

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) and amending Article 167, first subparagraph, of the Law of 4 December 1967 on income tax

(Mém. A 2005, No 108)

as amended by

– the Law of 25 August 2006

1. on the European company (EC), the public limited company with an executive and supervisory board and the single-member public limited company;
2. amending the Law of 10 August 1915 on commercial companies, as amended, and certain other legal provisions;
3. amending the Law of 19 December 2002 on the trade and companies register and the accounting practices and annual accounts of undertakings;
4. amending the Law of 30 March 1988 relating to undertakings for collective investment, as amended;
5. amending the Law of 20 December 2002 relating to undertakings for collective investment;
6. amending the Law of 25 July 1990 on the status of directors representing the State or a public corporation in a public limited company;
7. amending the Law of 4 December 1992 on the information to be published when a significant holding in a listed company is acquired or disposed of;
8. amending 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)

(Mém. A 2006, No 152)

– 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 relating to 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 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,
- organising the audit profession,
- amending certain other legal provisions, and
- repealing the Law of 28 June 1984 on the organisation of the profession of company auditor, as amended

(Mém. A 2010, No 22)

– 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 272)

– 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 (SEPCAVs) and pension savings associations (ASSEPs), as amended;
 - the Law of 13 July 2005 on the activities and supervision of 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 of 16 October 1934 on fiscal adjustment, as amended;
 - the Law of 16 October 1934 on the valuation of assets and values, as amended;
 - the Law of 12 February 1979 on value added tax, as amended

(Mém. A 2013, No 119)

- the Law of 18 December 2015 amending:
 - the Law of 4 December 1967 on income tax, as amended;
 - the Law of 16 October 1934 on wealth tax, 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 pension savings companies with variable capital (SEPCAVs) and pension savings associations (ASSEPs), as amended
(Mém. A 2015, No 245)

- the Law of 15 March 2016 on OTC derivatives, central counterparties and trade repositories and transposing:

Directive 2013/14/EU of the European Parliament and of the Council of 21 May 2013 amending Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision, Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) and Directive 2011/61/EU on Alternative Investment Fund Managers in respect of over-reliance on credit ratings; and

implementing:

 1. Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009;
 2. Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories; and
 3. Regulation (EU) No 462/2013 of the European Parliament and of the Council of 21 May 2013 amending Regulation (EC) No 1060/2009 on credit rating agencies; and

amending:

 1. the Law of 23 December 1998 establishing a financial sector supervisory commission (“Commission de surveillance du secteur financier”), as amended;
 2. 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;
 3. the Law of 10 November 2009 on payment services, as amended;
 4. the Law of 17 December 2010 relating to undertakings for collective investment, as amended;
 5. the Law of 28 October 2011 implementing Regulation (EC) No 1060/2009 of 16 September 2009; and
 6. the Law of 12 July 2013 on alternative investment fund managers, as amended.
(Mém. A 2016, No 39)

- 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 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, 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)
- the Law of 23 July 2016 concerning the audit profession
- transposing Directive 2014/56/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts;
 - implementing Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC;
 - amending 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;
 - amending the Law of 10 August 1915 on commercial companies, as amended
 - repealing the Law of 18 December 2009 concerning the audit profession
(Mém. A 2016, No 141)

PART I

Definitions and Scope

Article 1. For the purposes of this law, the following terms shall have the meanings indicated hereunder:

1. "institution for occupational retirement provision", or "IORP", means an institution, irrespective of its legal form, operating on a funded basis, established separately from any sponsoring undertaking or trade for the purpose of providing retirement benefits in the context of an occupational activity on the basis of an agreement or a contract agreed:

- individually or collectively between the employer(s) and the employee(s) or their respective representatives, or,
- with self-employed persons, in compliance with the legislation of the home and host Member States, and which carries out activities directly arising therefrom”;

2. "pension fund" means "an IORP within the meaning of Articles 5 and 25 of this law”;

3. "SEPCAV" means "an IORP in the form of a pension savings company with variable capital”;

4. "ASSEP" means "an IORP in the form of a pension savings association”;

5. "CSSF" means "the Commission de surveillance du secteur financier”;

6. "pension scheme" means a contract, an agreement, a trust deed or rules stipulating which retirement benefits are granted and under which conditions”;

7. "retirement benefits" means "benefits paid by reference to reaching, or the expectation of reaching, retirement or, where they are supplementary to those benefits and provided on an ancillary basis, in the form of payments on death, disability, or cessation of employment or in the form of support payments or services in case of sickness, indigence or death. In order to facilitate financial security in retirement, these benefits usually take the form of payments for life. They may, however, also be payments made for a temporary period or as a lump sum.

8. "member" means a person whose occupational activities entitle or will entitle him/her to retirement benefits in accordance with the provisions of a pension scheme”;

9. "beneficiary" means a person receiving retirement benefits”;

10. "contributor" means "a sponsoring undertaking, or a member paying personal contributions”;

11. "sponsoring undertaking" means "any undertaking or other body, regardless of whether it includes or consists of one or more legal or natural persons, which acts as an employer or in a self-employed capacity or any combination thereof and which pays contributions into an IORP”;

12. "biometric risks" means "the risks linked to death, disability and longevity”;

13. "Member State" means "a Member State of the European Union”;

14. "home Member State" means "the Member State in which an IORP has its registered office and its main administration or, if it does not have a registered office, its main administration”;

15. "host Member State" means "the Member State whose social and labour law relevant to the field of occupational pension schemes is applicable to the relationship between the sponsoring undertaking and members”;

16. "competent authorities" means "the national authorities designated to perform the functions provided for in Directive 2003/41/EC”;

17. "authorities of the Home Member State" means "the national authorities designated by the Home Member State to perform the functions provided for in Directive 2003/41/EC as the IORP's host Member State”;

18. "authorities of the host Member State" means "the national authorities designated by the host Member State to perform the tasks provided for in Directive 2003/41/EC as the IORP's host Member State”;

19. "Directive 73/239/EEC" means "the First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance, as amended";

20. "Directive 85/611/EEC" means "Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), as amended";

21. "Directive 93/22/EEC" means "Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field, as amended";

22. "Directive 2000/12/EC" means "Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions, as amended";

23. "Directive 2002/83/EC" means "Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance";

24. "Directive 2003/41/EC" means "Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision";

(Law of 12 July 2013)

"24a. "Directive 2011/61/EU" means "Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010";"

25. "Regulation (EEC) No. 1408/71" means "Council Regulation (EEC) No. 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended";

26. "Regulation (EEC) No. 574/72" means "Council Regulation (EEC) No. 574/72 of the Council of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No. 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community", as amended.

Article 2. (1) This law applies to IORPs situated in the Grand Duchy of Luxembourg which have adopted the form of pension fund in the form of a pension savings company with variable capital (SEPCAV) or a pension savings association (ASSEP).

(2) Only IORPs authorised under this law or by another means envisaged by the law on the activities and supervision of institutions for occupational retirement provision may pursue the business of an institution for occupational retirement provision.

(3) SEPCAVs and ASSEPs shall confine their activities to transactions pertaining to pension rights and activities ensuing therefrom.

(4) *Vis-à-vis* third parties, the activities of SEPCAVs and ASSEPs shall be deemed to be commercial acts.

Article 3. In the event of a pension fund also operating compulsory employment-related pension schemes which are considered to be social security schemes covered by Regulations (EEC) No. 1408/71 and (EEC) No. 574/72, the liabilities and assets corresponding to its non-compulsory occupational retirement provision business shall be ring-fenced.

Article 4. (1) With the exception of articles of the law which contain the provisions of Article 19 of Directive 2003/41/EC, a grand-ducal regulation may exclude from the scope of the law, in whole or in part, pension funds operating pension schemes having fewer than 100 members in total. Such pension funds may nevertheless elect to be subject to all the provisions of the law if they so wish. Article 97 may be applied only if all the other provisions of this law are applied.

(2) A grand-ducal regulation may contain terms which permit the non-application, in whole or in part, of the articles of the law which contain the provisions of Articles 9 to 17 of Directive 2003/41/EC to pension

funds which are required by law to provide occupational pension schemes under the guarantee of a public authority. Article 97 may be applied only if all the other provisions of this law are applied.

PART II

Provisions applicable to Institutions for Occupational Retirement Provision in the form of a Pension Savings Company with Variable Capital (SEPCAV)

Chapter 1: *Definition, Organisation and Administration*

Article 5. A pension savings company with variable capital within the meaning of this law is any IORP

- which has adopted the form of a cooperative society organised as a public limited company incorporated in Luxembourg, and
- has as its object the collection of funds and their investment with a view to spreading the investment risks and optimising the yield from the management of its assets while conferring on its members, in their capacity as shareholders, the benefit of a capital sum or a temporary annuity allocated by reference to reaching, or the expectation of reaching, retirement, and
- whose shares are reserved for a circle of members defined by its articles of association, and
- whose articles of association stipulate that the amount of the capital shall at all times be equal to the company's net asset value.

A SEPCAV may act as an agent or intermediary for the purpose of converting the proceeds of redemption into a life annuity and to provide the members and beneficiaries with additional benefits from other financial institutions or life insurance undertakings. Its articles of association shall make express provision for this eventuality and the retirement scheme's pension rules shall lay down the applicable terms and conditions.

Article 6. (1) SEPCAVs are subject to the general provisions applicable to cooperative societies organised as public limited companies insofar as this law does not derogate therefrom. (*Law of 25 August 2006*) "The formation of a SEPCAV requires only one associate".

(2) Notwithstanding Article 51 of the Law of 10 August 1915 on commercial companies, as amended, the articles of association may require the compulsory presence on the company's Board of Directors of one or more members nominated by the sponsoring undertaking(s).

(3) The articles of association stipulate the formalities for drawing up and amending the pension rules and the technical note within the meaning of Chapter 1 of Part V. The articles of association may, *inter alia*, authorise the Board of Directors to establish and amend the pension rules and the technical note. The articles of association may also require that the prior consent of the sponsoring undertakings concerned be obtained for any amendment to the pension rules and the technical note.

(4) The articles of association are recorded in a special notarial deed drafted in French, German or English at the discretion of the signatories.

(5) The general meeting shall validly consider amendments to the articles of association only when the object thereof has the CSSF's prior authorisation.

(6) The provisions concerning the formation of a SEPCAV also apply to the conversion to a SEPCAV of a company having a different legal form or a cooperative society organised as a public limited company.

(7) In their capacity as shareholders, the members do not assume any personal obligation in relation to the company's liabilities.

Article 7. (1) The general meeting may change the object within the limits indicated in Articles 1 and 5.

(2) The general meeting shall approve the annual accounts.

Article 8. (1) The SEPCAV's shares are registered.

(2) The shares are neither transferable nor distrainable. The proceeds of their redemption may nevertheless be pledged as collateral.

(3) Notwithstanding Article 137-4(14) of the Law of 10 August 1915 on commercial companies, as amended, upon the retirement of a member, or the death of a member which the SEPCAV is informed of via a death certificate or otherwise, the SEPCAV shall redeem that member's shares. Such redemption confers a right over its proceeds, to the exclusion of any other right over the SEPCAV. The redemption value of the shares shall be determined in accordance with Article 10. The redeemed shares shall be automatically cancelled, thus reducing the company's capital.

(4) Notwithstanding Article 137-5(2) of the Law of 10 August 1915 on commercial companies, as amended, relating to access to the register, each SEPCAV shareholder may inspect the personal data relating to his own situation only.

Article 9. The SEPCAV's share capital cannot be below one million euros or its equivalent in another freely convertible currency. This minimum amount must be reached within two years of the SEPCAV's authorisation. A grand-ducal regulation may determine a higher figure for this minimum amount, subject to a ceiling of five million euros.

The sponsoring undertaking(s) may make a contribution to the SEPCAV which increases the share capital to a maximum of one million euros. As soon as the SEPCAV's share capital exceeds one million euros, the shares representing that contribution shall be redeemed and cancelled as and when new shares are issued in favour of the members.

Article 10. (1) The SEPCAV may issue its shares at any time, except as otherwise provided in the articles of association.

Conversely, it may redeem its shares only under the conditions and within the limits determined by this law, the articles of association and the rules of the pension scheme(s) it operates.

(2) The shares are issued and redeemed at a price obtained by dividing the SEPCAV's net asset value by the number of shares in circulation. The said price may be adjusted to take account of any fees and commissions payable, for which the maxima and collection procedure may be determined in a grand-ducal regulation after the CSSF's opinion or proposal has been sought.

(3) The issuing of a SEPCAV's shares is contingent on the equivalent of the net issue price being credited to the SEPCAV's assets within the customary time limit.

"Notwithstanding Articles 26-1 and 26-2 of the Law of 10 August 1915 on commercial companies, as amended, contributions other than cash contributions shall be the subject of a report drawn up by a *réviseur d'entreprises* (statutory auditor) or a *cabinet de révision* (audit firm) appointed by the founders or the Board of Directors."¹

The said report shall include a description of each of the contributions and the valuation methods used and indicate whether the values those methods produce correspond, at least, to the number and par value of the shares to be issued in respect thereof. The report shall remain appended to the articles of association and its conclusions shall be reproduced therein.

