

## **Law of 13 February 2007 relating to specialised investment funds and**

- **amending the Law of 20 December 2002 relating to undertakings for collective investment, as amended;**
- **amending the Law of 12 February 1979 on value added tax, as amended**  
**(Mém. A 2007, No. 13)**

as amended by:

- the Law of 19 December 2008
  - revising the regime applicable to certain company acts as regards registration taxes
  - implementing Council Directive 2008/7/EC of 12 February 2008 concerning indirect taxes on the raising of capital
  - amending:
    - the Law of 7 August 1920 increasing registration taxes, stamp duties, inheritance taxes, etc., as amended
    - the Law of 20 December 2002 concerning undertakings for collective investment, as amended
    - the Law of 22 March 2004 on securitisation
    - the Law of 15 June 2004 relating to the investment company in risk capital (SICAR), as amended
    - 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), as amended
    - the Law of 13 February 2007 relating to specialised investment funds
  - and repealing the Law of 29 December 1971 concerning the tax on the raising of capital in companies governed by civil law or commercial law and revising certain legal provisions on the collection of registration taxes, as amended.  
(Mém. A 2008, No. 207)
- the Law of 18 December 2009 on the State revenue and expenditure budget for the financial year 2010  
(Mém. A 2009, No. 254)
- the Law of 18 December 2009 concerning the audit profession and:
  - transposing 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 amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC,
  - on the organisation of the audit profession,
  - amending certain other statutory provisions, and
  - repealing the Law of 28 June 1984 on the organisation of the profession of company auditors, as amended  
(Mém. A 2010, No. 22)
- the Law of 17 December 2010 relating to undertakings for collective investment and
  - transposing 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) (recast);
  - amending:
    - the Law of 20 December 2002 relating to undertakings for collective investment, as amended;
    - the Law of 13 February 2007 relating to specialised investment funds, as amended;
    - Article 156 of the Law of 4 December 1967 on income tax, as amended.  
(Mém. A 2010, No. 239)
- the Law of 26 March 2012 amending the Law of 13 February 2007 relating to specialised investment funds  
(Mém. A 2012, No. 63)
- the Law of 21 December 2012 transposing Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority

(European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) and amending:

1. the Law of 6 December 1991 on the insurance sector, as amended;
2. the Law of 5 April 1993 on the financial sector, as amended;
3. the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended;
4. the Law of 22 March 2004 on securitisation, as amended;
5. the Law of 15 June 2004 relating to the Investment company in risk capital (SICAR), as amended;
6. the Law of 10 July 2005 on prospectuses for securities, as amended;
7. 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), as amended;
8. the Law of 9 May 2006 on market abuse, as amended;
9. the Law of 13 February 2007 relating to specialised investment funds, as amended;
10. the Law of 13 July 2007 on markets in financial instruments, as amended;
11. the Law of 11 January 2008 on transparency requirements for issuers of securities, as amended;
12. the Law of 10 November 2009 on payment services, as amended;
13. the Law of 17 December 2010 relating to undertakings for collective investment

(Mém. A 2012, No. 275)

- the Law of 6 April 2013 on dematerialised securities and amending:
    - the Law of 5 April 1993 on the financial sector, as amended;
    - the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended;
    - the Law of 10 August 1915 on commercial companies, as amended;
    - the Law of 3 September 1996 concerning the involuntary dispossession of bearer securities, as amended;
    - the Law of 1 August 2001 on the circulation of securities and other fungible instruments, as amended;
    - the Law of 20 December 2002 relating to undertakings for collective investment, as amended;
    - the Law of 17 December 2010 relating to undertakings for collective investment;
    - the Law of 13 February 2007 relating to specialised investment funds, as amended;
    - the Law of 22 March 2004 on securitisation, as amended
- (Mém. A 2013, No. 71)
- the Law of 12 July 2013 on alternative investment fund managers and
    - 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;
    - amending:
      - the Law of 17 December 2010 relating to undertakings for collective investment, as amended;
      - the Law of 13 February 2007 relating to specialised investment funds, as amended;
      - the Law of 15 June 2004 relating to the Investment company in risk capital (SICAR), as amended;
      - the Law of 13 July 2005 on institutions for occupational retirement provision in the form of pension savings companies with variable capital (SEPCAV) and pension savings associations (ASSEP), as amended;
      - the Law of 13 July 2005 concerning the activities and supervision of the institutions for occupational retirement provision;
      - the Law of 5 April 1993 on the financial sector, as amended;
      - the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended;
      - the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended;
      - the Law of 10 August 1915 on commercial companies, as amended;
      - the Law of 19 December 2002 on the trade and companies register and the accounting practices and annual accounts of undertakings, as amended;
      - the Commercial Code;
      - the Law of 4 December 1967 on income tax, as amended;
      - the Law of 1 December 1936 on business tax, as amended;
      - the Law on tax adaptation of 16 October 1934, as amended;

- the Law of 16 October 1934 on the assessment of properties and values, as amended;
- the Law of 12 February 1979 on value added tax, as amended

(Mém. A 2013, No. 119)

- by the Law of 27 May 2016 amending, with the view of reforming the legal publication regime regarding companies and associations,
  - the Law of 19 December 2002 on the trade and companies register and the accounting practices and annual accounts of undertakings, as amended;
  - the Law of 10 August 1915 on commercial companies, as amended;
  - the Law of 21 April 1928 on non-profit organisations, as amended;
  - the Grand-ducal decree of 24 May 1935 supplementing the legislation on suspension of payments, on composition with creditors to prevent bankruptcy by establishing a controlled management regime, as amended;
  - the Grand-ducal decree of 17 September 1945 revising the Law of 27 March 1900 on the organisation of agricultural associations, as amended;
  - the Law of 24 March 1989 relating to Banque et Caisse d'Epargne de l'Etat, Luxembourg, as amended;
  - the Law of 25 March 1991 on economic interest groupings, as amended;
  - the Law of 25 March 1991 on diverse implementing measures of Council Regulation (EEC) No 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG), as amended;
  - the Law of 17 June 1992 relating to the annual and consolidated accounts of credit institutions, as amended;
  - the Law of 8 December 1994 relating to: - the annual and consolidated accounts of insurance and reinsurance undertakings governed by the laws of Luxembourg - the obligations in relation to the drawing-up and publication of accounting documents of branches of insurance undertakings governed by foreign laws, as amended;
  - the Law of 31 May 1999 governing the domiciliation of companies, as amended;
  - the Law of 22 March 2004 on securitisation, as amended;
  - the Law of 15 June 2004 relating to the Investment company in risk capital (SICAR), as amended;
  - the Law of 13 July 2005 on institutions for occupational retirement provision in the form of a SEPCAV and an ASSEP, as amended;
  - the Law of 13 February 2007 relating to specialised investment funds, as amended;
  - the Law of 10 November 2009 on payment services, as amended;
  - the Law of 17 December 2010 relating to undertakings for collective investment, as amended;
  - the Law of 7 December 2015 on the insurance sector;
  - the Law of 18 December 2015 on the failure of credit institutions and certain investment firms

(Mém. A 2016, No. 94)

- by the Law of 23 July 2016 on reserved alternative investment funds and amending:
  1. the Law of 16 October 1934 on wealth tax, as amended;
  2. the Law of 1 December 1936 concerning municipal business tax, as amended;
  3. the Law of 4 December 1967 on income tax, as amended;
  4. the Law of 5 April 1993 on the financial sector, as amended;
  5. the Law of 13 February 2007 relating to specialised investment funds, as amended, and
  6. the Law of 17 December 2010 relating to undertakings for collective investment, as amended

(Mém. A 2016, No. 140)

- by the Law of 8 April 2019 on the measures to be taken in relation to the financial sector in the event of the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and amending:
  - 1° the Law of 13 February 2007 relating to specialised investment funds, as amended; and
  - 2° the Law of 17 December 2010 relating to undertakings for collective investment, as amended.

