in any event even in the absence of such a request.

On this matter, the IML considers that the subscription contract may be entered into without the subscriber being aware of or, even received, a copy of the prospectus and periodical reports, provided these documents had been offered to him in the conditions provided for.

It follows from the above that Article 91(1) of the Law of 30 March 1988 does not prohibit that the subscription form is attached not to the prospectus, but to a brief information brochure which indicates how subscribers may obtain the prospectus and the periodical reports.

It is clear that for the purposes of distributing their securities abroad, Luxembourg UCIs must comply with the legal, regulatory and administrative provisions which govern the use of the prospectus and periodical reports in the respective distribution countries.

Chapter M. Financial information intended for the IML

In accordance with Article 94(1) of the Law of 30 March 1988, the UCIs must transmit to the IML the financial information set out in the table (IML: "Monthly financial information of UCIs") a template of which is annexed to this circular, on a monthly basis.

I. Reference date.

In principle, the last day of every month shall be the reference date for the preparation of financial information to be transmitted to the IML.

However, the preceding rule is not compulsory for UCIs which calculate their net asset value at least once a week. For this category of UCIs, the reference date may be the last day on which the net asset value of that month is calculated.

This derogation is also valid for the UCIs which calculate the net asset value per unit or per share at least monthly if the day of this calculation falls either in the last week of the reference month or in the first week of the following month. The financial information to be transmitted to the IML must then be prepared on the basis of the data available at the calculation date nearest to the last day of the month.

UCIs which do not calculate their net asset value per unit or per share on a monthly basis need only indicate in their monthly statements the amounts effectively booked in the accounts at the end of the month excluding any non- accounting estimates.

II. Reporting deadlines.

UCIs must report the monthly information to the IML within a period of 20 days after the reference date.

III. Reporting currency and portfolio.

The table for the transmission of monthly financial information must indicate the reporting currency used for the preparation of the information set out in point I.1., I.2. and III. of the table concerned. This reporting currency must be the currency used to calculate the net asset value per unit or share of a UCI.

The term "portfolio" within the meaning of point II. of the same table means all the investments which constitute the object of the investment policy of a UCI.

IV. Change in the net asset value per unit or per share.

Where the net asset value per unit or per share varies over 10% compared to the value calculated at the end of the preceding month, explanations must be given as to the reasons for this variation.

V. UCIs with multiple compartments.

The monthly financial statements must be drawn up for each compartment separately by using the reporting currency of the compartment concerned and a global situation must be drawn up in the currency used for the overall financial statements of the UCI.

Chapter N. Rules applicable to management companies of common funds.

I. Information obligation of management companies vis-à-vis the IML.

Immediately following the approval thereof by the general meeting of shareholders, the management companies of common funds must transmit to the IML their annual accounts together with the directors' report and the report of the external auditors responsible for the audit of the annual accounts.

II. Authorisation of the shareholders of a management company.

Pursuant to Article 71(3) of the Law of 30 March 1988 the managers of a management company must be of sufficiently good repute and have the requisite experience for the performance of their duties.

To that end, the names of the managers of the management company, and of every person succeeding them in office, must be communicated forthwith to the supervisory authority.

The Law of 30 March 1988 defines managers as being the persons who represent the management company or who effectively determine the strategy thereof.

This raises the question as to whether the shareholders of the management company are to be considered as managers for whom authorisation by the supervisory authority is required. This question must be answered in the affirmative insofar as one has to consider that the shareholders effectively determine the strategy of the management company.

The principal shareholders of the management company of a common fund must therefore be of sufficient repute and have the requisite experience for the performance of their duties and must, in this respect, obtain the authorisation of the IML.

Chapter O. Distribution rules applicable in Luxembourg.

The marketing rules with which UCIs must comply in Luxembourg when their units or shares are distributed therein derive in particular from:

- the Law of 25 August 1983 on the legal protection of consumers;
- the Law of 27 November 1986 regulating certain commercial practices and penalising unfair competition; and
- the Law of 16 July 1987 on door-to-door sales, itinerant trade, display of goods and canvassing for orders.

Chapter P. Obligation of UCIs to inform the IML of the audit performed by the *réviseur d'entreprises* (statutory auditor).

UCIs must forthwith communicate to the IML without being specifically requested to do so, the declarations, reports and written observations made by the *réviseur d'entreprises* (statutory auditor) within the scope of the controls which he must carry out pursuant to Article 89 of the Law of 30 March 1988. The documents to be communicated must *inter alia* include the written observations issued by the *réviseur* (auditor) which generally take the form of a management letter addressed to the UCI.

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