During the two years following the SEPCAV's formation, its acquisition of any asset item belonging to a person who signed the memorandum of association, or on behalf of whom the memorandum of association was signed, for a value equivalent to at least one tenth of the subscribed capital shall be subject to verification and publication similar to those stipulated in the preceding subparagraph, as well as authorisation from the general meeting of shareholders. "The *réviseur d'entreprises agréé* (approved statutory auditor) shall be appointed by the Board of Directors."²

¹ Law of 23 July 2016

² Law of 18 December 2009

The preceding subparagraph does not apply to acquisitions made in connection with the SEPCAV's current transactions or acquisitions made on the initiative or under the control of an administrative or judicial authority or acquisitions made on a regulated market or another organised market offering comparable guarantees.

(4) The articles of association determine the payment deadlines for issues and redemptions and specify the principles and valuation methods applicable to the SEPCAV's assets. Except as otherwise provided in the articles of association, the valuation of the SEPCAV's assets consisting of securities admitted to trading on a regulated market or another organised market offering comparable guarantees shall be based on the last known price, unless that price is not representative. For securities not admitted to trading on a regulated market or another organised market offering comparable guarantees and securities admitted to trading on a regulated market or another organised market offering comparable guarantees whose last price is not representative, the valuation shall be based on the probable realisation value, which shall be estimated prudently and in good faith.

(5) Notwithstanding paragraph 1, the articles of association specify the circumstances in which issues and redemptions may be suspended, without prejudice to legal grounds. The SEPCAV shall inform the CSSF of any suspension of issues or redemptions without delay.

(6) The articles of association determine how often the net asset value per share shall be calculated.

(7) The articles of association indicate the nature of the costs to be borne by the SEPCAV.

(8) The shares must be fully paid up. They have no value indication.

(9) Buying and selling of the assets must take place at prices consistent with the valuation criteria indicated in paragraph 4.

Article 11. (1) SEPCAVs may be formed with multiple compartments each corresponding to a distinct portion of the SEPCAV's assets.

(2) The articles of association shall make express provision for this possibility and the pension rules shall set out the relevant terms and conditions.

(3) The shares of multiple-compartment SEPCAVs may have different values.

(4) The rights of members and creditors relative to a compartment or arising on account of the creation, operation or liquidation of a compartment are limited to the assets of that compartment, except as otherwise provided in the constitutional documents.

A compartment's assets relate solely to the members' rights held in that compartment and the rights of creditors whose debt arose as a result of the creation, operation or liquidation of that compartment, except as otherwise provided in the constitutional documents.

In relations between members, each compartment is treated as a separate entity, except as otherwise provided in the constitutional documents.

(5) Each compartment of a SEPCAV may be liquidated separately without such liquidation resulting in the liquidation of any other compartment. Only the liquidation of the last remaining compartment of the SEPCAV will result in the liquidation of the SEPCAV within the meaning of Article 94 of this law.

(6) The articles of association may provide that compartmental shareholders' meetings take place. In which case, the compartmental shareholders' meeting has the broadest powers to implement or ratify actions pertaining to the compartment concerned. When the deliberations of a SEPCAV's general meeting of the shareholders of all the compartments are liable to affect the respective rights of the different compartments' shareholders, each compartment's quorum and majority requirements must be met in order for those deliberations to be valid.

Article 12. Legal persons subject to foreign law which are validly constituted in accordance with the law of the State of their registered office or State of registration and whose object is consistent with that of a SEPCAV governed by the laws of Luxembourg may transfer their registered office to Luxembourg if they meet the conditions of the law under which they were formed, if their activities do not contravene

public order and security and if they have obtained the prior authorisation referred to in Article 53. Such transfer entails subjection to the laws of Luxembourg without the need to acquire a new legal personality. On a unanimous decision of the shareholders, SEPCAVs constituted under Luxembourg law may decide to transfer their registered office abroad without losing their legal personality thereby, provided that the State in which their new registered office is situated recognises the continuation of that legal personality.

Article 13. (1) Variations in the share capital occur automatically and without the formalities of publication or of registration in the Registre de Commerce et des Sociétés (trade and companies register) required for the capital increases and reductions of public limited companies.

(2) Repayments to the shareholders following a share-capital reduction are subject only to the restriction referred to in Article 16(2).

(3) The existing shareholders may not invoke a preferential right when new shares are issued.

Article 14. (1) If the SEPCAV's capital should fall below two thirds of the minimum capital requirement, the directors shall submit the question of the SEPCAV's dissolution to the general meeting, which shall deliberate validly only if two thirds of the shares are represented. If this condition is not met, a new meeting may be convened. The second meeting shall deliberate validly regardless of the number of shares represented. Dissolution shall ensue only if it is approved by a majority of three quarters of the shares represented.

(2) If the SEPCAV's share capital should fall below one quarter of the minimum capital requirement, the directors shall submit the question of the SEPCAV's dissolution to the general meeting, which shall deliberate validly only if two thirds of the shares are represented. If this condition is not met, a new meeting may be convened. The second meeting shall deliberate validly regardless of the number of shares represented. Dissolution shall ensue only if it is approved by a simple majority of the shares represented.

(3) The meeting shall be convened to take place within forty days of the net assets being found to be below two thirds or one quarter of the minimum capital requirement respectively.

(4) All documents emanating from a SEPCAV in liquidation shall indicate that it is in liquidation.

(5) The SEPCAV's dissolution voids the future obligations of the contributor(s) towards the SEPCAV.

(6) Notwithstanding Article 137-1(4), of the Law of 10 August 1915 on commercial companies, as amended, the SEPCAV is not authorised to convert itself into another form or type of company.

Article 15. Notwithstanding Article 137-4(6), of the Law of 10 August 1915 on commercial companies, as amended, the creation of participating shares or similar securities, regardless of their denomination, is prohibited.

Article 16. (1) Notwithstanding Article 72 of the Law of 10 August 1915 on commercial companies, as amended, the SEPCAV is not obliged to create a legal reserve.

(2) Unless otherwise stipulated in the articles of association, the SEPCAV's net assets may be repaid only within the limits set by Article 9 of this law and under the redemption conditions laid down by the law, the articles of association and the rules of the pension scheme(s) operated by the SEPCAV.

(3) The SEPCAV's shares do not give entitlement to any dividend distribution.

Article 17. All deeds, invoices, advertisements, publications, letters, purchase orders and other documents emanating from a company coming within the purview of this Part shall bear:

a) the SEPCAV's name;

b) the words "pension savings company with variable capital" legibly reproduced either in full or abbreviated to "SEPCAV" and placed immediately before or after the company's name;

- c) a precise indication of the SEPCAV's registered office location;
- d) the words "Registre de Commerce et des Sociétés, Luxembourg" or the initials "R.C.S. Luxembourg" followed by the registration number.

Chapter 2: *The Custodian*

Article 18. (1) The safekeeping of a SEPCAV's assets shall be entrusted to a custodian.

In the case of a multiple-compartment SEPCAV, the articles of association may provide for a custodian to be appointed for each compartment provided that a compartment's assets relate solely to the members' rights held in that compartment and the rights of creditors whose debt arose as a result of the creation, operation or liquidation of that compartment.

(2) The custodian shall also:

- a) ensure that the SEPCAV receives confirmation for transactions involving its assets within the customary time limits;
- b) ensure that the proceeds received by the SEPCAV are allocated in accordance with the articles of association and the pension rules;
- c) ensure that the instructions concerning the asset securities received by or on behalf of the SEPCAV comply with the law, the articles of association and the pension rules;
- d) ensure that the contributor(s) pay their contributions promptly.

(3) The custodian's liability, as specified in Article 20, shall not be affected by the fact of its having entrusted some or all of the assets in its custody to a third party.

Article 19. (1) The custodian must be established in Luxembourg or in another Member State of the European Union and must have been duly authorised as a custodian of assets in accordance with Directive 93/22/EEC or Directive 2000/12/EC, or authorised as a custodian for the purposes of Directive 85/611/EEC.

(2) The CSSF must give its consent for the appointment or dismissal of a custodian. It assesses the custodian's ability to assume its task on the basis of its size, its financial capacity, its organisation and, more generally, the compatibility of its business with the SEPCAV's object.

Article 20. Under Luxembourg law, the custodian is liable towards the shareholders for any prejudice suffered by them on account of culpable non-performance or poor performance of its obligations.

Article 21. The SEPCAV's custodian's functions shall cease:

- a) in the event of its resignation, or its dismissal by the SEPCAV; pending its replacement, which shall take place within two months, the custodian shall take all necessary measures to safeguard the shareholders' interests;
- b) if the custodian is declared bankrupt, seeks a composition with its creditors, or suspension of payments, is put under court controlled management or any similar measure, or is put into liquidation;
- c) if its authorisation as a custodian of assets in accordance with Directive 93/22/EEC or Directive 2000/12/EC, or as a custodian for the purposes of Directive 85/611/EEC, is withdrawn;
- d) in all the other cases envisaged by the articles of association.

Article 22. In exercising its functions, the custodian shall act solely in the shareholders' interests.

Chapter 3: *The Asset Manager*

Article 23. (*Law of 12 July 2013*)“(1) The articles of association may provide that the SEPCAV delegates the asset management to one or more asset managers established in Luxembourg or another Member State which are duly authorised to carry out investment portfolio management in accordance with Directives 2009/65/EC, 2004/39/EC, 2006/48/EC, 2002/83/EC, 2003/41/EC and 2011/61/EU, as well as to those referred to in Article 2(1) of Directive 2003/41/EC. With respect to Directive 2009/138/EC, only direct life insurance undertakings shall be concerned.”

However, such delegation may also be granted to foreign professionals of non-Community origin who, in their home country, are subject to permanent supervision by a supervisory authority provided for by law with the aim of ensuring investor protection. Such foreign professionals of non-Community origin must be specifically authorised by the CSSF on the basis of criteria relating to competence, integrity and financial soundness, the terms of which are set out in a grand-ducal regulation.

(2) In this event, the asset manager shall be appointed and dismissed by the SEPCAV's Board of Directors.

(3) Where delegation to an asset manager has been made compulsory by the articles of association, the SEPCAV may not manage its assets itself.

(4) The SEPCAV's asset manager's functions shall cease:

- a) in the event of its resignation, or its dismissal by the SEPCAV; pending its replacement, which shall take place within two months, the asset manager shall take all necessary measures to safeguard the shareholders' interests;
- b) if it is declared bankrupt, seeks a composition with its creditors, or suspension of payments, is put under court controlled management or any similar measure, or is put into liquidation;
- c) if its authorisation in accordance with the provisions of paragraph 1 is withdrawn;
- d) in all the other cases envisaged by the articles of association.

(5) The CSSF must give its consent for the appointment or dismissal of an asset manager.

It assesses the asset manager's ability to assume its task on the basis of its size, its financial capacity, its organisation and, more generally, the compatibility of its business with the SEPCAV's object.

(6) In exercising its functions, the asset manager shall act solely in the shareholders' interests and shall refrain from using the SEPCAV's assets for its own purposes.

Article 24. The asset manager shall fulfil its obligations with the diligence of a salaried agent; it shall be accountable to the SEPCAV for any prejudice resulting from non-performance or poor performance of its obligations.

PART III

Provisions applicable to institutions for occupational retirement provision in the form of a pension savings association (ASSEP)

Chapter 1: *Definition, Organisation and Administration*

Article 25. A pension savings association within the meaning of this law is any IORP

- which has adopted the legal form of a pension savings association, and
- has as its object the collection of funds and their investment with a view to spreading the investment risks and optimising the yield from the management of its assets while conferring on its members and beneficiaries the benefit of a capital sum or a temporary annuity or life annuity allocated in respect of retirement or the expectation of reaching retirement, and, where

applicable, additional benefits in the form of death benefits, disability benefits or compensation for cessation of employment, or in the form of aid or services in the event of illness, indigence or death, and

- whose circle of members and beneficiaries is defined by its articles of association, and
- whose articles of association stipulate that it shall at all times maintain, for the full range of its pension schemes, an adequate level of technical provisions consistent with the financial liabilities arising out of its existing portfolio of pension contracts.

An ASSEP may act as an agent or intermediary for the purpose of converting retirement benefits in the form of capital into a life annuity and to provide the members and beneficiaries with additional benefits from other financial institutions or life insurance undertakings. The articles of association shall make express provision for this eventuality and the retirement scheme's pension rules shall lay down the terms and conditions that apply.

Article 26. (1) An ASSEP's articles of association shall indicate:

1. its name and registered office. This registered office must be in the Grand Duchy;
2. its object;
3. the minimum number of associate members. This number shall not be below three and must include at least one members' representative, one beneficiaries' representative and one representative of the contributor(s). If there is no beneficiary, the ASSEP shall have at least two members' representatives among its associate members.

The ASSEP's associate members may include legal persons;

4. the surnames, forenames, occupation, domicile or registered office of the founders;
5. the conditions under which associate members join and leave;
6. the powers of the general meeting and its convening procedure, as well as the means through which its resolutions are brought to the notice of the associate members and third parties;
7. the method of appointing, and powers of, the directors;
8. the rules applicable to amendments to the articles of association and the pension rules;
9. the duration;
10. circumstances giving rise to dissolution;
11. the closing date for the annual accounts.

(2) The articles of association stipulate the formalities for drawing up and amending the pension rules and the technical note within the meaning of Chapter 1 of Part V. The articles of association may, *inter alia*, authorise the Board of Directors to draw up and amend the pension rules and the technical note. The articles of association may also stipulate that the prior consent of the sponsoring undertaking(s) concerned shall be required for any amendment to the pension rules and the technical note.

(3) The ASSEP is constituted via a special notarial deed, failing which it shall be null and void. The said deed may be drafted in French, German or English at the discretion of the signatories.

(4) The associate members may not be required to make any payment in such capacity.