(Mém. A 2019, No 238)

*(Law of 12 July 2013)*

**“Part I – General provisions applicable to specialised investment funds”**

**Chapter 1. – General provisions and scope**

**Article 1.** (1) For the purpose of this Law, specialised investment funds shall be any undertakings for collective investment situated in Luxembourg:

- the exclusive object of which 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
- the securities “or partnership interests”<sup>1</sup> of which are reserved to one or several well-informed investors, and
- the constitutive documents or offering documents “or partnership agreement”<sup>2</sup> of which provide that they are subject to the provisions of this Law.

““Management” within the meaning of the 1<sup>st</sup> indent means an activity which includes at least the portfolio management service.”<sup>3</sup>

(2) Specialised investment funds may be constituted under the legal forms laid down in Chapters 2, 3 and 4 of this Law.

**Article 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 confirmed in writing that he adheres to the status of well-informed investor, and
- b) (i) he invests a minimum of 125,000 Euro 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”<sup>4</sup> certifying his expertise, his experience and his knowledge in adequately apprising an investment in the specialised investment fund.

(2) The conditions set forth in this Article are not applicable to the directors and other persons who intervene in the management of the specialised investment funds.

*(Law of 26 March 2012)*

“(3) The specialised investment fund shall have the necessary means in order to ensure compliance with the conditions set out in paragraph (1) of this article.”

*(Law of 12 July 2013)*

**“Article 2a.** The provisions of this part shall apply to all specialised investment funds, unless there is a derogation under the specific provisions of Part II of this law which applies to specialised investment funds whose management falls under an AIFM authorised under Chapter 2 of the Law of 12 July 2013 on alternative investment fund managers or Chapter II of Directive 2011/61/EU.”

**Article 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 situated in Luxembourg.

**Chapter 2. – Common funds**

**Article 4.** There shall be regarded as a common fund for the application of this Law any undivided collection of assets made up and managed according to the principle of risk-spreading on behalf of joint owners who are liable only up the amount contributed by them and whose rights are represented by units reserved to one or several well-informed investors.

**Article 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.

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<sup>1</sup> Law of 12 July 2013

<sup>2</sup> Law of 12 July 2013

<sup>3</sup> Law of 26 March 2012

<sup>4</sup> Law of 12 July 2013

**Article 6.** A common fund shall be managed by a Luxembourg management company which complies with the conditions set out in “ (...)”<sup>5</sup> Chapter 15, 16 or 18 of the Law of 17 December 2010 relating to undertakings for collective investment”<sup>6</sup>.

**Article 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 confirmations of entry in the register of units or fractions of units without limitation as to the fractioning of units.”<sup>7</sup>

Rights attached 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 the depositary referred to in Article 17.”<sup>8</sup>

Such 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 in respect of units registered in a securities account shall be determined and the transmission thereof shall be effected in accordance with the rules laid down in the law on dematerialised securities and the Law of 1 August 2001 on the circulation of securities.”<sup>9</sup>

*(Law of 6 April 2013)*

“(3) The owners of bearer securities may request, at any time and at their own expense, the conversion of these securities into registered securities or, insofar the articles of incorporation so provide, into dematerialised securities. In the latter case, the expenses shall be borne by the person referred to in the law on dematerialised securities.

Unless a formal prohibition is provided for in the articles of incorporation, the owners of the registered securities may request, at any time, the conversion of these securities into bearer securities.

If provided for by the articles of incorporation, the owners of the registered securities may request the conversion of these securities into dematerialised securities. The expenses shall be borne by the person referred to in the law on dematerialised securities.

The holders of dematerialised securities may request, at any time and at their own expense, the conversion of these securities into registered securities, unless the management regulations provide for a compulsory dematerialisation of securities.”

**Article 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.

**Article 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.

**Article 10.** Neither the holders of units nor their creditors may require the distribution or the dissolution of the common fund.

**Article 11.** (1) The Commission de Surveillance du Secteur Financier (the Commission for the Supervision of the Financial Sector) (the “CSSF”) may, in the interest of the unitholders or in the public interest, 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 the 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 a composition with creditors, a suspension of payment or a court controlled management or is the subject of similar proceedings.

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<sup>5</sup> Law of 12 July 2013

<sup>6</sup> Law of 17 December 2010

<sup>7</sup> Law of 6 April 2013

<sup>8</sup> Law of 6 April 2013

<sup>9</sup> Law of 6 April 2013

**Article 12.** “(1) The management company shall draw up the management regulations for the common fund.

Such regulations must be lodged with the trade and companies register and its publication in the *Recueil électronique des sociétés et associations*<sup>10</sup> will be made through a notice advising of the deposit of such document, in accordance with the provisions of Chapter Va of Title I of the Law of 19 December 2002 on the trade and companies register and the accounting practices and annual accounts of undertakings, as amended. The provisions of such regulations shall be deemed accepted by the unitholders by the mere fact of the acquisition of such units.<sup>11</sup>

(2) The management regulations of the common fund shall at least contain 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 proposed specific objectives and the criteria therefore,
- c) the distribution policy within the scope of Article 15,
- d) the remuneration and expenditure which the management company is empowered to charge to the fund and the method of calculation of such 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 procedure for amendment of the management regulations,
- i) the procedure for the issue of units and, as the case may be, for the redemption of units.

**Article 13.** (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 attached to the assets comprised in the portfolio of the common fund.

**Article 14.** The management company must fulfil its obligations with the diligence of a salaried agent<sup>12</sup>; it shall be answerable to the unitholders for any loss resulting from the non-fulfilment or improper fulfilment of its obligations.

**Article 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.

**Article 16.** (1) The custody of the assets of the common fund must be entrusted to a depositary.

*(Law of 12 July 2013)*

“(2) The depositary must either have its registered office in Luxembourg or be established in Luxembourg if its registered office is in another State.

