

Law of 17 December 2010 relating to undertakings for collective investment:

- **transposing Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (recast);**
- **amending:**
 - **the Law of 20 December 2002 relating to undertakings for collective investment, as amended;**
 - **the Law of 13 February 2007 relating to specialised investment funds, as amended;**
 - **Article 156 of the Law of 4 December 1967 on income tax.**

(Mém. A 2010, No 239)

as amended by:

- 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 a SEPCAV and an ASSEP, as amended;
 8. the Law of 9 May 2006 on market abuse, as amended;
 9. the Law of 13 February 2007 relating to specialised investment funds, as amended;
 10. the Law of 13 July 2007 on markets in financial instruments, as amended;
 11. the Law of 11 January 2008 on transparency requirements for issuers of securities, as amended;
 12. the Law of 10 November 2009 on payment services, as amended;
 13. the Law of 17 December 2010 relating to undertakings for collective investment

(Mém. A 2012, No 275)

- the Law of 6 April 2013 on dematerialised securities and amending:
 - the Law of 5 April 1993 on the financial sector, as amended;
 - the Law of 23 December 1998 establishing a financial sector supervisory commission (“Commission de surveillance du secteur financier”), as amended
 - the Law of 10 August 1915 on commercial companies, as amended;
 - the Law of 3 September 1996 concerning the involuntary dispossession of bearer securities, as amended;
 - the Law of 1 August 2001 on the circulation of securities and other fungible instruments, as amended;
 - the Law of 20 December 2002 relating to undertakings for collective investment, as amended;
 - the Law of 17 December 2010 relating to undertakings for collective investment;
 - the Law of 13 February 2007 relating to specialised investment funds, as amended;
 - the Law of 22 March 2004 on securitisation, as amended

(Mém. A 2013, No 71)

- the Law of 12 July 2013 on alternative investment fund managers and
 - transposing Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010;
 - amending:
 - the Law of 17 December 2010 relating to undertakings for collective investment, as amended;
 - the Law of 13 February 2007 relating to specialised investment funds, as amended;
 - the Law of 15 June 2004 relating to the investment company in risk capital (SICAR), as amended;

- the Law of 13 July 2005 on institutions for occupational retirement provision in the form of a SEPCAV and an ASSEP, 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 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 a SEPCAV and an ASSEP, 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 10 May 2016

- transposing Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014 amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions;

- amending:

- the Law of 17 December 2010 relating to undertakings for collective investment, as amended;
- the Law of 12 July 2013 on alternative investment fund managers, as amended.

(Mém. A 2016, No 88)

- the Law of 27 May 2016

amending, with a view to reforming the legal publication regime regarding companies and associations,

- the Law of 19 December 2002 on the trade and companies register and the accounting practices and annual accounts of undertakings, as amended;
- the Law of 10 August 1915 on commercial companies, as amended;
- the Law of 21 April 1928 on non-profit organisations, as amended;
- the Grand-ducal Decree of 24 May 1935 supplementing the legislation on suspension of payments, on composition with creditors to prevent bankruptcy by establishing a controlled management regime, as amended;
- the Grand-ducal Decree of 17 September 1945 revising the Law of 27 March 1900 on the organisation of agricultural associations, as amended;
- the Law of 24 March 1989 relating to Banque et Caisse d'Epargne de l'Etat, Luxembourg, as amended;
- the Law of 25 March 1991 on economic interest groupings, as amended;

- the Law of 25 March 1991 on diverse implementing measures of Council Regulation (EEC) No 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG), as amended;
- the Law of 17 June 1992 relating to the annual and consolidated accounts of credit institutions, as amended;
- the Law of 8 December 1994 relating to: - the annual and consolidated accounts of insurance and reinsurance undertakings governed by the laws of Luxembourg - the obligations in relation to the drawing-up and publication of accounting documents of branches of insurance undertakings governed by foreign laws, as amended;
- the Law of 31 May 1999 governing the domiciliation of companies, as amended;
- the Law of 22 March 2004 on securitisation, as amended;
- the Law of 15 June 2004 relating to the investment company in risk capital ("SICAR"), as amended;
- the Law of 13 July 2005 on institutions for occupational retirement provision in the form of a SEPCAV and an ASSEP, as amended;
- the Law of 13 February 2007 relating to specialised investment funds, as amended;
- the Law of 10 November 2009 on payment services, as amended;
- the Law of 17 December 2010 relating to undertakings for collective investment, as amended;
- the Law of 7 December 2015 on the insurance sector;
- the Law of 18 December 2015 on the failure of credit institutions and certain investment firms.
(Mém. A 2016, No 94)

- the Law of 23 July 2016 on reserved alternative investment funds and amending:
 1. the Law of 16 October 1934 on wealth tax, as amended;
 2. the Law of 1 December 1936 concerning municipal business tax, as amended;
 3. the Law of 4 December 1967 on income tax, as amended;
 4. the Law of 5 April 1993 on the financial sector, as amended;
 5. the Law of 13 February 2007 relating to specialised investment funds, as amended, and
 6. the Law of 17 December 2010 relating to undertakings for collective investment, as amended.
(Mém. A 2016, No 140)

- the Law of 27 February 2018 implementing Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions, and amending:
 1. the Law of 5 April 1993 on the financial sector, as amended;
 2. the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended;
 3. the Law of 5 August 2005 on financial collateral arrangements, as amended;
 4. the Law of 11 January 2008 on transparency requirements for issuers, as amended;
 5. the Law of 10 November 2009 on payment services, as amended;
 6. the Law of 17 December 2010 relating to undertakings for collective investment, as amended;
 7. the Law of 12 July 2013 on alternative investment fund managers, as amended;
 8. the Law of 7 December 2015 on the insurance sector, as amended;
 9. the Law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended, and
 10. the Law of 23 December 2016 on market abuse
(Mém. A 2018, No 150)

- the Law of 17 April 2018 implementing Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs), and amending the Law of 17 December 2010 relating to undertakings for collective investment, as amended.
(Mém. A 2018, No 256)

- the Law of 6 June 2018 implementing Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012, and amending:
 1. the Law of 17 December 2010 relating to undertakings for collective investment, as amended;
 2. the Law of 12 July 2013 on alternative investment fund managers, as amended; and
 3. the Law of 7 December 2015 on the insurance sector, as amended.
(Mém. A 2018, No 463)

- the Law of 8 April 2019 on the measures to be taken in relation to the financial sector in the event of the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and amending:
 - 1° the Law of 13 February 2007 relating to specialised investment funds, as amended; and
 - 2° the Law of 17 December 2010 relating to undertakings for collective investment, as amended
(Mém. A 2019, No 238)

- the Law of 19 December 2020 on the State revenue and expenditure budget for the financial year 2021:
(Mém. A 2020, No 1061)

- the Law of 25 February 2021 amending:
 - 1° the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended;
 - 2° the Law of 20 April 1977 on gaming and betting on sporting events, as amended;
 - 3° the Law of 17 December 2010 relating to undertakings for collective investment, as amended;
 - 4° the Law of 25 March 2020 establishing a central electronic data retrieval system related to IBAN accounts and safe-deposit boxes;
 - 5° the Law of 10 July 2020 establishing a Register of *fiducies* and trusts.

(Mém. A 2021, No 158)

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INTRODUCTORY PART: DEFINITIONS

Article 1. For the purposes of this Law:

¹ 1. “competent authorities” means the authorities which each Member State designates under Article 97 of Directive 2009/65/EC. The competent authority in Luxembourg which is responsible for the supervision of undertakings for collective investment and management companies is the CSSF;

2. “depository” means a credit institution entrusted with the duties as set out in Articles 17, 18, 33 and 34² for Luxembourg UCIs;

3. “initial capital” means the funds as referred to in Article 57, points (a) and (b) of Directive 2006/48/EC;

4. “CSSF” means the *Commission de Surveillance du Secteur Financier* (the Commission for the Supervision of the Financial Sector);

5. “Directive 78/660/EEC” means Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3) under (g) of the Treaty on the annual accounts of certain types of companies, as amended;

6. “Directive 83/349/EEC” means Council Directive 83/349/EEC of 13 June 1983 based on Article 54(3) under (g) of the Treaty on consolidated accounts, as amended;

7. “Directive 97/9/EC” means Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes;

(Law of 10 May 2016)

“7a. “Directive 98/26/EC” means Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems;”

8. “Directive 2004/39/EC” means Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments;

9. “Directive 2006/48/EC” means Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions;

10. “Directive 2006/49/EC” means Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions;

(Law of 10 May 2016)

“10a. “Directive 2006/73/EC” means Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive;”

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

(Law of 12 July 2013)

“11a. “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;”

(Law of 10 May 2016)

“11b. “Directive 2013/34/EU” means Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC;

11c. “Directive 2014/65/EU” means Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU;

11d. “Directive 2014/91/EU” means Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014 amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depository functions, remuneration policies and sanctions;”

¹ Law of 10 May 2016, Article 2: In the numbering of this article, the arabic figures between brackets are replaced by arabic figures followed by a point.

² Law of 10 May 2016, Article 1: The words “of this Law” are deleted after each reference to the articles, chapters or parts of the law being amended.

12. "parent undertaking" means an undertaking which owns the following rights:
- (a) it has the majority of shareholders' or members' voting rights of another undertaking, or
 - (b) it has the right to appoint or remove the majority of the members of the administrative, management or supervisory board of another undertaking and is at the same time a shareholder or member of that undertaking, or
 - (c) it has the right to exercise a dominant influence over an undertaking of which it is a shareholder or member, pursuant to a contract entered into with that undertaking or to a provision in its articles of incorporation where the law governing that undertaking allows it to be subject to such contracts or provisions, or
 - (d) it is a shareholder or member of an undertaking and controls alone, pursuant to an agreement entered into with other shareholders or members of this undertaking, the majority of the voting rights of the shareholders and members of the latter, or
 - (e) it may exercise or effectively exercises a dominant influence over another undertaking, or
 - (f) it is placed under management on a unified basis with another undertaking;

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

14. "UCITS host Member State" means a Member State other than the UCITS home Member State, in which the units of the common fund or the investment company are marketed;

15. "UCITS home Member State" means the Member State in which the common fund or the investment company is authorised pursuant to Article 5 of Directive 2009/65/EC;

16. "management company's host Member State" means a Member State other than the home Member State, within the territory of which a management company has a branch or provides services;

17. "management company's home Member State" means the Member State in which the management company has its registered office;

18. "subsidiary" means a subsidiary undertaking in respect of which rights are owned as set out in point (12). A subsidiary undertaking of a subsidiary undertaking shall also be considered to be a subsidiary of the parent undertaking which is at the head of those undertakings;

(Law of 12 July 2013)

"18a. "alternative investment funds (AIFs)" means undertakings for collective investment, including investment compartments thereof, referred to in Article 4(1)(a) of Directive 2011/61/EU, which:

- (a) raise capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and
- (b) do not require authorisation pursuant to Article 5 of Directive 2009/65/EC.

In Luxembourg, this means alternative investment funds within the meaning of Article 1(39) of the Law of 12 July 2013 on alternative investment fund managers;"

19. "own funds" shall mean own funds as defined in Title V, chapter 2, section 1 of Directive 2006/48/EC. For the purposes of this definition, Articles 13 to 16 of Directive 2006/49/EC shall apply *mutatis mutandis*;

20. "merger" means an operation whereby:

- (a) one or more UCITS or investment compartments thereof, the "merging UCITS", on being dissolved without going into liquidation, transfer all of their assets and liabilities to another existing UCITS or an investment compartment thereof, the "receiving UCITS", in exchange for the issue to their unit-holders of units of the receiving UCITS and, if applicable, a cash payment not exceeding 10% of the net asset value of those units,
- (b) two or more UCITS or investment compartments thereof, the "merging UCITS", on being dissolved without going into liquidation, transfer all of their assets and liabilities to a UCITS which they form or an investment compartment thereof, the "receiving UCITS", in exchange for the issue to their unit-holders of units of the receiving UCITS and, if applicable, a cash payment not exceeding 10% of the net asset value of those units,
- (c) one or more UCITS or investment compartments thereof, the "merging UCITS", which continue to exist until the liabilities have been discharged, transfer their net assets to another investment compartment of the same UCITS, to a UCITS which they form or to another existing UCITS or an investment compartment thereof, the "receiving UCITS";

21. “cross-border merger” means a merger of UCITS:

- (a) at least two of which are established in different Member States, or
- (b) established in the same Member State into a newly constituted UCITS established in another Member State;

22. “domestic merger” means a merger between UCITS established in the same Member State where at least one of the involved UCITS has been notified pursuant to Article 93 of Directive 2009/65/EC;

(Law of 12 July 2013)

“22a. “managing AIFs” means performing at least the investment management functions referred to in point 1(a) or (b) of Annex I of Directive 2011/61/EU for one or more AIFs;”

(Law of 12 July 2013)

“22b. “Alternative Investment Fund Managers (AIFMs)” means legal persons whose regular business is managing one or more AIFs as defined in Article 4(1)(a) of Directive 2011/61/EU. In Luxembourg, this means AIFMs within the meaning of Article 1(46) of the Law of 12 July 2013 on alternative investment fund managers;”

23. “money market instruments” means instruments normally dealt in on the money market which are liquid and have a value which can be accurately determined at any time;

(Law of 10 May 2016)

“23a. “financial instrument” means a financial instrument specified in Section C of Annex I to Directive 2014/65/EU;”

24. “close links” means a situation in which two or more natural or legal persons are linked by either:

- (a) “participation”, which means the ownership, direct or by way of control, of 20% or more of the voting rights or capital of an undertaking, or
- (b) “control”, which means the relationship between a “parent undertaking” and a “subsidiary”, as defined in Articles 1 and 2 of Seventh Council Directive 83/349/EEC of 13 June 1983 based on Article 54(3), item g), of the Treaty on consolidated accounts and in all the cases referred to in Article 1(1) and (2) of Directive 83/349/EEC, or a similar relationship between any natural or legal person and an undertaking.

For the purposes of point (b), the following provisions apply:

- a subsidiary undertaking of a subsidiary undertaking shall also be considered to be a subsidiary of the parent undertaking which is at the head of those undertakings;
- situations in which two or more natural or legal persons are permanently linked to the same person by a control relationship shall also be regarded as constituting a close link between such persons;

(Law of 12 July 2013)

“24a. “Law of 12 July 2013 on alternative investment fund managers” means the Law of 12 July 2013 on alternative investment fund managers transposing Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010;”

25. “UCI” means undertaking for collective investment;

26. “UCITS” means undertaking for collective investment in transferable securities subject to Directive 2009/65/EC;

(Law of 10 May 2016)

“26a. “management body” refers to:

- (a) as regards *sociétés anonymes*³, the board of directors or the management board, as the case may be;
- (b) as regards other types of companies, the body that represents, pursuant to the law and the instruments of incorporation, the management company or the UCITS;”

27. “units” means units of an undertaking constituted in accordance with contract law (common fund managed by a management company) and also shares in an undertaking constituted by statute (investment company);

28. “qualifying holding in a management company” means a direct or indirect holding in a management company which represents 10% or more of the capital or of the voting rights, in accordance with Articles 8 and 9 of the Law of 11 January 2008 on transparency requirements and on the conditions governing the aggregation of voting rights under Article 11(4) and (5) of this aforesaid Law, or any other possibility to exercise a significant influence over the management of this company;

29. “third country” means a state other than a Member State;

³ public limited companies

30. “unit-holder” means unit-holders in undertakings constituted in accordance with contract law (common fund managed by a management company) and also shareholders in undertakings constituted by statute (investment companies);

31. “SICAV” means *société d’investissement à capital variable* (investment company with variable capital);

32. “branch” means a place of business which is a part of the management company, which has no legal personality and which provides the services for which the management company has been authorised. For the purposes of this definition, all places of business established in the same Member State by a management company with its head office in another Member State shall be regarded as a single branch;

33. “durable medium” means an instrument which enables an investor to store information addressed personally to that investor in a way that is accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;

34. “transferable securities” means:

- shares in companies and other securities equivalent to shares in companies (“shares”);
- bonds and other forms of securitised debt (“debt securities”);
- any other negotiable securities which carry the right to acquire any such transferable securities by subscription or exchange.

For the purposes of this definition, the techniques and instruments referred to in Article 42 do not constitute transferable securities.

PART I: UCITS

Chapter 1 – General provisions and scope

Article 2. (1) This Part applies to all UCITS established in Luxembourg.

(2) For the purposes of this Law, and subject to Article 3, UCITS means an undertaking

- “with the sole object of collective investment in transferable securities and/or in other liquid financial assets referred to in Article 41(1)”⁴, of capital raised from the public and which operate on the principle of risk-spreading, and
- with units which are, at the request of holders, repurchased, directly or indirectly, out of this undertaking’s assets. Action taken by a UCITS to ensure that the stock exchange value of its units does not significantly vary from their net asset value shall be regarded as equivalent to any such repurchase.

(3) Any such undertakings may be constituted in accordance with contract law (common funds managed by management companies) or by statute (investment companies).

(4) Investment companies whose assets are invested through the intermediary of subsidiary companies, mainly in other assets than in transferable securities or in other liquid financial assets referred to in Article 41(1) shall not, however, be subject to this Part.

(5) UCITS which are subject to this Part are prohibited from transforming themselves into investment undertakings which are not subject to Directive 2009/65/EC.

Article 3. The following are not subject to this Part:

- UCITS of the closed-end type,
- UCITS which raise capital without promoting the sale of their units to the public within the European Union or any part of it,
- UCITS whose units, under their management regulations or instruments of incorporation, may be sold only to the public in countries which are not members of the European Union,
- categories of UCITS determined by the CSSF, for which the rules laid down in Chapter 5 are inappropriate in view of their investment and borrowing policies.

Article 4. A UCITS is deemed to be established in Luxembourg if it is authorised in accordance with Article 129.

Chapter 2 – Common funds in transferable securities

Article 5. For the purposes of this Part, any undivided collection of transferable securities and/or other liquid financial assets referred to in Article 41(1) shall be regarded as a common fund if it is made up and managed according to the principle of risk spreading on behalf of joint owners who are liable only up to the amount

⁴ Law of 12 July 2013

contributed by them and whose rights are represented by units intended for placement with the public by means of a public or private offer.

Article 6. A common fund shall not be liable for the obligations of the management company or of the unit-holders; it shall be answerable only for the obligations and expenses expressly imposed upon it by its management regulations.

Article 7. The management of a common fund shall be carried out by a management company referred to in Part IV, Chapter 15.

Article 8. (1) "The management company shall issue registered, bearer or dematerialised securities representing one or more portions of the common fund which it manages. The management company may issue, in accordance with the conditions laid down in the management regulations, written certificates of entry in the register of units or fractions of units without limitation as to the fractioning of units."⁵

Rights attaching to fractions of units are exercised in proportion to the fraction of a unit held except for possible voting rights which can only be exercised for whole units. "The bearer securities shall be signed by the management company and by the depositary referred to in Article 17."⁶

These signatures may be reproduced mechanically.

"(2) Ownership of units in the form of registered or bearer securities shall be determined and transfer thereof shall be effected in accordance with the rules laid down in Articles 40 and 42 of the Law of 10 August 1915 concerning commercial companies, as amended. The rights in respect of units registered in a securities account shall be determined and the transmission thereof shall be effected in accordance with the rules laid down in the Law on dematerialised securities and the Law of 1 August 2001 on the circulation of securities."⁷

(Law of 6 April 2013)

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

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

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

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

Article 9. (1) Units shall be issued at a price obtained by dividing the net asset value of the common fund by the number of units outstanding; this price may be increased by expenses and commissions, the maximum amounts and procedures for collection of which may be determined by a CSSF regulation.

(2) Units may not be issued unless the equivalent of the net issue price is paid into the assets of the common fund within the usual time limits. This provision shall not preclude the distribution of bonus units.

(3) Unless otherwise provided for in the management regulations of the fund, the valuation of the assets of the fund shall be based, in the case of securities admitted to official listing on a stock exchange, on the last known stock exchange quotation, unless this quotation is not representative. For securities not so admitted on such a stock exchange and for securities which are so admitted on such a stock exchange, but for which the latest quotation is not representative, the valuation shall be based on the probable realisation value, estimated with care and in good faith.

Article 10. The purchase and sale of the assets may only be effected at prices conforming to the valuation criteria laid down in paragraph 3 of Article 9.

Article 11. (1) Neither the holders of the units nor their creditors may require the distribution or the dissolution of the common fund.

(2) A common fund shall repurchase its units at the request of a unit-holder.

⁵ Law of 6 April 2013

⁶ Law of 6 April 2013

⁷ Law of 6 April 2013

(3) The repurchase of units shall be effected on the basis of the value calculated in accordance with Article 9(1), after deduction of any applicable expenses and commissions, the maximum amounts and procedures for collection of which may be determined by a CSSF regulation.

Article 12. (1) By way of derogation from Article 11(2):

- (a) the management company may, in the cases and according to the procedures provided for by the management regulations, temporarily suspend the repurchase of units. Suspension may be provided for only in exceptional cases where circumstances so require and where suspension is justified having regard to the interests of the unit-holders;
- (b) the CSSF may in the interests of the unit-holders or of the public require the suspension of the repurchase of units, in particular where the provisions of laws, regulations or agreements concerning the activity and operation of the common fund are not observed.

(2) In the cases referred to in paragraph 1 point (a), the management company shall, without delay, communicate its decision to the CSSF and, if the units of the fund are marketed in other Member States of the European Union, to the competent authorities of those Member States.

(3) The issue and repurchase of units shall be prohibited:

- (a) during any period where there is no management company or depositary;
- (b) where the management company or the depositary is put into liquidation or declared bankrupt or seeks an arrangement with creditors, a suspension of payment or a controlled management or is the subject of similar proceedings.

Article 13. “(1) The management company shall draw up the management regulations for the common fund. These management regulations shall be lodged with the trade and companies register and their publication in the Recueil électronique des sociétés et des associations⁸ shall be made by way of a notice advising of the deposit of the document, in accordance with the provisions of Chapter Va of Title I of the Law of 19 December 2002 on the trade and companies register and the accounting practices and annual accounts of undertakings, as amended. The provisions of these management regulations shall be deemed accepted by the unit-holders by the mere fact of the acquisition of these units.”⁹

(2) The management regulations of the common fund are subject to Luxembourg law and shall contain at least the following provisions:

- (a) the name and duration of the common fund, the name of the management company and of the depositary;
- (b) the investment policy according to its specific objectives and the criteria therefore;
- (c) the distribution policy within the scope of Article 16;
- (d) the remuneration and expenditure which the management company is entitled to charge to the common fund and the method of calculation of that remuneration;
- (e) the provisions as to publication;
- (f) the date of the closing of the accounts of the common fund;
- (g) the cases where, without prejudice to legal grounds, the common fund shall be dissolved;
- (h) the procedures for amendment of the management regulations;
- (i) the procedure for the issue of units;
- (j) the procedure for the repurchase of units and the conditions under which the repurchases are carried out and may be suspended.

Article 14. (1) The management company shall manage the common fund in accordance with the management regulations and in the exclusive interests of the unit-holders.

(2) It shall act in its own name, but shall indicate that it is acting on behalf of the common fund.

(3) It shall exercise all the rights attaching to the securities comprised in the portfolio of the common fund.

Article 15. The management company shall fulfil its obligations with the diligence of a salaried agent; it shall be liable to the unit-holders for any loss resulting from the non-fulfilment or improper fulfilment of its obligations.

Article 16. Unless otherwise provided for in the management regulations, the net assets of the common fund may be distributed subject to the limits set out in Article 23.

Article 17. “(1) For each of the common funds that it manages, a management company shall ensure that a single depositary is appointed in accordance with the provisions of this Article and of Articles 18 to 22.”¹⁰

⁸ Electronic digest of companies and associations

⁹ Law of 27 May 2016

¹⁰ Law of 10 May 2016

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

(3) The depositary shall be a credit institution within the meaning of the Law of 5 April 1993 on the financial sector, as amended.

(...)¹¹

(5) The *dirigeants* of the depositary shall be of sufficiently good repute and be sufficiently experienced, also in relation to the common fund concerned. To that end, the identity of the *dirigeants* and of any person succeeding them in office shall be communicated forthwith to the CSSF.

“*Dirigeants*” shall mean those persons, who under law or the instruments of incorporation represent the depositary or effectively determine the conduct of its activity.

(Law of 10 May 2016)

“(5a) The appointment of the depositary shall be evidenced by a written contract. That contract shall, inter alia, regulate the flow of information deemed to be necessary to allow the depositary to perform its functions for the common fund for which it has been appointed as depositary, as laid down in this Law and in other applicable laws, regulations or administrative provisions.”

(6) The depositary shall make available to the CSSF, on request, all information that the depositary has obtained “while performing its duties”¹² and which is necessary to enable the CSSF to “fulfil its supervisory function”¹³.

(Law of 10 May 2016)

“Where the management of the common fund is performed by a management company established in another Member State, the CSSF shall, without delay, share the information received with the competent authorities of the home Member State of the management company.”

Article 18. (...)¹⁴

(2) The depositary shall (...)¹⁵:

- (a) ensure that the sale, issue, repurchase, “redemption”¹⁶ and cancellation of units (...)¹⁷ of the common fund (...)¹⁸ are carried out “in accordance with the law and the management regulations”¹⁹;
- (b) ensure that the value of the units “of the common fund”²⁰ is calculated “in accordance with the law and the management regulations”²¹;
- (c) carry out the instructions of the management company, unless they conflict with the law or the management regulations;
- (d) ensure that in transactions involving the common fund’s assets, any consideration is remitted to it within the usual time limits;
- (e) ensure that the common fund’s income is applied in accordance with “the law or”²² the management regulations.

“(3) The depositary shall ensure that the cash flows of the common fund are properly monitored, and, in particular, that all payments made by, or on behalf of, unit-holders upon the subscription of units of the common fund have been received, and that all cash of the common fund has been booked in cash accounts that are:

- (a) opened in the name of the common fund, of the management company acting on behalf of the common fund, or of the depositary acting on behalf of the common fund;
- (b) opened at an entity referred to in points (a), (b) and (c) of Article 18(1) of Directive 2006/73/EC; and
- (c) maintained in accordance with the principles set out in Article 16 of Directive 2006/73/EC.

Where the cash accounts are opened in the name of the depositary acting on behalf of the common fund, no cash of the entity referred to in point (b) of the first subparagraph and none of the own cash of the depositary shall be booked on such accounts.”²³

¹¹ Law of 10 May 2016

¹² Law of 10 May 2016

¹³ Law of 10 May 2016

¹⁴ Law of 10 May 2016

¹⁵ Law of 10 May 2016

¹⁶ Law of 10 May 2016

¹⁷ Law of 10 May 2016

¹⁸ Law of 10 May 2016

¹⁹ Law of 12 July 2013

²⁰ Law of 10 May 2016

²¹ Law of 12 July 2013

²² Law of 10 May 2016

²³ Law of 10 May 2016

(Law of 10 May 2016)

“(4) The assets of the common fund shall be entrusted to a depositary for safekeeping as follows:

- (a) for financial instruments that may be held in custody, the depositary shall:
 - (i) hold in custody all financial instruments that may be registered in a financial instruments account opened in the depositary’s books and all financial instruments that can be physically delivered to the depositary;
 - (ii) ensure that all financial instruments that can be registered in a financial instruments account opened in the depositary’s books are registered in the depositary’s books within segregated accounts in accordance with the principles set out in Article 16 of Directive 2006/73/EC, opened in the name of the management company acting on behalf of the common fund, so that they can be clearly identified as belonging to the common fund in accordance with the applicable law at all times;
- (b) for other assets, the depositary shall:
 - (i) verify the ownership by the common fund of such assets, by assessing whether the common fund holds the ownership, based on information or documents provided by the management company acting on behalf of the common fund and, where available, on external evidence;
 - (ii) maintain a record of those assets for which it is satisfied that the common fund holds the ownership and keep that record up to date.”

(Law of 10 May 2016)

“(5) The depositary shall provide the management company, on a regular basis, with a comprehensive inventory of all of the assets of the common fund.”

(Law of 10 May 2016)

“(6) The assets of the common fund held in custody by the depositary shall not be reused by the depositary, or by any third party to which the custody function has been delegated, for their own account. Reuse comprises any transaction of assets held in custody including, but not limited to, transferring, pledging, selling and lending.

The assets of the common fund held in custody by the depositary are allowed to be reused only where:

- (a) the reuse of the assets is executed for the account of the common fund;
- (b) the depositary is carrying out the instructions of the management company on behalf of the common fund;
- (c) the reuse is for the benefit of the common fund and in the interest of the unit-holders; and
- (d) the transaction is covered by high-quality and liquid collateral received by the common fund under a title transfer arrangement.

The market value of the collateral shall, at all times, amount to at least the market value of the reused assets plus a premium.”

(Law of 10 May 2016)

“(7) In the event of insolvency of the depositary and/or of any third party located in Luxembourg to which custody of common fund assets has been delegated, the assets held in custody are unavailable for distribution among, or realisation for the benefit of, creditors of such a depositary and/or such a third party.”

(Law of 10 May 2016)

“**Article 18a.** (1) The depositary shall not delegate to third parties the functions referred to in Article 18(2) and (3).

(2) The depositary may delegate to third parties the functions referred to in Article 18(4) only where:

- (a) the tasks are not delegated with the intention of avoiding the requirements laid down in this Law;
- (b) the depositary can demonstrate that there is an objective reason for the delegation;
- (c) the depositary has exercised all due skill, care and diligence in the selection and the appointment of any third party to whom it intends to delegate parts of its tasks, and continues to exercise all due skill, care and diligence in the periodic review and ongoing monitoring of any third party to which it has delegated parts of its tasks and of the arrangements of the third party in respect of the tasks delegated to it.

(3) The functions referred to in Article 18(4) may be delegated by the depositary to a third party only where that third party fulfils all of the conditions below at all times during the performance of the tasks delegated to it:

- (a) has structures and expertise that are adequate and proportionate to the nature and complexity of the assets of the common fund which have been entrusted to it;
- (b) for custody tasks referred to in point (a) of Article 18(4), is subject to:
 - (i) effective prudential regulation, including minimum capital requirements, and supervision in the jurisdiction concerned;
 - (ii) an external periodic audit to ensure that the financial instruments are in its possession;
- (c) segregates the assets of the clients of the depositary from its own assets and from the assets of the depositary in such a way that they can, at any time, be clearly identified as belonging to clients of a particular depositary;

- (d) takes all necessary steps to ensure that in the event of insolvency of the third party, assets of a common fund held by the third party in custody are unavailable for distribution among, or realisation for the benefit of, creditors of the third party; and
- (e) complies with the general obligations and prohibitions laid down in Article 17(5a), in Article 18(4) and (6) and in Article 20.

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

- (a) the unit-holders investing in the relevant common fund are duly informed, prior to their investment, of the fact that such a delegation is required due to legal constraints in the law of the third country, of the circumstances justifying the delegation and of the risks involved in such a delegation;
- (b) the management company acting on behalf of the common fund has instructed the depositary to delegate the custody of such financial instruments to such a local entity.

The third party may, in turn, sub-delegate those functions, subject to the same requirements. In such a case, Article 19(2) shall apply *mutatis mutandis* to the relevant parties.

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

Article 19. “(1) The depositary shall be liable to the common fund and to the unit-holders of the common fund for the loss by the depositary or a third party to whom the custody of financial instruments held in custody in accordance with point (a) of Article 18(4) has been delegated.

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

The depositary shall also be liable to the common fund and to the unit-holders for all other losses suffered by them as a result of the depositary’s negligent or intentional failure to properly fulfil its obligations pursuant to this Law.

(2) The liability of the depositary referred to in paragraph 1 shall not be affected by any delegation as referred to in Article 18a.