“(5) The contributors' contributions other than cash contributions shall be the subject of a report drawn up by a *réviseur d'entreprises* (statutory auditor) or a *cabinet de révision* (audit firm) appointed by the founders or the Board of Directors.”³

The said report shall include a description of each of the contributions and the valuation methods used and indicate whether the values those methods produce correspond, at least, to the value of the relevant book entry. The report shall remain appended to the articles of association and its conclusions shall be reproduced therein.

³ Law of 23 July 2016

During the two years following the ASSEP's formation, its acquisition of any asset item belonging to a natural person or legal person who/which signed the memorandum of association, or on behalf of whom the memorandum of association was signed, for a value equivalent to at least one tenth of the net assets shall be subject to verification and publication similar to those stipulated in the preceding subparagraph, as well as authorisation from the general meeting of associate members. "The *réviseur d'entreprises agréé* (approved statutory auditor) shall be appointed by the Board of Directors."⁴

The preceding subparagraph does not apply to acquisitions made within the framework of the ASSEP's current transactions or acquisitions made on the initiative or under the control of an administrative or judicial authority or acquisitions made on a regulated market or another organised market offering comparable guarantees.

Article 27. (1) The ASSEP exists and has legal personality with effect from execution of the memorandum of association in the presence of a notary.

The ASSEP is registered in the Registre de Commerce et des Sociétés (trade and companies register).

When the articles of association are filed at the Registre de Commerce et des Sociétés, the surnames, forenames, (...) ⁵ and domiciles of the directors appointed in accordance therewith shall be indicated, as shall the address of the registered office. Any amendment thereto shall be notified to the Registre de Commerce et des Sociétés.

(2) All deeds, invoices, advertisements, publications, letters, purchase orders and other documents emanating from an association coming within the purview of this Part shall bear:

- a) the association's name;
- b) the words "pension savings association" legibly reproduced either in full or abbreviated to "ASSEP" and placed immediately before or after the association's name;
- c) a precise indication of the association's registered office location;
- d) the words "Registre de Commerce et des Sociétés, Luxembourg" or the initials "R.C.S. Luxembourg" followed by the registration number.

Article 28. (1) The ASSEP's technical provisions cannot be below five million euros. This minimum amount must be reached within ten years of the ASSEP's authorisation. A grand-ducal regulation may determine a higher figure for this minimum amount. The sponsoring undertaking(s) may make a contribution equivalent to a maximum of five million euros to the ASSEP.

(2) If the ASSEP's technical provisions should fall below two thirds of the required minimum amount, the directors shall submit the question of the ASSEP's dissolution to the general meeting, which shall deliberate validly only if two thirds of its associate members are present or represented. If this condition is not met, a new meeting may be convened. The second meeting shall deliberate validly regardless of the number of associate members present or represented. Dissolution shall ensue only if it is approved by a majority of three quarters of the associate members present or represented.

If the ASSEP's technical provisions should fall below one quarter of the required minimum amount, the directors shall submit the question of the ASSEP's dissolution to the general meeting, which shall deliberate validly only if two thirds of its associate members are present or represented. If this condition is not met, a new meeting may be convened. The second meeting shall deliberate validly regardless of the number of associate members present or represented. Dissolution shall ensue only if it is approved by a simple majority of the associate members present or represented.

(3) The meeting shall be convened to take place within forty days of the technical provisions being found to be below two thirds or one quarter of the minimum capital requirement respectively.

⁴ Law of 18 December 2009

⁵ Law of 27 May 2016

Article 29. The following decisions shall require a resolution of the general meeting:

1. amendment of the articles of association;
2. appointment and dismissal of directors;
3. authorisation of the accounts;
4. dissolution of the ASSEP.

Article 30. The directors shall call a general meeting as and when required by the articles of association or when one fifth of the associate members so request. The said request, signed by the associate members submitting it, shall be accompanied by a proposed agenda.

Article 31. All the associate members shall be invited to the general meetings.

It is permissible for associate members to arrange to be represented at general meetings by another associate or, if the articles of association so allow, by a third party.

Article 32. All the associate members have equal voting rights at general meetings and, except as otherwise provided by the law or the articles of association, resolutions are approved on a majority of the votes of the associate members present or represented.

Article 33. (1) The general meeting may validly deliberate on amendments to the articles of association only if the content thereof has received the CSSF's prior authorisation and is specifically indicated in the notice of meeting.

The general meeting shall deliberate validly only if two thirds of the associate members are present or represented. If this condition is not met, a new meeting may be convened. The second meeting shall deliberate validly regardless of the number of associate members present or represented.

(2) Any amendment to the articles of association shall require a majority of two thirds of the votes of the associate members present or represented.

Article 34. The articles of association and any amendment thereto shall be published as stipulated in "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"⁶.

Article 35. A list in alphabetical order indicating the surnames, forenames, domicile or registered office of the associate members shall be established and kept constantly up to date at the ASSEP's registered office. Any person claiming an interest may have free access thereto.

Article 36. In the event of the publication and other formalities stipulated in Articles 26, 27 (1), second subparagraph, and 34 not being complied with, the ASSEP shall be unable to invoke its legal personality in regard to third parties, although they shall be entitled to invoke it against the ASSEP.

Failure to comply with the formalities stipulated in Article 27(1), second subparagraph, and (2), shall have the effect of rendering the facts which those formalities were intended to establish ineffective against third parties if such omission has prejudiced them.

Article 37. (1) ASSEPs may be formed with multiple compartments each corresponding to a distinct portion of the ASSEP's assets.

(2) The articles of association shall make express provision for this and the pension rules shall set out the relevant terms and conditions.

⁶ Law of 27 May 2016

(3) The rights of members, beneficiaries and creditors relative to a compartment or arising on account of the creation, operation or liquidation of a compartment are limited to the assets of that compartment, except as otherwise provided in the constitutional documents.

A compartment's assets relate solely to the members' and beneficiaries' rights held in that compartment and the rights of creditors whose debt arose as a result of the creation, operation or liquidation of that compartment, except as otherwise provided in the constitutional documents.

In relations between members and beneficiaries, each compartment shall be treated as a separate entity, except as otherwise provided in the constitutional documents.

(4) Each compartment of an ASSEP may be liquidated separately without such liquidation resulting in the liquidation of any other compartment. Only the liquidation of the last remaining compartment of the ASSEP will result in the liquidation of the ASSEP within the meaning of Article 94 of this law.

(5) The articles of association may designate associate members for each compartment and require that compartmental associate members' meetings take place. In which case, the compartmental associate members' meeting has the broadest powers to implement or ratify actions pertaining to the compartment concerned. When the deliberations of a pension fund's general meeting of the associate members of all the compartments are liable to affect the respective rights of the different compartments' members and beneficiaries, each compartment's quorum and majority requirements must be met in order for those deliberations to be valid.

The provisions of Article 26 (1), points 3 and 6, and Articles 30 to 32 also apply to the meetings of each compartment's associate members.

Article 38. Any associate member shall be free to withdraw from the ASSEP by sending his resignation to the Board of Directors.

An associate member may be excluded only when the articles of association so require and with the CSSF's consent. It shall be pronounced by the general meeting deciding on a majority of two thirds of the votes.

The resigning or excluded associate member has no rights over the fund's assets and cannot claim repayment of the contributions he has made, this without prejudice to his rights as a member or beneficiary of the ASSEP.

If the articles of association have provided for a fixed relationship between the associate members based on the interests they represent, the resigning, excluded or deceased associate shall be replaced at the next general meeting. The replacement may be a representative of the members, a representative of the beneficiaries or a representative of the contributor(s), thus ensuring that the balance established by the original associate members is not upset.

Article 39. (1) The Board of Directors manages the ASSEP's affairs and represents it in all legal and judicial acts. It may, under its own responsibility, delegate its powers to one of its members, or even to a third party, if the articles of association or the general meeting so permit. It may delegate the management of the assets and the liabilities to professionals authorised as stipulated by this law.

(2) The directors do not contract any personal obligation relative to the ASSEP's liabilities.

(3) The articles of association may require the compulsory presence on the association's Board of Directors of one or more representatives of the sponsoring undertaking(s) and/or one or more representatives of the beneficiaries or members.

Article 40. Legal persons subject to foreign law which are validly constituted in accordance with the law of the State of their registered office or registration and whose object is consistent with that of an ASSEP governed by the laws of Luxembourg may transfer their registered office to Luxembourg if they meet the conditions of the law under which they were formed, if their activities do not contravene public order and security and if they have obtained the prior authorisation referred to in Article 53. Such transfer entails subjection to the laws of Luxembourg without the need to acquire a new legal personality.

On a unanimous decision of the associate members, ASSEPs constituted under Luxembourg law may decide to transfer their registered office abroad without losing their legal personality thereby, provided that the State in which their new registered office is situated recognises the continuation of that legal personality.

Article 41. The members' and beneficiaries' future debts shall be neither transferable nor distrainable. They may nevertheless be pledged as collateral.

Chapter 2: *The Custodian*

Article 42. (1) The safekeeping of an ASSEP's assets shall be entrusted to a custodian.

In the case of a multiple-compartment ASSEP, the articles of association may provide for a custodian to be appointed for each compartment provided that a compartment's assets relate solely to the members' and beneficiaries' rights held in that compartment and the rights of creditors whose debt arose as a result of the creation, operation or liquidation of that compartment.

(2) The custodian shall also:

- a) ensure that the ASSEP receives confirmation for transactions involving its assets within the customary time limits;
- b) ensure that the proceeds received by the ASSEP are allocated in accordance with the articles of association, the pension rules and the pension scheme's technical note;
- c) ensure that the instructions concerning the asset securities received by or on behalf of the ASSEP comply with the law, the pension rules and the pension scheme's technical note;
- d) ensure that the contributor(s) pay their contributions promptly.

(3) The custodian's liability, as specified in Article 44, shall not be affected by the fact of its having entrusted some or all of the assets in its custody to a third party.

Article 43. (1) The custodian must be established in Luxembourg or another Member State and must have been duly authorised as a custodian of assets in accordance with Directive 93/22/EEC or Directive 2000/12/EC or authorised as a custodian for the purposes of Directive 85/611/EEC.

(2) The CSSF must give its consent for the appointment or dismissal of a custodian. It assesses the custodian's ability to assume its task on the basis of its size, its financial capacity, its organisation and, more generally, the compatibility of its business with the ASSEP's object.

Article 44. (1) Under Luxembourg law, the custodian is liable towards the ASSEP and its members and beneficiaries for any prejudice suffered by them on account of culpable non-performance or poor performance of its obligations.

(2) In regard to its members and beneficiaries, such liability is invoked through the ASSEP. If the ASSEP fails to act, despite its having received written notice to do so from a member or a beneficiary, within three months of such notice being served, the said member or beneficiary may directly invoke the custodian's liability.

Article 45. The ASSEP's custodian's functions shall cease:

- a) in the event of its resignation, or its dismissal by the ASSEP; pending its replacement, which shall take place within two months, the custodian shall take all necessary measures to safeguard the members' and beneficiaries' interests;
- b) if the custodian is declared bankrupt, seeks a composition with its creditors, or suspension of payments, is put under court controlled management or any similar measure, or is put into liquidation;

- c) if its authorisation as a custodian of assets in accordance with Directive 93/22/EEC or Directive 2000/12/EC, or as a custodian for the purposes of Directive 85/611/EEC, is withdrawn;
- d) in all the other cases envisaged by the articles of association.

Article 46. In exercising its functions, the custodian shall act solely in the interests of the ASSEP and its members and beneficiaries.

Chapter 3: *The Asset Manager*

Article 47. (*Law of 12 July 2013*) “(1) The articles of association may provide that the ASSEP delegates the asset management to one or more asset managers established in Luxembourg or another Member State which are duly authorised to carry out investment portfolio management in accordance with Directives 2009/65/EC, 2004/39/EC, 2006/48/EC, 2002/83/EC, 2003/41/EC and 2011/61/EU, as well as to those referred to in Article 2(1) of Directive 2003/41/EC. With respect to Directive 2009/138/EC, only direct life insurance undertakings shall be concerned.”

However, such delegation may also be granted to foreign professionals of non-Community origin who, in their home country, are subject to permanent supervision by a supervisory authority provided for by law with the aim of ensuring investor protection. Such foreign professionals of non-Community origin must be specifically authorised by the CSSF on the basis of criteria relating to competence, integrity and financial soundness, the terms of which are set out in a grand-ducal regulation.

(2) In this event, the asset manager shall be appointed and dismissed by the ASSEP’s Board of Directors.

(3) Where delegation has been made compulsory by the articles of association, the ASSEP may not manage its assets itself.

(4) The ASSEP’s asset manager’s functions shall cease:

- a) in the event of its resignation, or its dismissal by the ASSEP; pending its replacement, which shall take place within two months, the asset manager shall take all necessary measures to safeguard the members’ and beneficiaries’ interests;
- b) if the asset manager is declared bankrupt, seeks a composition with its creditors, or suspension of payments, is put under court controlled management or any similar measure, or is put into liquidation;
- c) if its authorisation in accordance with the provisions of paragraph 1 is withdrawn;
- d) in all the other cases envisaged by the articles of association.

(5) The CSSF must give its consent for the appointment or dismissal of an asset manager.

It assesses the asset manager’s ability to assume its task on the basis of its size, its financial capacity, its organisation and, more generally, the compatibility of its business with the ASSEP’s object.