(3) Without prejudice to the provision laid down in the second subparagraph of this paragraph, the depositary shall be a credit institution or an investment firm within the meaning of the Law of 5 April 1993 on the financial sector, as amended. An investment firm shall only be eligible as a depositary if this investment firm fulfils the conditions laid down in Article 19(3) of the Law of 12 July 2013 on alternative investment fund managers.

For common 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 which shall be held in custody in accordance with Article 19(8)(a) of the Law of 12 July 2013 on 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 said law, the depositary may also be an entity incorporated under Luxembourg law which has the status of professional depositary of assets other than financial instruments within the meaning of Article 26-1 of the Law of 5 April 1993 on the financial sector, as amended.”

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<sup>10</sup> Electronic digest of companies and associations

<sup>11</sup> Law of 27 May 2016

<sup>12</sup> *Mandataire salarié*

(4) The depositary's liability shall not be affected by the fact that it has entrusted all or some of the assets in its custody to a third party.

(5) The depositary shall carry out all operations concerning the day-to-day administration of the assets of the common fund.

**Article 17.** (1) The depositary shall be liable in accordance with Luxembourg law to the management company and the unitholders for any losses suffered by them as a result of its wrongful failure to perform its obligations or its wrongful improper performance thereof.

(2) The liability to unitholders shall be invoked indirectly 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, such unitholder may directly invoke the liability of the depositary.

**Article 18.** In the context of their respective roles, the management company and the depositary must act independently and solely in the interest of the unitholders.

**Article 19.** The duties of the management company or of the depositary in respect of the common fund shall respectively cease:

- a) in the case of withdrawal of the management company, provided that it is replaced by another authorised management company within the meaning of Article 6 of this Law;
- b) in the case of voluntary withdrawal of the depositary or of its removal by the management company; until it is replaced, which must happen within two months, the depositary shall take all necessary steps for the good preservation of the interest of the unitholders;
- c) where the management company 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;
- 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.

**Article 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 by the management company or by the depositary in accordance with the subparagraphs b), c), d) and e) of Article 19, if they have not been replaced within two months without prejudice to the specific circumstance addressed in subparagraph 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 fourth 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 trade and companies register 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 Va of Title I of the Law of 19 December 2002 on the trade and companies register and the accounting practices and annual accounts of undertakings, as amended, and in at least two newspapers with adequate circulation, one of which at least must be a Luxembourg newspaper. Failure to do so implies that the lodging and publication shall be made by the CSSF at the expense of the common fund.”<sup>13</sup>

(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.

**Article 21.** The net assets of a common fund may not be less than one million two hundred fifty thousand Euro (1,250,000 Euro).

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<sup>13</sup> Law of 27 May 2016

This minimum must be reached within a period of twelve months following the authorisation of the common fund.

A grand-ducal regulation may increase such minimum amount up to a maximum of two million five hundred thousand Euro (2,500,000 Euro).

**Article 22.** The management company must without delay inform the CSSF 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 by the CSSF to the management company to put the common fund into liquidation shall be lodged with the trade and companies register 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 Va of Title I of the Law of 19 December 2002 on the trade and companies register and the accounting practices and annual accounts of undertakings, as amended, and in at least two newspapers with adequate circulation, one of which at least must be a Luxembourg newspaper. Failure to do so implies that the lodging and publication shall be made by the CSSF at the expense of the common fund.”<sup>14</sup>

**Article 23.** Neither the management company, nor the depositary, acting on behalf of the common fund may grant loans to unitholders of the common fund.

**Article 24.** For funds to which this Law applies, the words "common fund" or "FCP" are completed by the words "specialised investment fund" or "FIS"<sup>15</sup>.

### Chapter 3. – Investment companies with variable capital

**Article 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<sup>16</sup>, a partnership limited by shares<sup>17</sup>, “a limited partnership<sup>18</sup>, a special limited partnership<sup>19</sup>,”<sup>20</sup> a limited company<sup>21</sup> or a cooperative in the form of a public limited company<sup>22</sup>,
- the exclusive object of which 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
- the securities “or partnership interests”<sup>23</sup> of which are reserved to one or several well-informed investors, and
- the articles of incorporation “or partnership agreement”<sup>24</sup> of which provide that the amount of capital shall at all times be equal to the net asset value of the company.

**Article 26.** (Law of 26 March 2012) “(1) SICAVs are subject to the general provisions applicable to commercial companies, as far as it is not waived by this law.

(2) “Where the articles of incorporation or partnership agreement of a SICAV and any amendment to them are recorded in a notarial deed, the latter shall be drawn up in French, German or English as the appearers choose.”<sup>25</sup> By way of derogation from the provisions of the decree of 24 Prairial, year XI, where the notarial deed is drawn up in English, the requirement to append a translation in one of the official languages when it is registered is not applicable. The requirement neither applies to the other deeds which shall be recorded in notarial form, such as notarial deeds drawing-up reports of shareholders' meeting of a SICAV or recording a merger project regarding a SICAV.

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<sup>14</sup> Law of 27 May 2016

<sup>15</sup> "FIS" stands for the French abbreviation of "*Fonds d'Investissement Spécialisé*"

<sup>16</sup> *société anonyme*

<sup>17</sup> *société en commandite par actions*

<sup>18</sup> *société en commandite simple*

<sup>19</sup> *société en commandite spéciale*

<sup>20</sup> Law of 12 July 2013

<sup>21</sup> *société à responsabilité limitée*

<sup>22</sup> *société coopérative organisée sous forme de société anonyme*

<sup>23</sup> Law of 12 July 2013

<sup>24</sup> Law of 12 July 2013

<sup>25</sup> Law of 12 July 2013



(3) By way of derogation from Article 73, subparagraph 2 of the Law of 10 August 1915 on commercial companies, as amended, SICAVs under this chapter and which 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 transmit the annual accounts, the report of the *réviseur d'entreprises agréé* (approved statutory auditor), the management report and, if applicable, the observations of the supervisory board to the registered shareholders at the same time as the convening notice for the annual general meeting. The convening notice indicates the place and the way in which these documents are made available to the shareholders and specifies that every shareholder may request that the annual accounts, the report of the *réviseur d'entreprises agréé* (approved statutory auditor), the management report and, if applicable, the observations of the supervisory board be sent to him.

(4) As regards SICAVs which 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 for the general meetings of shareholders may set out that the quorum of the presence at the general meeting be determined according to the shares issued and outstanding at midnight on the fifth day prior to the general meeting (Luxembourg time) (referred to as "Record Date"). The rights of a shareholder to participate in a general meeting and to exercise the voting right attached to his shares are determined according to the shares held by this shareholder at the Record Date."

**Article 27.** The subscribed capital of the SICAV "(...)"<sup>26</sup> increased by the share premium "or the value of the amount constituting partnership interests"<sup>27</sup>, may not be less than one million two hundred fifty thousand Euro (1,250,000 Euro). This minimum must be reached within a period of twelve months following the authorisation of the SICAV. A grand ducal regulation may increase such minimum amount up to a maximum of two million five hundred thousand Euro (2,500,000 Euro).