(3) The liability of the depositary referred to in paragraph 1 shall not be excluded or limited by agreement.

(4) Any agreement that contravenes paragraph 3 shall be void.

(5) Unit-holders in the common fund may invoke the liability of the depositary directly or indirectly through the management company, provided that this does not lead to a duplication of redress or to unequal treatment of the unit-holders.”²⁴

Article 20. “(1) No company shall act as both management company and depositary.

(2) In carrying out their respective functions, the management company and the depositary shall act honestly, fairly, professionally, independently and solely in the interest of the common fund and the unit-holders.

A depositary shall not carry out activities with regard to the common fund or the management company acting on behalf of the common fund that may create conflicts of interest between the common fund, the unit-holders, the management company and itself, unless the depositary has functionally and hierarchically separated the performance of its depositary tasks from its other potentially conflicting tasks, and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the unit-holders of the common fund.”²⁵

Article 21. The duties of the management company or of the depositary in respect of the common fund shall cease:

- (a) in the case of withdrawal of the management company, provided that it is replaced by another management company authorised in accordance with Directive 2009/65/EC;

²⁴ Law of 10 May 2016

²⁵ Law of 10 May 2016

- (b) in the case of voluntary withdrawal of the depositary or of its removal by the management company; until the replacement of the depositary, which shall happen within two months, the depositary shall take all necessary steps for the good preservation of the interests of the unit-holders;
- (c) where the management company or the depositary has been declared bankrupt, has entered into an arrangement with creditors, has obtained a suspension of payment, has been put under court-controlled management, or has been the subject of similar proceedings or has been put into liquidation;
- (d) where the authorisation of the management company or the depositary has been withdrawn by the competent authority;
- (e) in all other cases provided for in the management regulations.

Article 22. (1) Liquidation of the common fund shall take place:

- (a) upon the expiry of any period as may be fixed by the management regulations;
- (b) in the event of cessation of their duties by the management company or by the depositary in accordance with Article 21, points (b), (c), (d) and (e), if they have not been replaced within two months without prejudice to the specific circumstance addressed in point (c) below;
- (c) in the event of bankruptcy of the management company;
- (d) if the net assets of the common fund have fallen for more than 6 months below one quarter of the legal minimum provided for in Article 23 hereafter;
- (e) in all other cases provided for in the management regulations.

“(2) Notice of the event giving rise to liquidation shall be deposited without delay in the file of the common fund with the trade and companies register and published by the management company or the depositary in the Recueil électronique des sociétés et associations²⁶ in accordance with the provisions of Chapter Va of Title I of the Law of 19 December 2002 on the trade and companies register and the accounting practices and annual accounts of undertakings, as amended, and in at least two newspapers with adequate circulation, one of which at least shall be a Luxembourg newspaper. Failing this, the deposit and the publication shall be carried out by the CSSF at the expense of the common fund.”²⁷

(3) As soon as the event giving rise to liquidation of the common fund occurs, the issue of units shall be prohibited, on penalty of nullity. The repurchase of units remains possible provided the equal treatment of unit-holders can be ensured.

Article 23. The net assets of a common fund may not be less than one million two hundred and fifty thousand euro (EUR 1,250,000).

This minimum shall be reached within a period of six months following the authorisation of the common fund.

A CSSF regulation may increase this minimum amount up to a maximum of two million five hundred thousand euro (EUR 2,500,000).

Article 24. The management company shall inform the CSSF without delay if the net assets of the common fund have fallen below two thirds of the legal minimum. In a case where the net assets of the common fund have fallen below two thirds of the legal minimum, the CSSF may, having regard to the circumstances, compel the management company to put the common fund into liquidation.

“The order addressed to the management company by the CSSF to put a common fund into liquidation shall be deposited without delay in the file of the common fund with the trade and companies register and published by the management company or the depositary in the Recueil électronique des sociétés et associations²⁸ in accordance with the provisions of Chapter Va of Title I of the Law of 19 December 2002 on the trade and companies register and the accounting practices and annual accounts of undertakings, as amended, and in at least two newspapers with adequate circulation, one of which at least shall be a Luxembourg newspaper. Failing this, the deposit and the publication shall be carried out by the CSSF at the expense of the common fund.”²⁹

Chapter 3 – SICAVs in transferable securities

Article 25. For the purposes of this Part, SICAVs shall be taken to mean those companies which have adopted the form of a *société anonyme*³⁰ governed by Luxembourg law,

- whose sole object is to invest their funds in transferable securities and/or other liquid financial assets referred to in Article 41(1) in order to spread the investment risks and to ensure for their unit-holders the benefit of the result of the management of their assets; and
- whose units are intended to be placed with the public by means of a public or private offer; and

²⁶ Electronic digest of companies and associations

²⁷ Law of 27 May 2016

²⁸ Electronic digest of companies and associations

²⁹ Law of 27 May 2016

³⁰ public limited company

- whose articles of incorporation provide that the amount of capital shall, at all times, be equal to the value of the net assets of the company.

Article 26. (1) SICAVs shall be subject to the provisions applicable in general to *sociétés anonymes*³¹, insofar as this Law does not derogate therefrom.

(2) The articles of incorporation of a SICAV and any amendment thereto shall be recorded in a special notarial deed drawn up in French, German or English as the appearing parties may decide. By derogation from the provisions of the Decree of 24 Prairial, year XI, where this deed is in English, the requirement to attach a translation into an official language to that deed when it is filed with the registration authorities, does not apply. "This requirement does neither apply to any other deeds which shall be recorded in notarial form, such as notarial deeds recording the minutes of meetings of shareholders of a SICAV or a merger proposal concerning a SICAV."³²

(3) By derogation to Article 73, subparagraph 2 of the Law of 10 August 1915 on commercial companies, as amended, SICAVs are not required to send the annual accounts, as well as the report of the *réviseur d'entreprises agréé* (approved statutory auditor), the management report and, where applicable, the comments made by the supervisory board to the registered unit-holders at the same time as the convening notice to the annual general meeting. The convening notice shall indicate the place and the practical arrangements for providing these documents to the unit-holders and shall specify that each unit-holder may request that the annual accounts, as well as the report of the *réviseur d'entreprises agréé* (approved statutory auditor), the management report and, where applicable, the comments made by the supervisory board are sent to him.

(4) The convening notices to general meetings of unit-holders may provide that the quorum and the majority at the general meeting shall be determined according to the units issued and outstanding at midnight (Luxembourg time) on the fifth day prior to the general meeting (referred to as "Record Date"). The rights of a unit-holder to attend a general meeting and to exercise a voting right attaching to his units are determined in accordance with the units held by this unit-holder at the Record Date.

Article 27. (1) The minimum capital of a SICAV which has not designated a management company may not be less than three hundred thousand euro (EUR 300,000) at the time of authorisation. The capital of any SICAV including SICAVs which have designated a management company shall reach one million two hundred and fifty thousand euro (EUR 1,250,000) within a period of 6 months following the authorisation of the SICAV. A CSSF regulation may raise those minimum amounts up to a respective maximum of six hundred thousand euro (EUR 600,000) and two million five hundred thousand euro (EUR 2,500,000).

In addition, where a SICAV has not designated a management company authorised pursuant to Directive 2009/65/EC:

- the application for authorisation shall be accompanied by a programme of operations setting out, "at least"³³, the organisational structure of the SICAV;
- the *dirigeants* of the SICAV shall be of sufficiently good repute and be sufficiently experienced in relation to the type of business carried out by that company. To that end, the name of the *dirigeants* and of any person succeeding them in office shall be communicated forthwith to the CSSF. The conduct of a SICAV's business shall be decided by at least two persons meeting these conditions. "*Dirigeants*" shall mean those persons who, under law or the instruments of incorporation represent the SICAV or who effectively determine the policy of the company;
- moreover, where close links exist between the SICAV and other natural or legal persons, the CSSF shall grant authorisation only if those links do not prevent the effective exercise of its supervisory functions.

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

SICAVs shall communicate to the CSSF the information it requires.

The applicant shall be informed, within six months of the submission of a complete application, whether or not authorisation has been granted. Reasons shall be given whenever an authorisation is refused.

A SICAV may start business as soon as authorisation has been granted.

For the members of the administrative body, management board and supervisory board of the SICAV, the granting of authorisation implies an obligation to notify the CSSF, spontaneously, in writing and in a complete, coherent and comprehensible manner, of any change regarding substantial information upon which the CSSF based itself to examine the application for authorisation.

³¹ public limited companies

³² Law of 12 July 2013

³³ Law of 12 July 2013

The CSSF may withdraw the authorisation issued to a SICAV subject to this part of the Law only where that company:

- (a) does not make use of the authorisation within twelve months, expressly renounces the authorisation or has ceased the activity covered by this Law for more than six months;
- (b) has obtained the authorisation by making false statements or by any other irregular means;
- (c) no longer fulfils the conditions under which authorisation was granted;
- (d) has seriously and/or systematically infringed the provisions of this Law or of the regulations adopted pursuant thereto;
- (e) falls within any of the cases where this Law provides for withdrawal.

(2) “Articles 110, 111, 111a, 111b and 112”³⁴ shall apply to SICAVs that have not designated a management company authorised pursuant to Directive 2009/65/EC, provided that the words “management company” shall be construed as “SICAV”.

SICAVs may only manage assets of their own portfolio and may not, under any circumstances, receive any mandate to manage assets on behalf of a third party.

(3) SICAVs that have not designated a management company authorised pursuant to Directive 2009/65/EC shall at all times observe applicable prudential rules.

In particular, the CSSF, having regard also to the nature of the SICAV, shall require that the company has sound administrative and accounting procedures, control and safeguard arrangements for electronic data processing and adequate internal control mechanisms including, in particular, rules for personal transactions by its employees or for the holding or management of investments in financial instruments in order to invest its initial capital and ensuring, *inter alia*, that each transaction involving the company may be reconstructed according to its origin, the parties concerned, its nature, and the time when and the place at which it was effected and that the assets of the SICAV are invested according to the instruments of incorporation and the legal provisions in force.

Article 28. (1) (a) Subject to any contrary provisions of its articles of incorporation, the SICAV may issue its units at any time.

(b) The SICAV shall repurchase its units at the request of the unit-holder without prejudice to paragraphs 5 and 6 of this Article.

(2) (a) The units shall be issued at a price arrived at by dividing the net asset value of the SICAV by the number of units outstanding; this price may be increased by expenses and commissions, the maximum amounts and procedures for collection of which may be determined by a CSSF regulation.

(b) The units shall be redeemed at a price arrived at by dividing the net asset value of the SICAV by the number of units outstanding; this price may be decreased by expenses and commissions, the maximum amounts and procedures for collection of which may be determined by a CSSF regulation.

(3) Units of a SICAV may not be issued unless the equivalent of the net issue price is paid into the assets of the SICAV within the usual time limits. This provision shall not preclude the distribution of bonus units.

(4) The articles of incorporation shall determine the time limits for payments in respect of issues and repurchase and shall specify the principles and methods of valuation of the assets of the SICAV. Unless otherwise provided for in the articles of incorporation, the valuation of the assets of the SICAV shall be based, in the case of securities admitted to official listing on a stock exchange, on the last known stock exchange quotation, unless that quotation is not representative. For securities not so admitted on such a stock exchange and for securities which are admitted on such a stock exchange but for which the latest quotation is not representative, the valuation shall be based on the probable realisation value which shall be estimated with care and in good faith.

(5) By way of derogation from paragraph 1, the articles of incorporation shall specify the conditions in which issues and repurchases may be suspended, without prejudice to legal causes. In the event of suspension of issues or repurchases, the SICAV shall inform the CSSF without delay and, if it markets its units in other Member States of the European Union, the competent authorities of those states.

In the interests of the unit-holders, repurchases may be suspended by the CSSF if the provisions of the laws, regulations or the articles of incorporation concerning the activity and operation of the SICAV are not observed.

(6) The articles of incorporation shall determine the frequency of the calculation of the issue and repurchase price.

(7) The articles of incorporation shall specify the nature of the expenses to be borne by the SICAV.

(8) The units shall be fully paid up. They shall have no par value.

(9) A unit shall specify the minimum amount of capital and shall give no indication regarding its par value or the portion of the capital which it represents.

(10) The purchase and sale of assets shall be effected at prices conforming to the valuation criteria of paragraph 4.

³⁴ Law of 10 May 2016

Article 29. (1) Variations in the capital shall be effected *ipso jure* and without compliance with measures regarding publication and entry in the trade and companies register prescribed for increases and decreases of capital of *sociétés anonymes*³⁵.

(2) Reimbursement to unit-holders following a reduction of capital shall not be subject to any restriction other than that provided for in Article 31(1).

(3) In the case of issue of new units, pre-emptive rights may not be claimed by existing unit-holders unless those rights are expressly provided for in the articles of incorporation.

Article 30. (1) If the capital of the SICAV falls below two thirds of the minimum capital, the directors or the management board, as the case may be, shall submit the question of the dissolution of the SICAV to a general meeting for which no quorum shall be prescribed and which shall decide by a simple majority of the units represented at the meeting.

(2) If the capital of the SICAV falls below one quarter of the minimum capital, the directors or the management board, as the case may be, shall submit the question of the dissolution of the SICAV to a general meeting for which no quorum shall be prescribed; dissolution may be resolved by unit-holders holding one quarter of the units at the meeting.

(3) The meeting shall be convened so that it is held within a period of forty days as from the ascertainment that the net assets have fallen below two thirds or one quarter of the minimum capital, as the case may be.

Article 31. (1) Unless otherwise provided for in the articles of incorporation, the net assets of the SICAV may be distributed subject to the limits set out in Article 27.

(2) SICAVs shall not be obliged to create a legal reserve.

(3) SICAVs are not subject to the provisions in respect of payment of interim dividends as set out in Article 72-2 of the Law of 10 August 1915 on commercial companies, as amended.

Article 32. For companies to which this Chapter applies, the words "*société anonyme*³⁶" or "*société européenne* (SE)³⁷" shall be replaced by the words "*société d'investissement à capital variable*³⁸" or the letters "SICAV", or by the words "*société européenne d'investissement à capital variable*" (European investment company with variable capital) or "SICAV-SE".

Article 33. "(1) SICAVs shall ensure that a single depositary is appointed in accordance with the provisions of this Article and of Articles 34 to 37.

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

(3) The depositary shall be a credit institution within the meaning of the Law of 5 April 1993 on the financial sector, as amended.

(4) The *dirigeants* of the depositary shall be of sufficiently good repute and be sufficiently experienced, also in relation to the type of SICAV concerned. To that end, the identity of the *dirigeants* and of any person succeeding them in office shall be communicated forthwith to the CSSF.

"*Dirigeants*" shall mean those persons, who under law or the instruments of incorporation represent the depositary or effectively determine the conduct of its activity.

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

(6) The depositary shall make available to the CSSF, on request, all information that the depositary has obtained while performing its duties and which is necessary to enable the CSSF to fulfil its supervisory function.

In the case where a SICAV has designated a management company, if the management company's home Member State is not the same as that of the SICAV, the CSSF shall, without delay, share the information received with the competent authorities of the home Member State of the management company."³⁹

Article 34. "(1) The depositary shall:

- (a) ensure that the sale, issue, repurchase, redemption and cancellation of units of the SICAV are carried out in accordance with the law and the articles of incorporation of the SICAV;

³⁵ public limited companies

³⁶ public limited company

³⁷ European company

³⁸ investment company with variable capital

³⁹ Law of 10 May 2016

- (b) ensure that the value of the units of the SICAV is calculated in accordance with the law and the articles of incorporation of the SICAV;
- (c) carry out the instructions of the SICAV or of the management company acting on behalf of the SICAV, unless they conflict with the law or the articles of incorporation of the SICAV;
- (d) ensure that in transactions involving the assets of the SICAV any consideration is remitted to it within the usual time limits;
- (e) ensure that the income of the SICAV is applied in accordance with the law or the articles of incorporation.

(2) The depositary shall ensure that the cash flows of the SICAV are properly monitored, and, in particular, that all payments made by, or on behalf of, unit-holders upon the subscription of units of the SICAV have been received, and that all cash of the SICAV has been booked in cash accounts that are:

- (a) opened in the name of the SICAV or of the depositary acting on behalf of the SICAV;
- (b) opened at an entity referred to in points (a), (b) and (c) of Article 18(1) of Directive 2006/73/EC; and
- (c) maintained in accordance with the principles set out in Article 16 of Directive 2006/73/EC.

Where the cash accounts are opened in the name of the depositary acting on behalf of the SICAV, no cash of the entity referred to in point (b) of the first subparagraph and none of the own cash of the depositary shall be booked on such accounts.

(3) The assets of the SICAV shall be entrusted to a depositary for safekeeping as follows:

- (a) for financial instruments that may be held in custody, the depositary shall:
 - (i) hold in custody all financial instruments that may be registered in a financial instruments account opened in the depositary's books and all financial instruments that can be physically delivered to the depositary;
 - (ii) ensure that all financial instruments that can be registered in a financial instruments account opened in the depositary's books are registered in the depositary's books within segregated accounts in accordance with the principles set out in Article 16 of Directive 2006/73/EC, opened in the name of the SICAV, so that they can be clearly identified as belonging to the SICAV in accordance with the applicable law at all times;
- (b) for other assets, the depositary shall:
 - (i) verify the ownership by the SICAV of such assets, by assessing whether the SICAV holds the ownership, based on information or documents provided by the SICAV and, where available, on external evidence;
 - (ii) maintain a record of those assets for which it is satisfied that the SICAV holds the ownership and keep that record up to date.

(4) The depositary shall provide the SICAV, on a regular basis, with a comprehensive inventory of all of the assets of the SICAV.

(5) The assets of the SICAV held in custody by the depositary shall not be reused by the depositary, or by any third party to which the custody function has been delegated, for their own account. Reuse comprises any transaction of assets held in custody including, but not limited to, transferring, pledging, selling and lending.

The assets of the SICAV held in custody by the depositary are allowed to be reused only where:

- (a) the reuse of the assets is executed for the account of the SICAV;
- (b) the depositary is carrying out the instructions of the SICAV or of the management company acting on behalf of the SICAV;
- (c) the reuse is for the benefit of the SICAV and in the interest of the unit-holders; and
- (d) the transaction is covered by high-quality and liquid collateral received by the SICAV under a title transfer arrangement.

The market value of the collateral shall, at all times, amount to at least the market value of the reused assets plus a premium.

(6) In the event of insolvency of the depositary and/or of any third party located in Luxembourg to which custody of SICAV assets has been delegated, the assets held in custody are unavailable for distribution among, or realisation for the benefit of, creditors of such a depositary and/or such a third party.⁴⁰

(Law of 10 May 2016)

Article 34a. (1) The depositary shall not delegate to third parties the functions referred to in Article 34(1) and (2).

(2) The depositary may delegate to third parties the functions referred to in Article 34(3) only where:

- (a) the tasks are not delegated with the intention of avoiding the requirements laid down in this Law;
- (b) the depositary can demonstrate that there is an objective reason for the delegation;

⁴⁰ Law of 10 May 2016

- (c) the depositary has exercised all due skill, care and diligence in the selection and the appointment of any third party to whom it intends to delegate parts of its tasks, and continues to exercise all due skill, care and diligence in the periodic review and ongoing monitoring of any third party to which it has delegated parts of its tasks and of the arrangements of the third party in respect of the tasks delegated to it.

(3) The functions referred to in Article 34(3) may be delegated by the depositary to a third party only where that third party fulfils all of the conditions below at all times during the performance of the tasks delegated to it:

- (a) has structures and expertise that are adequate and proportionate to the nature and complexity of the assets of the SICAV which have been entrusted to it;
- (b) for custody tasks referred to in point (a) of Article 34(3), is subject to:
 - (i) effective prudential regulation, including minimum capital requirements, and supervision in the jurisdiction concerned;
 - (ii) an external periodic audit to ensure that the financial instruments are in its possession;
- (c) segregates the assets of the clients of the depositary from its own assets and from the assets of the depositary in such a way that they can, at any time, be clearly identified as belonging to clients of a particular depositary;
- (d) takes all necessary steps to ensure that in the event of insolvency of the third party, assets of a SICAV held by the third party in custody are unavailable for distribution among, or realisation for the benefit of, creditors of the third party; and
- (e) complies with the general obligations and prohibitions laid down in Article 33(5), in Article 34(3) and (5) and in Article 37.

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

- (a) the unit-holders investing in the relevant SICAV are duly informed, prior to their investment, of the fact that such a delegation is required due to legal constraints in the law of the third country, of the circumstances justifying the delegation and of the risks involved in such a delegation;
- (b) the SICAV has instructed the depositary to delegate the custody of such financial instruments to such a local entity.

The third party may, in turn, sub-delegate those functions, subject to the same requirements. In such a case, Article 35(2) shall apply *mutatis mutandis* to the relevant parties.

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

Article 35. “(1) The depositary shall be liable to the SICAV and to the unit-holders for the loss by the depositary or a third party to whom the custody of financial instruments held in custody in accordance with point (a) of Article 34(3) has been delegated.

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

The depositary shall also be liable to the SICAV and to the unit-holders for all other losses suffered by them as a result of the depositary’s negligent or intentional failure to properly fulfil its obligations pursuant to this Law.

(2) The liability of the depositary referred to in paragraph 1 shall not be affected by any delegation as referred to in Article 34a.

(3) The liability of the depositary referred to in paragraph 1 shall not be excluded or limited by agreement.

(4) Any agreement that contravenes paragraph 3 shall be void.

(5) Unit-holders may invoke the liability of the depositary directly or indirectly through the SICAV, provided that this does not lead to a duplication of redress or to unequal treatment of the unit-holders.”⁴¹

Article 36. The duties of the depositary or of the management company in the case of a SICAV having designated a management company, shall cease, respectively, in respect of the SICAV:

⁴¹ Law of 10 May 2016

- (a) in the case of voluntary withdrawal of the depositary or of its removal by the SICAV; until the replacement of the depositary, which shall happen within two months, the depositary shall take all necessary steps for the good preservation of the interests of the unit-holders;
- (b) in the case of voluntary withdrawal of the designated management company or of its removal by the SICAV, provided that it is replaced by another management company authorised in accordance with Directive 2009/65/EC;
- (c) in the case of withdrawal of the designated management company by the SICAV, the SICAV having decided to adopt the status of a self-managed SICAV;
- (d) where the SICAV, the depositary or the designated management company has been declared bankrupt, has entered into an arrangement with creditors, has obtained a suspension of payment, has been put under court-controlled management or has been the subject of similar proceedings, or has been put into liquidation;
- (e) where the authorisation of the SICAV, the depositary or the designated management company has been withdrawn by the competent authority;
- (f) in all other cases provided for in the articles of incorporation.

Article 37. “(1) No company shall act as both SICAV and depositary. No company shall act as both management company and depositary.

(2) In carrying out their respective functions, the SICAV, the management company acting on behalf of the SICAV and the depositary shall act honestly, fairly, professionally, independently and solely in the interest of the SICAV and the unit-holders.

A depositary shall not carry out activities with regard to the SICAV or the management company acting on behalf of the SICAV that may create conflicts of interest between the SICAV, the unit-holders, the management company and itself, unless the depositary has functionally and hierarchically separated the performance of its depositary tasks from its other potentially conflicting tasks, and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the unit-holders of the SICAV.”⁴²

Chapter 4 – Other investment companies in transferable securities

Article 38. For the purposes of this Part I, other investment companies shall be taken to mean companies other than SICAVs and

- whose sole object is to invest their funds in transferable securities and/or other liquid financial assets referred to in Article 41(1) in order to spread the investment risks and to ensure for their unit-holders the benefit of the results of the management of their assets; and
- whose units are intended to be placed with the public by means of a public or private offer provided that the words “investment company” appear on all their deeds, announcements, publications, letters and other documents.

Article 39. Articles 26, 27, 28 with the exception of paragraphs 8 and 9, 30, 33, 34, “34a,”⁴³ 35, 36 and 37 are applicable to investment companies falling within the scope of this Chapter.

Chapter 5 – Investment policy of UCITS

Article 40. Where a UCITS comprises more than one investment compartment, each compartment shall be regarded as a separate UCITS for the purposes of this Chapter.

Article 41. (1) The investments of a UCITS shall comprise only one or more of the following:

- (a) transferable securities and money market instruments admitted to or dealt in on a regulated market within the meaning of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments;
- (b) transferable securities and money market instruments dealt in on another market in a Member State which is regulated, operates regularly and is recognised and open to the public;
- (c) transferable securities and money market instruments admitted to official listing on a stock exchange in a non-Member State of the European Union or dealt in on another market in a non-Member State of the European Union which is regulated, operates regularly and is recognised and open to the public provided that the choice of the stock exchange or market has been provided for in the management regulations or the instruments of incorporation of the UCITS;
- (d) recently issued transferable securities and money market instruments, provided that:
 - the terms of issue include an undertaking that application will be made for admission to official listing on a stock exchange or to another regulated market which operates regularly and is recognised and open to the public, provided that the choice of the stock exchange or the market

⁴² Law of 10 May 2016

⁴³ Law of 10 May 2016

- has been provided for in the management regulations or the instruments of incorporation of the UCITS;
- the admission is secured within one year of issue;
- (e) units of UCITS authorised according to Directive 2009/65/EC and/or other UCIs within the meaning of Article 1(2)(a) and (b) of Directive 2009/65/EC, whether or not established in a Member State provided that:
- such other UCIs are authorised under laws which provide that they are subject to supervision considered by the CSSF to be equivalent to that laid down in “EU law”⁴⁴, and that cooperation between authorities is sufficiently ensured;
 - the level of protection for unit-holders in the other UCIs is equivalent to that provided for unit-holders in a UCITS, and in particular that the rules on assets segregation, borrowing, lending, and uncovered sales of transferable securities and money market instruments are equivalent to the requirements of Directive 2009/65/EC;
 - the business of the other UCIs is reported in half-yearly and annual reports to enable an assessment of the assets and liabilities, income and operations over the reporting period;
 - no more than 10% of the assets of the UCITS or of the other UCIs, whose acquisition is contemplated, can, according to their management regulations or instruments of incorporation, be invested in aggregate in units of other UCITS or other UCIs;
- (f) deposits with a credit institution which are repayable on demand or have the right to be withdrawn, and maturing in no more than 12 months, provided that the credit institution has its registered office in a Member State or, if the registered office of the credit institution is situated in a third country, provided that it is subject to prudential rules considered by the CSSF as equivalent to those laid down in “EU law”⁴⁵;
- (g) financial derivative instruments, including equivalent cash-settled instruments, dealt in on a regulated market referred to in points (a), (b) and (c) above and/or financial derivative instruments dealt in over-the-counter (“OTC derivatives”), provided that
- the underlying consists of instruments covered by Article 41(1), financial indices, interest rates, foreign exchange rates or currencies, in which the UCITS may invest according to its investment objectives as stated in the UCITS management regulations or incorporation of instruments;
 - the counterparties to OTC derivative transactions are institutions subject to prudential supervision, and belonging to the categories approved by the CSSF; and
 - the OTC derivatives are subject to reliable and verifiable valuation on a daily basis and can be sold, liquidated or closed by an offsetting transaction at any time at their fair value at the UCITS initiative;
- (h) money market instruments other than those dealt in on a regulated market and which fall under Article 1, if the issuer or the issuer of such instruments is itself regulated for the purpose of protecting investors and savings, and provided that these investments are:
- issued or guaranteed by a central, regional or local authority or by a central bank of a Member State, the European Central Bank, the European Union or the European Investment Bank, a third country or, in the case of a Federal State, by one of the members making up the federation, or by a public international body to which one or more Member States belong; or
 - issued by an undertaking any securities of which are dealt in on regulated markets referred to in points (a), (b) or (c) above; or
 - issued or guaranteed by an establishment subject to prudential supervision, in accordance with criteria defined by “EU”⁴⁶ law, or by an establishment which is subject to and complies with prudential rules considered by the CSSF to be at least as stringent as those laid down by “EU law”⁴⁷; or
 - issued by other bodies belonging to the categories approved by the CSSF provided that investments in such instruments are subject to investor protection equivalent to that laid down in the first, the second or the third indent and provided that the issuer is a company whose capital and reserves amount to at least ten million euro (EUR 10,000,000) and which presents and publishes its annual accounts in accordance with the fourth Directive 78/660/EEC, is an entity which, within a group of companies which includes one or several listed companies, is dedicated to the financing of the group or is an entity which is dedicated to the financing of securitisation vehicles which benefit from a banking liquidity line.

(2) A UCITS shall not, however:

- (a) invest more than 10% of its assets in transferable securities or money market instruments other than those referred to in paragraph 1;
- (b) acquire either precious metals or certificates representing them.

⁴⁴ Law of 21 December 2012

⁴⁵ Law of 21 December 2012

⁴⁶ Law of 21 December 2012

⁴⁷ Law of 21 December 2012

A UCITS may hold ancillary liquid assets.

(3) An investment company may acquire movable and immovable property which is essential for the direct pursuit of its business.

Article 42. “(1) A management company having its registered office in Luxembourg shall employ a risk-management process which enables it to monitor and measure at any time the risk of the positions and their contribution to the overall risk profile of the portfolio of a UCITS. In particular, it shall not solely or mechanically rely on 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, for assessing the creditworthiness of the UCITS’ assets.

It must employ a process for accurate and independent assessment of the value of OTC derivatives. It shall communicate to the CSSF regularly, in accordance with the detailed rules the latter shall define, the types of derivative instruments, the underlying risks, the quantitative limits and the methods which are chosen in order to estimate the risks associated with transactions in derivative instruments regarding each managed UCITS.

An investment company having its registered office in Luxembourg is subject to the same obligation.”⁴⁸

(2) A UCITS is also authorised to employ techniques and instruments relating to transferable securities and money market instruments under the conditions and within the limits laid down by the CSSF provided that such techniques and instruments are used for the purpose of efficient portfolio management. When these operations concern the use of derivative instruments, these conditions and limits shall conform to the provisions laid down in this Law.

Under no circumstances shall these operations cause the UCITS to diverge from its investment objectives as laid down in the UCITS management regulations, its instruments of incorporation or prospectus.

(3) A UCITS shall ensure that its global exposure relating to derivative instruments does not exceed the total net value of its portfolio.

The exposure is calculated taking into account the current value of the underlying assets, the counterparty risk, future market movements and the time available to liquidate the positions. This shall also apply to the following subparagraphs.

A UCITS may invest, as a part of its investment policy and within the limits laid down in Article 43(5) in financial derivative instruments, provided that the exposure to the underlying assets does not exceed in aggregate the investment limits laid down in Article 43. When a UCITS invests in index-based financial derivative instruments, those investments are not required to be combined for the purposes of the limits laid down in Article 43.

When a transferable security or a money market instrument embeds a derivative instrument, the derivative instrument shall be taken into account when complying with the requirements of this Article.

(Law of 15 March 2016)

“(3a) Taking into account the nature, scale and complexity of the UCITS’ activities, the CSSF shall monitor the adequacy of the credit assessment processes of the management or investment companies having their registered office in Luxembourg, assess the use of references to credit ratings, as referred to in the second sentence of paragraph 1, in the UCITS’ 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 43. (1) A UCITS may invest no more than 10% of its assets in transferable securities or money market instruments issued by the same body. A UCITS may not invest more than 20% of its assets in deposits made with the same body. The risk exposure to a counterparty of the UCITS in an OTC derivative transaction may not exceed 10% of its assets when the counterparty is a credit institution referred to in Article 41(1)(f), or 5% of its assets in other cases.

(2) The total value of the transferable securities and money market instruments held by a UCITS in the issuing bodies in each of which it invests more than 5% of its assets shall not exceed 40% of the value of its assets. This limitation does not apply to deposits and OTC derivative transactions made with financial institutions subject to prudential supervision.