(6) In exercising its functions, the asset manager shall act solely in the members’ and beneficiaries’ interests and shall refrain from using the ASSEP’s assets for its own purposes.

Article 48. The asset manager shall fulfil its obligations with the diligence of a salaried agent; it shall be accountable to the fund for any prejudice resulting from non-performance or poor performance of its obligations.

Chapter 4: *The Liability Manager*

Article 49. (1) The articles of association may provide for the ASSEP to delegate management of the liabilities to one or more liability managers.

(2) The day-to-day management of the liabilities consists of determining the ASSEP's liabilities and technical provisions, at least. It may also cover the services provided to the pension funds' members and beneficiaries.

For ASSEPs operating occupational pension schemes for which they cover against biometric risk and/or guarantee either the investment performance or a given level of benefits, the liabilities management also includes the establishment of a financing plan within the meaning of the second subparagraph of Article 53(4), and continuous monitoring of its suitability and its correct implementation by the ASSEP. In the context of the actuarial report prepared by the liability manager in accordance with Article 72(4), the liability manager updates the financing plan in line with the trend of the ASSEP's assets and liabilities. It shall also update the financing plan when important and unexpected elements make such updating necessary, whether they originate within or outside the ASSEP.

The liability manager determines the amount of the retirement benefits to be paid to the members and beneficiaries as well as the amount of the members' and beneficiaries' accrued benefits, which shall be communicated to them periodically in accordance with the conditions laid down in the pension rules.

(3) If delegation of the liabilities management to a liability manager was provided for in the articles of association, the liability manager shall be appointed and dismissed by the ASSEP's Board of Directors.

(4) In this event, the ASSEP shall not manage its liabilities itself.

(5) The ASSEP's liability manager's functions shall cease:

- a) in the event of its resignation, or its dismissal by the ASSEP; pending its replacement, which shall take place within two months, the liability manager shall take all necessary measures to safeguard the members' and beneficiaries' interests;
- b) if the liability manager is declared bankrupt, seeks a composition with its creditors, or suspension of payments, is put under court controlled management or any similar measure, or is put into liquidation;
- c) if its authorisation as a liability manager is withdrawn;
- d) in all the other cases envisaged by the articles of association.

(6) The CSSF must give its consent for the appointment or dismissal of a liability manager. It assesses the manager's ability to assume its task on the basis of its size, its financial capacity, its organisation and, more generally, the compatibility of its business with the ASSEP's object.

Article 50. The liability manager shall discharge its obligations with the diligence of a salaried agent; it shall be accountable to the fund for any prejudice resulting from non-performance or poor performance of its obligations.

Article 51. (1) The liability manager is required to inform the CSSF promptly of any fact or decision which it has become aware of in performing its mission for a pension fund, if that fact or that decision is likely to:

- constitute a serious violation of the provisions of this law or the provisions of its implementing legislation, or
- jeopardise the pension fund's continued operation, or
- result in the ASSEP's technical provision certification being refused on grounds of inadequacy.

If, in carrying out its mission, the liability manager finds that the information provided to the members and beneficiaries or the CSSF in the pension fund's reports or other documents does not accurately reflect the pension fund's financial situation and the status of its assets, it shall inform the CSSF thereof without delay. The same shall apply in the event of the liability manager discovering that the pension fund's assets are not, or were not, invested in accordance with the applicable rules or that the calculation of the technical provisions or the valuation of the pension fund's liabilities does not comply with the general actuarial rules laid down in the technical note.

(2) The liability manager is, moreover, required to provide the CSSF with all the information or certificates it requires on points which the liability manager has, or must acquire, knowledge of in order to carry out its mission.

(3) A disclosure made to the CSSF in good faith by a liability manager concerning facts or decisions referred to in this paragraph does not constitute a violation of professional secrecy or a violation of any contractually imposed restriction on the disclosure of information, and does not incur liability of any kind for the liability manager.

(4) The CSSF may lay down rules concerning the scope of the annual actuarial report to be issued by the liability manager in accordance with Article 72(4).

The CSSF may ask a liability manager to carry out checks on one or more specific aspects of a pension fund's activities and operational methods. The cost of such checks shall be met by the pension fund concerned.

Article 52. (1) The liabilities management may be delegated only to one or more liability managers authorised either by the CSSF on the basis of criteria relating to competence, integrity and financial soundness, the terms of which are set out in a grand-ducal regulation, or as an insurance undertaking authorised by the *Commissariat aux assurances* for transactions covered by the life insurance branches as defined in Appendix II of the Law of 6 December 1991 on the insurance sector, as amended.

(2) Authorisation is granted for an unlimited period upon submission of a written application.

(3) The written application shall be accompanied by all the information required to assess it, including actuarial questions, and an activities schedule indicating the type and volume of business envisaged and the administrative structure chosen.

(4) Authorisation is also required for any change of name or legal form, and for the creation or acquisition of agencies, branches or subsidiaries in Luxembourg or abroad.

(5) A reasoned decision on a written application shall be notified to the applicant within six months of the application being received or, if it is incomplete, within six months of receipt of the information needed to make the decision. It shall, in any event, be finalised within twelve months of the application being received, failing which, the absence of a decision equates to a notification of rejection.

(6) To obtain authorisation, the members of the administrative, management and supervisory structures, and likewise the shareholders or associates, must substantiate their professional integrity. Professional integrity shall be assessed on the basis of the legal history and all elements likely to establish that the persons concerned are of good repute and can thus provide all the assurances associated with irrefragable business conduct.

(7) The persons responsible for the management must have the necessary technical qualifications as well as appropriate professional experience gained through having already performed similar tasks.

(8) Authorisation shall be contingent on the CSSF being notified of the identity of the direct or indirect shareholders or associates, whether legal or natural persons, who hold a qualified participation in the establishment seeking authorisation or a holding which enables them to exercise significant influence over the conduct of the business. The status of the said shareholders or associates must be satisfactory, in view of the need to guarantee healthy and prudent management of the undertaking.

(9) Authorisation shall be contingent on there being sufficient credit available relative to the activities schedule and the liabilities incurred.

(10) Authorisation is withdrawn if the conditions of its granting are no longer met. It becomes null and void if it is not used for an uninterrupted period of twelve months.

(11) Any change affecting the persons required to meet the legal conditions of integrity or professional experience shall be authorised in advance by the CSSF. To this end, the CSSF may request any necessary information on the persons required to meet the legal conditions.

(12) The CSSF has an official list of the professionals authorised to perform liabilities management functions for pension funds subject to this law. The said list shall be published in the *Mémorial* at the end of every year, at least.

(13) No person shall refer to his registration on the official list for commercial purposes.

PART IV

Authorisation and Prudential Supervision of the Pension Funds

Chapter 1: *Initial Authorisation and Continuing Authorisation*

Article 53. (1) In order to conduct their business, the pension funds must be authorised by the CSSF.

(2) A pension fund shall be authorised only if the CSSF has approved its articles of association, its pension rules and the technical note of the pension schemes it operates, the persons who must meet the legal conditions of integrity or professional qualifications and experience, the choice of the custodian and, where applicable, the asset manager(s) and liability manager(s).

(3) When a sponsoring undertaking guarantees payment of the retirement benefits, it shall undertake to provide regular financing for the scheme.

(4) Each pension fund shall submit an activities schedule to the CSSF for each pension scheme which shows, at least, the method used to calculate the contributions and the payment intervals, as well as an estimate of the likely status of the net assets or the technical provisions respectively over five years, in view of the likely change in the number of members and beneficiaries, and a yield projection.

Pension funds operating occupational pension schemes for which they cover against biometric risk and/or guarantee either the investment performance or a given level of benefits shall also submit a financing plan for each pension scheme showing, at least, the method and the bases used to calculate the technical provisions referred to in Article 72(6), including substantiation of the interest rate, the other economic and actuarial assumptions and the mortality tables used, as well as a description of the actuarial method used to finance the benefits, accompanied by a statement relating thereto which indicates, inter alia, the consequences of the use of that financing method.

(5) Authorisation shall be contingent on the members of the administrative, management and supervisory structures substantiating their professional integrity. Professional integrity shall be assessed on the basis of the legal history and all elements likely to establish that the persons concerned are of good repute and can thus provide all the assurances associated with irreproachable business conduct. The pension fund shall effectively be operated by honourable persons who either have the requisite professional qualifications and experience themselves or who employ advisors who have such professional qualifications and experience.

The CSSF must be informed immediately of any change affecting the persons required to meet the legal conditions of integrity or professional qualifications and experience.

The CSSF may request any necessary information on the persons required to meet the legal conditions.

(6) Each pension fund shall draw up a written statement of its investment-policy principles and review it at least every three years. This statement shall be revised without delay after any significant change in the investment policy. It shall contain, at least, such matters as the investment risk measurement methods, the risk-management processes implemented and the strategic asset allocation with respect to the nature and duration of pension liabilities.

The CSSF may lay down more detailed rules concerning the content and the presentation of the statement of investment policy principles.

(7) Each pension fund shall have a good administrative and accounting organisation and appropriate internal auditing procedures.

(8) The pension fund's central administration shall be situated in Luxembourg.

Article 54. (1) The CSSF shall record the authorised pension fund on a list. Such registration constitutes authorisation and the pension fund concerned shall be duly notified by the CSSF. Applications for

registration shall be made to the CSSF in the month following their formation or creation. The said register and any amendments thereto are published in the *Mémorial, Recueil Administratif et Economique*, by the CSSF “and this information shall be communicated to the European Insurance and Occupational Pensions Authority.”⁷

(2) Inclusion and retention in the register referred to in paragraph 1 are subject to compliance with all the relevant laws and regulations and the provisions of the articles of association relating to the organisation and operations of the pension funds.

(3) The CSSF also keeps a register of pension funds engaged in cross-border business as described in Article 97; this register also indicates the Member States in which the pension fund operates. “This information shall be communicated to the European Insurance and Occupational Pensions Authority.”⁸

Article 55. (1) No person who has not been granted authorisation as provided for in Article 53 shall use the designations pension savings company with variable capital (SEPCAV) or pension savings association (ASSEP) or any other description which suggests involvement in activities covered by this law.

(2) The district court hearing commercial cases of the place where the pension fund is situated or the court having jurisdiction of the place where the designation is used may, at the Public Prosecutor’s request, forbid anyone to use the designations indicated in paragraph 1 when the conditions laid down by this law are not, or are no longer, met.

(3) The enforceable court order imposing such prohibition shall be published by the Public Prosecutor in three Luxembourg or foreign journals of sufficient circulation.

Article 56. Pension funds covered by this law which are formed without authorisation and whose registration as provided for in Article 54 has been definitively refused may be treated as though their registration had been withdrawn.

Article 57. Relinquishment of authorisation may take place only in the cases and conditions indicated in Article 14 for SEPCAVs, Article 28 for ASSEPs and Article 94 for SEPCAVs and ASSEPs, unless the registered office is transferred abroad.

Chapter 2: Organisation of Supervision

Article 58. (1) The supervisory authority shall be the Commission de surveillance du secteur financier.

(2) The CSSF performs its prudential supervision duties solely in the public interest. If the public interest so warrants, it may publish its decisions.

The CSSF oversees the application of this law and its implementing legislation by the pension funds subject to its supervision.

(3) The CSSF shall be competent to deal with complaints from the pension funds’ members and beneficiaries and, where applicable, those of the sponsoring undertakings, and to confer with the pension funds in order to settle such complaints amicably.

Article 59. (1) “All persons acting, or having acted, on behalf of the CSSF, as well as the *réviseurs d’entreprises agréés* (approved statutory auditors) or experts appointed by the CSSF, are bound by the professional secrecy referred to in Article 16 of the Law of 23 December 1998 establishing a financial sector supervisory commission (“Commission de surveillance du secteur financier”).”⁹ Such secrecy means that the confidential information they receive in the performance of their duties may not be

⁷ Law of 21 December 2012

⁸ Law of 21 December 2012

⁹ Law of 18 December 2009

divulged to any person or authority except in summary or consolidated form, thus ensuring that no pension fund, no asset manager, no liability manager and no custodian can be identified individually, without prejudice to cases coming within the scope of criminal law.

(2) Paragraph 1 shall not prevent the CSSF from exchanging information within the limits laid down by this law with the competent authorities of other European Union Member States. Such information is subject to the professional secrecy referred to in paragraph 1.

The CSSF collaborates closely with the competent authorities of the other European Union Member States to facilitate accomplishment of their supervisory mission relative to the IORPs and, for this purpose only, communicates all the information required.

The competent authorities of the signatory States of the European Economic Area Agreement other than the Community Member States are treated as competent authorities of a European Union Member State within the limits laid down by that agreement and the laws pertaining thereto.

(3) Paragraph 1 shall not prevent the CSSF from exchanging information with:

- the authorities of third countries entrusted with a public supervisory mission pertaining to occupational pensions,
- the organisations and persons referred to in paragraph 5 established in third countries,
- the authorities of third countries referred to in paragraph 6.

The communication of information by the CSSF as authorised by this paragraph shall be subject to the following conditions:

- the information communicated must be essential to the function of the authorities, organisations and persons who receive it,
- the information communicated must be covered by the professional secrecy of the authorities, organisations and persons who receive it and the professional secrecy of those authorities, organisations and persons must provide guarantees at least equivalent to the professional secrecy which the CSSF is subject to,
- the authorities, organisations and persons receiving information from the CSSF may use it only for the purposes for which it was communicated to them and must be able to ensure that it is not used for any other purpose,
- the authorities, organisations and persons who receive information from the CSSF must grant the CSSF the same right to information,
- disclosure by the CSSF of information received from the authorities of the Community Home Member State responsible for the supervision of occupational pension schemes may only take place with the explicit consent of those authorities and, where applicable, solely for the purposes for which those authorities have given their consent.