**Article 28.** (1) Subject to any contrary provisions of its articles of incorporation "or partnership agreement"<sup>28</sup>, a SICAV may issue its securities "or partnership interests"<sup>29</sup> at any time.

(2) Securities "or partnership interests"<sup>30</sup> 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 the partnership agreement"<sup>31</sup>.

(3) The capital of a SICAV must be entirely subscribed, and at least 5% of the subscription amount for shares or units 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 the partnership agreement"<sup>32</sup>, 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"<sup>33</sup>.

(5) The articles of incorporation "or the partnership agreement"<sup>34</sup> 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 without delay inform the CSSF.

Where the interest of the "investors"<sup>35</sup> so requires, 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 the partnership agreement"<sup>36</sup> shall describe the nature of the expenses to be borne by the SICAV.

(7) The "securities or partnership interests"<sup>37</sup> of a SICAV shall have no par value.

(8) "A security or partnership interest"<sup>38</sup> 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.

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<sup>26</sup> Law of 12 July 2013

<sup>27</sup> Law of 12 July 2013

<sup>28</sup> Law of 12 July 2013

<sup>29</sup> Law of 12 July 2013

<sup>30</sup> Law of 12 July 2013

<sup>31</sup> Law of 12 July 2013

<sup>32</sup> Law of 12 July 2013

<sup>33</sup> Law of 12 July 2013

<sup>34</sup> Law of 12 July 2013

<sup>35</sup> Law of 12 July 2013

<sup>36</sup> Law of 12 July 2013

<sup>37</sup> Law of 12 July 2013

<sup>38</sup> Law of 12 July 2013

**Article 29.** (1) Variations in the capital shall be effected *ipso jure* and without compliance with measures regarding publication and entry in the trade and companies register.

(2) Repayments to investors following a reduction of capital shall not be subject to any restriction other than the one provided for by Article 31(1).

(3) In the case of issue of "new securities or partnership interests"<sup>39</sup>, pre-emptive rights may not be claimed by existing shareholders or unitholders unless the articles of incorporation provide for such a right by express provision.

**Article 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"<sup>40</sup> at the meeting.

(2) If the capital of the SICAV falls below one fourth 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 fourth of the securities or partnership interests represented"<sup>41</sup> 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 fourth 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, if the capital of the SICAV has fallen below two thirds of the minimum capital, as defined in Article 27, inform without delay the CSSF. In such case, the CSSF may, having regard to the circumstances, require the managers to put the SICAV into liquidation.

**Article 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.

**Article 32.** For companies to which this Law applies, the words "partnership limited by shares", "limited partnership, special limited partnership,"<sup>42</sup> "limited company", "public limited company", or "cooperative in the form of a public limited company" are completed by the words "investment company with variable capital - specialised investment fund" or "SICAV-FIS".

**Article 33.** The custody of the assets of a SICAV must be entrusted to a depository.

**Article 34.** (Law of 12 July 2013) "(1) The depository must either have its registered office in Luxembourg or be established in Luxembourg if its registered office is in another State.

(2) Without prejudice to the provision laid down in the second subparagraph of this paragraph, the depository shall be a credit institution or an investment firm within the meaning of the Law of 5 April 1993 on the financial sector, as amended. An investment firm shall only be eligible as a depository if this investment firm fulfils the conditions laid down in Article 19(3) of the Law of 12 July 2013 on alternative investment fund managers.

For SICAVs which have no redemption right 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 which shall be held in custody in accordance with Article 19(8)(a) of the Law of 12 July 2013 on 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 said law, the depository may also be an entity incorporated under Luxembourg law which has the status of professional depository of assets other than financial instruments within the meaning of Article 26-1 of the Law of 5 April 1993 on the financial sector, as amended."

(3) The depository's liability shall not be affected by the fact it has entrusted all or some of the assets in its custody to a third party.

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<sup>39</sup> Law of 12 July 2013

<sup>40</sup> Law of 12 July 2013

<sup>41</sup> Law of 12 July 2013

<sup>42</sup> Law of 12 July 2013

**Article 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 wrongful failure to perform its obligations or its wrongful improper performance thereof.

**Article 36.** The duties of the depositary regarding the SICAV shall respectively cease:

- 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 a composition with creditors, has obtained a suspension of payment, has been put under court controlled management or has been the subject of a similar proceeding 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”<sup>43</sup>.

**Article 37.** In carrying out its role as depositary, the depositary must act solely in the interest of the investors.

#### **Chapter 4. – Specialised investment funds which have not been constituted as common funds or SICAVs**

**Article 38.** This Chapter is applicable to all specialised investment funds subject to this Law which have not been constituted as common funds or SICAVs.

**Article 39.** (1) The subscribed capital, increased by the share premium, of specialised investment funds falling within this Chapter, may not be less than one million two hundred and fifty thousand Euro (1,250,000 Euro).

This minimum must be reached within a period of twelve months following their authorisation. A gradual regulation may increase such minimum amount up to a maximum of two million five hundred thousand Euro (2,500,000 Euro).

(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”<sup>44</sup> at the meeting.

(3) If the capital has fallen below one fourth 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 fourth 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 fourth 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, 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 without delay the CSSF. In such case, the CSSF may, having regard to the circumstances, require the directors or managers to put the specialised investment fund into liquidation.

(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.

**Article 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.”<sup>45</sup>

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<sup>43</sup> Law of 12 July 2013

<sup>44</sup> Law of 12 July 2013

<sup>45</sup> Law of 26 March 2012

(3) The denomination of the specialised investment funds to which this Chapter 4 applies is completed by the words "specialised investment fund" or "FIS".

## Chapter 5. – Authorisation and supervision

**Article 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.

**Article 42.** (*Law of 26 March 2012*) “(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 be authorised only if the CSSF has approved its 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 have sufficient experience, also in relation to the type of the specialised investment fund concerned. The identity of the directors of the specialised investment fund and of every person succeeding them in office, must be communicated forthwith to the CSSF. The appointment of the directors and of every person succeeding them in office, is subject to approval by 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 case of limited partnerships and special limited partnerships, the manager(s) whether or not it (they) is (are) general partner(s),”<sup>46</sup> 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) Besides the conditions of paragraphs (2) and (3), the authorisation under paragraph (1) is subject to the communication to the CSSF of the identity of the persons in charge of the investment portfolio management. These persons must be of sufficiently good repute and have sufficient experience in view of the type of specialised investment fund concerned.

The appointment of the persons referred to in subparagraph 1 and every person succeeding them in office is subject to the approval by the CSSF.

(5) The replacement of the management company or depositary and any amendment to the constitutive documents of the specialised investment fund are subject to approval by the CSSF.

(6) The authorisation granted under paragraph (1) implies that the specialised investment funds must spontaneously submit to the CSSF a complete, consistent and understandable written notification of all changes concerning the substantial information on which the CSSF based itself to process the authorisation request and all changes concerning the directors referred to in paragraph (3) and the persons in charge of the investment portfolio management referred to in paragraph (4) of this article.”