Notwithstanding the individual limits laid down in paragraph 1, a UCITS shall not combine, where this would lead to investment of more than 20% of its assets in a single body, any of the following:

- investments in transferable securities or money market instruments issued by that body;
- deposits made with that body; or
- exposures arising from OTC derivative transactions undertaken with that body.

⁴⁸ Law of 15 March 2016

(3) The limit laid down in the first sentence of paragraph 1 may be of a maximum of 35% if the transferable securities or money market instruments are issued or guaranteed by a Member State, by its public local authorities, by a third country or by public international bodies of which one or more Member States belong.

(4) The limit laid down in the first sentence of paragraph 1 may be of a maximum of 25% for certain bonds where they are issued by a credit institution which has its registered office in a Member State and is subject by law, to special public supervision designed to protect bondholders. In particular, sums deriving from the issue of those bonds shall be invested in accordance with the law in assets which, during the whole period of validity of the bonds, are capable of covering claims attaching to the bonds and which, in case of bankruptcy of the issuer, would be used on a priority basis for the reimbursement of the principal and payment of the accrued interest.

Where a UCITS invests more than 5% of its assets in the bonds referred to in the first subparagraph which are issued by a single issuer, the total value of such investments may not exceed 80% of the value of the assets of the UCITS.

(Law of 21 December 2012)

“The CSSF shall send to the European Securities and Markets Authority a list of the categories of bonds referred to in the first subparagraph together with the categories of issuers authorised, in accordance with the laws and supervisory arrangements mentioned in that subparagraph, to issue bonds complying with the criteria set out in this Article.”

(5) The transferable securities and money market instruments referred to in paragraphs 3 and 4 shall not be taken into account for the purpose of applying the limit of 40% referred to in paragraph 2.

The limits set out in paragraphs 1, 2, 3 and 4 shall not be combined; thus investments in transferable securities or money market instruments issued by the same body or in deposits or derivative instruments made with this body carried out in accordance with paragraphs 1, 2, 3 and 4 shall not exceed in total 35% of the assets of the UCITS.

Companies which are included in the same group for the purposes of consolidated accounts, as defined in accordance with Directive 83/349/EEC or in accordance with recognised international accounting rules, shall be regarded as a single body for the purpose of calculating the limits contained in this Article.

A UCITS may cumulatively invest up to a limit of 20% of its assets in transferable securities and money market instruments within the same group.

Article 44. (1) Without prejudice to the limits laid down in Article 48, the limits laid down in Article 43 are raised to a maximum of 20% for investments in shares and/or debt securities issued by the same body when, according to the management regulations or instruments of incorporation of the UCITS, the aim of the UCITS investment policy is to replicate the composition of a certain stock or debt securities index which is recognised by the CSSF, on the following basis:

- the composition of the index is sufficiently diversified;
- the index represents an adequate benchmark for the market to which it refers;
- it is published in an appropriate manner.

(2) The limit laid down in paragraph 1 is raised to 35% where that proves to be justified by exceptional market conditions in particular in regulated markets where certain transferable securities or money market instruments are highly dominant. The investment up to this limit is only permitted for a single issuer.

Article 45. (1) By way of derogation from Article 43, the CSSF may authorise a UCITS to invest in accordance with the principle of risk-spreading up to 100% of its assets in different transferable securities and money market instruments issued or guaranteed by a Member State, one or more of its local authorities, a non-Member State of the European Union or public international body to which one or more “Member States”⁴⁹ belong.

The CSSF shall grant such an authorisation only if it considers that “unit-holders”⁵⁰ in the UCITS have protection equivalent to that of “unit-holders”⁵¹ in UCITS complying with the limits laid down in Articles 43 and 44.

These UCITS shall hold securities from at least six different issues, but securities from any single issue shall not account for more than 30% of its total assets.

(2) The UCITS referred to in paragraph 1 shall make express mention, in their management regulations or instruments of incorporation, of the States, local public authorities or public international bodies issuing or guaranteeing securities in which they intend to invest more than 35% of their assets.

(3) In addition, the UCITS referred to in paragraph 1 shall include a prominent statement in their prospectuses or marketing communications, drawing attention to such authorisation and indicating the States, local public

⁴⁹ Law of 12 July 2013

⁵⁰ Law of 12 July 2013

⁵¹ Law of 12 July 2013

authorities and public international bodies in the securities of which they intend to invest or have invested more than 35% of their assets.

Article 46. (1) A UCITS may acquire the units of UCITS and/or other UCIs referred to in Article 41(1)(e), provided that no more than 20% of its assets are invested in the units of a single UCITS or other UCI.

For the purpose of the application of this investment limit, each compartment of a UCI with multiple compartments is to be considered as a separate issuer provided that the principle of segregation of the obligations of the various compartments *vis-à-vis* third parties is ensured.

(2) Investments made in units of UCIs other than UCITS may not in aggregate exceed 30% of the assets of a UCITS.

When a UCITS has acquired units of UCITS and/or other UCIs, the assets of the respective UCITS or other UCIs do not have to be combined for the purposes of the limits laid down in Article 43.

(3) Where a UCITS invests in the units of other UCITS and/or other UCIs that are managed, directly or by delegation, by the same management company or by any other company with which the management company is linked by common management or control, or by a substantial direct or indirect holding, that management company or other company may not charge subscription or redemption fees on account of the UCITS investment in the units of such other UCITS and/or other UCIs.

A UCITS that invests a substantial proportion of its assets in other UCITS and/or other UCIs shall disclose in its prospectus the maximum level of the management fees that may be charged both to the UCITS itself and to the other UCITS and/or other UCIs in which it intends to invest. In its annual report it shall indicate the maximum proportion of management fees charged both to the UCITS itself and to the UCITS and/or other UCIs in which it invests.

Article 47. (1) The prospectus shall indicate in which categories of assets a UCITS is authorised to invest. It shall mention if transactions in financial derivative instruments are authorised; in this event, it shall include a prominent statement indicating if these operations may be carried out for the purpose of hedging or with the aim of meeting investment goals, and the possible outcome of the use of financial derivative instruments on the risk profile.

(2) When a UCITS invests principally in any category of assets defined in Article 41 other than transferable securities and money market instruments or replicates a stock or debt securities index in accordance with Article 44, its prospectus and, where necessary, marketing communications shall include a prominent statement drawing attention to its investment policy.

(3) When the net asset value of a UCITS is likely to have a high volatility due to its portfolio composition or the portfolio management techniques that may be used, its prospectus and, where necessary, marketing communications shall include a prominent statement drawing attention to this characteristic of the UCITS.

(4) Upon request of an investor, the management company shall also provide supplementary information relating to the quantitative limits that apply in the risk management of the UCITS, to the methods chosen to this end and to the recent evolution of the main risks and yields of the categories of instruments.

Article 48. (1) An investment company or a management company acting in connection with all of the common funds which it manages and which fall within the scope of Part I or of Directive 2009/65/EC, may not acquire any shares carrying voting rights which would enable it to exercise significant influence over the management of an issuing body.

(2) Moreover, a UCITS may acquire no more than:

- 10% of the non-voting shares of the same issuer;
- 10% of the debt securities of the same issuer;
- 25% of the units of the same UCITS or other UCI within the meaning of Article 2(2);
- 10% of the money market instruments of any single issuer.

The limits laid down in the second, third and fourth indents may be disregarded at the time of acquisition if at that time the gross amount of bonds or of the money market instruments, or the net amount of the instruments in issue cannot be calculated.

(3) Paragraphs 1 and 2 are waived as regards:

- (a) transferable securities and money market instruments issued or guaranteed by a Member State or its local authorities;
- (b) transferable securities and money market instruments issued or guaranteed by a non-Member State of the European Union;
- (c) transferable securities and money market instruments issued by public international bodies of which one or more Member States of the European Union are members;
- (d) shares held by UCITS in the capital of a company incorporated in a third country of the European Union which invests its assets mainly in the securities of issuing bodies having their registered office in that

State, where under the legislation of that State, such a holding represents the only way in which the UCITS can invest in the securities of issuing bodies of that State. This derogation, however, shall apply only if in its investment policy the company from the third country of the European Union complies with the limits laid down in Articles 43 and 46 and Article 48(1) and (2). Where the limits set in Articles 43 and 46 are exceeded, Article 49 shall apply *mutatis mutandis*;

- (e) shares held by one or more investment companies in the capital of subsidiary companies which, carry on the business of management, advice or marketing in the country where the subsidiary is established, in regard to the repurchase of units at the request of unit-holders exclusively on its or their behalf.

Article 49. (1) UCITS need not comply with the limits laid down in this Chapter when exercising subscription rights attaching to transferable securities or money market instruments which form part of their assets.

While ensuring observance of the principle of risk-spreading, newly authorised UCITS may derogate from Articles 43, 44, 45 and 46 for six months following the date of their authorisation.

(2) If the limits referred to in paragraph 1 are exceeded for reasons beyond the control of the UCITS or as a result of the exercise of subscription rights, it shall adopt as a priority objective for its sales transactions the remedying of that situation, taking due account of the interests of its unit-holders.

Article 50. (1) The following shall not borrow:

- an investment company;
- a management company or depositary acting on behalf of a common fund.

A UCITS may, however, acquire foreign currency by means of a “back-to-back” loan.

(2) By way of derogation from paragraph 1, UCITS may borrow provided that such borrowing is:

- (a) on a temporary basis and represents:
 - in the case of an investment company, no more than 10% of its assets, or
 - in the case of a common fund, no more than 10% of the value of the fund; or
- (b) to enable the acquisition of immovable property essential for the direct pursuit of its business and represents, in the case of an investment company, no more than 10% of its assets.

Where a UCITS is authorised to borrow under points (a) and (b), such borrowing shall not exceed 15% of its assets in total.

Article 51. (1) Without prejudice to the application of Articles 41 and 42, the following shall not grant loans or act as a guarantor on behalf of third parties:

- an investment company;
- a management company or depositary acting on behalf of a common fund.

(2) Paragraph 1 shall not prevent such undertakings from acquiring transferable securities, money market instruments or other financial instruments referred to in points (e), (g) and (h) of Article 41(1) which are not fully paid.

Article 52. The following shall not carry out uncovered sales of transferable securities, money market instruments or other financial instruments referred to in points (e), (g) and (h) of Article 41(1):

- an investment company;
- a management company or depositary acting on behalf of a common fund.

Chapter 6 – UCITS established in Luxembourg which market their units in “other Member States”⁵²

Article 53. A UCITS which markets its units in another Member State shall, in accordance with the laws, regulations and administrative provisions in force in the Member State where its units are marketed, take the measures necessary to ensure that facilities are available in that Member State for making payments to unit-holders, repurchasing or redeeming units and making available the information which UCITS are required to provide.

Article 54. (1) A UCITS which proposes to market its units in another Member State, shall first submit a notification letter to the CSSF.

The notification letter shall include information on arrangements made for marketing units of the UCITS in the host Member State, including, where relevant, in respect of unit classes. In the context of Article 113, it shall specify in particular that the UCITS is marketed by the management company that manages the UCITS.

⁵² Law of 12 July 2013

(2) A UCITS shall enclose with the notification letter, as referred to in paragraph 1, the latest version of the following documents:

- (a) its management regulations or its instruments of incorporation, its prospectus and, where appropriate, its latest annual report and any subsequent half-yearly report translated in accordance with the provisions of Article 55(1)(c) and (d); and
- (b) its key investor information referred to in Article 159, translated in accordance with Article 55(1)(b) and (d).

(3) The CSSF shall verify whether the documentation submitted by the UCITS in accordance with paragraphs 1 and 2 is complete.

The CSSF shall transmit the complete documentation referred to in paragraphs 1 and 2 to the competent authorities of the Member State in which the UCITS proposes to market its units, no later than ten working days of the date of receipt of the notification letter accompanied by the complete documentation provided for in paragraph 2. The CSSF shall enclose with the documentation an attestation that the UCITS fulfils the conditions imposed by Directive 2009/65/EC.

Upon the transmission of the documentation, the CSSF shall immediately notify the UCITS of the transmission. The UCITS may access the market of the UCITS host Member State as from the date of that notification.

(Law of 12 July 2013)

“The UCITS shall communicate any amendments to the documents referred to in paragraph 2 to the competent authorities of the host Member State and shall specify where these documents can be obtained in electronic form.”

(4) In the event of a change in the information regarding the arrangements made for marketing communicated in the notification letter in accordance with paragraph 1, or a change regarding unit classes to be marketed, the UCITS shall give written notice thereof to the competent authorities of the host Member State before implementing the change.

Article 55. (1) Where a UCITS markets its units in another Member State, it shall provide to investors within the territory of that Member State all information and documents which it is required to provide to investors in Luxembourg in accordance with Chapter 21.

Such information and documents shall be provided to investors in compliance with the following provisions:

- (a) without prejudice to the provisions of Chapter 21, such information or documents shall be provided to investors in the way prescribed by the laws, regulations or administrative provisions of the UCITS host Member State;
- (b) key investor information referred to in Article 159 of the Law shall be translated into the official language, or one of the official languages, of the UCITS host Member State or into a language approved by the competent authorities of that Member State;
- (c) information and documents other than key investor information referred to in Article 159 of the Law shall be translated, at the choice of the UCITS, into the official language, or one of the official languages, of the UCITS host Member State, into a language approved by the competent authorities of that Member State or into a language customary in the sphere of international finance; and
- (d) translations of information and documents under points (b) and (c) shall be produced under the responsibility of the UCITS and shall faithfully reflect the content of the original information.

(2) The requirements set out in paragraph 1 shall also be applicable to any changes to the information and documents referred to therein.

(3) According to Article 157 of the Law, the frequency of the publication of the issue, sale, repurchase or redemption price of units of UCITS shall be subject to the current laws, regulations and administrative provisions of Luxembourg.

Article 56. For the purpose of pursuing its activities, a UCITS may use the same reference to its legal form such as “investment company” or “common fund” in its designation in a UCITS host Member State as it uses in Luxembourg.

Article 57. For the purposes of this Chapter, the term “UCITS” refers also to investment compartments of a UCITS.

Article 58. The provisions of Articles 53 to 57 are also applicable, within the limits provided by the Agreement on the European Economic Area and the instruments relating thereto, where a UCITS situated in Luxembourg markets its units on the territory of a State other than a Member State which is a party to that Agreement.

Chapter 7 – UCITS established in “other Member States”⁵³ which market their units in Luxembourg

Article 59. A UCITS established in another Member State which markets its units in Luxembourg shall appoint a credit institution to ensure that facilities are available in Luxembourg for making payments to unit-holders and repurchasing or redeeming units.

The UCITS shall take the necessary measures to ensure that the information which it is obliged to provide is made available to unit-holders in Luxembourg.

Article 60. (1) If a UCITS established in another Member State proposes to market its units in Luxembourg, the CSSF will receive from the competent authorities of the UCITS home Member State the documentation referred to in Article 93(1) and (2) of Directive 2009/65/EC as well as an attestation certifying that the UCITS fulfils the conditions imposed by Directive 2009/65/EC.

Upon notification to the UCITS of the transmission to the CSSF referred to in this paragraph by the competent authorities of the UCITS home Member State, the UCITS can have access to the Luxembourg market as from the date of this notification.

(2) In the event of a change in the information relating to the arrangements made for marketing communicated in the notification letter in accordance with paragraph 1, or a change regarding unit classes to be marketed, the UCITS shall give written notice thereof to the CSSF before implementing the change.

Article 61. (1) If a UCITS established in another Member State markets its units in Luxembourg, it shall provide investors in Luxembourg with all information and documents that it is required to provide in its home Member State in accordance with Chapter IX of Directive 2009/65/EC.

Such information and documents shall be provided to investors in compliance with the following provisions:

- (a) without prejudice to the provisions of Chapter IX of Directive 2009/65/EC, such information or documents shall be provided to investors in the way prescribed by the current laws, regulations or administrative provisions in Luxembourg;
- (b) key investor information referred to in Article 78 of Directive 2009/65/EC, as well as information and documents other than key investor information referred to in Article 78 of Directive 2009/65/EC, shall be translated into Luxembourgish, French, German or English;
- (c) translations of information and documents under point b) shall be produced under the responsibility of the UCITS and shall faithfully reflect the content of the original information.

(2) The requirements set out in paragraph 1 shall also be applicable to any changes to the information and documents referred to therein.

(3) The frequency of the publication of the issue, sale, repurchase or redemption price of units of UCITS according to Article 76 of Directive 2009/65/EC shall be subject to the current laws, regulations and administrative provisions of UCITS home Member State.

Article 62. For the purpose of pursuing its activities, a UCITS may use the same reference to its legal form such as “investment company” or “common fund” in its designation in Luxembourg as it uses in its home Member State.

Article 63. For the purposes of this Chapter, the term “UCITS” also refers to investment compartments of a UCITS.

Article 64. The provisions of Articles 59 to 63 are also applicable, within the limits provided by the Agreement on the European Economic Area and the instruments relating thereto, where a UCITS established in a State other than a Member State, which is a party to that Agreement, markets its units in Luxembourg.

Chapter 8 – Mergers of UCITS

A. – Principle, authorisation and approval

Article 65. For the purposes of this Chapter, the term “UCITS” also refers to investment compartments of a UCITS.

Article 66. (1) Subject to the conditions set out in this Chapter and irrespective of the manner in which UCITS are constituted under Article 2(3), a UCITS established in Luxembourg may, either as a merging UCITS or as a receiving UCITS, be subject to cross-border and domestic mergers as defined in Article 1, points (21) and (22) in accordance with one or more of the merger techniques provided for in Article 1, point (20).

(2) Mergers between UCITS established in Luxembourg where none of the UCITS concerned has been notified in accordance with Article 93 of Directive 2009/65/EC are also covered by this Chapter.

(3) The “provisions of Section XIV of the Law of 10 August 1915 on commercial companies, as amended,”⁵⁴ on mergers are not applicable to mergers of UCITS.

⁵³ Law of 12 July 2013

⁵⁴ Law of 12 July 2013

(4) Without prejudice to the following subparagraph, the instruments of incorporation of a UCITS established in corporate form in Luxembourg shall foresee who of the meeting of unit-holders or the board of directors or the management board, where applicable, is competent to decide on the effective date of the merger with another UCITS. For UCITS having the legal form of a common fund established in Luxembourg, the management company of these UCITS is, unless otherwise provided in the management regulations, competent to decide on the effective date of a merger with another UCITS. Where the management regulations or the instruments of incorporation provide for the approval by a meeting of unit-holders, these documents shall provide for the quorum and majority requirements applicable save that with respect to the approval of the common draft terms of the merger by the unit-holders, such an approval shall be adopted by simple majority, without however requiring more than 75% of the votes cast by the unit-holders present or represented at the meeting.

In the absence of specific provisions in the management regulations or the instruments of incorporation, any merger shall be approved by the management company for merging UCITS having the legal form of a common fund “or by the meeting of unit-holders”⁵⁵ deciding by simple majority of the votes cast by unit-holders present or represented at the meeting for the merging UCITS in corporate form.

For any merger where the merging UCITS is an investment company which ceases to exist, the effective date of the merger shall be decided by a meeting of the unit-holders of the merging UCITS deciding in accordance with the quorum and majority requirements provided in the articles of incorporation, it being understood that the provisions of this paragraph apply. “For any merging investment company which ceases to exist, the effective date of the merger shall be recorded by notarial deed.”⁵⁶

(Law of 12 July 2013)

“For any merger where the merging UCITS is a common fund which ceases to exist, the effective date of the merger shall be decided by the management company of this UCITS, unless otherwise provided in the management regulations. For any merging common fund which ceases to exist, the decision regarding the effective date of the merger shall be deposited with the trade and companies register and published in the Mémorial by way of a notice of the deposit of this decision with the trade and companies register, in accordance with the provisions of the Law of 10 August 1915 on commercial companies.”

Insofar as a merger requires the approval of the unit-holders pursuant to the provisions above, only the approval of the unit-holders of the compartment(s) concerned by the merger shall be required, unless otherwise provided in the management regulations or the instruments of incorporation of the UCITS.

The practical terms of merger procedures for Luxembourg UCITS concerned by a merger may be laid down by means of a CSSF regulation.

Mergers provided for in point (20)(c) of Article 1 shall be carried out in accordance with the terms and conditions provided for in this Chapter.

Where the receiving UCITS and the merging UCITS are established in Luxembourg, the provisions of this Chapter as to the intervention of the competent authorities of another Member State shall not apply.

Article 67. (1) Where the merging UCITS is established in Luxembourg, a merger is subject to prior authorisation by the CSSF.

(2) The merging UCITS shall provide the following information to the CSSF:

- (a) the common draft terms of the proposed merger duly approved by the merging UCITS and the receiving UCITS;
- (b) an up-to-date version of the prospectus and the key investor information, referred to in Article 78 of Directive 2009/65/EC, of the receiving UCITS, if it is established in another Member State;
- (c) a statement by each of the depositaries of the merging and the receiving UCITS confirming that, in accordance with Article 70, they have verified compliance of the particulars set out in points (a), (f) and (g) of Article 69(1), with the requirements of this Law and the management regulations or the instruments of incorporation of their respective UCITS. In the case where the receiving UCITS is established in another Member State, this statement issued by the depositary of the receiving UCITS confirms that, in accordance with Article 41 of Directive 2009/65/EC, compliance of the particulars set out in points (a), (f) and (g) of Article 40(1) with the requirements of Directive 2009/65/EC and the management regulations or the instruments of incorporation of UCITS has been verified; and
- (d) the information on the proposed merger that the merging and the receiving UCITS intend to provide to their respective unit-holders.

Such information shall be provided to the CSSF in either Luxembourgish, French, German or English.

(3) If it considers that the file is not complete, the CSSF shall request additional information within a maximum of ten working days of receiving the information referred to in paragraph 2.

⁵⁵ Law of 12 July 2013

⁵⁶ Law of 12 July 2013

- (4) (a) Where the receiving UCITS is not established in Luxembourg and once the file is complete, the CSSF shall immediately transmit copies of the information referred to in paragraph 2 to the competent authorities of the receiving UCITS home Member State. The CSSF and the competent authorities of the receiving UCITS home Member State shall, respectively, consider the potential impact of the proposed merger on unit-holders of the merging and the receiving UCITS to assess whether appropriate information is being provided to unit-holders.

If the CSSF considers it necessary, it may require, in writing, that the information to unit-holders of the merging UCITS be clarified.

If the competent authorities of the receiving UCITS home Member State consider it necessary, they may require, in writing, and no later than fifteen working days of receipt of the copies of the complete information referred to in paragraph 2, that the receiving UCITS modifies the information to be provided to its unit-holders.

In such a case, the competent authorities of the receiving UCITS home Member State shall send an indication of their dissatisfaction to the CSSF. They shall inform the CSSF whether they are satisfied with the modified information to be provided to the unit-holders of the receiving UCITS within twenty working days of being notified thereof.

- (b) Where the receiving UCITS is established in Luxembourg and insofar as the file is complete, the CSSF shall consider the potential impact of the proposed merger on the unit-holders of the merging and the receiving UCITS to assess whether appropriate information is being provided to unit-holders. If the CSSF considers it necessary, it may require, in writing, (i) that the information to unit-holders of the merging UCITS be clarified and (ii) no later than fifteen working days of receipt of the copies of the complete information referred to in paragraph 2, that the receiving UCITS modifies the information to be provided to its unit-holders.

(5) The CSSF shall inform the merging UCITS, within twenty working days of submission of the complete information, in accordance with paragraph 2, whether or not the merger has been authorised.

(6) Where the receiving UCITS is not established in Luxembourg and in the cases where:

- (a) the proposed merger complies with all of the requirements of Articles 67, 69, 70 and 71; and
- (b) the receiving UCITS has been notified, in accordance with Article 60, to market its units in Luxembourg and in all Member States where the merging UCITS is either authorised or has been notified to market its units in accordance with Article 60; and
- (c) the CSSF and the competent authorities of the receiving UCITS home Member State are satisfied with the proposed information to be provided to unit-holders, or no indication of dissatisfaction from the competent authorities of the receiving UCITS home Member State has been received under the fourth subparagraph of paragraph 4(a),

the CSSF shall authorise the proposed merger if these conditions are met. The CSSF shall also inform the competent authorities of the receiving UCITS home Member State of its decision.

Where the receiving UCITS is also established in Luxembourg and in the cases where:

- (a) the proposed merger complies with all of the requirements of Articles 67, 69, 70 and 71; and
- (b) the receiving UCITS has been notified, in accordance with Article 60, to market its units in all Member States where the merging UCITS is either authorised or has been notified to market its units in accordance with Article 60; and
- (c) the CSSF is satisfied with the proposed information to be provided to unit-holders of the merging and receiving UCITS,

the CSSF shall authorise the proposed merger if these conditions are met.

Article 68. (1) Where the receiving UCITS is established in Luxembourg and the merging UCITS is established in another Member State, the CSSF shall receive copies of the information referred to in Article 67(2)(a), (c) and (d) from the competent authorities of this other Member State.

(2) The CSSF and the competent authorities of the merging UCITS home Member State shall, respectively, consider the potential impact of the proposed merger on unit-holders of the merging and the receiving UCITS to assess whether appropriate information is being provided to unit-holders.

If the CSSF considers it necessary, it may require, in writing, and no later than fifteen working days of receipt of the copies of the complete information referred to in paragraph 1, that the receiving UCITS modifies the information to be provided to its unit-holders.

The CSSF shall inform the competent authorities of the merging UCITS home Member State within twenty working days of being notified thereof whether it is satisfied with the modified information to be provided to the unit-holders of the receiving UCITS.

(3) While ensuring observance of the principle of risk-spreading, the receiving UCITS is allowed to derogate from Articles 43, 44, 45 and 46 for six months following the effective date of the merger.

Article 69. (1) The merging and the receiving UCITS shall draw up common draft terms of merger.

The common draft terms of merger shall set out the following particulars:

- (a) an identification of the type of merger and of the UCITS involved;
- (b) the background to and rationale for the proposed merger;
- (c) the expected impact of the proposed merger on the unit-holders of both the merging and the receiving UCITS;
- (d) the criteria adopted for valuation of the assets and, where applicable, the liabilities on the date for calculating the exchange ratio as referred to in Article 75(1);
- (e) the calculation method of the exchange ratio;
- (f) the planned effective date of the merger;
- (g) the rules applicable, respectively, to the transfer of assets and the exchange of units; and
- (h) in the case of a merger pursuant to point (20)(b) of Article 1 and, as the case may be, point (20)(c) of Article 1 or, as the case may be, "point (p)(ii)"⁵⁷ of Article 2(1), and, as the case may be, point (p)(iii) of Article 2(1) of Directive 2009/65/EC, the management regulations or the instruments of incorporation of the newly constituted receiving UCITS.

(2) The merging and receiving UCITS may decide to include further items in the common draft terms of merger.

B. – Third-party control, information of unit-holders and other rights of unit-holders

Article 70. The depositaries of the merging and of the receiving UCITS, insofar as they are established in Luxembourg, shall verify the conformity of the particulars set out in points (a), (f) and (g) Article 69(1) with the requirements of this Law and with the management regulations or the instruments of incorporation of their respective UCITS.

Article 71. (1) The merging UCITS established in Luxembourg shall entrust either a *réviseur d'entreprises agréé* (approved statutory auditor) or, as the case may be, an independent auditor to validate the following:

- (a) the criteria adopted for valuation of the assets and, as the case may be, the liabilities on the date for calculating the exchange ratio, as referred to in Article 75(1);
- (b) where applicable, the cash payment per unit; and
- (c) the calculation method of the exchange ratio as well as the actual exchange ratio determined at the date for calculating that ratio, as referred to in Article 75(1).

(2) The *réviseur d'entreprises agréé* (approved statutory auditor) or the independent auditor of the merging UCITS or the *réviseur d'entreprises agréé* (approved statutory auditor) or the independent auditor of the receiving UCITS shall be considered *réviseurs d'entreprises agréés* (approved statutory auditors), or, independent auditors for the purposes of paragraph 1.

(3) A copy of the reports of the *réviseur d'entreprises agréé* (approved statutory auditor) or, as the case may be, the independent auditor shall be made available on request and free of charge to the unit-holders of both the merging UCITS and the receiving UCITS and to their respective competent authorities.

Article 72. (1) Where merging and/or receiving UCITS are established in Luxembourg, each shall provide appropriate and accurate information on the proposed merger to their respective unit-holders so as to enable them to make an informed judgement of the impact of the merger on their investment.

(2) This information shall be provided to unit-holders of the merging and of the receiving UCITS established in Luxembourg only after the CSSF has authorised the proposed merger under Article 67 of the Law.

This information shall be provided at least thirty days before the last date for requesting repurchase or redemption or, as the case may be, conversion without additional charge under Article 73(1).

(3) The information to be provided to unit-holders of the merging UCITS and/or of the receiving UCITS established in Luxembourg shall include appropriate and accurate information on the proposed merger such as to enable them to take an informed decision on the possible impact of the merger on their investment and to exercise their rights under Articles 66(4) and 73.

It shall include the following:

- (a) the background to and the rationale for the proposed merger;
- (b) the possible impact of the proposed merger on unit-holders, including but not limited to any material differences in respect of investment policy and strategy, costs, expected outcome, periodic reporting, possible dilution in performance, and, where relevant, a prominent warning to investors that their tax treatment may be changed following the merger;

⁵⁷ Law of 12 July 2013

- (c) any specific rights unit-holders have in relation to the proposed merger, including but not limited to the right to obtain additional information, the right to obtain or request a copy of the report of the *réviseur d'entreprises agréé* (approved statutory auditor) or the independent auditor or the depositary (if applicable in the receiving or merging UCITS home Member State) and the right to request the repurchase or redemption or, as the case may be, the conversion of their units without charge as specified in Article 73(1) and the last date for exercising that right;
- (d) the relevant procedural aspects and the planned effective date of the merger; and
- (e) a copy of the key investor information of the receiving UCITS, referred to in Article 159, or, as the case may be, in Article 78 of Directive 2009/65/EC.

(4) If the merging or the receiving UCITS has been notified in accordance with Article 93 of Directive 2009/65/EC, the information referred to in paragraph 3 shall be provided in one of the official languages of the relevant UCITS host Member State, or in a language approved by its competent authorities. The UCITS required to provide the information shall be responsible for producing the translation. That translation shall faithfully reflect the content of the original.

Article 73. (1) Where the merging and/or the receiving UCITS are established in Luxembourg, their unit-holders have the right to request, without any charge other than those retained by the UCITS to meet disinvestment costs, the repurchase or redemption of their units or, where possible, to convert them into units in another UCITS with similar investment policy and managed by the same management company or by any other company with which the management company is linked by common management or control, or by a substantial direct or indirect holding. This right shall become effective from the moment that the unit-holders of the merging UCITS and those of the receiving UCITS have been informed of the proposed merger in accordance with Article 72, and shall cease to exist five working days before the date for calculating the exchange ratio referred to in Article 75(1).

(2) Without prejudice to paragraph 1, for mergers between UCITS and by way of derogation from Articles 11(2) and 28(1)(b), the relevant UCITS may temporarily suspend the subscription, repurchase or redemption of units, provided that any such suspension is justified for the protection of the unit-holders. The CSSF may moreover require the temporary suspension of the subscription, repurchase or redemption of units, provided that any such suspension is justified by the protection of the unit-holders

C. – Costs and entry into effect

Article 74. Except in cases where UCITS have not designated a management company, any legal, advisory or administrative costs associated with the preparation and the completion of the merger shall not be charged to the merging or the receiving UCITS, or to any of their unit-holders.

Article 75. (1) The common draft terms of the merger referred to in Article 69 shall determine the effective date of the merger as well as the date for calculating the exchange ratio of units of the merging UCITS into units of the receiving UCITS and, as the case may be, for determining the relevant net asset value for cash payments. Such dates shall be after the approval, as the case may be, of the merger by unit-holders of the receiving UCITS or the merging UCITS.