For the purposes of this paragraph, “third countries” shall mean States other than those referred to in paragraph 2.

(4) When the CSSF receives confidential information by virtue of paragraphs 2 and 3, it shall use it solely in the performance of its duties:

- to check that the admission requirements for an IORP governed by this law are met and to facilitate monitoring of the conduct of the business, the administrative and accounting organisation and the internal auditing mechanisms; or
- for the imposition of sanctions; or
- in administrative actions against decisions taken by the CSSF; or
- in legal proceedings brought against decisions refusing to grant authorisation or withdrawing authorisation.

(5) Paragraphs 1 and 4 shall not impede exchanges of information between the following parties which are necessary for the accomplishment of their mission:

- a) in Luxembourg, between the CSSF and the Commissariat aux assurances and the Inspection Générale de la Sécurité Sociale;

- b) between the CSSF and the IORPs' asset managers and liability managers;
- c) within the European Union, between the CSSF and:
 - the bodies involved in liquidation or bankruptcy proceedings or other similar proceedings relating to IORPs and entities which participate in their business activities;
 - the persons responsible for the statutory auditing of the IORPs' accounts, insurance undertakings, credit institutions, investment institutions and other financial institutions.

The communication of information by the CSSF as authorised by this paragraph shall be subject to the condition of that information being covered by the professional secrecy of the authorities, organisations and persons who receive it, and shall be authorised only insofar as the professional secrecy of those authorities, organisations and persons provides guarantees at least equivalent to the professional secrecy which the CSSF is subject to. Furthermore, the authorities receiving information from the CSSF may use it only for the purposes for which it was communicated to them and must be able to ensure that it is not used for any other purpose.

The signatory States of the European Economic Area Agreement other than the Community Member States are treated as assimilated to European Union Member States within the limits laid down by that agreement and the laws pertaining thereto.

(6) Paragraphs 1 and 4 shall not impede exchanges of information within the European Union between the CSSF and:

- the authorities responsible for the supervision of the bodies involved in liquidation or bankruptcy proceedings or other similar proceedings relating to IORPs, credit institutions, investment institutions, insurance undertakings, undertakings for collective investment in transferable securities, management companies, the custodians of undertakings for collective investment in transferable securities and other financial institutions,
- the authorities responsible for the supervision of the persons tasked with the statutory auditing of the accounts of the IORPs, credit institutions, investment institutions, insurance undertakings, undertakings for collective investment in transferable securities, management companies, the custodians of undertakings for collective investment in transferable securities and other financial institutions,
- the bodies responsible for supervising the independent actuaries and liability managers of IORPs and insurance undertakings.

The communication of information by the CSSF as authorised by this paragraph shall be subject to the following conditions:

- the information communicated must be used to accomplish the supervisory mission of the authorities which receive it,
- the information communicated must be covered by the professional secrecy of the authorities which receive it and the professional secrecy of those authorities must provide guarantees at least equivalent to the professional secrecy which the CSSF is subject to,
- the authorities receiving information from the CSSF may use it only for the purposes for which it was communicated to them and must be able to ensure that it is not used for any other purpose,
- disclosure by the CSSF of information received from the supervisory authorities referred to in paragraphs 2 and 3 may only take place with the explicit consent of those authorities and, where applicable, solely for the purposes for which those authorities have given their consent.

The signatory States of the European Economic Area Agreement other than the Community Member States are treated as assimilated to European Union Member States within the limits laid down by that agreement and the laws pertaining thereto.

(7) This Article shall not prevent the CSSF from sending:

- central banks and other institutions having similar responsibilities as monetary authorities, and,
- where applicable, other public authorities responsible for the supervision of payment systems,

information intended to assist the accomplishment of their mission.

The communication of information by the CSSF as authorised by this paragraph shall be subject to the condition of that information being covered by the professional secrecy of the authorities which receive it and shall be authorised only insofar as the professional secrecy of those authorities provides guarantees at least equivalent to the professional secrecy which the CSSF is subject to. In particular, the authorities receiving information from the CSSF may use it only for the purposes for which it was communicated to them and must be able to ensure that it is not used for any other purpose.

This Article shall not prevent the authorities referred to in this paragraph from providing the CSSF with the information it requires for the purposes of paragraph 4.

The information received by the CSSF shall be covered by its professional secrecy.

Chapter 3: *The CSSF's Right to Information*

Article 60. The pension funds shall inform the CSSF of all amendments to the articles of association, the pension rules and the technical note, and shall send it their annual reports.

Article 61. (1) The CSSF may require the pension funds, the members of their Boards of Directors, their managers and other executives, and asset managers, liability managers or persons responsible for auditing pension funds, to provide it with any information conducive to the accomplishment of its supervisory mission or to send it any relevant document.

(2) The CSSF may monitor the relations between a pension fund and other undertakings or IORPs when the pension fund transfers functions to them which may affect the pension fund's financial situation or which have significant importance in terms of efficiency of control.

(3) The CSSF may, *inter alia*, require communication of the following information:

- intermediate internal reports;
- actuarial valuations and detailed assumptions relating thereto;
- studies on the adequacy of the assets relative to the liabilities;
- documents attesting to the consistent application of the investment policy's underlying principles;
- proof that the contributions have been paid as scheduled.

(4) To verify whether the business is being conducted in compliance with the legal provisions and prudential regulations, the CSSF may carry out on-site inspections at the pension funds' premises and, where applicable, those of the outsourced functions, and may carry out or commission inspections of the books, accounts, registers or other deeds and documents belonging to the pension funds.

Chapter 4: *The CSSF's Powers of Intervention*

Article 62. (1) The CSSF may initiate any suitable and necessary measures including, where appropriate, those of an administrative or financial nature, against any pension fund or its executives to prevent or remedy any irregularity prejudicial to the interests of the members and beneficiaries.

(2) The CSSF may restrict or prohibit the free disposal of a pension fund's assets when, in particular:

- a) it has not registered all of its liabilities or has failed to establish sufficient technical provisions in respect of the entire business or has insufficient assets to cover the technical provisions;
- b) it does not hold the additional hedging assets referred to in Article 77.

To this end, the CSSF may request the competent authorities of the other Member States to prohibit the free disposal of a pension fund's assets held by a depositary or a custodian established in that Member State.

In the interest of a SEPCAV's shareholders, the CSSF may suspend redemptions if the provisions of the laws and regulations or the articles of association concerning the business and operation of the SEPCAV are not complied with.

(3) In order to safeguard the interests of the members and beneficiaries, the CSSF may transfer all or some of the powers that this law confers on the persons running a pension fund to a suitably qualified special representative of its choosing who is fit to exercise these powers.

(4) The CSSF may prohibit or restrict the activities of a pension fund if:

- a) it fails to adequately protect the interests of members and beneficiaries;
- b) it no longer fulfils the conditions of operation;
- c) it seriously breaches the obligations it assumes under the rules which govern it;
- d) in the case of cross-border activity, it does not respect the requirements of social and labour law of the host Member State relevant to the field of occupational pensions.

Article 63. As the competent authority within the meaning of the Law of 5 April 1993 on the financial sector, as amended, and in accordance with the provisions of that law, the CSSF may also prohibit the free disposal of assets of an IORP deposited with a bank or a professional custodian of securities established in Luxembourg. Such a prohibition may only be imposed if the authority in the IORP's Home Member State so requests in accordance with the provisions of its national law implementing Article 14 of Directive 2003/41/EC.

Article 64. (1) The CSSF may withdraw authorisation from a pension fund which is unable to meet the liabilities it has assumed, which allocates its assets to applications other than the one for which it was formed, or which seriously contravenes its articles of association, the law, or public order.

(2) Withdrawal of a pension fund's authorisation entails withdrawal from the pension funds list referred to in Article 54.

Article 65. The directors or executives of a pension fund subject to the CSSF's supervision, and the liquidators in the event of the voluntary liquidation of a pension fund, may incur a fine of between five hundred and ten thousand euros in the event of them refusing to provide the financial reports and details requested or if such information proves to be incomplete, inaccurate or incorrect, and likewise in the event of a violation of Article 87 of this law or any other serious irregularity coming to light.

Article 66. (1) Decisions taken by the CSSF in accordance with this law shall be reasoned and, barring any extenuating circumstances, shall become effective after due hearing of the parties. They shall be notified by registered letter or delivered by a bailiff. "Any decision to prohibit activities shall be notified to the European Insurance and Occupational Pensions Authority."¹⁰

(2) The CSSF's decisions concerning the granting, refusal or revocation of authorisation as provided for herein may be referred to the Tribunal administratif (administrative tribunal) 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.

Article 67. (1) With effect from its notification to the pension fund concerned, and under that pension fund's responsibility, until such time as it becomes final, a decision taken by the CSSF to remove a pension fund from the register referred to in Article 54 shall automatically entail the suspension of any payment by that pension fund and prohibit all acts, under pain of them becoming null and void, other than protective measures unless they are authorised by the supervising auditor. The CSSF exercises

¹⁰ Law of 21 December 2012

the supervising auditor's functions as of right unless it requests the district court hearing commercial cases to appoint one or more supervising auditors.

(2) The reasoned request to that effect and its supporting documentation shall be filed at the registry of the court of the district in which the pension fund's registered office is situated.

The court rules on the matter promptly.

If it considers itself sufficiently apprised, it rules immediately in open court without hearing the parties. If it considers it necessary, its registrar shall summon the parties within three days of the request being filed. It hears the parties in closed session and rules in open court.

(3) Written authorisation from the supervising auditors shall be required for all acts and decisions of the pension fund, failing which they shall be null and void. The scope of the actions subject to authorisation may be limited, however.

(4) The supervising auditors may submit any proposals which they consider appropriate to deliberation by the pension fund's administrative structures. They may attend the meetings of the pension fund's administrative, management and supervisory structures.

The court or, where applicable, the CSSF, determines the supervising auditors' expenses and fees and may grant them advances.

(5) The judgement referred to in Article 91 terminates the supervising auditor's functions and he shall report to the liquidators appointed in the judgement regarding the application of the pension fund's assets and shall deliver the accounts and supporting documentation to them within one month of being replaced.

(6) If the Tribunal administratif (administrative tribunal) amends the withdrawal decision in accordance with Article 66(2), the supervisory commissioner shall be deemed to have resigned.

PART V

The Pension Funds' Conditions of Operation

Chapter 1: *The Pension Rules and the Technical Note*

Article 68. (1) Each pension fund shall equip itself with a set of guidelines, known as the pension rules, which describe the characteristics of the pension scheme(s) operated by the pension fund and whose minimum content is indicated in Article 69. Each pension scheme shall also be the subject of a technical note whose minimum content is indicated in Article 70. The CSSF's prior authorisation shall be required for any amendment to the pension rules and the technical note.

When the characteristics of the pension schemes operated by the pension fund allow it, the articles of association may provide for several sets of pension rules to exist within a pension fund. For pension funds with multiple compartments within the meaning of Articles 11 and 37, the articles of association may also provide for each compartment to have one or more sets of pension rules. When the pension fund operates several pension schemes or operates one scheme for several sponsoring undertakings, the articles of association may also provide for the pension rules to consist of a common general part supplemented by specific rules which form an integral part of the pension rules and address the specificities per sponsoring undertaking or per pension scheme. In such cases, the provisions of paragraphs 2 and 3 apply to the general rules and the specific rules of the pension scheme or sponsoring undertaking concerned.

(2) Within one month of the pension fund being authorised, each member or beneficiary shall be informed by letter of the registration of his surname, forenames, address and status on a list of members and beneficiaries and receives an up-to-date copy of the pension rules. Any new member shall be informed in the same way within one month of his joining the pension fund. The pension fund shall provide any members and beneficiaries concerned who so request, and likewise their representatives

where applicable, with an up-to-date version of the articles of association, the pension rules and the technical note.

When the pension rules are amended, each member and beneficiary shall be informed thereof in writing within one month and shall receive the amended text or an updated version of the amended pension rules at the same time.

The articles of association, the pension rules and the technical note, and any amendments thereto, shall be communicated within one month to those who committed themselves by accepting those documents, including the contributor(s), and, where applicable, the financial institutions assuming liabilities as provided for in Articles 74 and 76 designated by the pension rules by virtue of Article 69.

(3) Those who committed themselves by accepting those documents, including the contributor(s), and, where applicable, the financial institutions assuming liabilities as provided for in Articles 74 and 76, designated by the pension rules by virtue of Article 69, must accept the articles of association, the pension rules and the technical note, and any amendments thereto, in writing, if they have not already signed them in another capacity and must send their declaration to the pension fund's Board of Directors.

The pension rules are binding on the members and beneficiaries and shall be deemed to have been accepted by them if they do not raise any objection within two months of receiving the information described in the preceding paragraph. In the event of a member or a beneficiary not accepting the pension rules or a clause within them, he shall forfeit his membership or beneficiary status and any benefits he has shall be transferred to another qualifying scheme in accordance with the relevant provisions of the pension rules unless he is subject to more restrictive provisions which make his membership of the pension fund compulsory; depending on the relevant provisions of the pension rules, such membership may merely entail the maintenance of existing benefits or may take the form of a continuous accumulation of benefits in the future.