(*Law of 26 March 2012*)

**“Article 42a.** (1) Specialised investment funds subject to this Law shall put in place appropriate risk management systems in order to identify, measure, manage and monitor the risks arising from positions and their contribution to the general risk profile of the portfolio.

(2) In addition, specialised investment funds subject to this Law shall be structured and organised in such way as to minimise the risk of investors' interests being prejudiced by conflicts of interest between specialised investment funds and, as the case may be, any person contributing to the specialised investment fund or any person directly or indirectly related to the specialised investment fund. In case of possible conflicts of interests, the specialised investment fund ensures the safeguard of investors' interests.

(3) The arrangements made to implement paragraphs (1) and (2) are laid down by way of CSSF regulation.”

(*Law of 26 March 2012*)

**“Article 42b.** 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 power to carry out on their behalf one or more of their own functions. In that case, the following conditions have to be complied with:

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<sup>46</sup> Law of 12 July 2013

- a) the CSSF must be informed in an appropriate manner;
- b) the mandate may not prevent the effectiveness of supervision over the specialised investment fund, and in particular it must neither prevent the specialised investment fund from acting, nor the specialised investment fund from being managed, in the best interests of the investors;
- c) when the delegation concerns the investment portfolio management, the mandate may only be given to natural or legal persons which are authorised or registered for the purpose of investment portfolio management and are subject to prudential supervision; where this mandate is given to a third-country natural or legal person subject to prudential supervision, cooperation between the CSSF and the supervisory authority of that country must be ensured;
- d) when the conditions of point c) are not fulfilled, the delegation may only become effective if the CSSF approves the choice of the natural or legal person to which the functions will be delegated; in the latter case, these persons shall be of sufficiently good repute and have sufficient experience in view of the type of specialised investment fund concerned;
- e) the directors of the specialised investment fund shall be able to establish that the natural or legal person to which the functions will be delegated will be qualified and capable to carry out these functions and that a sufficient due diligence has been implemented for its selection;
- f) measures shall exist which enable the directors of the specialised investment fund to effectively and at all times monitor the delegated function;
- g) the mandate shall not prevent the directors of the specialised investment fund to give at any time instructions to the natural or legal person to which the functions are delegated and to withdraw the mandate with immediate effect to protect the interest of investors;
- h) no mandate relating to the main function of investment management shall be given to the depositary;
- i) the offering document of the specialised investment fund must list the delegated functions.”

**Article 43.** (1) Authorised specialised investment funds shall be entered by the CSSF on a list.

Such entry shall be tantamount to authorisation and shall be 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. The said list and any amendments made thereto shall be published in the *Mémorial*<sup>47</sup> by the CSSF.

(2) The entering and the maintaining of 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 specialised investment funds subject to this Law and the distribution, placing or sale of their “securities or partnership interests”<sup>48</sup>.

*(Law of 12 July 2013)*

“**Article 44.** The fact that a specialised investment fund is entered on the list referred to in Article 43(1) shall not, under any circumstances, be described in any way whatsoever as a positive assessment made by the CSSF of the soundness 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.”

**Article 45.** (Law of 26 March 2012) “(1) The decisions to be adopted by the CSSF in implementation of this Law shall state the reasons on which they are based and, unless any 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 CSSF’s decisions concerning the granting, refusal or withdrawal of the authorisations provided for in this Law as well as the CSSF’s decisions concerning administrative fines imposed pursuant to Article 51 of this Law may be referred to the administrative court which deals with the substance of the case. The action shall be filed within one month from the date of notification of the challenged decision, or else shall be time-barred.

(3) For the purposes of application of this Law, the CSSF shall be given all supervisory and investigatory powers for the exercise of its functions. The powers of the CSSF include the right to:

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<sup>47</sup> The *Mémorial B, Recueil Administratif et Economique* is the part of the official gazette in which certain administrative publications are made.

<sup>48</sup> Law of 12 July 2013

- a) have access to any document in any form whatsoever and to receive a copy of it;
- b) demand information from any person and if necessary to summon and question a person with a view to obtaining information;
- c) carry out on-site inspections or investigations by itself or by its delegates of the persons subject to its supervision pursuant to this Law;
- d) require existing telephone conversations and existing data records;
- e) require the cessation of any practice that is contrary to the provisions laid down for the implementation of this Law;
- f) request the freezing or sequestration of assets with the President of the district court of and in Luxembourg deciding on request;
- g) request temporary prohibition of exercising professional activities with respect to persons subject to its prudential supervision, as well as members of the management or supervisory bodies, employees and tied agents linked to these persons;
- h) require the authorised investment companies, management companies or depositaries that they provide information;
- i) lay down any type of measure to ensure that investment companies, management companies and depositaries continue to comply with legal requirements of this Law;
- j) require, in the interest of “investors”<sup>49</sup> or of the public, the suspension of issue, repurchase or redemption of “securities or partnership interests”<sup>50</sup>;
- k) withdraw the authorisation granted to a specialised investment fund, management company or depositary;
- l) transmit information to the State Prosecutor for criminal prosecution; and
- m) instruct *réviseurs d’entreprises agréés* (approved statutory auditors) or experts to carry out verifications or investigations.

#### **Chapter 6. – Dissolution and liquidation**

**Article 46.** The decision of the CSSF withdrawing a specialised investment fund subject to this Law from the list provided for in Article 43(1) shall, as from the notification thereof to such specialised investment fund and at its expense, until the decision has become final, *ipso jure* entail for such specialised investment fund suspension of any payment by said specialised investment fund, prohibition for such specialised investment fund, on pain of nullity, to take any measures other than protective measures, except with the authorisation of the supervisory commissioner<sup>51</sup>. The CSSF shall, *ipso jure*, hold the office of supervisory commissioner, unless at its request, the District Court<sup>52</sup> 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<sup>53</sup> in the district within which the specialised investment fund 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 make an order in public session, without hearing the parties. If it deems necessary, it shall convene the parties by notification from the registrar<sup>54</sup> at the latest within three days from the lodgement of the application. It shall hear the parties in chambers<sup>55</sup> and give the decision in public session.

The written authorisation of the supervisory commissioners is required for all measures 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.

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<sup>49</sup> Law of 12 July 2013

<sup>50</sup> Law of 12 July 2013

<sup>51</sup> *Commissaire de surveillance.*

<sup>52</sup> *Tribunal d’Arrondissement.*

<sup>53</sup> *Greffe du tribunal.*

<sup>54</sup> *Greffier.*

<sup>55</sup> *Chambre du conseil.*

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 and 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 administrative court amends the withdrawal decision in accordance with paragraph (2) of Article 45 above, the supervisory commissioner shall be deemed to have resigned.