(2) The entry into effect of the merger shall be made public through all appropriate means by the receiving UCITS established in Luxembourg and shall be notified to the CSSF and to the other competent authorities involved in the merger.

(3) A merger which has taken effect as provided for in paragraph 1 shall not be declared null and void.

Article 76. (1) A merger effected in accordance with point (20)(a) of Article 1 shall have the following consequences:

- (a) all the assets and liabilities of the merging UCITS are transferred to the receiving UCITS or, as the case may be, to the depositary of the receiving UCITS;
- (b) the unit-holders of the merging UCITS become unit-holders of the receiving UCITS and, as the case may be, they are entitled to a cash payment not exceeding 10% of the net asset value of their units in the merging UCITS; and
- (c) the merging UCITS established in Luxembourg ceases to exist on the entry into effect of the merger.

(2) A merger effected in accordance with point (20)(b) of Article 1 shall have the following consequences:

- (a) all the assets and liabilities of the merging UCITS are transferred to the newly constituted receiving UCITS or, as the case may be, to the depositary of the receiving UCITS;
- (b) the unit-holders of the merging UCITS become unit-holders of the newly constituted receiving UCITS and, as the case may be, they are entitled to a cash payment not exceeding 10 % of the net asset value of their units in the merging UCITS; and
- (c) the merging UCITS established in Luxembourg cease to exist on the entry into effect of the merger.

(3) A merger effected in accordance with point (20)(c) of Article 1 shall have the following consequences:

- (a) the net assets of the merging UCITS are transferred to the receiving UCITS or, as the case may be, to the depositary of the receiving UCITS;
- (b) the unit-holders of the merging UCITS become unit-holders of the receiving UCITS; and
- (c) the merging UCITS established in Luxembourg continues to exist until the liabilities have been discharged.

(4) The management company of the receiving UCITS shall confirm in writing to the depositary of the receiving UCITS that the transfer of assets and, as the case may be, liabilities is complete. Where the receiving UCITS has not designated a management company, it shall give that confirmation to the depositary of the receiving UCITS.

Chapter 9 – Master-feeder structures

A. – Scope and approval

Article 77. (1) A feeder UCITS is a UCITS, or an investment compartment thereof, which has been approved to invest, by way of derogation from Article 2(2), first indent, Articles 41, 43 and 46, and Article 48(2), third indent of this Law, at least 85% of its assets in units of another UCITS or investment compartment thereof (the “master UCITS”).

(2) A feeder UCITS may hold up to 15% of its assets in one or more of the following:

- (a) ancillary liquid assets in accordance with Article 41(2), second subparagraph;
- (b) financial derivative instruments, which may be used only for hedging purposes, in accordance with Article 41(1)(g) and Article 42(2) and (3);
- (c) movable and immovable property which is essential for the direct pursuit of its business, if the feeder UCITS is an investment company.

For the purposes of compliance with Article 42(3), the feeder UCITS shall calculate its global exposure related to financial derivative instruments by combining its own direct exposure under point (b) of the first subparagraph with either:

- (a) the master UCITS actual exposure to financial derivative instruments in proportion to the feeder UCITS investment into the master UCITS; or
- (b) the master UCITS potential maximum global exposure to financial derivative instruments provided for in the master UCITS management regulations or instruments of incorporation in proportion to the feeder UCITS investment into the master UCITS.

(3) A master UCITS is a UCITS, or an investment compartment thereof, which:

- (a) has, among its unit-holders, at least one feeder UCITS;
- (b) is not itself a feeder UCITS; and
- (c) does not hold units of a feeder UCITS.

(4) The following derogations for a master UCITS shall apply:

- (a) if a master UCITS has at least two feeder UCITS as unit-holders, Article 2(2), first indent and Article 3, second indent of this Law shall not apply, giving the master UCITS the choice whether or not to raise capital from other investors;
- (b) if a master UCITS does not raise capital from the public in a Member State other than that in which it is established, but only has one or more feeder UCITS in that Member State, Chapter XI and Article 108(1), second subparagraph of Directive 2009/65/EC shall not apply.

Article 78. (1) The investment of a feeder UCITS which is established in Luxembourg into a given master UCITS which exceeds the limit applicable under Article 46(1) for investments in other UCITS shall be subject to the prior approval of the CSSF.

(2) The feeder UCITS shall be informed within fifteen working days following the submission of a complete file, whether or not the CSSF has approved the feeder UCITS investment into the master UCITS.

(3) The CSSF shall grant approval if the feeder UCITS, its depositary and its *réviseur d'entreprises agréé* (approved statutory auditor), as well as the master UCITS, comply with all the requirements set out in this Chapter. For such purposes, the feeder UCITS shall provide the CSSF with the following documents:

- (a) the management regulations or instruments of incorporation of the feeder UCITS and the master UCITS;
- (b) the prospectus and the key investor information referred to in Article 159 of the feeder and the master UCITS;
- (c) the agreement between the feeder and the master UCITS or the internal conduct of business rules referred to in Article 79(1);
- (d) where applicable, the information to be provided to unit-holders referred to in Article 83(1);

- (e) if the master UCITS and the feeder UCITS have different depositaries, the information-sharing agreement referred to in Article 80(1) between their respective depositaries; and
- (f) if the master UCITS and the feeder UCITS have different *réviseurs d'entreprises agréés* (approved statutory auditors), the information-sharing agreement referred to in Article 81(1) between their respective auditors.

Points (a), (b), (c) of paragraph 3 of this Article shall not apply in the case where the feeder UCITS and the master UCITS are both established in Luxembourg.

Where the feeder UCITS is established in Luxembourg and the master UCITS is established in another Member State, the feeder UCITS shall also provide the CSSF with an attestation by the competent authorities of the master UCITS home Member State that the master UCITS is a UCITS, or an investment compartment thereof, which fulfils the conditions set out in Article 58(3)(b) and (c) of Directive 2009/65/EC. Documents shall be provided by the feeder UCITS either in Luxembourgish, French, German or English.

B. – Common provisions for feeder and master UCITS

Article 79. (1) The master UCITS shall provide the feeder UCITS with all documents and information necessary for the latter to meet the requirements laid down in this Law. For this purpose, the feeder UCITS shall enter into an agreement with the master UCITS.

The feeder UCITS shall not invest in excess of the limit applicable under Article 46(1), in units of that master UCITS until the agreement referred to in the first subparagraph has become effective. That agreement shall be made available, on request and free of charge, to all unit-holders.

In the event that both master and feeder UCITS are managed by the same management company, the agreement may be replaced by internal conduct of business rules ensuring compliance with the requirements set out in this paragraph.

(2) The master and the feeder UCITS shall take appropriate measures to coordinate the timing of their net asset value calculation and publication, in order to avoid market timing in their units, preventing arbitrage opportunities.

(3) Without prejudice to Article 11(2) and Article 28(1)(b), if a master UCITS temporarily suspends the repurchase, redemption or subscription of its units, whether at its own initiative or at the request of its competent authorities, each of its feeder UCITS is entitled to suspend the repurchase, redemption or subscription of its units, notwithstanding the conditions laid down in Article 12(1), and Article 28(5), within the same period of time as the master UCITS.

(4) If a master UCITS is liquidated, the feeder UCITS shall also be liquidated, unless the CSSF approves:

- (a) the investment of at least 85 % of the assets of the feeder UCITS in units of another master UCITS; or
- (b) the amendment of the management regulations or the instruments of incorporation of the feeder UCITS in order to enable it to convert into a UCITS which is not a feeder UCITS.

Without prejudice to specific provisions regarding compulsory liquidation, the liquidation of a master UCITS shall take place no sooner than three months after the master UCITS has informed all of its unit-holders and the CSSF of the binding decision to liquidate.

(5) If a master UCITS merges with another UCITS or is divided into two or more UCITS, the feeder UCITS shall be liquidated, unless the CSSF grants approval to the feeder UCITS to:

- (a) continue to be a feeder UCITS of the master UCITS or another UCITS resulting from the merger or division of the master UCITS;
- (b) invest at least 85 % of its assets in units of another master UCITS not resulting from the merger or the division; or
- (c) amend its management regulations or its instruments of incorporation in order to convert into a UCITS which is not a feeder UCITS.

“No merger or division of a master UCITS shall become effective, unless the master UCITS has provided all of its unit-holders and the competent authorities of the home Member State of its feeder UCITS with the information referred to, or comparable with that referred to, in Article 72, at least sixty days before the proposed effective date.”⁵⁸

Unless the CSSF has granted approval pursuant to the first subparagraph, point (a) above, the master UCITS shall enable the feeder UCITS to repurchase or redeem all units in the master UCITS before the merger or division of the master UCITS becomes effective.

C. – Depositaries and réviseurs d'entreprises agréé (approved statutory auditors)

⁵⁸ Law of 12 July 2013

Article 80. (1) If the master and the feeder UCITS have different depositaries, those depositaries shall enter into an information-sharing agreement in order to ensure the fulfilment of the duties of both depositaries.

The feeder UCITS shall not invest in units of the master UCITS until such agreement has become effective.

Where they comply with the requirements laid down in this Chapter, neither the depositary of the master UCITS nor that of the feeder UCITS shall be found to be in breach of any rules that restrict the disclosure of information or relate to data protection, where such rules are provided for in a contract or in a law, regulation or administrative provision. Such compliance shall not give rise to any liability, on the part of such depositary or any person acting on its behalf.

The feeder UCITS or, when applicable, the management company of the feeder UCITS, shall be in charge of communicating to the depositary of the feeder UCITS any information about the master UCITS which is required for the completion of the duties of the depositary of the feeder UCITS.

(2) The depositary of the master UCITS shall immediately inform the competent authorities of the master UCITS home Member State, the feeder UCITS or, where applicable, the management company and the depositary of the feeder UCITS, about any irregularities it detects with regard to the master UCITS, which are deemed to have a negative impact on the feeder UCITS.

Article 81. (1) If the master and the feeder UCITS have different *réviseurs d'entreprises agréés* (approved statutory auditors), those *réviseurs d'entreprises agréés* (approved statutory auditors) shall enter into an information-sharing agreement, in order to ensure the fulfilment of the duties of both *réviseurs d'entreprises agréés* (approved statutory auditors), including the arrangements taken to comply with the requirements of paragraph 2.

The feeder UCITS shall not invest in units of the master UCITS until such agreement has become effective.

(2) In its audit report, the *réviseur d'entreprises agréé* (approved statutory auditor) of the feeder UCITS shall take into account the audit report of the master UCITS. If the feeder and the master UCITS have different accounting years, the *réviseur d'entreprises agréé* (approved statutory auditor) of the master UCITS shall make an *ad hoc* report on the closing date of the feeder UCITS.

The *réviseur d'entreprises agréé* (approved statutory auditor) of the feeder UCITS shall, in particular, report on any irregularities revealed in the audit report of the master UCITS and on their impact on the feeder UCITS.

(3) Where they comply with the requirements laid down in this Chapter, neither the *réviseur d'entreprises agréé* (approved statutory auditor) of the master UCITS nor that of the feeder UCITS shall be found to be in breach of any rules that restrict the disclosure of information or relate to data protection, where such rules are provided for in a contract or in a law, regulation or administrative provision. Such compliance shall not give rise to any liability, on the part of such *réviseur d'entreprises agréé* (approved statutory auditor) or any person acting on its behalf.

D. – Compulsory information and marketing communications by the feeder UCITS

Article 82. (1) In addition to the information provided for in Schedule A of Annex I, the prospectus of the feeder UCITS shall contain the following information:

- (a) a declaration that the feeder UCITS is a feeder of a particular master UCITS and as such permanently invests 85% or more of its assets in units of that master UCITS;
- (b) the investment objective and policy, including the risk profile and whether the performance of the feeder and the master UCITS are identical, or to what extent and for which reasons they differ, including a description of investment made in accordance with Article 77(2);
- (c) a brief description of the master UCITS, its organisation, its investment objective and policy, including the risk profile, and an indication of how the prospectus of the master UCITS may be obtained;
- (d) a summary of the agreement entered into between the feeder UCITS and the master UCITS or of the internal conduct of business rules pursuant to Article 79(1);
- (e) how the unit-holders may obtain further information on the master UCITS and the agreement entered into between the feeder UCITS and the master UCITS pursuant to Article 79(1);
- (f) a description of all remuneration and reimbursement of costs payable by the feeder UCITS by virtue of its investment in units of the master UCITS, as well as of the aggregate charges of the feeder UCITS and the master UCITS; and
- (g) a description of the tax implications of the investment into the master UCITS for the feeder UCITS.

(2) In addition to the information provided for in Schedule B of Annex I, the annual report of the feeder UCITS shall include a statement on the aggregate charges of the feeder UCITS and the master UCITS.

The annual and the half-yearly reports of the feeder UCITS shall indicate how the annual and the half-yearly report of the master UCITS can be obtained.

(3) In addition to the requirements laid down in Articles 155(1) and 163(1), the feeder UCITS shall send the prospectus, the key investor information referred to in Article 159 and any amendment thereto, as well as the annual and half-yearly reports of the master UCITS, to the CSSF.

(4) A feeder UCITS shall disclose in any relevant marketing communications that it permanently invests 85% or more of its assets in units of such master UCITS.

(5) A paper copy of the prospectus, and the annual and half-yearly reports of the master UCITS shall be delivered by the feeder UCITS to investors on request and free of charge.

E. – Conversion of existing UCITS into feeder UCITS and change of master UCITS

Article 83. (1) A feeder UCITS, which already pursues activities as a UCITS, including those of a feeder UCITS of a different master UCITS, shall provide the following information to its unit-holders:

- (a) a statement that the CSSF approved the investment of the feeder UCITS in units of such master UCITS;
- (b) the key investor information referred to in Article 159 concerning the feeder and the master UCITS;
- (c) the date when the feeder UCITS is to start to invest in the master UCITS or, if it has already invested therein, the date when its investment will exceed the limit applicable under Article 46(1); and
- (d) a statement that the unit-holders have the right to request, within thirty days, the repurchase or redemption of their units without any charges other than those retained by the UCITS to cover disinvestment costs; that right shall become effective from the moment the feeder UCITS has provided the information referred to in this paragraph.

That information shall be provided at least thirty days before the date referred to in point (c) of this paragraph.

(2) In the event that the feeder UCITS has been notified in accordance with Chapter 7, the information referred to in paragraph 1 shall be provided in Luxembourgish, French, German or English. The feeder UCITS shall be responsible for producing the translation. That translation shall faithfully reflect the content of the original.

(3) The feeder UCITS is not authorised to invest into the units of the given master UCITS in excess of the limit applicable under Article 46(1) before the period of thirty days referred to in paragraph 1, second subparagraph has elapsed.

F. – Obligations and competent authorities

Article 84. (1) The feeder UCITS shall monitor effectively the activity of the master UCITS. In performing that obligation, the feeder UCITS may rely on information and documents received from the master UCITS or, where applicable, its management company, depositary and *réviseur d'entreprises agréé* (approved statutory auditor), unless there is reason to doubt their accuracy.

(2) Where, in connection with an investment in the units of the master UCITS, a distribution fee, commission or other monetary benefit, is received by the feeder UCITS, its management company, or any person acting on behalf of either the feeder UCITS or the management company of the feeder UCITS, the fee, commission or other monetary benefit shall be paid into the assets of the feeder UCITS.

Article 85. (1) Any master UCITS established in Luxembourg shall immediately inform the CSSF of the identity of each feeder UCITS, which invests in its units. If the feeder UCITS is established in another Member State, the CSSF shall immediately inform the competent authorities of the feeder UCITS home Member State of such investment.

(2) The master UCITS shall not charge subscription or redemption fees for the investment of the feeder UCITS into its units or the divestment thereof.

(3) The master UCITS shall ensure the timely availability of all information that is required in accordance with this Law, and any other laws, regulations and administrative provisions applicable in Luxembourg, "EU law"⁵⁹ provisions, as well as the management regulations or the instruments of incorporation of the UCITS to the feeder UCITS or, where applicable, its management company, and to the competent authorities, the depositary and the *réviseur d'entreprises agréé* (approved statutory auditor) of the feeder UCITS.

Article 86. (1) If the master UCITS and the feeder UCITS are both established in Luxembourg, the CSSF shall immediately inform the feeder UCITS of any decision, measure, observation of non-compliance with the conditions of this Chapter or of any information reported pursuant to Article 154(3), with regard to the master UCITS or, where applicable, its management company, depositary or *réviseur d'entreprises agréé* (approved statutory auditor).

(2) If the master UCITS is established in Luxembourg and the feeder UCITS is established in another Member State, the CSSF shall immediately communicate any decision, measure, observation of non-compliance with the conditions of this Chapter or information reported pursuant to Article 154(3), with regard to the master UCITS or,

⁵⁹ Law of 21 December 2012

where applicable, its management company, depositary or *réviseur d'entreprises agréé* (approved statutory auditor), to the competent authorities of the feeder UCITS home Member State.

(3) If the master UCITS is established in another Member State and the feeder UCITS is established in Luxembourg, the CSSF shall transmit any decision, measure, observation referred to in Article 67(2) of Directive 2009/65/EC and which have been communicated to the CSSF by the competent authorities of the master UCITS home Member State.

PART II: OTHER UCIS

Chapter 10 – Scope

Article 87. This Part shall apply to all UCITS referred to in Article 3 and to all other UCIs situated in Luxembourg not covered by Part I.

Article 88. A UCI shall be deemed to be established in Luxembourg if the registered office of the management company of the common fund or the registered office of the investment company is established in Luxembourg. The head office shall be located in Luxembourg.

(Law of 12 July 2013)

“Chapter 10a – General provisions

Article 88-1. Any UCI governed by Part II qualifies as an AIF within the meaning of the Law of 12 July 2013 on alternative investment fund managers.

This chapter sets out the general provisions applicable to UCIs governed by Part II by virtue of the Law of 12 July 2013 on alternative investment fund managers.

Article 88-2. (1) Without prejudice to the derogations provided for in Article 3 of the Law of 12 July 2013 on alternative investment fund managers, every UCI shall be managed by a single AIFM, which may either be an AIFM established in Luxembourg authorised under Chapter 2 of the Law of 12 July 2013 on alternative investment fund managers, or an AIFM established in another Member State or in a third country authorised under Chapter II of Directive 2011/61/EU, subject to the application of Article 66(3) of the aforementioned directive where the UCI is managed by an AIFM established in a third country.

(2) The AIFM shall be determined in accordance with the provisions of Article 4 of the Law of 12 July 2013 on alternative investment fund managers or in accordance with the provisions of Article 5 of Directive 2011/61/EU respectively.

The AIFM is:

- (a) either an external AIFM, which is the legal person appointed by the UCI or on behalf of the UCI and which through this appointment, is responsible for managing this UCI; in case of appointment of an external AIFM, the latter shall, subject to the derogations provided for in Article 3 of the Law of 12 July 2013 on alternative investment fund managers, be authorised in accordance with the provisions of Chapter 2 of the Law of 12 July 2013 on alternative investment fund managers, or in accordance with the provisions of Chapter II, respectively and, where applicable, also in accordance with the provisions of Chapter VII of Directive 2011/61/EU;
- (b) or where the legal form of the UCI permits an internal management and where the UCI's governing body chooses not to appoint an external AIFM, the UCI itself.

An internally managed UCI within the meaning of paragraph 2, point (b) of this Article shall, in addition to the authorisation required under Article 129 and subject to the derogations provided for in Article 3 of the Law of 12 July 2013 on alternative investment fund managers, be authorised as an AIFM under Chapter 2 of the Law of 12 July 2013 on alternative investment fund managers. The relevant UCI shall ensure at all times compliance with all provisions of the aforementioned law, provided that those provisions are applicable to it.

Article 88-3. “The assets of a UCI “managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013 on alternative investment fund managers, as amended, or which benefits from and makes use of the exemptions laid down in Article 3 of that Law”⁶⁰ shall be entrusted to a single depositary for safekeeping appointed in accordance with the provisions set out in Article 17(1), Article 33(1) or Article 39 depending on the legal form of the relevant UCI.

“This paragraph shall also apply to UCIs managed by an AIFM authorised under Chapter II of Directive 2011/61/EU or which benefits from and makes use of the exemptions laid down in Article 3 of that Directive or

⁶⁰ Law of 27 February 2018

which is established in a third country and whose issue documents allow the marketing of their units to retail investors on Luxembourg territory.”⁶¹⁶²

(Law of 27 February 2018)

“(2) By derogation from paragraph 1, the assets of a UCI managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013 on alternative investment fund managers, as amended, and whose issue documents do not allow the marketing of its units to retail investors on Luxembourg territory shall be entrusted to a single depository for safekeeping appointed in accordance with the provisions set out in Article 19 of the Law of 12 July 2013 on alternative investment fund managers.

The *dirigeants* of the depository of a UCI referred to in the first subparagraph shall be of sufficiently good repute and be sufficiently experienced, also in relation to the type of UCI concerned. To that end, the identity of the *dirigeants* and of any person succeeding them in office shall be communicated forthwith to the CSSF.

“*Dirigeants*” shall mean those persons, who under law or the instruments of incorporation represent the depository or effectively determine the conduct of its activity.

The depository of a UCI referred to in the first subparagraph shall make available to the CSSF, on request, all information that the depository has obtained in the exercise of its duties and which is necessary to enable the CSSF to monitor compliance by the UCI with this Law.”

(Law of 27 February 2018)

“(3) By derogation from paragraph 1, the assets of a UCI whose AIFM benefits from and makes use of the exemptions laid down in Article 3 of the Law of 12 July 2013 on alternative investment fund managers, as amended, or Directive 2011/61/EU or is established in a third country and whose issue documents do not allow the marketing of its units to retail investors on Luxembourg territory shall be entrusted to a single depository for safekeeping appointed in accordance with the provisions set out in Articles 16 to 19, Articles 33 to 37 or Article 40(2) of the Law of 13 February 2007 relating to specialised investment funds, as amended, depending on the legal form of the relevant UCI.”

Article 88-4. Without prejudice to the application of the provisions of Articles 9, 28(4) and 99(5), the valuation of the assets of a UCI managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013 on alternative investment fund managers is performed in accordance with the rules laid down in Article 17 of the Law of 12 July 2013 on alternative investment fund managers and in the delegated acts provided for in Directive 2011/61/EU.

Article 88-5. The AIFM of a UCI is authorised to delegate to third parties the task of carrying out on its behalf one or more of its functions. In this case, the delegation of functions by the AIFM shall comply with all the conditions provided for in Article 18 of the Law of 12 July 2013 on alternative investment fund managers and in the delegated acts provided for in Directive 2011/61/EU, in case of UCIs managed by an AIFM established in Luxembourg, and in accordance with the provisions provided for in Article 20 of Directive 2011/61/EU, in case of UCIs managed by an AIFM established in another Member State or in a third country, subject to the application of Article 66(3) of the aforementioned directive where the UCI is managed by an AIFM established in a third country. This Article shall not apply if the AIFM benefits from and makes use of the derogations provided for in Article 3 of the Law of 12 July 2013 on alternative investment fund managers.

Article 88-6. The marketing by an AIFM in the European Union of units or shares of UCIs as well as the management of such UCIs in the European Union on a cross-border basis are governed by the provisions of Chapter 6 of the Law of 12 July 2013 on alternative investment fund managers in the case of UCIs managed by an AIFM established in Luxembourg, or by the provisions of Chapters VI and VII of Directive 2011/61/EU in the case of UCIs managed by an AIFM established in another Member State or in a third country, subject to the application of Article 66(3) of the aforementioned directive where the UCI is managed by an AIFM established in a third country. This Article shall not apply if the AIFM benefits from and makes use of the derogations provided for in Article 3 of the Law of 12 July 2013 on alternative investment fund managers.”

Chapter 11 – Common funds

Article 89. (1) For the purpose of this Part, any undivided collection of assets shall be regarded as a common fund if it is made up and managed according to the principle of risk-spreading on behalf of joint owners who are liable only up to the amount contributed by them and whose rights are represented by units intended for placement with the public by means of a public or private offer.

(2) The management of a common fund shall be carried out by a management company having its registered office in Luxembourg, which complies with the conditions set out in Chapter 15 or 16 of Part IV.

“(…)”⁶³

⁶¹ Law of 27 February 2018

⁶² Law of 10 May 2016

⁶³ Law of 12 July 2013

Article 90. (1) Articles 6, 8, 9, 10, 11(1), 12(1)(b), 12(3), 13(1), 13(2)(a) to (i), 14, 15, 16, “17, 18, 18a, 19”⁶⁴ “(...)”⁶⁵, 20, 21, 22, 23 and 24 “are applicable to common funds “managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013 on alternative investment fund managers, as amended, or Chapter II of Directive 2011/61/EU or which benefits from and makes use of the exemptions laid down in Article 3 of that Law of 12 July 2013 or Directive 2011/61/EU or which is established in a third country and whose issue documents allow the marketing of their units to retail investors on Luxembourg territory”⁶⁶⁶⁷.

(Law of 27 February 2018)

“(2) Articles 6, 8, 9, 10, 11(1), 12(1)(b), 12(3), 13(1), 13(2)(a) to (i), 14, 15, 16, 21, 22, 23 and 24 are applicable to common funds managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013 on alternative investment fund managers, as amended, or under Chapter II of Directive 2011/61/EU or which benefits from and makes use of the exemptions laid down in Article 3 of that Law of 12 July 2013 or Directive 2011/61/EU or which is established in a third country and whose issue documents do not allow the marketing of their units to retail investors on Luxembourg territory.”

Article 91. (1) A CSSF regulation may determine:

- (a) the minimum frequency for the determination of the issue and repurchase prices for units of the common fund;
- (b) the minimum percentage of the assets of the common fund which shall be represented by liquid assets;
- (c) the maximum percentage of the assets of the common fund which may be invested in transferable securities which are not quoted on a stock exchange or dealt in on an organised market offering comparable safeguards;
- (d) the maximum percentage of securities of the same kind issued by the same body which the common fund may hold;
- (e) the maximum percentage of the assets of the common fund which may be invested in securities issued by the same body;
- (f) the conditions under which and possibly the maximum percentages the common fund may invest in securities of other UCIs;
- (g) the maximum percentage of the amounts the common fund is authorised to borrow in relation to its total assets and the terms and conditions for such borrowings.

(2) The frequency and percentages determined in accordance with the foregoing paragraph may be differentiated depending on whether or not the common funds display certain characteristics or fulfil certain conditions.

(3) A newly created common fund may, while ensuring observance of the principle of risk-spreading, derogate from paragraph 1, point (e) above for six months following the date of its authorisation.

(4) Where the limits referred to in points (c), (d), (e), (f) and (g) of paragraph 1 above are exceeded as a result of the exercise of rights attaching to securities in the portfolio or otherwise than by the purchase of securities, the management company shall adopt as a priority objective for its sales transactions the remedying of that situation of the fund, taking due account of the interests of the unit-holders.

Article 92. (1) Neither the management company nor the depositary, each acting on behalf of the common fund, may, either directly or indirectly, grant loans to purchasers and unit-holders of the common fund with a view to the acquisition or subscription of units.

(2) Paragraph 1 shall not prevent common funds from acquiring transferable securities which are not fully paid up.

Chapter 12 – SICAVs

Article 93. For the purposes of this Part, SICAVs shall be taken to mean those companies which have adopted the form of a *société anonyme*⁶⁸ governed by Luxembourg law,

- whose sole object is to invest their funds in assets in order to spread the investment risks and to ensure for their investors the benefit of the results of the management of their assets; and
- whose units are intended to be placed with the public by means of a public or private offer; and
- whose articles of incorporation provide that the amount of capital shall, at all times, be equal to the value of the net assets of the company.

Article 94. The share capital of a SICAV may not be less than one million two hundred and fifty thousand euro (EUR 1,250,000). This minimum shall be reached within a period of six months following the authorisation of the SICAV. A CSSF regulation may raise that minimum amount up to a maximum of two million five hundred thousand euro (EUR 2,500,000).

⁶⁴ Law of 10 May 2016

⁶⁵ Law of 12 July 2013

⁶⁶ Law of 27 February 2018

⁶⁷ Law of 10 May 2016

⁶⁸ public limited company

Article 95. (1) Articles 26, 28(1)(a), 28(2)(a), 28(3) to (10), 29, 30, 31, 32, “33, 34, 34a, 35”⁶⁹ “(…)”⁷⁰, 36 and 37 “are applicable to the SICAVs “managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013 on alternative investment fund managers, as amended, or under Chapter II of Directive 2011/61/EU or which benefits from and makes use of the exemptions laid down in Article 3 of that Law of 12 July 2013 or Directive 2011/61/EU or which is established in a third country and whose issue documents allow the marketing of their units to retail investors on Luxembourg territory”⁷¹”⁷²

(Law of 27 February 2018)

“(1a) Articles 26, 28(1)(a), 28(2)(a), 28(3) to (10), 29, 30, 31, 32 and 36 are applicable to SICAVs managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013 on alternative investment fund managers, as amended, or under Chapter II of Directive 2011/61/EU or which benefits from and makes use of the exemptions laid down in Article 3 of that Law of 12 July 2013 or Directive 2011/61/EU or which is established in a third country and whose issue documents do not allow the marketing of their units to retail investors on Luxembourg territory.”

(Law of 12 July 2013)

“(2) SICAVs which are managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013 on alternative investment fund managers, which have appointed an external AIFM within the meaning of Article 88-2(2)(a), are authorised to delegate to third parties, for the purpose of a more efficient conduct of their activities, the task of carrying out on their behalf, one or more of their administration and marketing functions, to the extent that the external AIFM does not itself perform the functions in question.

In that case, the following preconditions shall be complied with:

- (a) the CSSF shall be informed in an appropriate manner;
- (b) the mandate shall not prevent the effectiveness of supervision over the SICAV; in particular, it shall not prevent the SICAV from acting, or from being managed, in the best interests of investors.

For internally managed SICAVs within the meaning of Article 88-2(2)(b) and which do not or cannot make use of the derogations laid down in Article 3 of the Law of 12 July 2013 on alternative investment fund managers, the delegation of one or more of their functions shall comply with all the conditions laid down in Article 18 of the Law of 12 July 2013 on alternative investment fund managers.”

(3) “SICAVs whose AIFM benefits and makes use of the derogations provided for in Article 3 of the Law of 12 July 2013 on alternative investment managers”⁷³ are authorised to delegate to third parties for the purpose of a more efficient conduct of their activities, to carry out on their behalf one or more of their own functions. In such a case, the following preconditions shall be complied with:

- (a) the CSSF shall be informed in an appropriate manner;
- (b) the mandate shall not prevent the effectiveness of supervision over the SICAV; and in particular it shall not prevent the SICAV from acting, or from being managed, in the best interests of the investors;
- (c) when the delegation concerns investment management, the mandate may be given only to undertakings which are authorised or registered for the purpose of asset management and subject to prudential supervision“, where the mandate is given to a third-country undertaking subject to prudential supervision, cooperation between the CSSF and the supervisory authority of this country shall be ensured”⁷⁴;

(Law of 12 July 2013)

- “(d) where the conditions of point (c) are not complied with, the delegation can only become effective after prior approval of the CSSF; and”
- (e) a mandate with regard to the core function of investment management shall not be given to the depositary.