However, if the member is also a contributor or if his acceptance makes him a debtor of the fund in some other way, he shall accept the articles of association, the pension rules and, where applicable, the technical note, and any amendments thereto, in writing, unless the pension rules are founded on a collective agreement or a law.

Article 69. (1) For each pension scheme, the pension rules shall contain the following indications, at least:

1. the groups of persons eligible to become members and beneficiaries,
2. a definition of the contributors and, where applicable, the financial institutions assuming liabilities as provided for in Articles 74 and 76,
3. all the obligations of the contributor(s), including, in the event of a pension scheme being underfunded, and where applicable, the obligations of the financial institutions assuming liabilities as provided for in Articles 74 and 76,
4. the pension fund's obligations in regard to providing information to the members and beneficiaries, and, where applicable, their representatives,
5. the calculation method for, and frequency of calculation of, the accumulated benefits of each member and each beneficiary, and the rules relating to the provision of information on those benefits,
6. the members' benefits upon retirement, in the event of invalidity, cessation of employment or the insolvency of the sponsoring undertaking, as well as the rights of the entitled beneficiaries upon the death of a member,
7. the terms and conditions of joining and leaving for members and beneficiaries and, where applicable, an indication of the vesting period,
8. the terms and conditions relating to the maintenance, transfer and redemption of the members' acquired rights in the event of cessation of employment or non-acceptance of the pension rules or a clause thereof or an amendment thereto,

9. information on the financial and technical risks and other risks associated with the pension scheme, and the nature and distribution of such risks, including the statement of the investment-policy principles referred to in Article 53(6),

10. for schemes in which the investment risk is borne by the members, a definition of the investment policy, the specific aims it adopts and the criteria that guide it, the fees and expenses the asset manager is authorised to debit to the pension fund, and the method used to calculate such income. If the pension scheme offers a choice of several investment policies, the rules shall expressly provide for that option and describe the investment policies proposed and their risk profiles,

11. the terms and conditions for drawing up and amending the pension rules and the technical note, as determined in the articles of association,

12. for ASSEPs, a description of the principles governing the allocation of any surplus remaining after liquidation of the pension scheme.

(2) Notwithstanding paragraph 1, the CSSF may allow the pension fund's pension rules to use the relevant provisions of the legal documentation imposed on pension schemes by the social security and labour legislation of the host country, if it deems the information provided to be equivalent; where necessary, it may insist that additional information be included in the articles of association or the technical note.

Article 70. For each pension scheme, the technical note shall contain the following indications, at least:

1. the financing plan within the meaning of Article 53(4),

2. for schemes with defined benefits, a definition of the investment policy, the specific aims it adopts and the criteria that guide it,

3. the obligation to appoint an asset manager, where applicable,

4. the obligation to appoint a liability manager, where applicable,

5. the fees and expenses that the asset managers and liability managers are authorised to debit to the pension fund and the method used to calculate such income,

6. the asset valuation rules and the frequency of calculation of the net asset value,

7. the rules for valuing the liabilities and the calculation method used to determine the members' and beneficiaries' benefits in the situations referred to in point 6 of Article 69,

8. the measures taken in the event of the contributor no longer being able to meet its obligations,

9. for ASSEPs having benefited from a contribution as provided for in Article 28(1), a description of the procedure for dealing with any depreciation of that contribution,

10. for pension funds operating pension schemes for several sponsoring undertakings, the terms and conditions under which one or more sponsoring undertakings may withdraw,

11. for pension funds operating pension schemes for several sponsoring undertakings, rules for dividing the assets in the event of the departure or insolvency of one or more sponsoring undertakings,

12. for pension funds assuming biometric and/or financial risks which bring together several sponsoring undertakings within a single pension fund or compartment, whether they all belong to the same group or not, the obligations of each of the undertakings in the event of the pension fund being underfunded or one or more sponsoring undertakings becoming insolvent.

Article 71. Amendments to the articles of association, the pension rules and the technical note which are likely to increase the obligations or reduce the benefits of those who accepted those documents are subject to their unanimous agreement. Amendments to the pension rules are binding on the members and the beneficiaries as soon as they are communicated to them and are deemed to have been accepted by them. In the event of such amendments not being accepted by a member or a beneficiary within two months of the date on which he was informed of their content, he shall forfeit his membership or beneficiary status and his benefits shall be transferred to another qualifying scheme or vehicle in accordance with the relevant provisions of the pension rules unless he is subject to more restrictive

provisions which make his membership of the pension fund compulsory; depending on the relevant provisions of the pension rules, such membership may merely entail the maintenance of existing benefits or may take the form of a continuous accumulation of benefits in the future.

Chapter 2: *Technical Provisions*

Article 72. (1) The pension funds shall at all times maintain, for the full range of their pension schemes, an adequate amount of liabilities corresponding to the financial liabilities arising out of their portfolio of existing pension contracts.

(2) Pension funds operating occupational pension schemes where they provide cover against biometric risks and/or guarantee either an investment performance or a given level of benefits shall establish sufficient technical provisions in respect of the total range of these schemes.

(3) The calculation of technical provisions shall take place every year.

The CSSF may nevertheless allow calculation to take place every three years if the pension fund provides the CSSF with a certificate or report attesting to the adjustments made in the intervening years. The said certificate or report constitutes an integral part of the annual actuarial report referred to in paragraph 4; it shall reflect the variations in the technical provisions and the changes in the risks covered.

(4) For pension funds operating occupational pension schemes for which they cover against biometric risk and/or guarantee either the investment performance or a given level of benefits, it is incumbent on the liability manager to calculate and certify the technical provisions on the date of closure of the annual accounts every year on the basis of the actuarial methods recognised by the CSSF. In this context, the liability manager issues an actuarial report every year on the date of closure of the annual accounts whose content may be defined by the CSSF in accordance with Article 51(4).

If the liabilities management is not delegated, the pension fund shall ensure that it is performed in accordance with the provisions of Article 49(2), by persons who meet qualification criteria equivalent to those applicable to the executives of liabilities management firms. "In which case, the calculation of the technical provisions shall be verified and certified by a *réviseur d'entreprises agréé* (approved statutory auditor) who then draws up a specific report to this end the content of which may be determined by the CSSF in accordance with the last subparagraph of Article 90(3)."¹¹

"Each pension fund shall send the CSSF the actuarial report issued annually by the liability manager, or the specific report issued by the *réviseur d'entreprises agréé* (approved statutory auditor)."¹²

(5) The CSSF must approve the method and bases of calculation of the technical provisions which the pension fund proposes to use, which must comply with the rules laid down in paragraph 6; the method and the bases of calculation of the technical provisions are set out in the financing plan referred to in Article 53(4).

The CSSF may make the calculation of the technical provisions subject to additional and more detailed requirements to ensure that the members' and beneficiaries' interests are adequately safeguarded.

(6) The technical provisions shall be calculated on the basis of the actuarial methods recognised by the CSSF, in accordance with the following principles:

- a) the minimum amount of the technical provisions shall be calculated by a sufficiently prudent actuarial valuation, taking account of all commitments for benefits and for contributions in accordance with the pension arrangements of the pension fund. It must be sufficient both for pensions and benefits already in payment to beneficiaries to continue to be paid, and to reflect the commitments which arise out of members' accrued pension rights. The economic and actuarial assumptions chosen for the valuation of the liabilities shall also be chosen prudently taking account, if applicable, of an appropriate margin for adverse deviation;
- b) the interest rates used shall be chosen prudently and determined in accordance with:

¹¹ Law of 18 December 2009

¹² Law of 18 December 2009

- the yield on the corresponding assets held by the pension fund and the future investment returns and/or
- the market yields of high-quality or government bonds;
- c) the biometric tables used for the calculation of technical provisions shall be based on prudent principles, having regard to the main characteristics of the group of members and the pension schemes, in particular the expected changes in the relevant risks;
- d) the method and basis of calculation of technical provisions shall in general remain constant from one financial year to another. However, discontinuities may be justified by a change of legal, demographic or economic circumstances underlying the assumptions.

Chapter 3: Funding of Technical Provisions

Article 73. (1) Each pension fund shall have at all times sufficient and appropriate assets to cover the technical provisions in respect of the total range of pension schemes operated.

To ensure compliance with this requirement, the CSSF may impose ring-fencing of the assets and liabilities of one or more pension schemes.

(2) A pension fund may temporarily have insufficient assets to cover the technical provisions. In this case, the CSSF shall require the pension fund to adopt a concrete and realisable recovery plan in order to ensure that the requirements of paragraph 1 are met again. The plan shall be subject to the following conditions:

- a) the pension fund shall set up a concrete and realisable plan to re-establish the required amount of assets to cover fully the technical provisions in due time. It shall be subject to authorisation from the CSSF;
- b) in drawing up the plan, account shall be taken of the specific situation of the pension fund, in particular the asset/liability structure, risk profile, liquidity plan, the age profile of the members entitled to receive retirement benefits, start-up schemes and schemes changing from non-funding or partial funding to full funding;
- c) in the event of termination of a pension scheme during the period referred to above in this paragraph, the pension fund shall inform the CSSF thereof. The pension fund shall establish a procedure in order to transfer the assets and the corresponding liabilities to another financial institution or a similar body. This procedure shall be disclosed to the CSSF and a general outline of the procedure shall be made available to members in accordance with the principle of confidentiality.

(3) In the event of cross-border activity as referred to in Article 97, the technical provisions shall at all times be fully funded in respect of the total range of pension schemes operated. If these conditions are not met, the CSSF shall intervene in accordance with Article 62.

Chapter 4: Additional assets above technical provisions

Article 74. SEPCAVs shall not operate pension schemes in respect of which the pension fund itself underwrites the liability to cover against biometric risk or guarantees a given investment performance or a given level of benefits.

A SEPCAV may guarantee a given investment performance or a given level of benefits provided that it is the sponsoring undertaking or a life insurance undertaking or a bank, and not the SEPCAV, which ultimately bears the financial risks arising from the guarantee. In this event, the guarantor entity shall undertake to make the necessary allocations to cover the benefits arising from the guarantee at the SEPCAV's first request.

In the event of a life insurance undertaking or bank guaranteeing a given investment performance or a given level of benefits, the pension rules shall specify whether the residual counterparty risk on the

guarantor financial institution shall be assumed by the members and beneficiaries or by the sponsoring undertaking.

Article 75. ASSEPs may operate pension schemes in respect of which the pension fund itself underwrites the liability to cover against biometric risk or guarantees a given investment performance or a given level of benefits. The ASSEP's articles of association shall specify whether it is subject to the provisions of Article 76 or Article 77.

Article 76. ASSEPs in respect of which the sponsoring undertaking or a life insurance undertaking or a bank, and not the ASSEP itself, ultimately assumes the biometric and/or financial risks are not subject to the requirement to hold additional assets. In such cases, the sponsoring undertaking or, where applicable, the life insurance undertaking or the bank, shall at all times undertake to ensure the liquidity and solvency of the pension scheme and full coverage of the technical provisions established by the ASSEP for the pension scheme operated for the sponsoring undertaking by making the necessary allocations as soon as the ASSEP so requests.

When a life insurance undertaking or a bank assumes the biometric and/or financial risks, the pension rules specify whether the residual counterparty risk on the financial institution shall be assumed by the members and beneficiaries or by the sponsoring undertaking.

Article 77. (1) ASSEPs which operate pension schemes in respect of which the ASSEP itself, and not the sponsoring undertaking or a life insurance undertaking or a bank, underwrites the liability to cover against biometric risk or guarantees a given investment performance or a given level of benefits, shall hold on a permanent basis additional assets above the technical provisions to serve as a buffer. The amount thereof shall reflect the type of risk and asset base in respect of the total range of schemes operated. These assets shall be free of all foreseeable liabilities and serve as a safety capital to absorb discrepancies between the anticipated and the actual expenses and profits.

“(2) The amount of the additional assets above technical provisions held shall be at least equal to the amount which results from application of the rules laid down in accordance with Article 303 of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II).”¹³

(3) The CSSF may establish more specific rules for determination of the minimum amount and a maximum amount for the additional assets above technical provisions provided that they are prudentially justified.

Chapter 5: Investment Rules

Article 78. The pension funds shall invest their assets in accordance with the "prudent person" rule and in particular in accordance with the following rules:

- a) the assets shall be invested in the best interests of the members and beneficiaries. In the case of a potential conflict of interest, the institution, or the entity which manages its portfolio, shall ensure that the investment is made in the sole interest of members and beneficiaries;
- b) the assets shall be invested in such a manner as to ensure the security, quality, liquidity and profitability of the portfolio as a whole.

Assets held to cover the technical provisions shall also be invested in a manner appropriate to the nature and duration of the expected future retirement benefits;

¹³ Law of 15 March 2016

- c) the assets shall be predominantly invested on regulated markets. Investment in assets which are not admitted to trading on a regulated financial market must in any event be kept to prudent levels;
- d) investment in derivative instruments shall be possible insofar as they contribute to a reduction of investment risks or facilitate efficient portfolio management. They must be valued on a prudent basis, taking into account the underlying asset, and included in the valuation of the pension fund's assets. The institution shall also avoid excessive risk exposure to a single counterparty and to other derivative operations;
- e) the assets shall be properly diversified in such a way as to avoid excessive reliance on any particular asset, issuer or group of undertakings and accumulations of risk in the portfolio as a whole.

Investments in assets issued by the same issuer or by issuers belonging to the same group shall not expose the pension fund to excessive risk concentration.