**Article 47.** (1) The District Court dealing with commercial matters shall, at the request of the State Prosecutor<sup>56</sup>, acting on its own motion 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(1) has finally been refused or withdrawn. "The district court, sitting in commercial matters, orders, upon the State Prosecutor's request, acting on its own or upon the CSSF's request, the dissolution and the liquidation of one or several compartments of a specialised investment fund referred to in this Law, in case the authorisation concerning the compartment(s) will definitely be refused or withdrawn."<sup>57</sup>

When ordering the liquidation, the Court shall appoint a reporting judge<sup>58</sup> 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 in bankruptcy. 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 specialised investment fund, receive all payments, grant releases with or without discharge, realise all the securities of the specialised investment fund and reemploy the proceeds therefrom, issue or endorse any assets, compound or compromise all claims. They may alienate immovable property of the specialised investment fund by 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 the 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 liquidation shall terminate all seizures effected at the instance of general creditors who are not secured by charges<sup>59</sup> 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"<sup>60</sup> the sums or amounts due to them.

(5) The liquidators may convene at their own initiative, and must convene at the request of "investors"<sup>61</sup> representing at least one fourth of the assets of the specialised investment fund, a general meeting of "investors"<sup>62</sup> for the purpose of deciding whether instead of an outright liquidation it is 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 capital, by a majority of two thirds of the votes of the investors present or represented."<sup>63</sup>

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<sup>56</sup> *Procureur d'Etat.*

<sup>57</sup> Law of 26 March 2012

<sup>58</sup> *Juge-commissaire.*

<sup>59</sup> *Créanciers chirographaires et non-privilégiés.*

<sup>60</sup> Law of 12 July 2013

<sup>61</sup> Law of 12 July 2013

<sup>62</sup> Law of 12 July 2013

<sup>63</sup> Law of 12 July 2013

(6) The court decisions pronouncing the dissolution and ordering the liquidation of the specialised investment fund shall be published in the "Recueil électronique des sociétés et associations, in accordance with the provisions of Chapter Va of Title I of the Law of 19 December 2002 on the trade and companies register and the accounting practices and annual accounts of undertakings, as amended"<sup>64</sup> and in two newspapers with adequate circulation specified by the Court, one of which at least 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 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 funds of the specialised investment fund and shall submit the accounts and supporting documents thereof. The Court shall appoint auditors (*commissaires*) 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 designed 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 payment into court<sup>65</sup> of the sums and funds due to creditors, "investors"<sup>66</sup> 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 misconduct, five years after the discovery thereof.

(11) The provisions of this Article shall equally apply 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.

**Article 48.** (1) Specialised investment funds shall, after the dissolution, be deemed to exist for the purpose of 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 specialised investment fund in liquidation shall indicate that it is in liquidation.

**Article 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 honourability 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.

**Article 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"<sup>67</sup> whose holders failed to present themselves at the time of the closure of the liquidation, shall be paid to the public trust office<sup>68</sup> to be held for the benefit of the persons entitled thereto.

**Article 51.** (*Law of 26 March 2012*) "(1) The directors or members of the management, as appropriate, managers, directors of specialised investment funds, of management companies, depositaries and any undertaking contributing to the activities of a specialised investment fund subject to the supervision of

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<sup>64</sup> Law of 27 May 2016

<sup>65</sup> *Consignation*.

<sup>66</sup> Law of 12 July 2013

<sup>67</sup> Law of 12 July 2013

<sup>68</sup> *Caisse de Consignation*.



the CSSF as well as the liquidators in the case of voluntary liquidation of a specialised investment fund may have imposed upon them by the said authority an administrative fine of 125 to 12,500 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 52 of this Law.

(2) The same administrative fine is imposed upon those who infringe the provisions of Article 44.

(3) The CSSF may disclose to the public any administrative fine issued pursuant to this article, unless such disclosure would seriously distress the financial markets, harm the investors' interests or cause disproportionate damage to the parties involved."

#### **Chapter 7. – Establishment of an offering document and an annual report**

**Article 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 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 trade and companies register and the accounting practices 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, 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 of the results of the specialised investment fund. However, Articles 56 and 57 of the Law of 19 December 2002 on the trade and companies register and the accounting practices and annual accounts of undertakings apply to specialised investment funds subject to Chapter 3 and Chapter 4 of this Law.

(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 shall be exempt from the obligation of consolidating the companies owned for investment purposes.

*(Law of 26 March 2012)*

"(6) As regards specialised investment funds referred to in this Law, the contributions in kind are subject to a report drawn up by a *réviseur d'entreprises agréé* (approved statutory auditor) when the contribution occurs. The conditions and rules set out in Article 26-1 of the Law of 10 August 1915 on commercial companies are applicable to the drawing-up of the report referred to in this article, notwithstanding the legal form adopted by the specialised investment fund concerned."

**Article 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.

**Article 54.** *(Law of 26 March 2012)* "The essential elements of the offering document must be up to date when new "securities or partnership interests"<sup>69</sup> are issued to new investors. Any change of these essential elements of the offering document is subject to CSSF approval."

**Article 55.** (1) Luxembourg specialised investment funds must have the accounting information given in their annual report audited by a *réviseur d'entreprises agréé* (approved statutory auditor).

"The report of the *réviseur d'entreprises agréé* (approved statutory auditor) and his qualifications, if any, are set out in full in each annual report."<sup>70</sup>

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<sup>69</sup> Law of 12 July 2013

<sup>70</sup> Law of 18 December 2009

"The *réviseur d'entreprises agréé* (approved statutory auditor) must justify of an appropriate professional experience."<sup>71</sup>

"(2) The *réviseur d'entreprises agréé* (approved statutory auditor) shall be appointed and remunerated by the specialised investment fund."<sup>72</sup>

"(3) The *réviseur d'entreprises agréé* (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 such fact or decision is likely to constitute a material 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."<sup>73</sup>

"The *réviseur d'entreprises agréé* (approved statutory auditor) shall likewise have a duty to promptly report to the CSSF, in the accomplishment of his duties referred to in the preceding subparagraph in respect of a specialised investment fund, any fact or decision concerning the specialised investment fund and meeting the criteria referred to in the preceding subparagraph 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 specialised investment fund or while carrying any other legal tasks concerning such other undertaking."<sup>74</sup>

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 *réviseur d'entreprises agréé* (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."<sup>75</sup>

"The *réviseur d'entreprises agréé* (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 *réviseur d'entreprises agréé* (approved statutory auditor) has or ought to have knowledge in connexion with the discharge of his duties. The same applies if the *réviseur d'entreprises agréé* (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."<sup>76</sup>

"The disclosure in good faith to the CSSF by a *réviseur d'entreprises agréé* (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 *réviseur d'entreprises agréé* (approved statutory auditor)."<sup>77</sup>

(Law of 21 December 2012)

"Every Luxembourg specialised investment fund subject to the supervision of the CSSF which must have its accounts audited by a *réviseur d'entreprises agréé* (approved statutory auditor), must spontaneously communicate to the CSSF the reports and written comments issued by the *réviseur d'entreprises agréé* (approved statutory auditor) in the framework of its audit of the annual accounting documents.