Article 96. (1) A CSSF regulation may determine:

- (a) the minimum frequency for the determination of the issue and, where the articles of incorporation provide for the right of unit-holders to have their units repurchased, the repurchase prices for units of the SICAV;
- (b) the minimum percentage of the assets of a SICAV which shall be represented by liquid assets;
- (c) the maximum percentage of the assets of the SICAV which may be invested in transferable securities which are not quoted on a stock exchange or dealt in on an organised market offering comparable safeguards;
- (d) the maximum percentage of securities of the same kind issued by the same body which the SICAV may hold;

⁶⁹ Law of 10 May 2016

⁷⁰ Law of 12 July 2013

⁷¹ Law of 27 February 2018

⁷² Law of 10 May 2016

⁷³ Law of 12 July 2013

⁷⁴ Law of 12 July 2013

- (e) the maximum percentage of the assets which the SICAV may invest in securities issued by the same body;
- (f) the conditions under which and possibly the maximum percentages the SICAV may invest in securities of other UCIs;
- (g) the maximum percentage of the amounts the SICAV is authorised to borrow in relation to its total assets and the terms and conditions for such borrowings.

(2) The frequency and percentages determined in accordance with the foregoing paragraph may be differentiated depending on whether or not the SICAVs display certain characteristics or fulfil certain conditions.

(3) A newly created SICAV may, while ensuring observance of the principle of risk-spreading, derogate from paragraph 1, point (e) above for six months following the date of its authorisation.

(4) Where the maximum percentages fixed by reference to points (c), (d), (e), (f) and (g) of paragraph 1 above are exceeded as a result of the exercise of rights attaching to securities in the portfolio or otherwise than by the purchase of securities, the SICAV shall adopt as a priority objective for its sales transactions, the remedying of that situation, taking due account of the interests of the unit-holders.

(Law of 12 July 2013)

“**Article 96a.** Notwithstanding Article 309 of the Law of 10 August 1915 on commercial companies, as amended, SICAVs referred to in this Chapter, as well as their subsidiaries are exempt from the obligation to consolidate the accounts of the companies owned for investment purposes.”

Chapter 13 – UCIs which have not been constituted as common funds or SICAVs

Article 97. This Chapter is applicable to all companies and all undertakings other than common funds or SICAVs

- whose sole object is the collective investment of their funds in assets in order to spread the investment risks and to ensure for the investors the benefit of the results of the management of their assets, and
- whose units are intended to be placed with the public by means of a public or private offer.

Article 98. (1) The net assets of the UCIs falling within this Chapter may not be less than one million two hundred and fifty thousand euro (EUR 1,250,000).

This minimum shall be reached within a period of six months following their authorisation. A CSSF regulation may raise that minimum amount up to a maximum of two million five hundred thousand euro (EUR 2,500,000).

(2) If the net assets have fallen below two thirds of the legal minimum, the directors or the management board, as the case may be, or managers shall submit the question of the dissolution of the UCI to a general meeting for which no quorum shall be prescribed and which shall decide by simple majority of the units represented at the meeting.

(3) If the net assets have fallen below one quarter of the legal minimum, the directors or the management board, as the case may be, or the managers shall submit the question of the dissolution to a general meeting for which no quorum shall be prescribed; the dissolution may be resolved by investors holding one quarter of the units represented at the meeting.

(4) The meeting shall be convened so that it is held within a period of forty days as from the ascertainment that the net assets have fallen below two thirds or one fourth of the legal minimum, as the case may be.

(5) If the instruments of incorporation of the undertaking do not provide for general meetings, the directors or the management board, as the case may be, or the managers shall, if the net assets of the UCI have fallen below two thirds of the legal minimum, inform the CSSF without delay. In such a case, the CSSF may, having regard to the circumstances, require the directors or the managers to liquidate the UCI.

Article 99. (1) A CSSF regulation may determine:

- (a) the minimum frequency for the determination of the issue and, in case the instruments of incorporation provide the right for the unit-holders or members to have their units redeemed, the redemption price of the shares or units of the UCI;
- (b) the minimum percentage of the assets of the UCI which shall be represented by liquid assets;
- (c) the maximum percentage of the assets of the UCI which may be invested in transferable securities which are not quoted on a stock exchange or dealt in on an organised market offering comparable safeguards;
- (d) the maximum percentage of securities of the same kind issued by the same body which the UCI may hold;
- (e) the maximum percentage of the assets of the UCI which may be invested in securities issued by the same body;
- (f) the conditions under which and possibly the maximum percentages the UCI may invest in securities of other UCIs;

- (g) the maximum percentage of the amounts the UCI is authorised to borrow in relation to its total assets and the terms and conditions for such borrowings.

(2) The frequency and percentages determined in accordance with paragraph 1 above may be differentiated depending on whether or not the UCI displays certain characteristics or fulfils certain conditions.

(3) A newly created UCI may, while ensuring observance of the principle of risk-spreading, derogate from paragraph 1, point e) above, for six months following the date of its authorisation.

(4) Where the maximum percentages fixed by reference to points (c), (d), (e), (f) and (g) of paragraph 1 above are exceeded as a result of the exercise of rights attaching to securities in the portfolio or otherwise than by the purchase of securities, the UCI shall adopt as a priority objective for its sales transactions, the remedying of that situation, taking due account of the interests of the unit-holders or members.

(5) The management regulations or the instruments of incorporation of the UCI provide for the principles and methods of valuation of the assets of the UCI. Unless otherwise provided in the management regulations or the instruments of incorporation, the valuation of the assets of the UCI shall be based in the case of officially listed securities, on the last known stock exchange quotation, unless such quotation is not representative. For securities which are not so listed and for securities which are so listed but for which the latest quotation is not representative, the valuation shall be based on the probable realisation value which shall be estimated with care and in good faith.

(6) Articles 28(5), “33, 34, 34a, 35”⁷⁵ “(…)”⁷⁶, 36 and 37 “are applicable to the UCIs governed by this Chapter”⁷⁷ “managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013 on alternative investment fund managers, as amended, or under Chapter II of Directive 2011/61/EU or which benefits from and makes use of the exemptions laid down in Article 3 of that Law of 12 July 2013 or Directive 2011/61/EU or which is established in a third country and whose issue documents allow the marketing of their units to retail investors on Luxembourg territory”⁷⁸

(Law of 27 February 2018)

“(6a) Articles 28(5) and 36 are applicable to UCIs governed by this Chapter managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013 on alternative investment fund managers, as amended, or under Chapter II of Directive 2011/61/EU or which benefits from and makes use of the exemptions laid down in Article 3 of that Law of 12 July 2013 or Directive 2011/61/EU or which is established in a third country and whose issue documents do not allow the marketing of their units to retail investors on Luxembourg territory.”

(6b) UCIs which do not have the legal form of a common fund or a SICAV and whose management is the responsibility of an AIFM authorised under Chapter 2 of the Law of 12 July 2013 on alternative investment fund managers, which have appointed an external AIFM within the meaning of of Article 88-2(2)(a), are authorised to delegate to third parties, for the purpose of a more efficient conduct of their activities, the task of carrying out, on their behalf, one or more of their functions of administration and marketing, to the extent that the external AIFM does not itself perform the functions in question.

In that case, the following preconditions shall be complied with:

- (a) the CSSF shall be informed in an appropriate manner;
- (b) the mandate shall not prevent the effectiveness of supervision over the SICAV; in particular, it shall not prevent the SICAV from acting, or from being managed, in the best interests of investors.

For UCIs which do not have the legal form of a common fund or a SICAV and which are managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013 on alternative investment fund managers, which are internally managed within the meaning of Article 88-2(2)(b), the delegation of one or more of their functions shall comply with all the conditions provided for in Article 18 of the Law of 12 July 2013 on alternative investment fund managers.”

“(6c)⁷⁹ “UCIs which do not have the legal form of a common fund or a SICAV and whose AIFM benefits from and makes use of the derogations provided for in Article 3 of the Law of 12 July 2013 on alternative investment fund managers”⁸⁰ are authorised to delegate to third parties, for the purpose of a more efficient conduct of their activities, the task of carrying out, on their behalf, one or more of their functions. In this case, the following preconditions shall be complied with:

- (a) the CSSF shall be informed in an appropriate manner;
- (b) the mandate shall not prevent the effectiveness of supervision over the UCI, and in particular it shall not prevent the UCI from acting, or from being managed, in the best interests of the investors;

⁷⁵ Law of 10 May 2016

⁷⁶ Law of 12 July 2013

⁷⁷ Law of 10 May 2016

⁷⁸ Law of 27 February 2018

⁷⁹ Law of 12 July 2013

⁸⁰ Law of 12 July 2013

- (c) when the delegation concerns the investment management, the mandate may be given only to undertakings which are authorised or registered for the purpose of asset management and subject to prudential supervision“, where the mandate is given to a third-country undertaking subject to prudential supervision, cooperation between the CSSF and the supervisory authority of this country shall be ensured;”⁸¹

(Law of 12 July 2013)

- “(d) where the conditions of point (c) are not complied with, the delegation can only become effective after the prior approval of the CSSF; and”⁸²

- (e) a mandate with regard to the core function of investment management shall not be given to the depositary.

(7) The articles of incorporation of the UCI having adopted the form of one of the companies referred to in Article 2 of the Law of 10 August 1915 on commercial companies, as amended, and any amendment to these articles of incorporation shall be recorded in a special notarial deed, drawn up in French, German or English, as the appearing parties may decide. By derogation from the provisions of the Decree of 24 Prairial, year XI, where this deed is in English, the requirement to attach a translation into an official language to that deed when it is filed with the registration authorities, does not apply. “This requirement does neither apply to any other deeds which shall be recorded in notarial form, such as notarial deeds recording the minutes of meetings of shareholders of the abovementioned companies or a merger proposal concerning such companies.”⁸³

(8) By derogation to Article 73 subparagraph 2 of the Law of 10 August 1915 on commercial companies, as amended, UCIs subject to this Chapter and which have adopted the form of a *société anonyme*⁸⁴ or of a *société en commandite par actions*⁸⁵, are not required to send the annual accounts, as well as the report of the *réviseur d’entreprises agréé* (approved statutory auditor), the management report and, where applicable, the comments made by the supervisory board to the registered unit-holders, at the same time as the convening notice to the annual general meeting. The convening notice indicates the place and the practical arrangements for providing these documents to the unit-holders and shall specify that each unit-holder may request that the annual accounts, as well as the report of the *réviseur d’entreprises agréé* (approved statutory auditor), the management report and, where applicable, the comments made by the supervisory board are sent to him.

(9) The convening notices to general meetings of unit-holders may provide that the quorum and the majority at the general meeting shall be determined according to the units issued and outstanding at midnight (Luxembourg time) on the fifth day prior to the general meeting (referred to as “Record Date”). The rights of a unit-holder to attend a general meeting and to exercise the voting rights attaching to his units are determined in accordance with the units held by this unit-holder at the Record Date.

(Law of 12 July 2013)

“(10) The provisions of the Law of 10 August 1915 on commercial companies, as amended, are applicable to UCIs falling within the scope of this Chapter, insofar as this Law does not derogate therefrom.”

PART III: FOREIGN UCIs

Chapter 14 – General provisions and scope

(Law of 12 July 2013)

“**Article 100.** (1) Without prejudice to paragraph 2, UCIs other than the closed-ended type established or operating under foreign laws, which are not subject to Chapter 7 and whose securities are marketed to retail investors in or from Luxembourg, shall be subject in their home State to a permanent supervision performed by a supervisory authority set up by law in order to ensure the protection of investors. These UCIs shall, moreover, be subject to supervision considered by the CSSF to be equivalent to that laid down in this Law. Article 59 is applicable to these UCIs.

(2) This Article is not applicable to the marketing of units or shares of foreign law AIFs to professional investors in Luxembourg which is made in compliance with the provisions of Chapters 6 and 7 of the Law of 12 July 2013 on alternative investment fund managers where marketing is undertaken by an AIFM established in Luxembourg, or in accordance with the provisions of Chapters VI and VII of Directive 2011/61/EU where marketing is undertaken by an AIFM established in another Member State or in a third country, subject to the provisions of Article 58(5) of the Law of 12 July 2013 on alternative investment fund managers.”

⁸¹ Law of 12 July 2013

⁸² Law of 12 July 2013

⁸³ Law of 12 July 2013

⁸⁴ public limited company

⁸⁵ corporate partnership limited by shares

PART IV: MANAGEMENT COMPANIES

Chapter 15 – Management companies managing UCITS governed by Directive 2009/65/EC

Title A. – Conditions for taking up business of management companies having their registered office in Luxembourg

Article 101. (1) Access to the business of management companies having their registered office in Luxembourg within the meaning of this Chapter is subject to prior authorisation by the CSSF. Authorisation granted under this Law to a management company shall be valid for all Member States “and shall be notified to the European Securities and Markets Authority”⁸⁶.

A management company shall be incorporated as a *société anonyme*⁸⁷, a *société à responsabilité limitée*⁸⁸, a *société coopérative*⁸⁹, a *société coopérative organisée comme une société anonyme*⁹⁰ or a *société en commandite par actions*⁹¹. The capital of that company shall be represented by registered shares. “The provisions of the Law of 10 August 1915 on commercial companies, as amended, are applicable to management companies subject to this chapter, insofar as this Law does not derogate therefrom.”⁹²

Authorised management companies are entered by the CSSF on a list. This entry is tantamount to authorisation and is notified by the CSSF to the management company concerned. Applications for entry on the list shall be filed with the CSSF before the incorporation of the management company. The incorporation of the management company can only be undertaken after notification of the authorisation by the CSSF. This list and modifications made thereto are published in the *Mémorial* by the CSSF.

(2) No management company shall engage in activities other than the management of UCITS authorised according to Directive 2009/65/EC with the exception of the additional management of other UCIs which are not covered by this Directive and for which the management company is subject to prudential supervision but the units of which cannot be marketed in other Member States of the European Union under Directive 2009/65/EC.

The activity of the management of UCITS includes the functions listed in Annex II of this Law.

(3) By way of derogation from paragraph 2, management companies may also provide the following services:

- (a) management of portfolios of investments, including those owned by pension funds, in accordance with mandates given by investors on a discretionary, client-by-client basis, where such portfolios include one or more of the instruments listed in section B of Annex II of the Law of 5 April 1993 on the financial sector, as amended;
- (b) as non-core services:
 - investment advice concerning one or more of the instruments listed in section B of Annex II of the Law of 5 April 1993 on the financial sector, as amended;
 - safekeeping and administration in relation to units of UCIs.

Management companies shall in no case be authorised under this Chapter to provide only the services mentioned in this paragraph or to provide non-core services without being authorised for the services referred to in point (a).

For the purpose of this Article, investment advice consists of the provision of personalised recommendations to a client, either upon the request of this client or at the management company’s initiative, regarding one or more transactions concerning financial instruments referred to in section B of Annex II of the Law of 5 April 1993 on the financial sector, as amended.

For the purpose of this Article, a personalised recommendation is a recommendation which is addressed to a person by reason of his capacity as investor or potential investor or its capacity as agent of an investor or of a potential investor.

This recommendation has to be adapted to this person or has to be based on the examination of this person's personal circumstances and has to recommend the realisation of an operation of the following categories:

- (a) the purchase, the sale, the subscription, the exchange, the repayment, the holding or the underwriting of a particular financial instrument;
- (b) the exercise or non-exercise of the right conferred by a particular financial instrument to purchase, to sell, to subscribe, to exchange or to reimburse a financial instrument.

⁸⁶ Law of 21 December 2012

⁸⁷ public limited company

⁸⁸ private limited company

⁸⁹ cooperative company

⁹⁰ cooperative company set up as a public limited company

⁹¹ corporate partnership limited by shares

⁹² Law of 12 July 2013

A recommendation is not a personalised recommendation if it is exclusively disseminated by distribution channels within the meaning of Article 1, point (18) of the Law of 9 May 2006 on market abuse or if it is intended for the public.

(4) Article 1-1, Article 37-1 and Article 37-3 of the Law of 5 April 1993 on the financial sector, as amended, shall apply *mutatis mutandis* to the provision by management companies of the services mentioned in paragraph 3 of this Article.

Management companies which provide the services referred to in point (a) of paragraph 3 of this Article shall furthermore comply with the Luxembourg regulations implementing Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (recast).

(5) The assets under management in application of paragraphs 2 and 3 do not form part of the estate in case of insolvency of the management company. They cannot be claimed by the creditors of the management company.

(Law of 12 July 2013)

Article 101-1. (1) By way of derogation from Article 101(2), management companies having their registered office in Luxembourg authorised pursuant to this chapter which are appointed as AIFMs within the meaning of Directive 2011/61/EU shall also obtain prior authorisation by the CSSF as AIFM under Chapter 2 of the Law of 12 July 2013 on alternative investment fund managers.

(2) Where a management company applies for authorisation under paragraph 1, this management company is exempt from providing the information or documents which the management company has already provided to the CSSF when applying for authorisation under Article 102, provided that such information or documents remain up-to-date.

(3) Management companies referred to in this Article can only engage in the activities referred to in Annex I of the Law of 12 July 2013 on alternative investment fund managers and in the additional activities of the management of UCITS subject to authorisation pursuant to Article 101.

Managing AIFs implies for these management companies that they also may provide non-core services within the meaning of Article 5(4) of the Law of 12 July 2013 on alternative investment fund managers, comprising reception and transmission of orders in relation to financial instruments.

(4) Management companies appointed as AIFMs within the meaning of this Article are subject to all the rules provided for by the Law of 12 July 2013 on alternative investment fund managers, to the extent that these rules are applicable to them.”

“(5) For each UCI under Part II for which it is appointed as an AIFM within the meaning of this Article, the management company shall ensure that a single depositary is appointed in accordance with the provisions set out in Article 88-3.”⁹³

Article 102. (1) The CSSF shall not grant authorisation to a management company unless the following conditions are met :

- (a) the management company has an initial capital of at least one hundred and twenty-five thousand euro (EUR 125,000) taking into account the following:
 - When the value of the portfolios of the management company exceeds two hundred and fifty million euro (EUR 250,000,000), the management company shall be required to provide an additional amount of own funds. This additional amount of own funds is equal to 0.02% of the amount by which the value of the portfolios of the management company exceeds two hundred and fifty million euro (EUR 250,000,000). The required total of the initial capital and the additional amount shall not, however, exceed ten million euro (EUR 10,000,000).
 - For the purposes of this paragraph, the following portfolios are deemed to be the portfolios of the management company:
 - (i) common funds managed by the management company, including portfolios for which it has delegated the management function but excluding portfolios that it is managing under delegation;
 - (ii) investment companies for which the management company is the designated management company;
 - (iii) other UCIs managed by the management company including portfolios for which it has delegated the management function but excluding portfolios that it is managing under delegation.
 - Irrespective of the amount of these requirements, the own funds of the management company shall never be less than the amount prescribed in Article 21 of Directive 2006/49/EC.

⁹³ Law of 27 February 2018

Management companies may not provide up to 50% of the additional amount of own funds referred to above if they benefit from a guarantee of the same amount given by a credit institution or an insurance undertaking. The credit institution or insurance undertaking shall have its registered office in a Member State or in a non-Member State provided that it is subject to prudential rules considered by the CSSF as equivalent to those laid down in "EU"⁹⁴ law.

- (b) The funds referred to in paragraph 1(a) are to be maintained at the permanent disposal of the management company and to be invested in its own interest.
- (c) The persons who effectively conduct the business of a management company shall be of sufficiently good repute and be sufficiently experienced also in relation to the type of UCITS managed by the management company. To that end, the identity of these persons and of every person succeeding them in office shall be communicated forthwith to the CSSF. The conduct of the business of a management company shall be determined by at least two persons meeting such conditions;
- (d) the application for authorisation shall be accompanied by a programme of operations setting out, *inter alia*, the organisational structure of the management company;
- (e) both its head office and its registered office are located in Luxembourg;
- (f) the *dirigeants* of a management company shall be of sufficiently good repute and be sufficiently experienced within the meaning of Article 129(5), in relation to the type of UCITS or UCI concerned.

(2) Moreover, where close links exist between the management company and other natural or legal persons, the CSSF shall grant authorisation only if those links do not prevent the effective exercise of its supervisory functions.

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

The CSSF shall require management companies to provide it with the information required to monitor compliance with the conditions referred to in this paragraph on a continuous basis.

(3) The applicant shall be informed, within six months of the submission of a complete application whether or not authorisation has been granted. Reasons shall be given where an authorisation is refused.

(4) A management company may start business as soon as authorisation has been granted.

For the members of the administrative body, management board and supervisory board of the management company, the granting of authorisation implies the obligation to notify the CSSF, spontaneously in writing and in a complete, coherent and comprehensible manner, of any change regarding the substantial information upon which the CSSF based itself to examine the application for authorisation.

(5) The CSSF may withdraw the authorisation issued to a management company subject to this Chapter only where that company:

- (a) does not make use of the authorisation within twelve months, expressly renounces the authorisation or has ceased to exercise the activity covered by this Chapter for more than six months;
- (b) has obtained the authorisation by making false statements or by any other irregular means;
- (c) no longer fulfils the conditions under which authorisation was granted;
- (d) no longer complies with the Law of 5 April 1993 on the financial sector, as amended, resulting from the transposition of Directive 2006/49/EC if its authorisation also covers the discretionary portfolio management service referred to in Article 101(3)(a) above;
- (e) has seriously and/or systematically infringed the provisions of this Law or of regulations adopted pursuant thereto;
- (f) falls within any of the other cases where this Law provides for withdrawal.

(6) In the case where a management company pursues collective portfolio management activities on a cross-border basis pursuant to Article 116, the CSSF shall consult the competent authorities of the UCITS home Member State before withdrawing the authorisation of the management company.

Article 103. (1) The CSSF shall not grant authorisation to take up the business of a management company until it has been informed of the identities of the shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings and of the amounts of those holdings.

The CSSF shall refuse authorisation if, taking into account the need to ensure the sound and prudent management of a management company, it is not satisfied as to the suitability of such shareholders or members.

(2) The competent authorities of the other Member State involved shall be consulted beforehand in relation to the authorisation of any management company which is:

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

⁹⁴ Law of 21 December 2012

- (b) a subsidiary of the parent undertaking of another management company, an investment firm, a credit institution or an insurance undertaking authorised in another Member State, or
- (c) controlled by the same natural or legal persons as those who control another management company, an investment firm, a credit institution or an insurance undertaking authorised in another Member State.

Article 104. (1) The authorisation of a management company is subject to the condition that the audit of its annual accounting documents is entrusted to one or more *réviseurs d'entreprises agréés* (approved statutory auditors) who can prove that they have adequate professional experience.

(2) Any change regarding the *réviseur d'entreprises agréé* (approved statutory auditor) shall be previously approved by the CSSF.

(3) The institution of *commissaires aux comptes*⁹⁵ provided for by the Law of 10 August 1915 concerning commercial companies, as amended, and by Article 140 of that Law, shall not apply to management companies subject to this Chapter.

(Law of 21 December 2012)

“(4) Every management company subject to the supervision of the CSSF which shall have its accounts audited by a *réviseur d'entreprises agréé* (approved statutory auditor) shall 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.”

(5) The *réviseur d'entreprises agréé* (approved statutory auditor) shall report promptly to the CSSF any fact or decision which he has become aware of while carrying out the audit of the accounting information contained in the annual report of a management company or any other legal task concerning a management company or a UCI, where any such fact or decision is likely to:

- constitute a material breach of this Law or the regulations adopted for its execution; or
- impair the continuous functioning of the management company, or of an undertaking contributing towards its business activity; or
- lead to a refusal to certify the accounts or to the expression of reservations thereon.

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

If, in the discharge of its duties, the *réviseur d'entreprises agréé* (approved statutory auditor) becomes aware that the information provided to investors or to the CSSF in the reports or other documents of the management company does not truly describe the financial situation and the assets and liabilities of the management company, it is obliged to inform the CSSF forthwith.

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

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

(...)⁹⁶

The CSSF may request a *réviseur d'entreprises agréé* (approved statutory auditor) to perform a control of one or several particular aspects of the activities and operations of a management company. This control is performed at the expense of the management company concerned.

Article 105. In the event of the voluntary liquidation of a management company, the liquidator(s) shall be approved by the CSSF. The liquidator(s) shall provide all guarantees of good repute and professional skill.

⁹⁵ supervisory auditors

⁹⁶ Repealed by the Law of 21 December 2012

(Law of 12 July 2013)

Article 105a. (1) The *Tribunal d'Arrondissement* (District Court) dealing with commercial matters shall, at the request of the State Prosecutor, acting on its own initiative or at the request of the CSSF, pronounce the dissolution and order the liquidation of management companies, whose entry on (i) the list provided for in Article 101(1) and, where applicable, (ii) the list provided for in Article 7(1) of the Law of 12 July 2013 on alternative investment fund managers, has definitively been refused or withdrawn.

(2) The decision of the CSSF regarding the withdrawal from the lists referred to in paragraph 1 of this Article shall, as from the notification thereof to the management company and until the decision has become final, *ipso jure* entail the suspension of any payment by this management company and prohibition, on penalty of nullity, of taking any measures other than protective measures, except with the authorisation of the CSSF."

Title B. – Relations with third countries

Article 106. Relations with third countries shall be regulated in accordance with the rules laid down in Article 15 of Directive 2004/39/EC.

For the purpose of this Law, the terms "firm/investment firm" and "investment firms" contained in Article 15 of Directive 2004/39/EC shall mean respectively "management company" and "management companies"; the term "providing investment services" contained in Article 15(1) of Directive 2004/39/EC shall mean "providing services".

Title C. – Operating conditions applicable to management companies having their registered office in Luxembourg

Article 107. (1) The management company shall comply at all times with the conditions laid down in Article 101 and Article 102(1) and (2) above. The own funds of a management company shall not fall below the level specified in Article 102(1)(a). If they do, however, the CSSF may, where the circumstances so justify, allow such firm a limited period in which to rectify its situation or cease its activities.

(2) The prudential supervision of a management company shall be the responsibility of the CSSF, whether or not the management company establishes a branch as defined in Article 1 or provides services in another Member State or not, without prejudice to those provisions of Directive 2009/65/EC which confer responsibility to the authorities of the host Member State.

Article 108. (1) Qualifying holdings in a management company shall be subject to the same rules as those applicable to investment firms under Article 18 of the Law of 5 April 1993 on the financial sector, as amended.

(2) For the purpose of this Law, the expressions "firm/investment firm" and "investment firms" contained in Article 18 of the Law of 5 April 1993 on the financial sector, as amended, shall be construed respectively as "management company" and "management companies".

Article 109. (1) With regard to the nature of the UCITS managed by it and in furtherance of the prudential rules it is required to observe at all times with regard to the activity of management of UCITS according to Directive 2009/65/EC, a management company shall be required:

- (a) to have sound administrative and accounting procedures, control and safeguard arrangements for electronic data processing and adequate internal control mechanisms including, in particular, rules for personal transactions by its employees or for the holding or management of investments in financial instruments in order to invest on its own account and ensuring, at least, that each transaction involving the UCITS may be reconstructed according to its origin, the parties to it, its nature, and the time and place at which it was effected and that the assets of the UCITS managed by the management company are invested according to the management regulations or to the instruments of incorporation and the legal provisions in force;
- (b) to be structured and organised in such a way as to minimise the risk of UCITS or clients' interests being prejudiced by conflicts of interest between the company and its clients, between two of its clients, between one of its clients and a UCITS or between two UCITS.

(2) The management company the authorisation of which also covers the discretionary portfolio management service mentioned in Article 101(3)(a), shall:

- not be permitted to invest all or a part of the investor's portfolio in units of UCITS it manages, unless it has received the prior general approval from the client;
- be subject with regard to the services referred to in Article 101(3) to the provisions "of Part III, Title III of the Law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended, and of Article 22-1 of the Law of 5 April 1993 on the financial sector, as amended"⁹⁷.

⁹⁷ Law of 27 February 2018

Article 110. (1) Management companies are authorised to delegate to third parties, for the purpose of a more efficient conduct of their business, the power to carry out on their behalf one or more of their functions. In that case, all of the following preconditions shall be complied with:

- (a) the management company shall inform the CSSF in an appropriate manner; the CSSF shall, without delay, transmit the information to the competent authorities of the UCITS home Member State;
- (b) the mandate may not prevent the effectiveness of supervision over the management company; in particular, it shall not prevent the management company from acting, or the UCITS from being managed, in the best interests of the investors;
- (c) when the delegation concerns investment management, the mandate shall be given only to undertakings which are authorised or registered for the purpose of asset management and subject to prudential supervision; the delegation shall be in accordance with investment allocation criteria periodically laid down by the management company;
- (d) when the mandate concerns investment management and is given to a third country undertaking, cooperation between the CSSF and the supervisory authority of that country shall be ensured;
- (e) a mandate with regard to the core function of investment management shall not be given to the depositary or to any other undertaking whose interests may conflict with those of the management company or the unit-holders;
- (f) measures shall exist which enable the persons who conduct the business of the management company to monitor effectively at any time the activity of the undertaking to which the mandate is given;
- (g) the mandate shall not prevent the persons who conduct the business of the management company from giving at any time further instructions to the undertaking to which functions are delegated or from withdrawing the mandate with immediate effect when this is in the interests of investors;
- (h) having regard to the nature of the functions to be delegated, the undertaking to which functions will be delegated shall be qualified and capable of undertaking the functions in question; and
- (i) the UCITS' prospectuses shall list the functions delegated by the management company.

(2) The liability of the management company or the depositary shall not be affected by delegation by the management company of any functions to third parties. The management company shall not delegate its functions to the extent that it becomes a letter box entity.

Article 111. In the conduct of its business activities, a management company authorised under this Chapter shall, at all times, by virtue of rules of conduct:

- (a) act honestly and fairly in conducting its business activities in the best interests of the UCITS it manages and the integrity of the market,
- (b) act with due skill, care and diligence, in the best interests of the UCITS it manages and the integrity of the market,
- (c) have and employ efficiently the resources and procedures that are necessary for the proper performance of its business activities,
- (d) try to avoid conflicts of interest and, when they cannot be avoided, ensure that the UCITS it manages are fairly treated, and
- (e) comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of its investors and the integrity of the market.

(Law of 10 May 2016)

Article 111a. (1) The management companies referred to in this Chapter shall establish and apply remuneration policies and practices that are consistent with, and promote, sound and effective risk management and that neither encourage risk taking which is inconsistent with the risk profiles, rules or instruments of incorporation of the UCITS that they manage nor impair compliance with the management company's duty to act in the best interest of the UCITS.

(2) The remuneration policies and practices shall include fixed and variable components of salaries and discretionary pension benefits.

(3) The remuneration policies and practices shall apply to those categories of staff, including senior management, risk takers, control functions and any employee receiving total remuneration that falls within the remuneration bracket of senior management and risk takers whose professional activities have a material impact on the risk profiles of the management companies or of the UCITS that they manage."