The investment policy shall always be subject to the principle of risk spreading but may provide for all assets to be invested in one or more asset accumulation vehicles as long as the investment policy laid down by the pension scheme's pension rules is complied with;

- f) investment in the sponsoring undertaking shall be no more than 5% of the portfolio as a whole and, when the sponsoring undertaking belongs to a group, investment in the undertakings belonging to the same group as the sponsoring undertaking shall not be more than 10% of the portfolio. When the pension fund is sponsored by a number of undertakings, investment in these sponsoring undertakings shall be made prudently, taking into account the need for proper diversification.

The requirements referred to in points e) and f) do not apply to investment in government bonds.

(Law of 15 March 2016)

"Taking into account the nature, scale and complexity of the activities of pension funds, the CSSF shall monitor the adequacy of the pension funds' credit assessment processes, assess the use of references to credit ratings issued by credit rating agencies as defined in Article 3(1)(b) of Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies, in their investment policies and, where appropriate, encourage mitigation of the impact of such references, with a view to reducing sole and mechanistic reliance on such credit ratings."

Article 79. (1) A grand-ducal regulation may lay down minimal rules of congruence and, based on the nature of the pension fund's liabilities and the nature of the assets, impose limits regarding their allocation and location.

(2) The CSSF may determine structure ratios which the pension funds subject to its supervision shall be required to comply with. It shall specify the elements used in the calculation of such ratios and monitor compliance with the ratios determined by the international conventions or "EU law"¹⁴.

Article 80. (1) A grand-ducal regulation may, after the CSSF's opinion or proposal has been sought, determine:

- a) how often the SEPCAV's net asset value per share shall be calculated;
- b) the minimum percentage of the pension fund's assets which must be in cash;
- c) the maximum percentage of the pension fund's assets which may be invested in shares, securities or marketable securities treated as shares and bonds of undertakings which are not traded on a regulated market or another organised market offering comparable guarantees;
- d) the maximum percentage of the securities of the same kind issued by the same issuer which the pension fund may hold;

¹⁴ Law of 21 December 2012

- e) the maximum percentage of the pension fund's assets which may be invested in the securities of the same issuer.

(2) The frequency and the percentages, determined as indicated in the foregoing paragraph, may be differentiated according to whether the pension funds have certain characteristics or meet certain conditions.

(3) A newly created pension fund may depart from paragraph 1, letter e) above, while nevertheless applying the principle of risk spreading, for a period of two years from the date of its authorisation. The grand-ducal regulation may set a longer or shorter period subject to a maximum of five years.

(4) When the maximum percentages, determined by reference to letters c), d), and e) of paragraph 1 above, are exceeded as a result of rights attaching to the securities in the portfolio being exercised or another transaction other than a purchase of securities, the pension fund's selling transactions shall have as their prime objective the regularisation of its situation, having due regard to the beneficiaries' interest.

Article 81. Grand-ducal regulations and prudential regulations applied in accordance with Articles 79 and 80 shall nevertheless not prevent pension funds from:

- a) investing up to 70% of the assets covering the technical provisions or of the whole portfolio for schemes in which the members and beneficiaries bear the investment risks in shares, negotiable securities treated as shares and corporate bonds admitted to trading on regulated markets and deciding on the relative weight of these securities in their investment portfolio. Provided it is prudentially justified, however, a lower limit may be applied to pension funds which provide retirement products with a long-term interest rate guarantee, bear the investment risk and themselves provide for the guarantee;
- b) investing up to 30% of the assets covering technical provisions in assets denominated in currencies other than those in which the liabilities are expressed;
- c) investing in risk capital markets.

Article 82. The CSSF may require the application to pension funds of more stringent investment rules on an individual basis provided they are prudentially justified, in particular in the light of the liabilities entered into by the pension fund.

Article 83. (1) In the event of cross-border activity as referred in Article 97, the competent authorities of each host Member State may require that the rules set out in the second subparagraph apply to the pension fund. In such case, these rules shall apply only to the part of the assets of the pension fund that corresponds to the activities carried out in the particular host Member State. Furthermore, they shall only be applied if the same or stricter rules also apply to IORPs located in the host Member State.

The rules referred to in the first subparagraph are as follows:

- a) the pension fund shall not invest more than 30% of these assets in shares, other securities treated as shares and debt securities which are not admitted to trading on a regulated market, or the pension fund shall invest at least 70% of these assets in shares, other securities treated as shares, and debt securities which are admitted to trading on a regulated market;
- b) the pension fund shall invest no more than 5% of these assets in shares and other securities treated as shares, bonds, debt securities and other money and capital-market instruments issued by the same undertaking and no more than 10% of these assets in shares and other securities treated as shares, bonds, debt securities and other money and capital market instruments issued by undertakings belonging to a single group;
- c) the pension fund shall not invest more than 30% of these assets in assets denominated in currencies other than those in which the liabilities are expressed.

(2) To ensure compliance with these requirements, the CSSF may require ring-fencing of the assets and liabilities of one or more pension schemes.

Article 84. A pension fund may not borrow or act as guarantor on behalf of third parties; this provision shall not prevent a pension fund from acquiring securities which are not fully paid up.

The pension fund may nevertheless carry out some borrowing only for liquidity purposes and on a temporary basis.

Chapter 6: Information for Members and Beneficiaries

Article 85. Without prejudice to any more rigorous provisions in the pension scheme's pension rules, each pension fund shall provide its members and beneficiaries with the information set out in this chapter, at very least.

Article 86. The pension rules and amendments thereto are sent to the members and beneficiaries in accordance with Article 68.

The pension fund shall provide any members and beneficiaries concerned who so request, and likewise their representatives where applicable, with an up-to-date version of the articles of association, the pension rules and the technical note.

Article 87. (1) Each pension fund shall draw up annual accounts and annual reports which cover every pension scheme and, where appropriate, annual accounts and annual reports for each pension scheme. The annual accounts and annual reports shall be drawn up within six months of the closure of the financial year. The annual accounts and annual reports shall provide a true and fair view of the pension fund's assets and liabilities and its financial situation. The annual accounts and the information in the reports shall be accurate, complete and clearly presented.

(2) The annual reports shall contain the annual accounts, a report on the activities during the previous year and any significant information which enables the members and beneficiaries to make an informed judgement on the progress of the business and the pension fund's results. Rules concerning the form and content of the annual accounts and annual reports shall be determined in a grand-ducal regulation, after the CSSF's opinion or proposal has been sought.

(3) The annual accounts and annual reports as provided for in paragraphs 1 and 2 may be varied or supplemented by the CSSF dependent on whether the pension fund has certain characteristics or meets certain conditions.

(4) The members and beneficiaries, and likewise the sponsoring undertakings and, where applicable, their representatives, may have sight of the pension fund's accounts and annual reports upon request. When a pension fund is responsible for more than one scheme, they receive the accounts regarding their own specific pension scheme. Notwithstanding Article 73 of the Law of 10 August 1915 on commercial companies, as amended, the annual report shall not be sent to a SEPCAV's shareholders before the general meeting.

Article 88. The statement of the principles underlying the investment policy referred to in Article 53(6), shall be sent to the members and beneficiaries at their request, and to their representatives where applicable.

Article 89. (1) Without prejudice to any more rigorous provisions in the pension scheme's pension rules, each member may also receive more detailed and substantial information upon request concerning:

- a) the level that the retirement benefits must reach, where applicable;
- b) the level of the benefits in the event of cessation of employment;

- c) when the member bears the investment risk, all investment options available, if any, and the existing investment portfolio, with a description of the risks and costs associated with those investments;
- d) the procedure for transferring his pension rights to another IORP if his contract of employment is terminated.

(2) Every year, the members receive concise information on the pension fund's situation and the current financing level of their own accumulated pension rights.

(3) Upon retirement, or when other benefits become payable, each beneficiary receives adequate information on the benefits due to him and the corresponding payment options.

“Chapter 7: Auditing by a réviseur d’entreprises agréé (approved statutory auditor)”¹⁵

Article 90. (1) Pension funds shall have the accounting information in their annual reports verified by an approved statutory auditor.

“The report of the *réviseur d’entreprises agréé* (approved statutory auditor) and any possible qualifications made therein shall be reproduced in full in every annual report.”¹⁶

“The *réviseur d’entreprises agréé* (approved statutory auditor) shall demonstrate that he has appropriate professional experience.”¹⁷

“(2) The *réviseur d’entreprises agréé* (approved statutory auditor) shall be appointed by the pension fund’s Board of Directors and paid by the pension fund.”¹⁸

“(3) The *réviseur d’entreprises agréé* (approved statutory auditor) shall be required to inform the CSSF promptly of any fact or decision which he has become aware of through verifying the accounting information in a pension fund’s annual report or in performing any other statutory duty relating to a pension fund, if that fact or that decision is likely to:

- constitute a serious violation of the provisions of this law or the provisions of its implementing legislation, or
- jeopardise the pension fund’s continued operation, or
- result in refusal to certify the accounts or the issuing of reservations concerning them.”¹⁹

“In performing his duties for a pension fund as described in the preceding subparagraph, the *réviseur d’entreprises agréé* (approved statutory auditor) shall also be required to inform the CSSF promptly of any fact or decision concerning the pension fund relative to the criteria enumerated in the said subparagraph which he has become aware of through having audited the accounting information in its annual report or in performing another statutory duty concerning an undertaking linked to that pension fund by a controlling interest.”²⁰

For the purposes of this Article, “controlling interest” shall mean the link which exists between a parent undertaking and a subsidiary in the cases referred to in Article 77 of the Law of 17 June 1992 relating to the annual and consolidated accounts of credit institutions, as amended, or a relationship of the same kind between any natural person or legal person and an undertaking; any subsidiary of a subsidiary undertaking shall likewise be deemed to be a subsidiary of those undertakings’ ultimate parent undertaking. A situation in which such persons are linked to the same person on a long-term basis through a controlling interest shall also be deemed to constitute a controlling interest between two or more legal or natural persons.

“If, in the performance of his duties, the *réviseur d’entreprises agréé* (approved statutory auditor) discovers that the information provided to the members and beneficiaries or to the CSSF in the pension

¹⁵ Law of 18 December 2009

¹⁶ Law of 18 December 2009

¹⁷ Law of 18 December 2009

¹⁸ Law of 18 December 2009

¹⁹ Law of 18 December 2009

²⁰ Law of 18 December 2009

fund's reports or other documents does not present a true and fair image of the pension fund's financial situation and the status of its assets, he shall be obliged to inform the CSSF thereof. The same applies if the *réviseur d'entreprises agréé* (approved statutory auditor) learns that the pension fund's assets are not, or were not, invested in accordance with the rules laid down or that the valuation of the pension fund's liabilities does not conform to the standard actuarial valuation rules stipulated in the technical note."²¹

"The *réviseur d'entreprises agréé* (approved statutory auditor) shall also be required to provide the CSSF with all the information or certificates which it requires concerning the points which the *réviseur d'entreprises agréé* (approved statutory auditor), or ought to have, knowledge of in order to carry out his duties."²²

"A disclosure made in good faith to the CSSF by a *réviseur d'entreprises agréé* (approved statutory auditor) concerning facts or decisions referred to in this paragraph does not constitute a violation of professional secrecy or a violation of any contractually imposed restriction on the disclosure of information and does not incur liability of any kind for the *réviseur d'entreprises agréé* (approved statutory auditor)."²³

(Law of 21 December 2012)

"Every pension 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* (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 ask the *réviseur d'entreprises agréé* (approved statutory auditor) to carry out checks on one or more specific aspects of a pension fund's activities and transactions."²⁴ Such checks shall be carried out at the expense of the pension fund concerned.

"(4) The CSSF shall refuse or withdraw the registration on the list of any pension fund whose *réviseur d'entreprises agréé* (approved statutory auditor) fails to meet the conditions, or the obligations, imposed by this Article."²⁵

(5) Articles 61 and 137 of the Law of 10 August 1915 on commercial companies, as amended, do not apply to SEPCAVs. The directors shall have sole competence in all cases in which the Law of 10 August 1915 on commercial companies, as amended, makes provision for joint action by the *commissaires aux comptes* (supervisory auditors) and the directors.

The requirement to appoint supervising *commissaries* (supervisory auditors) provided for in Article 151 of the Law of 10 August 1915 on commercial companies does not apply to SEPCAVs. "Upon completion of the liquidation procedure, the *réviseur d'entreprises agréé* (approved statutory auditor) draws up a liquidation report."²⁶ The said report shall be presented at the general meeting at which the liquidators report on the application of the fund's resources and submit the accounts and supporting documentation. That same meeting approves the liquidation accounts, decides on the discharge and pronounces the closure of the liquidation procedure.

²¹ Law of 18 December 2009

²² Law of 18 December 2009

²³ Law of 18 December 2009

²⁴ Law of 18 December 2009

²⁵ Law of 18 December 2009

²⁶ Law of 18 December 2009

Chapter 8: *Dissolution and Liquidation of a Pension Fund*

Article 91. At the request of the CSSF or the Public Prosecutor, the district court hearing commercial cases may order the dissolution and liquidation of a pension fund which no longer has an authorisation or which is unable to meet the liabilities it has assumed, which allocates its assets to applications other than the one for which it was formed, or which seriously contravenes its articles of association, the law, or public order.

On rejecting a request for dissolution, the court may nevertheless order the cancellation of the contested act.

Article 92. (1) On ordering liquidation, the court appoints an official receiver and one or more liquidators. It determines the winding-up procedure. Insofar as it deems it appropriate, it may make the rules governing bankruptcy proceedings applicable. The winding-up procedure may be changed by a subsequent decision, either without consultation, or at the request of the liquidator(s).