The CSSF may set rules regarding the scope of the mandate for the audit of annual accounting documents and the content of the reports and written comments of the *réviseur d'entreprises agréé*

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<sup>71</sup> Law of 18 December 2009

<sup>72</sup> Law of 18 December 2009

<sup>73</sup> Law of 18 December 2009

<sup>74</sup> Law of 18 December 2009

<sup>75</sup> Law of 18 December 2009

<sup>76</sup> Law of 18 December 2009

<sup>77</sup> Law of 18 December 2009

(approved statutory auditor), as referred to in the previous subparagraph, without prejudice to the legal provisions governing the content of the statutory auditor's report."

"The CSSF may request a *réviseur d'entreprises agréé* (approved statutory auditor) to perform a control on one or several particular aspects of the activities and operations of a specialised investment fund."<sup>78</sup> 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 fund whose *réviseur d'entreprises agréé* (approved statutory auditor) does not satisfy the conditions or does not discharge the obligations prescribed in this Article."<sup>79</sup>

(5) The institution of supervisory auditors<sup>80</sup> 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 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. "Upon completion of the liquidation, a report on the liquidation shall be drawn up by the *réviseur d'entreprises agréé* (approved statutory auditor)."<sup>81</sup> 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.

**Article 56.** Specialised investment funds must send their offering document and any amendments thereto, as well as their annual report, to the CSSF.

**Article 57.** (1) The offering document and the last published annual report shall on request be supplied to subscribers free of charge.

(2) The annual report shall on request be supplied to investors free of charge.

#### **Chapter 8. – Transmission of other information to the CSSF**

**Article 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**

**Article 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 State 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 of the District Court, of the Court of Appeals or of the Supreme Court which delivers this injunction, is published by the State Prosecutor and at the expense of the person sentenced in two Luxembourg or foreign newspapers with adequate circulation.

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<sup>78</sup> Law of 18 December 2009

<sup>79</sup> Law of 18 December 2009

<sup>80</sup> *Commissaire aux comptes* – A supervisory auditor under company law is an organ of the company with a certain control and surveillance function.

<sup>81</sup> Law of 18 December 2009

## Chapter 10. – Criminal law provisions

**Article 60.** A penalty of imprisonment from one month to one year and a fine of five hundred to twenty-five thousand Euro or either of such penalty 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 (*commissaire*) 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.

**Article 61.** (1) A penalty of imprisonment from one to six months and a fine of five hundred to twenty-five thousand Euro or either of such penalties shall be imposed upon:

- 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 one fourth 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 Euro shall be imposed upon any persons who in infringement of Article 59 purport to 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.

**Article 62.** A penalty of imprisonment from one month to one year and a fine of five hundred to twenty-five thousand Euro or either of such 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).

**Article 63.** A penalty of imprisonment of one month to one year and a fine of five hundred to twenty-five thousand Euro or either of such 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.

**Article 64.** A penalty of imprisonment of three months to two years and a fine of five hundred to fifty thousand Euro 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 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.

**Article 65.** (1) A penalty of imprisonment from one month to one year and a fine of five hundred to twenty-five thousand Euro or either such 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 of them only 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. – Fiscal provisions

**Article 66.** (1) Apart from the capital duty<sup>82</sup> levied on the contribution of capital to civil and commercial companies and the subscription tax<sup>83</sup> mentioned in Article 68 below, no other tax shall be payable by the specialised investment funds referred to in this Law.

(2) Without prejudice to the provisions of the Law of 21 June 2005 implementing in 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 deduction at source. They are not taxable if received by non residents.

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<sup>82</sup> *Droit d'apport.*

<sup>83</sup> *Taxe d'abonnement.*

**Article 67.** “(...)”<sup>84</sup>

**Article 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) Are exempt from the subscription tax:

- 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”<sup>85</sup> “or by Article 46 of the Law of 23 July 2016 on reserved alternative investment funds”<sup>86</sup>;
- b) specialised investment funds as well as individual compartments of specialised investment funds with multiple compartments:
  - (i) the exclusive object of which is the collective investment in money market instruments and the placing of deposits with credit institutions, and,
  - (ii) the weighted residual portfolio maturity of which does not exceed 90 days , and,
  - (iii) that have obtained the highest possible rating from a recognised rating agency;
- c) specialised investment funds the “securities or partnership interests”<sup>87</sup> of which 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 own, in order to provide their employees with retirement benefits.

(Law of 18 December 2009)

“d) specialised investment funds as well as individual compartments of specialised funds with multiple compartments the main object of which is the investment in microfinance institutions.”

(3) A grand-ducal regulation shall determine the conditions necessary for the application of the exemption, and fix the criteria with which the money market instruments referred to above must comply.

(4) The taxable basis of the subscription tax shall be the entire net assets of the specialised investment funds valued on the last day of each quarter.

(5) The provisions of paragraph (2)(c) apply *mutatis mutandis* to:

- individual compartments of a specialised investment fund with multiple compartments the “securities or partnership interests”<sup>88</sup> of which compartments 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 own, in order to provide their employees with retirement benefits, and,
- individual classes created within a specialised investment fund or within a compartment of a specialised investment fund with multiple compartments the “securities or partnership interests”<sup>89</sup> of which classes 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 own, in order to supply their employees with retirement benefits.

(Law of 18 December 2009)

“(6) A grand-ducal regulation shall lay down the criteria which specialised investment funds as well as individual compartments of specialised investment funds with multiple compartments referred to in paragraph 2(d), shall fulfil.”

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<sup>84</sup> Law of 19 December 2008

<sup>85</sup> Law of 17 December 2010

<sup>86</sup> Law of 23 July 2016

<sup>87</sup> Law of 12 July 2013

<sup>88</sup> Law of 12 July 2013

<sup>89</sup> Law of 12 July 2013

(Law of 26 March 2012)

“(7) Any condition for the pursuit of the exclusive object laid down in this article does not prevent liquidity management on an incidental basis or the use of techniques and instruments for the purpose of hedging or efficient portfolio management.”

**Article 69.** The administration for registration<sup>90</sup> is responsible for 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 fall outside the framework of the activities authorised by this Law, the fiscal 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

**Article 70.** (1) Investment companies entered on the list provided for by Article 43(1) may be converted into SICAVs and their “documents of incorporation”<sup>91</sup> may be brought into harmony with the provisions of Chapter 3 of this Law by resolution of a general meeting passed at a majority of two thirds of the votes of the shareholders or holders of units present or represented regardless of the portion of the capital represented.

(2) Common funds referred to in this Law may on the same conditions as those laid down in paragraph (1) above, convert themselves into a SICAV governed by this Law.

**Article 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.

(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”<sup>92</sup> 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 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 between investors, each compartment will be deemed to be a separate entity, unless a clause included in the constitutive documents provides differently.