(Law of 10 May 2016)

Article 111b. (1) When establishing and applying the remuneration policies referred to in Article 111a, management companies shall comply with the following principles in a way and to the extent that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities:

- (a) the remuneration policy is consistent with and promotes sound and effective risk management and does not encourage risk taking which is inconsistent with the risk profiles, rules or instruments of incorporation of the UCITS that the management company manages;

- (b) the remuneration policy is in line with the business strategy, objectives, values and interests of the management company and the UCITS that it manages and of the investors in such UCITS, and includes measures to avoid conflicts of interest;
- (c) the remuneration policy is adopted by the management body of the management company in its supervisory function, and that body adopts, and reviews at least annually, the general principles of the remuneration policy and is responsible for, and oversees, their implementation. The tasks referred to in this point shall be undertaken only by members of the management body who do not perform any executive functions in the management company concerned and who have expertise in risk management and remuneration;
- (d) the implementation of the remuneration policy is, at least annually, subject to central and independent internal review for compliance with policies and procedures for remuneration adopted by the management body in its supervisory function;
- (e) staff engaged in control functions are compensated in accordance with the achievement of the objectives linked to their functions, independent of the performance of the business areas they control;
- (f) the remuneration of the senior officers in the risk management and compliance functions is overseen directly by the remuneration committee, where such a committee exists;
- (g) where remuneration is performance-related, the total amount of remuneration is based on a combination of the assessment as to the performance of the individual and of the business unit or UCITS concerned and as to their risks and of the overall results of the management company when assessing individual performance, taking into account financial and non-financial criteria;
- (h) the assessment of performance is set in a multi-year framework appropriate to the holding period recommended to the investors of the UCITS managed by the management company in order to ensure that the assessment process is based on the longer-term performance of the UCITS and its investment risks and that the actual payment of performance-based components of remuneration is spread over the same period;
- (i) guaranteed variable remuneration is exceptional, occurs only in the context of hiring new staff and is limited to the first year of engagement;
- (j) fixed and variable components of total remuneration are appropriately balanced, the fixed component represents a sufficiently high proportion of the total remuneration to allow the operation of a fully flexible policy, on variable remuneration components, including the possibility to pay no variable remuneration component;
- (k) payments relating to the early termination of a contract reflect performance achieved over time and are designed in a way that does not reward failure;
- (l) the measurement of performance used to calculate variable remuneration components or pools of variable remuneration components includes a comprehensive adjustment mechanism to integrate all relevant types of current and future risks;
- (m) subject to the legal structure of the UCITS and its fund rules or instruments of incorporation, a substantial portion, and in any event at least 50%, of any variable remuneration component consists of units of the UCITS concerned, equivalent ownership interests, or share-linked instruments or equivalent non-cash instruments with equally effective incentives as any of the instruments referred to in this point, unless the management of the UCITS accounts for less than 50% of the total portfolio managed by the management company, in which case the minimum of 50% does not apply.
The instruments referred to in this point shall be subject to an appropriate retention policy designed to align incentives with the interests of the management company and the UCITS that it manages and the investors of such UCITS. This point shall apply to both the portion of the variable remuneration component deferred in line with point (n) and the portion of the variable remuneration component not deferred;
- (n) a substantial portion, and in any event at least 40%, of the variable remuneration component, is deferred over a period which is appropriate in view of the holding period recommended to the investors of the UCITS concerned and is correctly aligned with the nature of the risks of the UCITS in question.
The period referred to in this point shall be at least three years; remuneration payable under deferral arrangements vests no faster than on a pro-rata basis; in the case of a variable remuneration component of a particularly high amount, at least 60% of the amount shall be deferred;
- (o) the variable remuneration, including the deferred portion, is paid or vests only if it is sustainable according to the financial situation of the management company as a whole, and justified according to the performance of the business unit, the UCITS and the individual concerned.
The total variable remuneration shall generally be considerably contracted where subdued or negative financial performance of the management company or of the UCITS concerned occurs, taking into account both current compensation and reductions in payouts of amounts previously earned, including through malus or clawback arrangements;
- (p) the pension policy is in line with the business strategy, objectives, values and long-term interests of the management company and the UCITS that it manages.
If the employee leaves the management company before retirement, discretionary pension benefits shall be held by the management company for a period of five years in the form of instruments defined

in point (m). In the case of an employee reaching retirement, discretionary pension benefits shall be paid to the employee in the form of instruments defined in point (m), subject to a five-year retention period;

- (q) staff are required to undertake not to use personal hedging strategies or remuneration- and liability-related insurance to undermine the risk alignment effects embedded in their remuneration arrangements;
- (r) variable remuneration is not paid through vehicles or methods that facilitate the avoidance of the requirements of this Law.

(2) The principles set out in paragraph 1 shall apply to any benefit of any type paid by the management company, to any amount paid directly by the UCITS itself, including performance fees, and to any transfer of units or shares of the UCITS, made for the benefit of those categories of staff, including senior management, risk takers, control functions and any employee receiving total remuneration that falls into the remuneration bracket of senior management and risk takers, whose professional activities have a material impact on their risk profile or the risk profile of the UCITS that they manage.

(3) Management companies that are significant in terms of their size or of the size of the UCITS that they manage, their internal organisation and the nature, scope and complexity of their activities shall establish a remuneration committee. The remuneration committee shall be constituted in a way that enables it to exercise competent and independent judgment on remuneration policies and practices and the incentives created for managing risk.

The remuneration committee that is, where appropriate, set up in accordance with the European Securities and Markets Authority guidelines referred to in Article 14a(4) of Directive 2009/65/EC shall be responsible for the preparation of decisions regarding remuneration, including those which have implications for the risk and risk management of the management company or the UCITS concerned and which are to be taken by the management body in its supervisory function. The remuneration committee shall be chaired by a member of the management body who does not perform any executive functions in the management company concerned. The members of the remuneration committee shall be members of the management body who do not perform any executive functions in the management company concerned.

In the management companies in which employee representation on the management body is provided for by the Labour Code, the remuneration committee shall include one or more employee representatives. When preparing its decisions, the remuneration committee shall take into account the long-term interest of investors and other stakeholders and the public interest.”

Article 112. A management company shall take measures in accordance with Article 53 and establish appropriate procedures and arrangements to ensure that it deals properly with investor complaints and that there are no restrictions on investors exercising their rights in the event that the management company manages a UCITS established in another Member State. Those measures shall allow investors to file complaints in the official language or one of the official languages of their Member State.

The management company shall establish appropriate procedures and arrangements to make information available at the request of the public or the competent authorities of the UCITS home Member State.

(Law of 12 July 2013)

“**Article 112a.** (1) Management companies are authorised to appoint tied agents within the meaning of Article 1, item 1 of the Law of 5 April 1993 on the financial sector, as amended.

(2) Where a management company decides to appoint tied agents, this management company shall, within the limits of activities permitted under this Law, comply with the same rules as those applicable to investment firms under Article 37-8 of the Law of 5 April 1993 on the financial sector, as amended. For the purpose of applying this paragraph, the term “investment firm” in Article 37-8 of the Law of 5 April 1993 on the financial sector, as amended, shall read “management company”.”

Title D. – The right of establishment and the freedom to provide services

Article 113. Where a management company authorised under this Chapter proposes, without establishing a branch, only to market the units of the UCITS it manages as provided for in Annex II in a Member State other than the UCITS home Member State, without proposing to pursue any other activities or services, such marketing shall be subject only to the requirements of Chapter 6.

1. Freedom of establishment and freedom to provide services in another Member State by a management company authorised in accordance with this Chapter

Article 114. (1) In addition to meeting the conditions imposed in Articles 101 and 102, a management company authorised under this Chapter wishing to establish a branch within the territory of another Member State to pursue the activities for which it has been authorised shall notify the CSSF.

(2) The notification provided for in paragraph 1 shall be accompanied by the following information and documents:

- (a) the Member State within the territory of which the management company plans to establish a branch;

- (b) a programme of operations setting out the activities and services according to Article 101(2) and (3) envisaged and the organisational structure of the branch, which shall include a description of the risk management process put in place by the management company. It shall also include a description of the procedures and arrangements taken in accordance with Article 112;
- (c) the address, in the management company's host Member State from which documents may be obtained; and
- (d) the name of those responsible for the management of the branch.

(3) Unless the CSSF has reason to doubt the adequacy of the administrative structure or the financial situation of the management company, taking into account the activities envisaged, it shall, within two months of receiving all the information referred to in paragraph 2, communicate that information to the competent authorities of the management company's host Member State and shall inform the management company accordingly. It shall also communicate details of any compensation scheme intended to protect investors.

Where the CSSF refuses to communicate the information referred to in paragraph 2 to the competent authorities of the management company's host Member State, it shall give reasons for such refusal to the management company concerned within two months of receiving all the information. An action against the refusal or any failure to reply may be brought in the Luxembourg courts.

Where a management company wishes to pursue the activity of collective portfolio management referred to in Annex II, the CSSF shall enclose with the documentation sent to the competent authorities of the management company's host Member State an attestation that the management company has been authorised "pursuant to the provisions of Directive 2009/65/EC"⁹⁸, a description of the scope of the management company's authorisation and details of any restriction on the types of UCITS that the management company is authorised to manage.

(4) A management company which pursues activities by a branch within the territory of the host Member State shall comply with the rules drawn up by the management company's host Member State pursuant to Article 14 of Directive 2009/65/EC.

(5) Before the branch of a management company starts business, the competent authorities of the management company's host Member State shall, within two months of receiving the information referred to in paragraph 2, prepare for supervising the compliance of the management company with the rules under their responsibility.

(6) On receipt of a communication from the competent authorities of the management company's host Member State or on the expiry of the period provided for in paragraph 5 without receipt of any communication from those authorities, the branch may be established and start business.

(7) In the event of a change in any particulars communicated in accordance with paragraph 2, point (b), (c) or (d), a management company shall give written notice of that change to the CSSF and the competent authorities of its host Member State at least one month before implementing the change so that the CSSF may take a decision on the change under paragraph 3 and the competent authorities of the management company's host Member State may do so under paragraph 6 of Article 17 of Directive 2009/65/EC.

(8) In the event of a change in the particulars communicated in accordance with paragraph 3, first subparagraph, the CSSF shall inform the competent authorities of the management company's host Member State accordingly.

The CSSF shall update the information contained in the attestation referred to in paragraph 3, third subparagraph and inform the competent authorities of the management company's host Member State whenever there is a change in the scope of the management company's authorisation or in the details of any restriction on the types of UCITS that the management company is authorised to manage.

Article 115. (1) Any management company authorised pursuant to this Chapter wishing to pursue the activities for which it has been authorised within the territory of another Member State for the first time under the freedom to provide services shall communicate the following information to the CSSF:

- (a) the Member State within the territory of which the management company intends to operate; and
- (b) a programme of operations stating the envisaged activities and services referred to in Article 101(2) and (3) which shall include a description of the risk management process put in place by the management company. It shall also include a description of the procedures and arrangements taken in accordance with Article 112.

(2) The CSSF shall, within one month of receiving the information referred to in paragraph 1 forward it to the competent authorities of the management company's host Member State.

The CSSF shall also communicate details of any applicable compensation scheme intended to protect investors.

Where a management company wishes to pursue the activity of collective portfolio management as referred to in Annex II, the CSSF shall enclose with the documentation sent to the competent authorities of the management company's host Member State, an attestation that the management company has been authorised "pursuant to

⁹⁸ Law of 12 July 2013

the provisions of Directive 2009/65/EC⁹⁹, a description of the scope of the management company's authorisation and details of any restriction on the types of UCITS that the management company is authorised to manage.

Notwithstanding Article 20 of Directive 2009/65/EC and Article 54, the management company may then start business in the management company's host Member State.

(3) A management company which pursues activities under the freedom to provide services shall comply with the rules drawn up by the CSSF pursuant to Article 111.

(4) Where the content of the information communicated in accordance with paragraph 1, point (b) is amended, the management company shall give notice of the amendment in writing to the CSSF and the management company's host Member State before implementing the change. The CSSF shall update the information contained in the attestation referred to in paragraph 2 and inform the competent authorities of the management company's host Member State whenever there is a change in the scope of the management company's authorisation or in the details of any restriction on the types of UCITS that the management company is authorised to manage.

Article 116. (1) A management company authorised pursuant to this Chapter which pursues the activity of collective portfolio management on a cross-border basis by establishing a branch or under the freedom to provide services shall comply with this Law as it relates to its organisation, including delegation arrangements, risk-management procedures, prudential rules and supervision, procedures referred to in Article 109 and the management company's reporting requirements.

(2) The CSSF shall be responsible for supervising compliance with paragraph 1.

(3) A management company which pursues the activity of collective portfolio management on a cross-border basis by establishing a branch or in accordance with the freedom to provide services shall comply with the rules of the UCITS home Member State which relate to the constitution and functioning of the UCITS, namely the rules applicable to:

- (a) the setting up and authorisation of the UCITS;
- (b) the issuance and redemption of units;
- (c) investment policies and limits, including the calculation of total exposure and leverage;
- (d) restrictions on borrowing, lending and uncovered sales;
- (e) the valuation of assets and the accounting of the UCITS;
- (f) the calculation of the issue or redemption price, and errors in the calculation of the net asset value and related investor compensation;
- (g) the distribution or reinvestment of income;
- (h) the disclosure and reporting requirements of the UCITS, including the prospectus, key investor information and periodic reports;
- (i) the arrangements made for marketing;
- (j) the relationship with unit-holders;
- (k) the merging and restructuring of the UCITS;
- (l) the dissolution and liquidation of the UCITS;
- (m) where applicable, the content of the unit-holder register;
- (n) the licensing and supervision fees regarding the UCITS; and
- (o) the exercise of unit-holders' voting rights and other unit-holders' rights in relation to points (a) to (m).

(4) The management company shall comply with the obligations set out in the management regulations or in the instruments of incorporation, and the obligations set out in the prospectus.

(5) The management company shall decide and be responsible for adopting and implementing all the arrangements and organisational decisions which are necessary to ensure compliance with the rules which relate to the constitution and functioning of the UCITS and with the obligations set out in the management regulations or in the instruments of incorporation, and with the obligations set out in the prospectus.

(6) The CSSF shall be responsible for supervising the adequacy of the arrangements and organisation of the management company so that the management company is in a position to comply with the obligations and rules which relate to the constitution and functioning of all the UCITS it manages.

Article 117. (1) A management company pursuant to this Chapter which applies to manage a UCITS established in another Member State shall provide the competent authorities of the UCITS home Member State with the following documentation:

- (a) "the written contract with the depositary referred to in Article 22(2) of Directive 2009/65/EC"¹⁰⁰; and
- (b) information on delegation arrangements regarding functions of investment management and administration referred to in Annex II.

⁹⁹ Law of 12 July 2013

¹⁰⁰ Law of 10 May 2016

If a management company already manages other UCITS of the same type in the UCITS home Member State, reference to the documentation already provided shall be sufficient.

(2) The competent authorities of the UCITS home Member State may ask the CSSF for clarification and information regarding the documentation referred to in paragraph 1 and, based on the attestation referred to in Articles 114(3), third subparagraph and 115(2), third subparagraph, as to whether the type of UCITS for which authorisation has been requested falls within the scope of the management company's authorisation. The CSSF shall provide its opinion within ten working days of the initial request.

(3) Any subsequent material modifications of the documentation referred to in paragraph 1 shall be notified by the management company to the competent authorities of the UCITS home Member State.

Article 118. (1) A management company's host Member State may require management companies pursuing business within its territory under Directive 2009/65/EC to provide the information necessary for the monitoring of their compliance with the rules under the responsibility of the management company's host Member State that apply to them.

Management companies shall ensure that the procedures and arrangements referred to in Article 112 enable the competent authorities of the UCITS home Member State to obtain directly from the management company the information referred to in this paragraph.

(2) Where the competent authorities of a management company's host Member State ascertain that this management company is in breach of one of the rules under their responsibility, those authorities shall require the management company concerned to put an end to that breach and inform the CSSF.

(3) If the management company concerned refuses to provide the management company's host Member State with information falling under its responsibility, or fails to take the necessary steps to put an end to the breach referred to in paragraph 1, the competent authorities of the management company's host Member State shall inform the CSSF accordingly. The CSSF shall, at the earliest opportunity, take all appropriate measures to ensure that the management company concerned provides the information requested by the management company's host Member State pursuant to paragraph 1 or puts an end to the breach. The nature of those measures shall be communicated to the competent authorities of the management company's host Member State.

(4) If, despite the measures taken by the CSSF, the management company continues to refuse to provide the information requested by the management company's host Member State pursuant to paragraph 1, or persists in breaching the legal or regulatory provisions referred to in the same paragraph, the competent authorities of the management company's host Member State may, after informing the CSSF, take appropriate measures, including under Articles 98 and 99 of Directive 2009/65/EC, to prevent or penalise further irregularities and, in so far as necessary, to prevent that management company from initiating any further transaction within its territory. Where the service provided within the management company's host Member State is the management of a UCITS, the management company's host Member State may require the management company to cease managing that UCITS.

(5) Any measure adopted pursuant to paragraphs 3 or 4 involving measures or penalties shall be duly justified and communicated to the management company concerned. An action against such measure may be brought in the courts of the Member State which adopted it.

II. Freedom of establishment and freedom to provide services in Luxembourg by a management company authorised under Directive 2009/65/EC in another Member State

Article 119. (1) A management company authorised by the competent authorities of another Member State under Directive 2009/65/EC may pursue in Luxembourg the activity for which it has been authorised, either by the establishment of a branch or under the freedom to provide services.

(2) The establishment of a branch or the provision of the aforementioned services is not subject to any authorisation requirement or to any requirement to provide endowment capital or to any other measure having equivalent effect.

(3) Within the limits thus provided, a UCITS established in Luxembourg shall be free to designate, or to be managed by a management company authorised in another Member State under Directive 2009/65/EC, in accordance with the provisions of Article 16(3) of Directive 2009/65/EC.

Article 120. (1) A management company authorised in another Member State wishing to establish a branch in Luxembourg to pursue the activities for which it has been authorised shall notify the competent authorities of its home Member State in accordance with the provisions of Article 17 of Directive 2009/65/EC.

The competent authorities of the home Member State shall notify to the CSSF the information referred to in Article 17(2) of Directive 2009/65/EC within two months of receiving the same.

Where a management company wishes to pursue the activity of collective portfolio management, this notification shall include an attestation that the management company has been authorised pursuant to the provisions of

Directive 2009/65/EC, a description of the scope of the management company's authorisation and details of any possible restriction on the types of UCITS that the management company is authorised to manage.

(2) The management company shall comply with Article 111. The CSSF shall be responsible for supervising compliance with this provision.

(3) The CSSF shall within two months of receiving the information referred to in Article 17 of Directive 2009/65/EC prepare for supervising the compliance of the management company with the rules under its responsibility.

(4) On receipt of a communication from the CSSF or on the expiry of the period provided for in paragraph 3 without receipt of any communication from the latter, the branch may be established and start business.

(5) In the event of change of any particulars communicated in accordance with Article 17(2) of Directive 2009/65/EC, the management company shall give written notice of that change to the competent authorities of the management company's home Member State and to the CSSF, at least one month before implementing the change, so that the competent authorities of the management company's home Member State and the CSSF may take a decision on the change in accordance with discharging their responsibilities under Directive 2009/65/EC and this Law respectively.

Article 121. (1) A management company wishing to pursue the activities for which it has been authorised in another Member State for the first time in Luxembourg under the freedom to provide services shall communicate this to the competent authorities of the management company's home Member State in accordance with the provisions of Article 18 of Directive 2009/65/EC.

(2) The competent authorities of the management company's home Member State shall, within one month of receiving the information referred to in the abovementioned article, communicate it to the CSSF. Where a management company wishes to pursue the activity of collective portfolio management, this shall include an attestation that the management company has been authorised pursuant to the provisions of Directive 2009/65/EC, a description of the scope of the management company's authorisation and details of any restriction on the types of UCITS that the management company is authorised to manage.

(3) Notwithstanding Articles 20 and 93 of Directive 2009/65/EC, the management company may then start business in Luxembourg.

(4) The management company shall comply with the rules drawn up pursuant to Article 14 of Directive 2009/65/EC.

(5) In the event of a change in any particulars communicated in accordance with Article 18(1)(b) of Directive 2009/65/EC, the management company shall give written notice of that change to the competent authorities of the management company's home Member State and of the CSSF before implementing the change.

Article 122. (1) A management company which pursues the activity of collective portfolio management in Luxembourg on a cross-border basis by establishing a branch or under the freedom to provide services shall comply with the rules of the management company's home Member State which relate to the organisation of the management company, including delegation arrangements, risk-management procedures, prudential rules and supervision, procedures referred to in Article 12 of Directive 2009/65/EC and the management company's reporting requirements.

(2) The management company referred to in paragraph 1 shall comply with "the rules in force in Luxembourg"¹⁰¹ as regards the constitution and functioning of the UCITS, in particular the rules applicable to:

- (a) the setting up and authorisation of the UCITS;
- (b) the issuance and redemption of units;
- (c) investment policies and limits, including the calculation of total exposure and leverage;
- (d) restrictions on borrowing, lending and uncovered sales;
- (e) the valuation of assets and the accounting of the UCITS;
- (f) the calculation of the issue or redemption price, and errors in the calculation of the net asset value and related investor compensation;
- (g) the distribution or reinvestment of income;
- (h) the disclosure and reporting requirements of the UCITS, including the prospectus, key investor information and periodic reports;
- (i) the arrangements made for marketing;
- (j) the relationship with unit-holders;
- (k) the merging and restructuring of the UCITS;
- (l) the dissolution and liquidation of the UCITS;
- (m) where applicable, the content of the unit-holder register;
- (n) the licensing and supervision fees regarding the UCITS; and
- (o) the exercise of unit-holders' voting rights and other unit-holders' rights in relation to points (a) to (m).

¹⁰¹ Law of 12 July 2013

(3) The management company shall comply with the obligations set out in the management regulations or in the instruments of incorporation, and the obligations set out in the prospectus.

(4) The CSSF shall be responsible for supervising compliance with “paragraphs 2 and 3”¹⁰².

(5) The management company shall decide and be responsible for adopting and implementing all the arrangements and organisational decisions which are necessary to ensure compliance with the rules which relate to the constitution and functioning of the UCITS and with the obligations set out in the management regulations or in the instruments of incorporation, as well as with the obligations set out in the prospectus.

Article 123. (1) Notwithstanding Article 129, a management company which applies to manage a UCITS established in Luxembourg shall provide the CSSF with the following documentation:

- (a) the “written contract”¹⁰³ with the depositary, referred to in Articles 17 and 33; and
- (b) any information on delegation arrangements, regarding functions of investment management and administration referred to in Annex II of this Law.

If a management company already manages other UCITS of the same type in Luxembourg, reference to the documentation already provided shall be sufficient.

(2) In so far as it is necessary, the CSSF may ask the competent authorities of the management company's home Member State for clarification and information regarding the documentation referred to in paragraph 1 of this Article and, based on the attestation referred to in Articles 120(1) and 121(2), to verify as to whether the type of UCITS for which authorisation has been requested falls within the scope of the management company's authorisation.

(3) The CSSF may refuse the application of the management company only if:

- (a) the management company does not comply with the rules falling under its responsibility pursuant to Article 122;
- (b) the management company is not authorised by the competent authorities of its home Member State to manage the type of UCITS for which authorisation is requested; or
- (c) the management company has not provided the documentation referred to in paragraph 1.

Before refusing an application, the CSSF shall consult the competent authorities of the management company's home Member State.

(4) Any subsequent material modifications of the documentation referred to in paragraph 1 shall be notified by the management company to the CSSF.

Article 124. (1) For statistical purposes, a management company with a branch in Luxembourg shall report periodically on its activities in Luxembourg to the CSSF.

(2) The management company which pursues activities in Luxembourg through the establishment of a branch or under the freedom to provide services, has to provide the CSSF with the information necessary for the monitoring of the management company's compliance with the rules under the responsibility of the CSSF that apply to it.

The management company shall ensure that the procedures and arrangements referred to in Article 15 of Directive 2009/65/EC enable the CSSF to obtain the information referred to in this paragraph directly from the management company.

(3) Where the CSSF ascertains that a management company that has a branch or provides services in Luxembourg, is in breach of one of the rules under its responsibility, it shall require the management company concerned to put an end to that breach and inform the competent authorities of the management company's home Member State thereof.

(4) If the management company concerned refuses to provide the CSSF with information falling under its responsibility, or fails to take the necessary steps to put an end to the breach referred to in paragraph 3, the CSSF shall inform the competent authorities of the management company's home Member State accordingly. The competent authorities of the management company's home Member State shall, at the earliest opportunity, take all appropriate measures to ensure that the management company concerned provides the information requested by the CSSF pursuant to paragraph 2 or puts an end to the breach. The nature of those measures shall be communicated to the CSSF.

(5) If, despite the measures taken by the competent authorities of the management company's home Member State or because such measures prove to be inadequate or are not available in the Member State in question, the management company continues to refuse to provide the information requested by the CSSF pursuant to paragraph 2, or persists in breaching the legal or regulatory provisions, referred to in the same paragraph, in force in Luxembourg, the CSSF may, after informing the competent authorities of the management company's home

¹⁰² Law of 12 July 2013

¹⁰³ Law of 10 May 2016

Member State, take appropriate measures, including under Articles 147 and 148, to prevent or penalise further irregularities and, in so far as necessary, to prevent that management company from initiating any further transactions in Luxembourg.

Where the service provided is the management of a UCITS, the CSSF may require the management company to cease managing that UCITS.

(Law of 21 December 2012)

“Where the CSSF considers that the competent authority of the management company’s home Member State has not acted adequately, the CSSF may refer the matter to the European Securities and Markets Authority.”

(6) Any measure adopted pursuant to paragraph 4 or 5 involving measures or penalties shall be duly justified and communicated to the management company concerned. An action against such measure may be brought in the Luxembourg courts.

(7) Before following the procedure laid down in paragraph 3, 4 or 5, the CSSF may, in emergencies, take any precautionary measures necessary to protect the interests of investors and others for whom services are provided. The Commission of the European Union “, the European Securities and Markets Authority”¹⁰⁴ and the competent authorities of the other Member States concerned shall be informed of such measures at the earliest opportunity.

After consulting the competent authorities of the Member States concerned, the Commission of the European Union may decide that the CSSF shall amend or abolish those measures.

(8) The competent authorities of the management company’s home Member State shall consult the CSSF before withdrawing the authorisation of the management company. In such case, the CSSF shall take appropriate measures to safeguard investors’ interests. Those measures may include decisions preventing the management company concerned from initiating any further transactions in Luxembourg.

(Law of 15 March 2016)

“Title E. – Management companies in a financial conglomerate”

“**Article 124-1.** Without prejudice to the supervisory provisions laid down in this Law, where a management company authorised pursuant to this chapter is part of a financial conglomerate within the meaning of Article 2(14) of Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council, this management company shall also be subject to supplementary supervision carried out by the CSSF in accordance with Part III, Chapter 3b, of the Law of 5 April 1993 on the financial sector, as amended.”

“Chapter 16 – Other management companies”¹⁰⁵

“**Article 125-1**”¹⁰⁶. (1) Access to the business of a management company within the meaning of this Chapter is subject to prior authorisation by the CSSF.

The management company shall be incorporated as a *société anonyme*¹⁰⁷, a *société à responsabilité limitée*¹⁰⁸, a *société coopérative*¹⁰⁹, a *société coopérative organisée comme une société anonyme*¹¹⁰ or a *société en commandite par actions*¹¹¹. The capital of the company shall be represented by registered shares. “The provisions of the Law of 10 August 1915 concerning commercial companies, as amended, are applicable to management companies falling within the scope of this Chapter, insofar as this Law does not derogate therefrom.”¹¹²

Authorised management companies shall be entered by the CSSF on a list. That entry shall be tantamount to authorisation and shall be notified by the CSSF to the management company concerned. Applications for entry on the list shall be filed with the CSSF before the incorporation of the management company. The incorporation of the management company can only be undertaken after notification of the authorisation by the CSSF. This list and any modifications made thereto are published in the *Mémorial* by the CSSF.

(Law of 12 July 2013)

“Without prejudice to the application of Article 125-2, management companies authorised pursuant to this Article can only engage in the following activities:

¹⁰⁴ Law of 21 December 2012

¹⁰⁵ Law of 12 July 2013

¹⁰⁶ Law of 12 July 2013

¹⁰⁷ public limited company

¹⁰⁸ private limited company

¹⁰⁹ cooperative company

¹¹⁰ cooperative company set up as a public limited company

¹¹¹ corporate partnership limited by shares

¹¹² Law of 12 July 2013

- (a) ensure the management of investment vehicles other than AIFs within the meaning of Directive 2011/61/EU;
- (b) ensure the function of management company within the meaning of Article 89(2), for one or more common funds which qualify as AIFs within the meaning of Directive 2011/61/EU or for one or more investment companies with variable capital or investment companies with fixed capital which qualify as AIFs within the meaning of Directive 2011/61/EU. In such case, the management company shall appoint, on behalf of the common fund(s) and/or of the investment compan(y/ies) with variable capital or investment compan(y/ies) with fixed capital concerned, an external AIFM in accordance with Article 88-2(2)(a);
- (c) ensure the management of one or more AIFs, whose assets under management do not exceed one of the thresholds provided for in Article 3(2) of the Law of 12 July 2013 on alternative investment fund managers. In such case, the management companies concerned shall:
 - identify the AIFs that they manage to the CSSF;
 - provide information on the investment strategies of the AIFs that they manage to the CSSF;
 - regularly provide the CSSF with information on the main instruments in which they are trading and on the principal exposures and most important concentrations of the AIFs that they manage in order to enable the CSSF to monitor systemic risk effectively.

Where the threshold conditions set out above are no longer met and where the management company concerned has not appointed an external AIFM within the meaning of Article 88-2(2)(a), or where the management company has chosen to be subject to the Law of 12 July 2013 on alternative investment fund managers, the management company concerned shall apply to the CSSF for authorisation within thirty calendar days in accordance with the procedures laid down in Chapter 2 of the Law of 12 July 2013 on alternative investment fund managers.

Under no circumstances shall management companies be authorised under this Article to only perform the services referred to in point (a) without also performing the services referred to in points (b) or (c), unless the investment vehicles other than AIFs within the meaning of Directive 2011/61/EU, are regulated by specific sector laws which are applicable to them.

The administration of the management companies' own assets shall only be of an ancillary nature."

Both its head office and its registered office shall be situated in Luxembourg.

(Law of 12 July 2013)

"Management companies falling within the scope of this Article performing the activities referred to in points (a) or (c) of the fourth subparagraph of this Article are authorised to delegate to third parties, for the purposes of a more efficient conduct of their activities, the power to carry out on their behalf, one or more of their functions. In that case, the following preconditions shall be complied with:

- (a) the CSSF shall be informed in an appropriate manner;
- (b) the mandate shall not prevent the effectiveness of the supervision over the management company; in particular, it shall not prevent the management company from acting, or the UCI from being managed, in the best interests of the investors;
- (c) when the delegation concerns investment management, the mandate may only be given to undertakings which are authorised or registered for the purpose of asset management and subject to prudential supervision; when the mandate is given to a third country undertaking subject to prudential supervision, cooperation between the CSSF and the supervisory authority of this country shall be ensured;
- (d) where the conditions of point (c) are not fulfilled, the delegation can only become effective after prior approval of the CSSF; and
- (e) no mandate regarding the core function of investment management shall be given to the depositary.

Management companies falling within the scope of this Article performing activities referred to under point (b) of the fourth subparagraph of this Article are authorised to delegate to third parties, for the purpose of a more efficient conduct of their activities, the task of carrying out on their behalf, one or more of their functions of administration and marketing, to the extent that the external AIFM appointed by the management company concerned does not itself undertake the functions in question. In that case, the following preconditions shall be complied with:

- (a) the CSSF shall be informed in an appropriate manner;
- (b) the mandate shall not prevent the effectiveness of the supervision over the management company; in particular, it shall not prevent the management company from acting, or the common fund, the investment company with variable capital or the investment company with fixed capital from being managed in the best interests of the investors."

(2) The CSSF will grant authorisation to the company only on the following conditions:

- (a) it shall have sufficient financial resources at its disposal to enable it to conduct its business effectively and meet its liabilities; in particular it shall have a minimum paid-up capital of one hundred and twenty-

five thousand euro (EUR 125,000); a CSSF regulation may raise that minimum amount to a maximum of six hundred and twenty-five thousand euro (EUR 625,000);

- (b) the funds referred to in paragraph 2(a) are to be maintained at the management company's permanent disposal and invested in its own interests;
- (c) the *dirigeants* of the management company, within the meaning of Article 129(5), shall be of sufficiently good repute and have the professional experience required for the performance of their duties;
- (d) the identity of reference shareholders or members of the management company shall be provided to the CSSF;
- (e) the application for authorisation shall describe the organisational structure of the management company.

(3) The applicant shall be informed, within six months of the submission of a complete application whether or not authorisation has been granted. Reasons shall be given whenever authorisation is refused.