The creditors shall be paid in the following order:

1. creditors other than the members and beneficiaries;
2. members and beneficiaries;
3. the sponsoring undertaking(s).

(2) The judgement ordering the dissolution and liquidation is immediately enforceable.

(3) Once judgement is pronounced, all legal actions relating to movable or immovable property, and all enforcement procedures on movables or immovables, may only be pursued, initiated or exercised against the liquidator(s).

The liquidator(s) alone may bring and pursue any actions on behalf of the pension fund, receive any payments, give discharge with or without a receipt, realise and reinvest all the pension fund's assets, create or endorse any negotiable instrument and compromise on or settle any claim. The liquidator(s) may dispose of the pension fund's immovables by public auction.

(4) The liquidator(s) shall be liable in regard to third parties, members and beneficiaries and the pension fund for the execution of their remit and any mismanagement.

(5) Court decisions ordering the dissolution and liquidation of a pension fund shall be published, in whole or in part, at the pension fund's expense and at the liquidators' behest, 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"²⁷, and in at least three Luxembourg or foreign journals of sufficient circulation, designated by the court.

All documents emanating from a pension fund in liquidation shall indicate that it is in liquidation.

(6) The court determines the fees and expenses of the liquidators; it may grant them advances. In the event of the official receiver finding the assets to be non-existent or insufficient, the proceedings shall be exempt from any court fees and registration fees and the fees and expenses of the liquidator(s) shall be met by the *Trésor* and treated as legal fees.

(7) Any sums or assets due to the members and beneficiaries and other creditors who did not present themselves during the liquidation procedure shall be deposited with the Consignment Office in favour of their rightful owners.

(8) When the liquidation is completed, the liquidator(s) shall report to the court on the application of the pension fund's assets and shall submit the accounts and supporting documentation. The court appoints supervising auditors to examine the documents. The court rules after the supervising auditors have reported on the management of the liquidator(s) and the closure of the liquidation. The ruling shall be published in accordance with paragraph 5 above. Such publication also includes:

²⁷ Law of 27 May 2016

- a) details of the place designated by the court where the pension fund's books and documents shall be lodged for at least five years;
- b) details of the measures taken in accordance with paragraph 7 above relative to the consignment of any sums and securities due to the members and beneficiaries and other creditors which it was not possible to transmit to them.

(9) Any action brought against the liquidator(s) acting in such capacity shall become void five years after publication of the closure of the liquidation procedure in accordance with paragraph 8.

Article 93. (1) Any deed, exhibit or document likely to inform the court concerning the request referred to in Article 91 may be produced and filed without submission to any stamping or registration formalities.

(2) The fees of the supervising auditors and the liquidator(s) and any other expenses incurred in accordance with this chapter shall be met by the pension fund. Such fees and expenses shall be treated as administration costs.

Article 94. (1) The general meeting may decide to dissolve and liquidate the pension fund only if two thirds of its associates are present or represented. If this condition is not met, a new meeting may be convened. The second meeting shall deliberate validly regardless of the number of associates present or represented. Dissolution shall require a majority of three quarters of the votes of the associates present or represented.

(2) The pension fund may only place itself in voluntary liquidation if it informed the CSSF of its intention at least one month before the convening of the extraordinary general meeting.

(3) The liquidators appointed by the pension fund must be approved by the CSSF, which retains its supervisory rights until the closure of the liquidation procedure.

Article 95. A judgement declaring a pension fund's dissolution or the voidance of one of its acts shall be open to appeal.

The same shall apply to a judgement ruling on the liquidators' management and the closure of the liquidation procedure.

Article 96. (1) The dissolution and liquidation of the pension fund decided by the general meeting in accordance with Article 94 or rendered final and binding in accordance with Article 95 releases the contributors from their future obligations towards the pension fund.

(2) The acquired rights of each member and each beneficiary shall be decided on the date of the pension fund's dissolution and liquidation and become payable in cash if the articles of association do not stipulate a different allocation.

PART VI

Cross-border Activities and Cooperation

Chapter 1: *Cross-border Activities in other Member States*

Article 97. (1) Pension funds authorised under this law may accept sponsorship from sponsoring undertakings established in other Member States.

(2) A pension fund wishing to accept sponsorship from one or more sponsoring undertakings located within the territory of another Member State must notify the CSSF of its intention.

(3) Such notification shall include the following information:

- a) the host Member State(s);
- b) the name(s) of the sponsoring undertaking(s);
- c) the main characteristics of the pension scheme to be operated for the sponsoring undertaking(s).

(4) Where the CSSF is notified under paragraph 2, and unless it has reason to doubt that the administrative structure or the financial situation of the pension fund or the good repute and professional qualifications or experience of the persons running the pension fund are compatible with the operations proposed in the host Member State, it shall within three months of receiving all the information referred to in paragraph 3 communicate that information to the competent authorities of the host Member State and inform the pension fund accordingly. "The CSSF shall inform the European Insurance and Occupational Pensions Authority of this cross-border activity."²⁸

(5) Before a pension fund starts to operate a pension scheme for a sponsoring undertaking in another Member State, the competent authorities of the host Member State shall, within two months of receiving the information referred to in paragraph 3, inform the CSSF, if appropriate, of the requirements of social and labour law relevant to the field of occupational pensions under which the pension scheme sponsored by an undertaking in the host Member State must be operated and any rules that are to be applied in accordance with Article 83(1) and with paragraph 7 of this Article. The CSSF shall communicate this information to the pension fund.

(6) On receiving the communication referred to in paragraph 5, or if no communication is received from the CSSF on expiry of the period provided for in paragraph 5, the pension fund may start to operate the pension scheme sponsored by an undertaking in the host Member State in accordance with the host Member State's requirements of social and labour law relevant to the field of occupational pensions and any rules that are to be applied in accordance with Article 83(1) and with paragraph 7 of this Article.

(7) In particular, a pension fund sponsored by an undertaking established in another Member State shall also be subject, in respect of the corresponding members, to any information requirements imposed by the competent authorities of the host Member State on IORPs established in that Member State.

(8) The competent authorities of the host Member State shall inform the CSSF of any significant change in the host Member State's requirements of social and labour law relevant to the field of occupational pension schemes which may affect the characteristics of the pension scheme insofar as it concerns the operation of the pension scheme sponsored by an undertaking in the host Member State and in any rules that have to be applied in accordance with Article 83(1) and with paragraph 7 of this Article.

(9) The pension fund shall be subject to ongoing supervision by the competent authorities of the host Member State as to the compliance of its activities with the host Member State's requirements of labour and social law relevant to the field of occupational pensions referred to in paragraph 5 and with the information requirements referred to in paragraph 7. Should this supervision bring irregularities to light, the competent authorities of the host Member State shall inform the CSSF immediately. The CSSF shall, in coordination with the competent authorities of the host Member State, take the necessary measures to ensure that the pension fund puts a stop to the detected breach of social and labour law.

(10) If, despite the measures taken by the CSSF or because appropriate measures are lacking in Luxembourg, the pension fund persists in breaching the applicable provisions of the host Member State's requirements of social and labour law relevant to the field of occupational pension schemes, the competent authorities of the host Member State may, after informing the CSSF, take appropriate measures to prevent or penalise further irregularities, including, insofar as is strictly necessary, preventing the pension fund from operating in the host Member State for the sponsoring undertaking.

Art. 98. The competent authorities of the host Member State may ask the CSSF to decide on the ring-fencing of the pension fund's assets and liabilities as provided for in Article 73(1), and Article 83(2).

²⁸ Law of 21 December 2012

Chapter 2: Cross-border Activities in Third Countries

Art. 99. Pension funds may accept sponsorship from sponsoring undertakings established in third countries in accordance with the provisions of the national law applicable to such activities.

PART VII

Criminal and Fiscal Provisions

Chapter 1: Criminal Provisions

Art. 100. The following persons shall incur a term of imprisonment of between one month and one year and a fine of between five hundred and twenty-five thousand euros, or only one of these penalties:

- 1) those who have issued or redeemed, or arranged issuance or redemption of, the shares of a SEPCAV in violation of one of the provisions of this law or in violation of the articles of association or the pension rules;
- 2) those who have issued or redeemed the shares of a SEPCAV at a price different from that which would result from application of the criteria stipulated in Article 10(2) and (4);
- 3) those who have granted pension rights, or paid, or arranged payment of, a capital sum or a pension from an ASSEP in violation of one of the provisions of this law or in violation of the articles of association or the pension rules;
- 4) those who, as executives of a SEPCAV or of its custodian, have made loans or advances on shares using the company's assets, or who, by whatever means, have made payments to pay up shares at the company's expense or treated as made payments which were not in fact made;
- 5) those who, as executives of an ASSEP or of its custodian, have made loans or advances using the ASSEP's assets against a pledge of receivables made against the ASSEP or treated as made payments of contributions which were not in fact made.

Art. 101. (1) The following persons shall incur a term of imprisonment of between one month and six months and a fine of five hundred to twenty-five thousand euros, or only one of these penalties:

- 1) executives of a pension fund who have failed to inform the CSSF immediately of the pension fund's intention to put itself into liquidation in accordance with Articles 14, 28 or 94;
- 2) executives of a pension fund or of its liability manager or asset manager who have contravened the provisions of the pension rules regarding the investment policy, the asset valuation rules, the financing plan or the liabilities valuation rules.

(2) Whoever, in breach of Article 55, has used a designation or qualification which gives the impression of activities subject to this law, if he has not obtained authorisation as provided for in Article 53 and registration in accordance with Article 54, shall incur a fine of five hundred to twenty-five thousand euros.

Art. 102. The directors or executives of a pension fund who have not arranged for the net issue price and redemption price of a SEPCAV's shares to be established and have not complied with the rules governing the frequency of calculation of the net asset value, the frequency of calculation of the members' and beneficiaries' benefits and the provision of information concerning those benefits shall incur a fine of between five hundred and ten thousand euros.

Art. 103. Directors or executives of a pension fund who, notwithstanding the provisions of Article 67(1), take actions other than protective measures without being authorised to do so by the CSSF shall incur

a term of imprisonment of one month to one year and a fine of five hundred to twenty-five thousand euros, or only one of these penalties.

Chapter 2: Fiscal Provisions

“Article 104. (1) Paragraph 3, 1st subparagraph of the amended Law of 16 October 1934 on wealth tax is supplemented by numbers 9 and 10 worded as follows:

“9. pension savings companies with variable capital (SEPCAV) set up as a *société coopérative organisée comme une société anonyme de droit luxembourgeois*, subject to the minimum wealth tax determined in accordance with the provisions of § 8, 2nd subparagraph;”

10. “pension savings associations (ASSEP) set up in the legal form of a pension savings association, subject to the minimum wealth tax determined in accordance with the provisions of § 8, 2nd subparagraph.”²⁹

(2) Income received from transferable securities and from assignment of such assets does not constitute taxable income in the context of a SEPCAV.

(3) SEPCAVs and ASSEPs are required to send the register of members and beneficiaries to the Administration des contributions by the last day of the third month following the closure of the financial year, indicating the contact details of the members and beneficiaries, their benefit entitlement at the year-end and the benefits paid during the period.

(4) A grand-ducal regulation may determine the particulars and rules relating to the information to be provided by SEPCAVs and ASSEPs by virtue of paragraph 3 to enable the Administration des Contributions to communicate these details to the foreign tax authorities for processing under the legislation of the State of residence of the member and the beneficiary.

Article 105. A point 7, worded as follows, has been added to the first subparagraph of Article 167 of the Law of 4 December 1967 on income tax, as amended:

“7. the sums corresponding to the statutory reserves allocation made by pension savings associations to form the additional hedging assets referred to in Article 77 of the law on institutions for occupational retirement provision in the form of a SEPCAV or an ASSEP.”

Art. 106. “(…)”³⁰

Article 107. If, at a date subsequent to the date of formation of a pension fund covered by this law, the CSSF or the relevant tax authorities find that it is engaged in transactions beyond the scope of the activities authorised by this law, the fiscal provisions relating to SEPCAVs and ASSEPs set out in the third subparagraph of Article 97 of the Law of 4 December 1967 on income tax, as amended, and in Articles 104 and 106 of this law shall cease to apply.

²⁹ Law of 18 December 2015

³⁰ Law of 19 December 2008

PART VIII
Transitional and Repealing Provisions

Article 108. (1) The Law of 8 June 1999 creating pension funds in the form of a pension savings company with variable capital (SEPCAV) and a pension savings association (ASSEP), as subsequently amended, is repealed.

References to the Law of 8 June 1999 creating pension funds in the form of a pension savings company with variable capital (SEPCAV) and a pension savings association (ASSEP), as amended, made in other laws are deemed to have been replaced by references to this law.

(2) Pension funds, liability managers and asset managers of non-Community origin authorised before this law's date of entry into force who were previously subject to the Law of 8 June 1999, as amended, shall be automatically governed by this law from the date of its publication in the Mémorial and shall be deemed to be authorised in accordance with the provisions of this law.

All references to the Law of 8 June 1999, as amended, in the articles of association shall be deemed to have been replaced by references to this law.

Such pension funds must comply with the provisions of this law by 23 September 2005.

Article 109. (1) This law enters into force on the date of its publication in the Mémorial.

(2) References to this law may be made in abbreviated form using the following wording: "Law of 13 July 2005 on institutions for occupational retirement provision in the form of a SEPCAV and an ASSEP".