(6) Each compartment of a specialised investment fund may be separately liquidated without such 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(1) of this Law. “In this case, when the specialised investment fund is a legal entity, as soon as the event giving rise to liquidation of the specialised investment fund occurs, the issue of units shall be prohibited, on penalty of nullity, except for the purpose of liquidation.”<sup>93</sup>

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<sup>90</sup> *Administration de l'Enregistrement*

<sup>91</sup> Law of 12 July 2013

<sup>92</sup> Law of 12 July 2013

<sup>93</sup> Law of 26 March 2012

(Law of 26 March 2012)

“(7) The authorisation of a compartment of a specialised investment fund referred to in this Law and the maintaining of this authorisation are subject to observance of all legislative, regulatory or contractual provisions relating to the organisation and operation. The withdrawal of the authorisation of a compartment does not give rise to the withdrawal of the specialised investment fund from the list referred to in Article 43(1).”

(Law of 26 March 2012)

“(8) A compartment of a specialised investment fund may, subject to the conditions set out in the offering document, subscribe, acquire and/or hold “securities or partnership interests”<sup>94</sup> to be issued or already issued by one or several other compartments of the same specialised investment fund, without this specialised investment fund, when it is a legal entity, being subject to the requirements regarding the subscription, acquisition and/or holding by a company of its own shares set out in the Law of 10 August 1915 on commercial companies, under the conditions however, that:

- the target compartment does not, in turn, invest in the compartment invested in this target compartment; and
- the voting rights, if any, which might be attached to the securities concerned will be suspended for as long as they are held by the relevant compartment and without prejudice to an appropriate treatment in accounting and in the periodical reports; and
- in any case, as long as these securities are held by the specialised investment fund, their value shall not be taken into account for the calculation of the specialised investment fund's net assets for the control of the minimum threshold of net assets imposed by this Law.”

### Chapter 13. – Amending provisions

**Article 72.** Paragraph (3) of Article 129 of the amended Law of 20 December 2002 relating to undertakings for collective investment, 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”.

**Article 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

**Article 74.** The Law of 19 July 1991 concerning undertakings for collective investment the securities of which are not intended to be placed with the public is repealed.

**Article 75.** All references in legal and regulatory texts to “undertakings governed by the Law of 19 July 1991 concerning undertakings for collective investment the securities of which 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”.

**Article 76.** Undertakings governed by the Law of 19 July 1991 concerning undertakings for collective investment the securities of which 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 the securities of which are not intended to be placed with the public shall be read as references to this Law.

(Law of 26 March 2012)

“**Article 76a.** The specialised investment funds created before the date of entry into force of the Law of 26 March 2012 amending the Law of 13 February 2007 relating to specialised investment funds must comply with the provisions of Article 2(3) and Article 42a of this Law by 30 June 2012. These investment funds must comply with the provisions of Article 42b of this Law by 30 June 2013 provided that these provisions are applicable to them.”

(Law of 8 April 2019)

“**Article 76b.** Where the investment rules of a specialised investment fund are no longer complied with as a result of the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union, a maximum period of 12 months shall be granted to the specialised investment fund for the regularisation of the breaches resulting from such withdrawal. This regularisation shall be made

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<sup>94</sup> Law of 12 July 2013

by taking into account the stability of the financial markets and the interest of the unit-holders. This regularisation period shall be granted only in relation to the breaches resulting from positions taken prior to the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union.”

#### **Chapter 15. – Final provisions**

**Article 77.** This Law may, in abbreviation, be referred to as the "Law of 13 February 2007 relating to specialised investment funds".

**Article 78.** This Law enters into force on 13 February 2007.



**(Law of 12 July 2013)**

**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**

**Article 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 on alternative investment fund managers or under Chapter II of Directive 2011/61/EU.

**Article 80.** (1) Any specialised investment fund subject to this part shall 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 on 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(3) of the aforementioned directive where the specialised investment fund is managed by an AIFM established in a third country.

(2) The AIFM shall be determined in accordance with the provisions of Article 4 of the Law of 12 July 2013 on 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 on 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 shall, in addition to the authorisation required under Article 42(1) of this Law, be authorised as an AIFM under Chapter 2 of the Law of 12 July 2013 on alternative investment fund managers. The relevant specialised investment fund shall ensure at all times compliance with all provisions of the aforementioned law, provided that those provisions are applicable to it.

**Article 81.** (1) The assets of a specialised investment fund subject to this part shall be entrusted to a depositary, appointed in accordance with the provisions of Article 19 of the Law of 12 July 2013 on alternative investment fund managers.

(2) The depositary shall 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 subparagraph of this paragraph, the depositary shall be a credit institution or an investment firm within the meaning of the Law of 5 April 1993 on the financial sector, as amended. An investment firm shall only be eligible as depositary if this investment firm fulfils the conditions laid down in Article 19(3) of the Law of 12 July 2013 on 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 which shall be held in custody in accordance with Article 19(8)(a) of the Law of 12 July 2013 on alternative investment fund managers or which generally invest in issuers or non-listed companies in order to potentially acquire control over such companies in accordance with Article 24 of said law, the depositary may also be an entity incorporated under Luxembourg law which has the status of professional depositary of assets other than financial instruments referred to in Article 26-1 of the Law of 5 April 1993 on the financial sector, as amended.

(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 on alternative investment fund managers.

**Article 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 on alternative investment fund managers and in the delegated acts provided for in Directive 2011/61/EU.

**Article 83.** By way of derogation from Article 52(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 on alternative investment fund managers and in the delegated acts provided for in Directive 2011/61/EU.

**Article 84.** As far as the information to be provided to investors is concerned, specialised investment funds subject to this part shall comply with the rules laid down in Article 21 of the Law of 12 July 2013 on alternative investment fund managers and in the delegated acts provided for in Directive 2011/61/EU.

**Article 85.** The AIFM of a specialised investment fund falling within the scope of this part is authorised to delegate to third parties the task of carrying out on its behalf, one or more of its functions. In this case, the delegation of functions by the AIFM shall comply with all the conditions provided for in Article 18 of the Law of 12 July 2013 on 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 on alternative investment fund managers, subject to the application of Article 66(3) of the aforementioned directive where the specialised investment fund is managed by an AIFM established in a third country.

**Article 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 on 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, respectively, 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(3) of the aforementioned directive where the specialised investment fund is managed by an AIFM established in a third country.

## Chapter 2 - Transitional provisions

**Article 87.** (1) Without prejudice to the transitional provisions provided for in Article 58 of the Law of 12 July 2013 on 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 on 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 on alternative investment fund managers or under Chapter II of Directive 2011/61/EU shall comply with the provisions of this part 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 on 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 on 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 on 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 on alternative investment fund managers from the date they are established. These specialised investment funds shall 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, shall comply with the provisions of Part II of this Law from 22 July 2014 at the latest.

(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 on 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 alternative investment fund managers 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 on 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 on 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 on 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 on 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 on 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 on alternative investment fund managers whose subscription period for investors 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 on alternative investment fund managers, except for Article 20 and, where applicable, Articles 24 to 28 of the Law of 12 July 2013 on alternative investment fund managers, nor do they need to submit an application for authorisation under the Law of 12 July 2013 on 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,
  - changes in 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 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.