(4) A management company may start business as soon as authorisation has been granted.

For the members of the administrative body, management board and supervisory board of the management company, the granting of authorisation implies an obligation to notify the CSSF, spontaneously in writing and in complete, coherent and comprehensible manner, of any change regarding the substantial information upon which the CSSF based itself to examine the application for authorisation.

(5) The CSSF may withdraw the authorisation issued to a management company subject to this Chapter only where that company:

- (a) does not make use of the authorisation within twelve months, expressly renounces the authorisation or has ceased the activity covered by this Chapter for more than six months;
- (b) has obtained the authorisation by making false statements or by any other irregular means;
- (c) no longer fulfils the conditions under which authorisation was granted;
- (d) has seriously and/or systematically infringed the provisions adopted pursuant to this Law; or
- (e) falls within any of the other cases that provide for withdrawal in this Law.

(6) The management company may not make use of the assets of the UCIs it manages for its own needs.

(7) The assets of the UCIs under management do not form part of the estate in case of insolvency of the management company. They cannot be claimed by the creditors of the management company.

(Law of 12 July 2013)

Article 125-2. (1) Management companies authorised pursuant to this Article which, as appointed management company, manage one or more AIFs within the meaning of Directive 2011/61/EU, without having appointed an external AIFM within the meaning of Article 88-2(2)(a), shall also, where the assets under management exceed one of the thresholds provided for in Article 3(2) of the Law of 12 July 2013 on alternative investment fund managers, obtain prior authorisation from the CSSF as AIFM under Chapter 2 of the Law of 12 July 2013 on alternative investment fund managers.

(2) Management companies referred to in this Article can only engage in the activities referred to in Annex I of the Law of 12 July 2013 on alternative investment fund managers as well as in the non-core activities referred to in Article 5(4) of that Law.

(3) In relation to the AIFs that they manage pursuant to this Article, management companies, as appointed management company, are subject to all the rules provided for by the Law of 12 July 2013 on alternative investment fund managers, to the extent that these rules are applicable to them."

"(4) For each UCI under Part II for which it is appointed as an AIFM within the meaning of this Article, the management company shall ensure that a single depositary is appointed in accordance with the provisions set out in Article 88-3."¹¹³

Article 126. (1) Article 104 is applicable to management companies falling within the scope of this Chapter.

(2) In the event of the voluntary liquidation of a management company, the liquidator(s) shall be approved by the CSSF. The liquidator(s) shall provide all guarantees of good repute and professional skill.

(Law of 12 July 2013)

Article 126-1. (1) The *Tribunal d'Arrondissement* (District Court) dealing with commercial matters shall, at the request of the State Prosecutor, acting on its own initiative or at the request of the CSSF, pronounce the dissolution and order the liquidation of management companies, whose entry on (i) the list provided for in Article

¹¹³ Law of 27 February 2018

125(1) and, where applicable, (ii) the list provided for in Article 7(1) of the Law of 12 July 2013 on alternative investment fund managers, has definitively been refused or withdrawn.

(2) The decision of the CSSF regarding the withdrawal from the lists referred to in paragraph 1 of this Article shall, as from the notification thereof to the management company and until the decision has become final, *ipso jure* entail the suspension of any payment by this management company and prohibition, on penalty of nullity, of taking any measures other than protective measures, except with the authorisation of the CSSF.”

Chapter 17 – Management companies other than those authorised by the competent authorities of another Member State in accordance with Directive 2009/65/EC, from Member States or third countries

Article 127. (1) Management companies other than those authorised by the competent authorities of another Member State in accordance with Directive 2009/65/EC, from a Member State or a third country, wishing to establish a branch in Luxembourg, are subject to the same authorisation rules as management companies subject to Chapter 16.

(2) For the purposes of the preceding paragraph, compliance with the conditions required for authorisation is assessed in the context of the foreign establishment.

(3) The authorisation for the activity of a management company of UCIs shall not be granted to branches of foreign companies, unless these companies have own funds distinct from the assets of their members. The branch shall in addition have at its permanent disposal an endowment capital or financial resources equivalent to those required for a management company under Luxembourg law pursuant to Chapter 16.

(4) The requirements of good repute and professional experience are extended to the directors of the branch. The branch shall also have, instead of the condition relating to the central administration, an adequate administrative infrastructure in Luxembourg.

Chapter 18 – Exercise of the activity of a management company by multilateral development banks

Article 128. The multilateral development banks listed in Annex VI, point 20, of Directive 2006/48/EC, as amended, and which are permitted by their statute to provide the services of collective portfolio management, are authorised to manage UCIs for the purposes of “Article 125-1”¹¹⁴.

The institutions referred to in the preceding subparagraph are required to provide the CSSF, in relation to UCIs under its supervision, the information required by the CSSF for the purposes of prudential supervision of the UCI(s) managed.

In case of UCIs managed by institutions referred to in the first subparagraph, which have the form of a common fund, the provisions of this Article shall only apply if the management regulations of the UCIs concerned are subject to Luxembourg law.

PART V: GENERAL PROVISIONS APPLICABLE TO UCITS AND OTHER UCIS

Chapter 19 – Authorisation

Article 129. (1) UCIs subject to Articles 2, 87 and “100(1)”¹¹⁵ shall, in order to carry out their activities in Luxembourg, be previously authorised by the CSSF pursuant to this Law.

A UCITS subject to Article 2 which is legally prevented from marketing its units in Luxembourg, in particular by a provision included in the management regulations or the instruments of incorporation, will not be authorised by the CSSF.

(2) A UCI shall be authorised only if the CSSF has approved the instruments of incorporation and the management regulations respectively and the choice of the depositary.

(Law of 12 July 2013)

“(2a) In addition to the conditions provided for in paragraph 2, and subject to the derogations provided for in Article 3 of the Law of 12 July 2013 on alternative investment fund managers, a UCI subject to Part II shall only be authorised if its external AIFM, appointed in accordance with Article 88-2(2)(a), has been previously authorised in accordance with that article.

A UCI subject to Part II, which is internally managed within the meaning of Article 88-2(2)(b) shall, in addition to the authorisation required pursuant to Article 129(1), and subject to the derogations provided for in Article 3 of the Law of 12 July 2013 on alternative investment fund managers, be authorised in accordance with Article 88-2(2)(b).”

¹¹⁴ Law of 12 July 2013

¹¹⁵ Law of 12 July 2013

(3) In addition to the conditions laid down in paragraph 2, a UCITS within the scope of Article 2 shall not be authorised by the CSSF unless it fulfils the following conditions:

- (a) A common fund shall be authorised only if the CSSF has approved the application of the management company to manage that common fund. An investment company having designated a management company shall be authorised only if the CSSF has approved the application of the management company designated to manage that investment company.
- (b) Without prejudice to subparagraph (a), if the UCITS which is established in Luxembourg is managed by a management company subject to Directive 2009/65/EC and which has been authorised by the competent authorities of another Member State pursuant to Directive 2009/65/EC, the CSSF shall decide on the application of the management company to manage the UCITS in accordance with Article 123.

(4) The CSSF may refuse to authorise a UCITS within the scope of Article 2 if:

- (a) it establishes that the investment company does not comply with the preconditions laid down in Chapter 3; or
- (b) the management company is not authorised to manage a UCITS pursuant to Chapter 15, or
- (c) the management company is not authorised to manage a UCITS in its home Member State.

Without prejudice to Article 27(1), the management company or, where applicable, the investment company shall be informed within two months of the submission of a complete application whether or not the authorisation of the UCITS has been granted.

(5) The *dirigeants* of the UCI and of the depositary shall be of sufficiently good repute and be sufficiently experienced, also in relation to the type of UCI concerned. To that end, the identity of the *dirigeants* and of any person succeeding them in office shall be communicated forthwith to the CSSF.

“*Dirigeants*” shall mean those persons, who under law or the instruments of incorporation represent the UCI or the depositary or who effectively determine the conduct of the activity of the UCI.

(6) “The replacement of the management company, the AIFM or the depositary and the amendment of the management regulations or the instruments of incorporation of the investment company are subject to approval by the CSSF.”¹¹⁶

(7) “The granting of the authorisation pursuant to paragraph 1 of this Article implies that the members of the administrative, management and supervisory bodies of the management company, the AIFM or, where applicable, the investment company, are obliged to notify the CSSF spontaneously in writing and in a complete, coherent and comprehensible manner of any change regarding the substantial information on which the CSSF based itself to examine the application for authorisation as well as any change in respect of the *dirigeants* referred to in paragraph 5 above.”¹¹⁷

Article 130. (1) Authorised UCIs shall be entered by the CSSF on a list. That entry shall be tantamount to authorisation and shall be notified by the CSSF to the UCI concerned. For the UCIs referred to in Articles 2 and 87, applications for entry on the list shall be filed with the CSSF within the month following their incorporation or formation. This list and any amendments made thereto shall be published in the *Mémorial* by the CSSF.

(2) The entering and the maintaining on the list referred to in paragraph 1 shall be subject to observance of all the provisions of laws, regulations or agreements relating to the organisation and operation of UCIs and the distribution, placing or sale of their units.

Article 131. Luxembourg UCIs other than of the closed-end type, UCITS governed by harmonised “EU law”¹¹⁸ and foreign UCIs in case of a public offer in Luxembourg shall be exempt from publishing a prospectus as provided for in Part III of the Law on prospectuses for transferable securities. The prospectus which those UCIs draw up in accordance with the regulatory requirements applicable to UCIs shall be valid for the purposes of an offer to the public of transferable securities or the admission of transferable securities to trading on a regulated market.

Article 132. The fact that a UCI is entered on the list referred to in Article 130(1) shall not, under any circumstances, be described in any way whatsoever as a positive assessment made by the CSSF of the quality of the units offered for sale.

¹¹⁶ Law of 12 July 2013

¹¹⁷ Law of 12 July 2013

¹¹⁸ Law of 21 December 2012

Chapter 20 – Organisation of supervision

A. – Competent authority for supervision

Article 133. (1) The authority which is to carry out the duties provided for in this Law is the CSSF.

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

(3) The CSSF has jurisdiction to settle any consumer disputes concerning the activity of UCIs governed by this Law through out-of-court procedures.

Article 134. (1) Any person who works or who has worked for the CSSF, as well as the *réviseurs d'entreprises agréés* (approved statutory auditors) or experts mandated by the CSSF, shall be bound by the obligation of professional secrecy provided for by Article 16 of the Law of 23 December 1998 creating the Commission de Surveillance du Secteur Financier, as amended. Such secrecy implies that confidential information which they may receive in the course of their duties may not be divulged to any person or authority whatsoever, save in summary or abridged form such that no UCIs, management company or depositary can be individually identified, without prejudice to cases covered by criminal law.

(Law of 12 July 2013)

“However, when a UCI or an undertaking contributing towards its business activity has been declared bankrupt or is being compulsorily wound up, confidential information which does not concern the third parties involved in rescue attempts may be divulged in the course of civil or commercial proceedings.”

(2) Paragraph 1 shall not prevent the CSSF from exchanging information with the supervisory authorities of other Member States of the European Union within the limits provided by this Law “or from transmitting this information to the European Securities and Markets Authority in accordance with Regulation (EU) No 1095/2010 or to the European Systemic Risk Board”¹¹⁹.

The supervisory authorities of countries, other than Member States of the European Union which are party to the Agreement on the European Economic Area are assimilated to the supervisory authorities of Member States of the European Union within the limits provided by that Agreement and the instruments relating thereto.

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

- authorities of third countries with public responsibilities for the prudential supervision of UCIs,
- other authorities, bodies and persons referred to in paragraph 5, with the exception of central credit registers established in third countries,
- authorities of third countries referred to in paragraph 6.

The communication of information by the CSSF authorised by this paragraph is subject to the following conditions:

- the transmitted information shall be required for the purpose of performing the duty of the recipient authorities, bodies and persons,
- the information received shall be subject to the professional secrecy of the recipient authorities, bodies and persons, and the professional secrecy of these authorities, bodies and persons shall offer guarantees at least equivalent to the professional secrecy to which the CSSF is bound,
- the authorities, bodies and persons which receive information from the CSSF may only use that information for the purposes for which it has been communicated to them and shall be able to ensure that no other use can be made thereof,
- the authorities, bodies and persons who receive information from the CSSF grant the same right of information to the CSSF,
- the CSSF may only disclose information received from EU authorities responsible for the prudential supervision of UCIs with the express consent of those authorities and, where appropriate, solely for the purposes for which those authorities gave their consent.

For the purpose of this paragraph, third countries are countries other than those referred to in paragraph 2.

(4) Where the CSSF receives confidential information under paragraphs 2 and 3, it may use it only in the course of its duties for the purposes of:

- checking that the conditions governing the taking-up of the business of UCITS, of management companies, depositaries and of any other undertaking contributing towards their business activity are met and facilitating the monitoring of the conduct of that business, of administrative and accounting procedures as well as of internal control mechanisms; or
- imposing penalties; or
- taking administrative actions against decisions by the CSSF; or
- initiating legal proceedings against decisions taken by the CSSF under this Law.

¹¹⁹ Law of 21 December 2012

(5) Paragraphs 1 and 4 shall not preclude:

- (a) the exchange of information within the European Union or in Luxembourg between the CSSF and:
- authorities with public responsibility for the supervision of credit institutions, investment firms, insurance undertakings and other financial institutions and the authorities responsible for the supervision of financial markets,
 - bodies involved in the liquidation, bankruptcy or other similar proceedings concerning UCIs, management companies and depositaries or other undertakings contributing towards their business activity,
 - persons responsible for carrying out statutory audits of the accounts of credit institutions, investment firms, other financial institutions or insurance undertakings,
- (*Law of 21 December 2012*)
- “the European Securities and Markets Authority, the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Systemic Risk Board,”

in the performance of their supervisory functions,

- (b) the disclosure by the CSSF within the European Union or in Luxembourg to bodies which administer compensation schemes of investors or to central credit registers of information necessary for the performance of their functions.

The communication of information by the CSSF authorised by this paragraph is subject to the condition that such information is covered by the professional secrecy of the authorities, bodies and persons receiving the information and is only authorised to the extent that the professional secrecy of those authorities, bodies and persons offers guarantees at least equivalent to the professional secrecy of the CSSF. In particular, authorities which receive information from the CSSF may only use such information for the purposes for which it has been communicated to them and shall be able to ensure that no other use can be made thereof.

Countries other than Member States of the European Union which are party to the Agreement on the European Economic Area are assimilated to the Member States of the European Union within the limits provided by that Agreement and the instruments relating thereto.

(6) Paragraphs 1 and 4 do not prevent exchanges of information within the European Union or in Luxembourg between the CSSF and:

- the authorities responsible for overseeing the bodies involved in the liquidation, bankruptcy and other similar proceedings concerning credit institutions, investment firms, insurance undertakings, UCIs, management companies and depositaries,
- the authorities responsible for overseeing persons entrusted with the carrying out of statutory audits of the accounts of credit institutions, investment firms, insurance undertakings and other financial institutions.

The communication of information by the CSSF authorised by this paragraph is subject to the following conditions:

- the transmitted information is intended to be used for the purpose of performing the supervisory duty of the recipient authorities,
- the information received shall be subject to the professional secrecy of the recipient authorities and the professional secrecy of such authorities shall offer guarantees at least equivalent to the professional secrecy of the CSSF,
- the authorities which receive information from the CSSF may only use that information for the purposes for which it has been communicated to them and shall be able to ensure that no other use can be made thereof,
- the CSSF may only disclose information received from supervisory authorities referred to in paragraphs 2 and 3 with the express consent of those authorities and, where appropriate, solely for the purposes for which those authorities gave their consent.

Countries other than Member States of the European Union which are party to the Agreement on the European Economic Area are assimilated to Member States of the European Union within the limits provided by that Agreement and the instruments relating thereto.

(7) This Article shall not prevent the CSSF from transmitting to central banks and other bodies with a similar function in their capacity as monetary authorities information intended for the performance of their duties.

The communication of information by the CSSF authorised by this paragraph is subject to the condition that such information is covered by the professional secrecy of the recipient authorities and is only authorised to the extent that the professional secrecy of those authorities offers guarantees at least equivalent to the professional secrecy of the CSSF. In particular, authorities which receive information from the CSSF may only use that information for the purposes for which it has been communicated to them and shall be able to ensure that no other use can be made thereof.

This Article shall furthermore not prevent the authorities or bodies referred to in this paragraph from communicating to the CSSF any such information as it may require for the purposes of paragraph 4. Information received in this context by the CSSF shall be subject to its professional secrecy.

(8) This Article shall not prevent the CSSF from communicating the information referred to in paragraphs 1 to 4 to a clearing house or other similar undertaking recognised under law for the provision of clearing or settlement services for a market in Luxembourg if the CSSF considers it is necessary to communicate such information in order to ensure the proper functioning of those undertakings in relation to defaults or potential defaults by market participants.

The communication of information by the CSSF authorised by this paragraph is subject to the condition that any such information is covered by the professional secrecy of the recipient bodies and is only authorised to the extent that the professional secrecy of those undertakings offers guarantees at least equivalent to the professional secrecy of the CSSF. In particular, undertakings which receive information from the CSSF may only use that information for the purposes for which it has been communicated to them and shall be able to ensure that no other use can be made thereof.

The information received by the CSSF pursuant to paragraphs 2 and 3 may not be disclosed in the circumstances referred to in this paragraph without the express consent of the supervisory authorities which have disclosed that information to the CSSF.

(Law of 10 May 2016)

“Article 134a. The processing of personal data pursuant to this Law shall be carried out in accordance with the Law of 2 August 2002 on the protection of persons with regard to the processing of personal data.”

B. – Cooperation with competent authorities of the other Member States

Article 135. (1) The CSSF shall cooperate with the competent authorities of other Member States for the purpose of carrying out their duties under Directive 2009/65/EC or of exercising their powers under the aforementioned Directive or under national law.

The CSSF shall cooperate with the competent authorities of other Member States even in cases where the conduct under investigation does not constitute an infringement of any regulation in force in Luxembourg.

(2) The CSSF shall provide the competent authorities of other Member States with the information required for the purposes of carrying out their duties under Directive 2009/65/EC without delay.

(Law of 21 December 2012)

“(2a) The CSSF shall cooperate with the European Securities and Markets Authority for the purposes of Directive 2009/65/EC, in accordance with Regulation (EU) No 1095/2010.

The CSSF shall provide, without delay, the European Securities and Markets Authority with all the information necessary to carry out its duties, in accordance with Article 35 of Regulation (EU) No 1095/2010.”

(3) Where the CSSF has good reason to suspect that acts contrary to the provisions of Directive 2009/65/EC are being or have been carried out by entities not subject to its supervision on the territory of another Member State, it shall notify the competent authorities of the other Member State thereof in as specific a manner as possible.

(4) The competent authorities of a Member State may request the cooperation of the CSSF in a supervisory activity or for an on-the-spot verification or in an investigation in Luxembourg within the framework of their powers pursuant to Directive 2009/65/EC. Where the CSSF receives a request with respect to an on-the-spot verification or investigation, it shall:

- (a) carry out the verification or investigation itself;
- (b) allow the requesting competent authorities of the Member State to carry out the verification or investigation;
- (c) allow auditors or experts to carry out the verification or investigation.

(5) If the verification or investigation is carried out by the CSSF, the competent authorities of the Member State which have requested cooperation may request that their own officials accompany the officials of the CSSF carrying out the verification or investigation. The verification or investigation shall, however, be subject to the overall control of the CSSF.

If the verification or investigation is carried out in Luxembourg by a competent authority of a Member State, the CSSF may request that its own officials accompany the officials carrying out the verification or investigation.

(6) The CSSF may refuse to exchange information as provided for in paragraph 2 or to act on a request for cooperation in carrying out an investigation or on-the-spot verification as provided for in paragraph 4, only where:

- (a) such an investigation, on-the-spot verification or exchange of information might adversely affect the sovereignty, security or public policy of Luxembourg;

- (b) judicial proceedings have already been initiated in respect of the same persons and the same actions before the authorities of Luxembourg;
 - (c) final judgement in respect of the same persons and the same actions has already been delivered in Luxembourg;
- (Law of 10 May 2016)*
- “(d) compliance with the request is likely to affect adversely the CSSF’s own investigation or, where applicable, an ongoing criminal investigation.”

(7) The CSSF shall notify the requesting competent authorities of any decision taken under paragraph 6. Any such notification shall contain information about the reasons of the decision.

Article 136. (1) The CSSF, in so far as a UCITS is established in Luxembourg, shall have the exclusive rights to take action against the UCITS if it infringes the laws, regulations or administrative provisions as well as the rules provided for by the management regulations or the instruments of incorporation of the investment company.

(2) Any decision to withdraw authorisation, or any other serious measure taken against a UCITS, or any suspension of the issue, repurchase or redemption of its units imposed upon it, shall be communicated without delay by the CSSF to the authorities of the UCITS host Member State and, if the management company of a UCITS is established in another Member State, to the competent authorities of the management company’s home Member State.

(3) The CSSF, as the competent authority of the UCITS home Member State, and the competent authorities of the management company’s home Member State may take action against the management company if it infringes rules under their respective responsibility.

(4) The CSSF shall take the appropriate measures in the event that the competent authorities of the UCITS host Member State inform the CSSF that they have clear and demonstrable grounds for believing that a UCITS, the units of which are marketed within the territory of that Member State is in breach of the obligations arising from the provisions adopted pursuant to Directive 2009/65/EC which do not grant them powers.

Article 137. (1) The CSSF may take actions against a UCITS, the units of which are marketed in Luxembourg if it infringes the laws, regulations or administrative provisions in force that fall outside the scope of this Law or the requirements set out in Articles 59 and 61.

(2) Any decision to withdraw authorisation, or any other serious measure taken against a UCITS, or any suspension of the issue, repurchase or redemption of its units imposed upon it, shall be communicated without delay to the CSSF by the authorities of the UCITS home Member States. This information shall also be communicated to the CSSF if the management company of a UCITS is established in Luxembourg.

(3) The CSSF shall inform the competent authorities of the UCITS home Member State in the event that the CSSF has clear and demonstrable grounds for believing that such a UCITS is in breach of the obligations arising from the provisions adopted pursuant to Directive 2009/65/EC which do not confer powers on it.

(4) If, despite the measures taken by the competent authorities of the UCITS home Member State, the UCITS persists in acting in a manner that is clearly prejudicial to the interests of investors in Luxembourg, the CSSF may:

- (a) after informing the competent authorities of the UCITS home Member State, take all the appropriate measures needed in order to protect investors, including the possibility of preventing the UCITS concerned from carrying out any further marketing of its units in Luxembourg; or

(Law of 21 December 2012)

- “(b) if necessary, refer the matter to the European Securities and Markets Authority, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) no 1095/2010.”

The CSSF shall inform the Commission of the European Union “and the European Securities and Markets Authority”¹²⁰ without delay of any measure taken pursuant to point (a).

Article 138. Where, through the provision of services or by the establishment of branches, a management company operates in one or more management company’s host Member States, the CSSF shall collaborate closely with the competent authorities concerned.

It shall supply on request all the information concerning the management and ownership of that management company that is likely to facilitate their supervision and all information likely to facilitate the monitoring of such companies.

Article 139. (1) Where the CSSF is the competent authority of the management company, it cooperates in order to ensure the collection by the authorities of the management company’s host Member State of the information referred to in Article 21(2) of Directive 2009/65/EC.

¹²⁰ Law of 21 December 2012

(2) In so far as it is necessary for the purpose of exercising its powers of supervision, as the management company's home Member State competent authority, the competent authorities of the management company's host Member State shall inform the CSSF of any measures taken by them pursuant to Article 21(5) of Directive 2009/65/EC which involves measures or penalties imposed on a management company or restrictions on a management company's activities.

(3) The CSSF, as the competent authority of the management company, shall, without delay, notify the competent authorities of the home Member State of the UCITS of any problem identified at the level of the management company which may materially affect the ability of the management company to perform its duties properly with respect to the UCITS or of any breach of the requirements under Chapter 15.

(4) The CSSF shall be informed by the competent authorities of the UCITS home Member State of any problem identified at the level of the UCITS which may materially affect the ability of the management company to perform its duties properly or to comply with the requirements under Directive 2009/65/EC which fall under the responsibility of the UCITS home Member State.

Article 140. Where the UCITS is established in Luxembourg, the CSSF shall, without delay, notify the competent authorities of the management company's home Member State of any problem identified at the level of the UCITS which may materially affect the ability of the management company to perform its duties properly or to comply with the requirements under this Law, which fall under the responsibility of the CSSF.

Article 141. (1) Where a management company authorised in another Member State pursues its business in Luxembourg through the provision of services or through a branch, insofar as this is necessary for the purpose of exercising the powers of supervision, the CSSF shall inform the competent authorities of the management company's home Member State, of any measures taken by the CSSF pursuant to Article 124(5) which involve measures or penalties imposed on a management company or restrictions on a management company's activities.

(2) Where a management company authorised in another Member State pursues its business within the territory of Luxembourg through a branch, the CSSF shall ensure that the competent authorities of the management company's home Member State may, after having informed the CSSF, carry out themselves or through the intermediary they instruct on-the-spot verification of the information referred to in Article 109 of Directive 2009/65/EC.

(3) Paragraph 2 shall not affect the right of the CSSF in discharging its duties under this Law, to carry out on-the-spot verifications of branches established in Luxembourg.

C. – Supervisory powers and powers of sanction

Article 142. (1) The decisions to be adopted by the CSSF in implementation of this Law shall state in writing the reasons on which they are based and, unless the delay entails risks, they shall be adopted after preparatory proceedings at which all parties are able to state their case. They shall be notified by registered letter or delivered by bailiff.

“(2) The CSSF's decisions concerning the granting, refusal or withdrawal of the authorisations provided for in this Law as well as the CSSF's decisions concerning the sanctions and other administrative measures imposed pursuant to Article 148 may be referred to the *Tribunal Administratif* (Administrative Tribunal), which will be dealing 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.”¹²¹

(3) The decision of the CSSF withdrawing the name of a UCI referred to in Articles 2 and 87 from the list provided for in Article 130(1), shall, as from the notification thereof to that undertaking and until the decision has become final, *ipso jure* entail for that undertaking suspension of any payment by the undertaking and prohibition for that undertaking, on pain of nullity, to take any measures other than protective measures, except with the authorisation of the supervisory commissioner. The CSSF shall *ipso jure* hold the office of supervisory commissioner, unless at its request, the *Tribunal d'Arrondissement* (District Court) dealing with commercial matters appoints one or more supervisory commissioners. The application, stating the reasons on which it is based and accompanied by supporting documents, shall be lodged for that purpose at the Registry of the *Tribunal d'Arrondissement* (District Court) in the district within which the undertaking has its registered office.

The Court shall give its ruling within a short period.

If it considers that it has sufficient information, it shall immediately pronounce in open court, without hearing the parties. If it deems it necessary, it shall convene the parties by notification from the Registrar within three days from the lodging of the application. It shall hear the parties in chambers and give its decision in public session.

The written authorisation of the supervisory commissioners is required for all actions and decisions of the undertaking and, failing such authorisation, they shall be void.

¹²¹ Law of 10 May 2016

The Court may, however, limit the scope of operations subject to authorisation.

The commissioners may submit for consideration to the relevant bodies of the undertaking any proposals which they consider appropriate. They may attend proceedings of the administrative body, management, executive or supervisory boards of the undertaking.

The Court shall decide as to the expenses and fees of the supervisory auditors; it may grant them advances.

The judgement provided for in Article 143(1) shall terminate the functions of the supervisory commissioner who shall, within one month after his replacement, submit to the liquidators appointed in such judgement a report on the use of the undertaking's assets together with the accounts and supporting documents.

If the administrative court amends the withdrawal decision in accordance with paragraph 2 above, the supervisory commissioner shall be deemed to have resigned.

Article 143. (1) The *Tribunal d'Arrondissement* (District Court) dealing with commercial matters shall, at the request of the State Prosecutor, acting on its own initiative or at the request of the CSSF, pronounce the dissolution and order the liquidation of the UCIs referred to in Articles 2 and 87, whose entry on the list provided for in Article 130(1) has finally been refused or withdrawn.

The *Tribunal d'Arrondissement* (District Court) dealing with commercial matters shall, at the request of the State Prosecutor, acting on its own initiative or at the request of the CSSF, pronounce the dissolution and order the liquidation of one or more compartments of UCIs referred to in Article 2 and 87, in cases where the authorisation of this compartment has been refused or withdrawn.

When ordering the liquidation, the Court shall appoint a reporting judge and one or more liquidators. It shall determine the method of liquidation. It may render applicable, as far as it may determine, the rules governing liquidation in bankruptcy. The method of liquidation may be changed by subsequent decision, either at the Court's own motion or at the request of the liquidator(s).

The Court shall decide as to the expenses and fees of the liquidators; it may grant advances to them. The judgement pronouncing dissolution and ordering liquidation shall be enforceable on a provisional basis.

(2) The liquidator(s) may bring and defend all actions on behalf of the undertaking, receive all payments, grant releases with or without discharge, realise all the transferable securities of the undertaking and reemploy the proceeds therefrom, issue or endorse any negotiable instruments, compound or compromise on all claims. They may alienate immovable property of the undertaking by public auction.

They may also but only with the authorisation of the Court, mortgage and pledge its assets and alienate its immovable property by private treaty.

(3) As from the day of the judgement, no legal actions relating to movable or immovable property or any enforcement procedures relating to movable or immovable property may be pursued, commenced or exercised otherwise than against the liquidators.

The judgement ordering liquidation shall terminate all arrests effected at the request of unsecured creditors who are not secured by charges on movable and immovable property.

(4) After payment or deposit of the sums necessary for the discharge of the debts, the liquidators shall distribute to unit-holders the sums or amounts due to them.

(5) The liquidators may convene, at their own initiative, and shall convene at the request of unit-holders representing at least one quarter of the assets of the undertaking, a general meeting of unit-holders for the purpose of deciding whether, instead of an outright liquidation, it would be appropriate to contribute the assets of the undertaking in liquidation to another UCI. That decision shall be taken, provided that the general meeting is composed of a number of unit-holders representing at least one half of the outstanding units or share capital of the undertaking, by a majority of two thirds of the votes of the unit-holders present or represented.

(6) The Court's decisions pronouncing the dissolution and ordering the liquidation of a UCI shall be published in the "Recueil électronique des sociétés et associations"¹²²¹²³ and in two newspapers with adequate circulation specified by the Court, one of which at least shall be a Luxembourg newspaper. The Liquidator(s) shall arrange for such publications.

(7) If there are no or insufficient assets, as ascertained by the reporting judge, the documents relating to the proceedings shall be exempt from any registry and registration duties and the expenses and fees of the liquidators shall be borne by the Treasury and paid as judicial costs.

(8) The liquidators shall be responsible both towards third parties and to the UCI for the discharge of their duties and for any faults committed in the conduct of their activities.

¹²² Electronic digest of companies and associations

¹²³ Law of 27 May 2016

(9) When the liquidation is completed, the liquidators shall report to the Court on the use made of the assets of the undertaking and shall submit the accounts and supporting documents thereof. The Court shall appoint the supervisory auditors to examine the documents.

After receipt of the supervisory auditors' report, a ruling shall be given on the management of the liquidators and the closure of the liquidation.

The closure of the liquidation shall be published in accordance with paragraph 6 above.

That publication shall also indicate:

- the place designated by the Court where the books and records shall be kept for at least five years;
- the measures taken in accordance with Article 145 with a view to the deposit of the sums and assets due to creditors, unit-holders or members to whom it has not been possible to deliver the same.

(10) Any legal actions against the liquidators of UCIs, in their capacity as such, shall be prescribed five years after publication of the closure of the liquidation provided for in paragraph 9.

Legal actions against the liquidators in connection with the performance of their duties shall be prescribed five years after the date of the facts or, in the event of intentional concealment, five years after the discovery thereof.

(11) The provisions of this Article shall also apply equally to the UCIs which have not applied to be entered on the list provided for in Article 130(1) within the time limit laid down therein.

Article 144. (1) UCIs shall, after dissolution, be deemed to exist for the purpose of their liquidation. In the case of a non-judicial liquidation, they shall remain subject to supervision by the CSSF.

(2) All documents issued by a UCI in liquidation shall indicate that it is in liquidation.

Article 145. (1) In the event of a non-judicial liquidation of a UCI, the liquidator(s) shall be approved by the CSSF. The liquidator(s) shall provide all guarantees of good repute and professional skill.

(2) Where a liquidator does not accept its appointment or is not approved, the *Tribunal d'Arrondissement* (District Court) dealing with commercial matters shall, at the request of any interested party or of the CSSF, appoint the liquidator(s). The judgement appointing the liquidator(s) shall be provisionally enforceable, on the production of the original thereof and before registration, notwithstanding any appeal or objection.

Article 146. In the event of a voluntary or compulsory liquidation of a UCI within the meaning of this Law, the sums and assets payable in respect of units whose holders failed to present themselves at the time of the closure of the liquidation, shall be paid to the *Caisse de Consignation*¹²⁴ to be held for the benefit of the persons entitled thereto.

Article 147. (1) For the purposes of application of this Law, the CSSF is granted all supervisory and investigative powers that are necessary for the exercise of their functions.

(2) The powers of the CSSF shall include the right to:

- (a) access any document in any form and receive a copy thereof;
- (b) require any person to provide information and, if necessary, to summon and question any person with a view to obtaining information;
- (c) carry out on-site inspections or investigations, by itself or by its delegates, of persons subject to its supervision under this Law;
- “(d) require existing recordings of telephone conversations, electronic communications or other data traffic records held by a UCI, management company, investment company, depository or any other entity regulated by this Law”¹²⁵;
- (e) require the cessation of any practice that is contrary to the provisions adopted in implementation of this Law;
- (f) request the freezing or the sequestration of assets by the president of the *Tribunal d'Arrondissement* (District Court) of and in Luxembourg acting on request;
- (g) pronounce the temporary prohibition of exercising professional activities against the persons subject to its prudential supervision, as well as the members of administrative, governing and management bodies, employees and agents linked to these persons;
- (h) require authorised investment companies, management companies or depositaries to provide information;
- (i) adopt any type of measure to ensure that investment companies, management companies or depositaries continue to comply with the requirements of this Law;
- (j) require the suspension of the issue, repurchase or redemption of units in the interest of the unit-holders or of the public;

¹²⁴ public trust office

¹²⁵ Law of 10 May 2016

- (k) withdraw the authorisation granted to a UCI, a management company or a depository;
- (l) transmit information to the State Prosecutor for criminal proceedings; and
- (m) instruct *réviseur d'entreprises agréé* (*approved statutory auditor*)s or experts to carry out verifications or investigations.

(Law of 12 July 2013)

“(3) The judge presiding over the *Tribunal d'Arrondissement* (District Court) dealing with commercial matters may, at the request of the organisations referred to in Article L. 313-1 and following of the Consumer Code enacted by the Law of 8 April 2011, or the CSSF, order any measure for the purpose of stopping any acts contrary to the provisions of this Law referred to in the second subparagraph of this paragraph. The action for an injunction is brought according to the procedure applicable to summary proceedings (*Tribunal des référés*). The judge presiding over the *Tribunal d'Arrondissement* (District Court) dealing with commercial matters shall decide on the merits of the case. The appeal period is fifteen days.

The acts referred to in the first subparagraph are the following:

- (a) the fact of performing or having performed activities of collection of savings from the public in view of their placement without the UCI having been entered on the list referred to in Article 130;
- (b) the fact of performing activities of a management company of UCIs without being authorised in accordance with the provisions of Chapter 15, 16 or 17;
- (c) the fact of making use of a designation or of a description giving the impression of activities being subject to this Law without having obtained the authorisation provided for in Article 130.”

“**Article 148.** (1) The CSSF is competent to issue the sanctions and other administrative measures specified in paragraph 4 against:

- UCIs governed by Part I and Part II, their management companies, their depositaries as well as any undertaking contributing towards the business activity of the UCI subject to the supervision of the CSSF;
- the members of the management body or of the supervisory board of the entities referred to in the first indent or the persons who effectively determine the conduct of the activity of these entities within the meaning of Article 129(5);
- the liquidators in case of voluntary liquidation of a UCI;

in the following cases:

- (a) refusal to provide the accounting documents or other information requested, necessary to the CSSF for the purposes of this Law;
- (b) provision of documents or other information that proves to be incomplete, incorrect or false;
- (c) preventing the CSSF from exercising its powers of supervision, inspection and investigation;
- (d) non-compliance with the rules governing the publication of balance sheets and accounts;
- (e) failure to act in response to the injunctions of the CSSF issued by the CSSF pursuant to paragraph 4, point (b);
- (f) behaviour likely to jeopardise the sound and prudent management of the institution concerned;
- (g) non-compliance with the provisions of Article 132.

(2) Without prejudice to the provisions of paragraph 1, the CSSF is competent to issue the sanctions and other administrative measures specified in paragraph 4 against:

- UCITS governed by Part I, their management companies, their depositaries;
- the members of the management body or of the supervisory board of the entities referred to in the first indent or the persons who effectively determine the conduct of the activity of these entities within the meaning of Article 129(5);

in the following cases:

- (a) a qualifying holding in a management company governed by Chapter 15 is acquired, directly or indirectly, or such a qualifying holding in a management company is further increased so that the proportion of the voting rights or of the capital held would reach or exceed 20%, 30% or 50% or so that the management company would become its subsidiary ('the proposed acquisition'), without notifying in writing the CSSF of the management company in which the acquirer is seeking to acquire or increase a qualifying holding, thus infringing Article 108(1);
- (b) a qualifying holding in a management company governed by Chapter 15 is disposed of, directly or indirectly, or reduced so that the proportion of the voting rights or of the capital held would fall below 20%, 30% or 50% or so that the management company would cease to be a subsidiary, without notifying in writing the CSSF, thus infringing Article 108(1);
- (c) a management company governed by Chapter 15 has obtained an authorisation through false statements or any other irregular means, thus infringing point (b) of Article 102(5);
- (d) an investment company within the meaning of Article 27 has obtained an authorisation through false statements or any other irregular means, thus infringing Article 27(1);

- (e) a management company governed by Chapter 15, on becoming aware of any acquisition or disposal of holdings in its capital that cause holdings to exceed or fall below one of the thresholds referred to in Article 11(1) of Directive 2014/65/EU fails to inform the CSSF of those acquisitions or disposals, thus infringing Article 108(1);
 - (f) a management company governed by Chapter 15 fails to inform the CSSF, at least once a year, of the names of shareholders and members possessing qualifying holdings and the sizes of such holdings, thus infringing Article 108(1);
 - (g) a management company governed by Chapter 15 fails to comply with procedures and arrangements imposed in accordance with the provisions of point (a) of Article 109(1);
 - (h) a management company governed by Chapter 15 fails to comply with structural and organisational requirements imposed in accordance with the provisions of point (b) Article 109(1);
 - (i) an investment company within the meaning of Article 27 fails to comply with procedures and arrangements imposed in accordance with the provisions of Article 27(3);
 - (j) a management company governed by Chapter 15 or an investment company within the meaning of Article 27 fails to comply with requirements related to delegation of its functions to third parties imposed in accordance with the provisions of Article 110;
 - (k) a management company governed by Chapter 15 or an investment company within the meaning of Article 27 fails to comply with rules of conduct imposed in accordance with the provisions of Article 111;
 - (l) a depositary fails to perform its tasks in accordance with the provisions of Articles 18(1) to (5) or 34(1) to (5);
 - (m) an investment company within the meaning of Article 27 or, for each of the common funds that it manages, a management company governed by Chapter 15, repeatedly fails to comply with obligations concerning the investment policies laid down in the provisions of Chapter 5;
 - (n) a management company governed by Chapter 15 or an investment company within the meaning of Article 27 fails to employ a risk-management process or a process for accurate and independent assessment of the value of OTC derivatives as laid down in the provisions of Article 42(1);
 - (o) an investment company within the meaning of Article 27 or, for each of the common funds that it manages, a management company governed by Chapter 15, repeatedly fails to comply with obligations concerning information to be provided to investors imposed in accordance with the provisions of Articles 47 and 150 to 163;
 - (p) a management company governed by Chapter 15 marketing units of UCITS that it manages in another Member State or an investment company within the meaning of Article 27 marketing its units in another Member State fails to comply with the notification requirement laid down in Article 54(1)“;
- (Law of 6 June 2018)*
- (q) non-compliance with the provisions of Articles 13 and 14 of Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012.”

(3) Without prejudice to the provisions of paragraph 1, the CSSF is competent to issue the sanctions and other administrative measures specified in paragraph 4 against:

- UCIs governed by Part II, their management companies, their depositaries;
- the members of the management body or of the supervisory board of the entities referred to in the first indent or the persons who effectively determine the conduct of the activity of these entities within the meaning of Article 129(5);

in the following cases:

- (a) a management company governed by Chapter 16 has obtained an authorisation through false statements or any other irregular means, thus infringing point (b) of Article 125-1(5);
- (b) a management company governed by Chapter 16 fails to comply with requirements related to delegation of its functions to third parties imposed in accordance with the provisions of Article 125-1;
- (c) a SICAV governed by Chapter 12 fails to comply with requirements related to delegation of its functions to third parties imposed in accordance with the provisions of Article 95(2) and (3);
- (d) a UCI which has not been constituted as a common fund or SICAV governed by Chapter 13 fails to comply with requirements related to delegation of its functions to third parties imposed in accordance with the provisions of Article 99(6a) and (6b);
- (e) a UCI or its management company repeatedly fails to comply with obligations concerning information to be provided to investors imposed in accordance with the provisions of Articles 150 to 158;
- (f) a depositary fails to perform its tasks in accordance with the provisions of Articles 18(1) to (5) or 34(1) to (5);
- (g) a management company governed by Article 125-2 has obtained an authorisation as AIFM through false statements or any other irregular means, infringing point (b) of Article 10(1) of the Law of 12 July 2013 on alternative investment fund managers, as amended;

- (h) a management company governed by Article 125-2 fails to comply with organisational requirements imposed in accordance with the provisions of Articles 16 and 17 of the Law of 12 July 2013 on alternative investment fund managers, as amended;
- (i) a management company governed by Article 125-2 fails to comply with policies and specific safeguards against conflicts of interest imposed in accordance with the provisions of Article 13 of the Law of 12 July 2013 on alternative investment fund managers, as amended;
- (j) a management company governed by Article 125-2 fails to comply with rules of conduct imposed in accordance with the provisions of Article 11(1) of the Law of 12 July 2013 on alternative investment fund managers, as amended;
- (k) a management company governed by Article 125-2 fails to comply with risk management processes and systems imposed in accordance with the provisions of Article 14 of the Law of 12 July 2013 on alternative investment fund managers, as amended;
- (l) a management company governed by Article 125-2 fails to comply with requirements related to delegation of its functions to third parties imposed in accordance with the provisions of Article 18 of the Law of 12 July 2013 on alternative investment fund managers, as amended;
- (m) a management company governed by Article 125-2 repeatedly fails to comply, for each of the AIFs that it manages, with obligations concerning information to be provided to investors imposed in accordance with the provisions of Articles 20 to 21 of the Law of 12 July 2013 on alternative investment fund managers, as amended;
- (n) a management company governed by Article 125-2 marketing units of an AIF that it manages in another Member State fails to comply with the notification requirement laid down in Article 30 of the Law of 12 July 2013 on alternative investment fund managers, as amended;

(4) In the cases referred to in paragraphs 1 to 3, the CSSF may impose the following sanctions and other administrative measures :

- (a) a public statement which identifies the person responsible for the infringement and the nature of the infringement;
- (b) an order requiring the person responsible to cease the conduct and to desist from a repetition of that conduct;
- (c) in the case of a UCI or a management company, suspension or withdrawal of the authorisation of the UCI or the management company;
- (d) a temporary or, for repeated serious infringements of the laws, a permanent ban against a member of the management body of the management company or of the UCI or against any other natural person employed by the management company or the UCI who is held responsible, from exercising management functions in those or in other such entities;
- (e) in the case of a legal person, an administrative fine of up to EUR 5,000,000 or of a maximum amount of 10 % of the total annual turnover of the legal person according to the last available accounts approved by the management body; where the legal person is a parent undertaking or a subsidiary of the parent undertaking which has to prepare consolidated financial accounts in accordance with Directive 2013/34/EU, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant EU law in the area of accounting according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking;
- (f) in the case of a natural person, an administrative fine of up to EUR 5,000,000;
- (g) as an alternative to points (e) and (f), a maximum administrative fine of at least twice the amount of the benefit derived from the infringement of the law where that benefit can be determined, even if that exceeds the maximum amounts in points (e) and (f).¹²⁶

Article 149. “(1) The CSSF shall publish any decision against which there is no appeal imposing an administrative sanction or measure for infringements of the provisions of this Law on its website without undue delay after the person on whom the sanction or measure was imposed has been informed of that decision. The publication shall include at least information on the type and nature of the infringement and the identity of the persons responsible. That obligation does not apply to decisions imposing measures that are of an investigatory nature.

However, where the publication of the identity of the legal persons or of the personal data of the natural persons is considered by the CSSF to be disproportionate following a case-by-case assessment conducted on the proportionality of the publication of such data, or where publication jeopardises the stability of financial markets or an ongoing investigation, the CSSF shall:

- (a) defer the publication of the decision to impose the sanction or measure until the reasons for non-publication cease to exist;

¹²⁶ Law of 10 May 2016

- (b) publish the decision to impose the sanction or measure on an anonymous basis in a manner which complies with the applicable law, if such anonymous publication ensures effective protection of the personal data concerned; or
- (c) not publish the decision to impose a sanction or measure in the event that the options laid down in points (a) and (b) are considered to be insufficient to ensure:
 - (i) that the stability of the financial markets would not be put in jeopardy;
 - (ii) the proportionality of the publication of such decisions with regard to measures which are deemed to be of a minor nature.

Where the CSSF decides to publish a sanction or measure on an anonymous basis, the publication of the relevant data may be postponed for a reasonable period of time if it is envisaged that within that period the reasons for anonymous publication shall cease to exist.

(2) Where the decision to impose a sanction or measure is subject to proceeding, the CSSF shall also publish immediately on its website such information and any subsequent information on the outcome of such proceeding. Any decision annulling a previous decision to impose a sanction or a measure shall also be published.

(3) Any publication of a sanction or measure under this Article shall remain on the website of the CSSF for a minimum period of five years and a maximum period of ten years from its publication.

(4) In accordance with Article 99e(2) of Directive 2009/65/EC, where the CSSF discloses administrative sanctions or measures relating to a UCITS, a management company of a UCITS or a UCITS depositary, it shall simultaneously report them to the European Securities and Markets Authority.

Moreover, the CSSF shall inform the European Securities and Markets Authority of all administrative sanctions imposed but not published in accordance with point (c) of paragraph 1 including any proceeding in relation thereto and the outcome of such proceeding.”¹²⁷

(Law of 10 May 2016)

“**Article 149a.** When determining the type of administrative sanctions or measures and the level of administrative fines, the CSSF shall ensure that they are effective, proportionate and dissuasive and it shall take into account all relevant circumstances, including, where appropriate:

- (a) the gravity and the duration of the infringement;
- (b) the degree of responsibility of the person responsible for the infringement;
- (c) the financial strength of the person responsible for the infringement, as indicated, for example, by its total turnover in the case of a legal person or the annual income in the case of a natural person;
- (d) the importance of the profits gained or losses avoided by the person responsible for the infringement, the damage to other persons and, where applicable, the damage to the functioning of markets or the wider economy, in so far as they can be determined;
- (e) the level of cooperation of the person responsible for the breach with the CSSF;
- (f) previous infringements by the person responsible for the infringement;
- (g) measures taken after the infringement by the person responsible for the infringement to prevent its repetition.”

(Law of 10 May 2016)

“**Article 149b.** (1) The CSSF shall establish effective and reliable mechanisms to encourage the reporting of potential or actual infringements of the provisions of this Law, including secure communication channels for reporting such infringements.

(2) The mechanisms referred to in paragraph 1 shall include at least:

- (a) specific procedures for the receipt of reports on infringements and their follow-up;
- (b) appropriate protection for employees of UCIs, management companies, depositaries as well as any undertaking contributing towards the business activity of the UCI subject to the supervision of the CSSF, who report infringements committed within those entities, at least against retaliation, discrimination and other types of unfair treatment;
- (c) protection of personal data concerning both the person who reports the infringements and the natural person who is allegedly responsible for an infringement, in accordance with the Law of 2 August 2002 on the protection of persons with regard to the processing of personal data, as amended;
- (d) clear rules that ensure that confidentiality is guaranteed in all cases in relation to the person who reports an infringement, unless disclosure is required in the context of further investigations or subsequent judicial proceedings.

(3) The reporting by employees of UCIs, management companies, depositaries as well as any undertaking contributing towards the business activity of the UCI subject to the supervision of the CSSF referred to in paragraph 1 shall not be considered to be an infringement of any restriction on disclosure of information imposed

¹²⁷ Law of 10 May 2016

by contract or by any law, regulation or administrative provision, and shall not subject the person reporting to liability of any kind relating to such reporting.

(4) UCIs, management companies, depositaries as well as any undertaking contributing towards the business activity of the UCI subject to the supervision of the CSSF shall have in place appropriate procedures for their employees to report infringements of the provisions of this Law internally through a specific, independent and autonomous channel.”

Chapter 21 – Obligations concerning information to be supplied to investors

A. - Publication of a prospectus and periodical reports

Article 150. (1) The investment company and the management company, for each of the common funds it manages, shall publish:

- a prospectus,
- an annual report for each financial year, and
- a half-yearly report covering the first six months of the financial year.

(2) The annual and half-yearly reports shall be published within the following time limits, with effect from the end of the periods to which they relate:

- four months in the case of the annual report,
- two months in the case of the half-yearly report.

“However, for undertakings for collective investment subject to Part II, the time limit of four months for the publication of the annual report referred to in the first indent is extended to six months, and the time limit of two months for the publication of the half-yearly report referred to in the second indent is extended to three months.”¹²⁸

(3) The obligation to publish a prospectus within the meaning of this Law shall not apply to undertakings for collective investment of the closed-end type.

Article 151. (1) The prospectus shall include the information necessary for investors to be able to make an informed judgement of the investment proposed to them, and, in particular, of the risks attached thereto. The prospectus shall include, independent of the instruments invested in, a clear and easily understandable description of the fund’s risk profile.

(Law of 10 May 2016)

“For UCITS subject to Part I, the prospectus shall also include either:

- (a) the details of the up-to-date remuneration policy, including, but not limited to, a description of how remuneration and benefits are calculated, the identities of persons responsible for awarding the remuneration and benefits including the composition of the remuneration committee, where such a committee exists; or
- (b) a summary of the remuneration policy and a statement to the effect that the details of the up-to-date remuneration policy, including, but not limited to, a description of how remuneration and benefits are calculated, the identity of persons responsible for awarding the remuneration and benefits, including the composition of the remuneration committee, where such a committee exists, are available by means of a website – including a reference to that website – and that a paper copy will be made available free of charge upon request.”

(2) The prospectus shall contain at least the information provided for in Schedule A of Annex I of this Law in so far as such information does not already appear in the management regulations or instruments of incorporation annexed to the prospectus in accordance with Article 152(1).

(3) The annual report shall include a balance sheet or a statement of assets and liabilities, a detailed income and expenditure account for the financial year, a report on the activities of the past financial year and the other information provided for in Schedule B of Annex I of this Law, as well as any significant information which will enable investors to make an informed judgement on the development of the activities and the results of the UCI.

(Law of 10 May 2016)

“For UCITS subject to Part I, the annual report shall also include:

- (a) the total amount of remuneration for the financial year, split into fixed and variable remuneration paid by the management company and by the investment company to its staff, and the number of beneficiaries, and where relevant, any amount paid directly by the UCITS itself, including any performance fee;
- (b) the aggregate amount of remuneration broken down by categories of employees or other members of staff as referred to in Article 111a(3);

¹²⁸ Law of 12 July 2013

- (c) a description of how the remuneration and the benefits have been calculated;
- (d) the outcome of the reviews referred to in points (c) and (d) of Article 111b(1) including any irregularities that have occurred;
- (e) material changes to the adopted remuneration policy.”

(4) The half-yearly report shall include at least the information provided for in Chapters I to IV of Schedule B of Annex I of this Law. Where a UCI has paid or proposes to pay an interim dividend, the figures shall indicate the results after tax for the half-year concerned and the interim dividend paid or proposed.

(5) The Schedules as provided for by paragraphs 2, 3 and 4 may be differentiated by the CSSF for UCIs subject to Articles 87 and 100, depending on whether or not these UCIs display certain characteristics or fulfil certain conditions.

Article 152. (1) The management regulations or the instruments of incorporation of the investment company shall form an integral part of the prospectus and shall be annexed thereto.

(2) The documents referred to in paragraph 1 need not, however, be annexed to the prospectus provided that the unit-holder is informed that, on request, he will either be sent those documents or be apprised of the place where, in each Member State the units are marketed, he may consult them.

Article 153. The essential elements of the prospectus shall be kept up to date.

Article 154. (1) Luxembourg UCIs shall have the accounting information given in their annual report audited by a *réviseur d'entreprises agréé* (approved statutory auditor).

The report of the *réviseur d'entreprises agréé* (approved statutory auditor) and, as the case may be, its qualifications are set out in full in each annual report.

The *réviseur d'entreprises agréé* (approved statutory auditor) shall prove it has appropriate professional experience.

(2) The *réviseur d'entreprises agréé* (approved statutory auditor) shall be appointed and remunerated by the UCI.

(3) The *réviseur d'entreprises agréé* (approved statutory auditor) shall report promptly to the CSSF any fact or decision of which he has become aware while carrying out the audit of the accounting information contained in the annual report of a UCI or any other legal task concerning a UCI, where such a fact or decision is likely to:

- constitute a substantial breach of this Law or the regulations adopted for its execution; or
- affect the continuous functioning of the UCI or of an undertaking contributing towards its business activity; or
- lead to a refusal to certify the accounts or to the expression of qualifications thereon.

The *réviseur d'entreprises agréé* (approved statutory auditor) likewise has a duty to promptly report to the CSSF, in the accomplishment of its duties referred to in the preceding subparagraph in respect of a UCI, any fact or decisions concerning the UCI and meeting the criteria referred to in the preceding subparagraph of which he has become aware while carrying out the audit of the accounting information contained in their annual report or of another legal task in relation to another undertaking having close links resulting from a control relationship with the UCI or having close links with an undertaking involved in its business activity.

If, in the discharge of his duties, the *réviseur d'entreprises agréé* (approved statutory auditor) ascertains that the information provided to investors or to the CSSF in the reports or other documents of the UCI does not truly describe the financial situation and the assets and liabilities of the UCI, he shall be obliged to inform the CSSF forthwith.

The *réviseur d'entreprises agréé* (approved statutory auditor) shall moreover be obliged to provide the CSSF with all information or certificates required by the latter on any matters of which the *réviseur d'entreprises agréé* (approved statutory auditor) has or ought to have knowledge in connection with the discharge of his duties. The same applies if the *réviseur d'entreprises agréé* (approved statutory auditor) ascertains that the assets of the UCI are not or have not been invested in accordance with the provisions of this Law or of the prospectus.

The disclosure in good faith to the CSSF by the *réviseur d'entreprises agréé* (approved statutory auditor) of any fact or decision referred to in this paragraph shall not constitute a breach of professional secrecy or of any restriction on disclosure of information imposed contractually and shall not result in liability of any kind of the *réviseur d'entreprises agréé* (approved statutory auditor).

(Law of 21 December 2012)

“Every Luxembourg UCI subject to the supervision of the CSSF which shall have its accounts audited by a *réviseur d'entreprises agréé* (approved statutory auditor) shall 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 regulate the scope of the mandate of the *réviseur d'entreprises agréé* (approved statutory auditor) and the contents of the audit report on the annual accounts.

The CSSF may request a *réviseur d'entreprises agréé* (approved statutory auditor) to perform an audit on one or several particular aspects of the activities and operations of a UCI. This audit is performed at the expense of the UCI concerned.

(4) The CSSF shall refuse or withdraw the entry on the list of UCIs whose *réviseur d'entreprises agréé* (approved statutory auditor) does not satisfy the conditions or does not discharge the obligations prescribed in this Article.

(5) The institution of the supervisory auditors provided for by Articles 61, 109, 114 and 200 of the Law of 10 August 1915 on commercial companies, as amended, is not applicable to Luxembourg investment companies. The directors or the management board, as the case may be, are solely competent in all cases where the Law of 10 August 1915 on commercial companies, as amended, provides for the joint action of the supervisory auditors and the directors or the management board, as the case may be, or managers together.

The institution of supervisory auditors provided for by Article 151 of the Law of 10 August 1915 on commercial companies, as amended, is not applicable to Luxembourg investment companies. Upon completion of the liquidation, a report on the liquidation shall be drawn up by the *réviseur d'entreprises agréé* (approved statutory auditor). This report shall be tabled at the general meeting at which the liquidators report on the application of the corporate assets and submit the accounts and supporting documents. The same meeting shall resolve on the approval of the accounts of the liquidation, the discharge and the closure of the liquidation.

(Law of 12 July 2013)

"The obligation to draw up a report on the liquidation as referred to in the preceding subparagraph is also applicable to UCIs having the legal form of a common fund. The decision to put the common fund into liquidation and the decision relating to the closure of the liquidation shall be deposited with the trade and companies register and their publication in the Mémorial is made by way of a notice advising of the deposit of these decisions with the trade and companies register in accordance with the provisions of the Law of 10 August 1915 on commercial companies, as amended."

(6) The accounting information included in the annual reports of foreign UCIs as referred to in Article 100 shall be audited by an independent expert providing all guarantees of good repute and professional skill.

Paragraphs 2, 3 and 4 are applicable to the case referred to in this paragraph.

Article 155. (1) UCIs shall send their prospectuses and any amendments thereto, as well as their annual and half-yearly reports, to the CSSF. UCIs shall, on request, provide these documents to the competent authorities of the management company's home Member State.

(2) The CSSF may publish or cause the publication of the aforesaid documents by any such means as it shall consider adequate.

Article 156. (1) The prospectus and the latest published annual and half-yearly reports shall be provided to investors on request and free of charge.

(2) The prospectus may be provided in a durable medium or by means of a website. A paper copy shall, in any case, be delivered to investors on request and free of charge.

(3) The annual and half-yearly reports shall be available to investors in the manner specified in the prospectus as well as in the key investor information referred to in Article 159 in respect of UCITS. A paper copy of the annual and half-yearly reports shall, in any case, be delivered to investors on request and free of charge.

B. - Publication of other information

Article 157. (1) The UCITS referred to in Article 2 shall make public the issue, sale and repurchase price of their units each time they issue, sell and repurchase their units, and at least twice a month. The CSSF may, however, permit a UCITS to reduce this frequency to once a month, on condition that such derogation does not prejudice the interests of unit-holders.

(2) The UCIs referred to in Article 87 shall make public the issue, sale and repurchase price of their units each time they issue, sell and repurchase their units, and at least once a month. The CSSF may, however, grant derogations therefrom upon a duly justified application.

Article 158. All marketing communications to investors shall be clearly identifiable as such. They shall be fair, clear and not misleading. In particular, any marketing communication comprising an invitation to purchase units of UCIs that contains specific information about UCIs shall make no statement that contradicts or diminishes the

significance of the information contained in the prospectus and, for UCITS, the key investor information referred to in Article 159. It shall indicate that a prospectus exists and, for UCITS, that the key investor information referred to in Article 159 is available. It shall specify where and in which language such information and documents may be obtained by investors or potential investors or how they may obtain access to them.

C. – Key investor information to be established by UCITS

Article 159. (1) Investment companies and management companies, for each of the common funds they manage, shall draw up a short document containing key information for investors. That document shall be referred to as “key investor information” in this Law.

Where the UCITS is established in Luxembourg or markets its units in Luxembourg pursuant to Chapter 7, the words “key investor information” shall be clearly stated in that document, in Luxembourgish, French, German or English.

(2) Key investor information shall include appropriate information about the essential characteristics of the UCITS concerned, which is to be provided to investors so that they are reasonably able to understand the nature and the risks of the investment product that is being offered to them and, consequently, to take investment decisions on an informed basis.

(3) Key investor information shall provide information on the following essential elements in respect of the UCITS concerned:

- (a) identification of the UCITS “and the indication that the CSSF is the competent authority for the supervision of the UCITS pursuant to this Law”¹²⁹;
- (b) a short description of its investment objectives and investment policy;
- (c) past performance presentation or, where relevant, performance scenarios;
- (d) costs and associated charges; and
- (e) risk/reward profile of the investment, including appropriate guidance and warnings in relation to the risks associated with investments in the relevant UCITS.

Those essential elements shall be comprehensible to the investor without any reference to other documents.

(4) Key investor information shall clearly specify where and how to obtain additional information relating to the proposed investment, including but not limited to where and how the prospectus and the annual and half-yearly reports can be obtained on request and free of charge, at any time, and the language in which such information is available to investors.

(Law of 10 May 2016)

“Key investor information shall also include a statement to the effect that the details of the up-to-date remuneration policy, including, but not limited to, a description of how remuneration and benefits are calculated, the identity of persons responsible for awarding the remuneration and benefits, including the composition of the remuneration committee, where such a committee exists, are available by means of a website – including a reference to that website – and that a paper copy will be made available free of charge upon request.”

(5) Key investor information shall be written in a concise manner and in non-technical language. It shall be drawn up in a common format, allowing for comparison, and shall be presented in a way that is likely to be understood by retail investors.

(6) Key investor information shall be used without alterations or supplements, except translation, in all Member States where the UCITS is notified to market its units in accordance with Article 54.

Article 160. (1) Key investor information shall constitute pre-contractual information. It shall be fair, clear and not misleading. It shall be consistent with the relevant parts of the prospectus.

(2) No person shall incur civil liability solely on the basis of the “key investor information”¹³⁰, including any translation thereof, unless it is misleading, inaccurate or inconsistent with the relevant parts of the prospectus. “Key investor information shall contain a clear warning that no person shall incur civil liability solely on the basis of the key investor information, including any translation thereof, unless it is misleading, inaccurate or inconsistent with the relevant parts of the prospectus.”¹³¹

Article 161. (1) Investment companies and management companies, for each of the common funds they manage, which sell UCITS directly or through another natural or legal person who acts on their behalf and under their full and unconditional responsibility shall provide investors with key investor information on those UCITS in good time before their proposed subscription of units in those UCITS. “Key investor information does not necessarily need to be provided to investors in a State other than a Member State, unless the competent authorities of this State require that this information is provided to investors.

¹²⁹ Law of 10 May 2016

¹³⁰ Law of 12 July 2013

¹³¹ Law of 12 July 2013

(...) ¹³², ¹³³

(2) Investment companies and management companies, for each of the common funds they manage, which do not sell UCITS directly or through another natural or legal person who acts on their behalf and under their full and unconditional responsibility shall provide key investor information to product manufacturers and intermediaries selling those UCITS to investors or advising investors on potential investments in those UCITS or in products offering exposure to those UCITS upon their request. The intermediaries selling UCITS or advising investors on potential investments in UCITS shall provide key investor information to their clients or potential clients.

(3) Key investor information shall be provided to investors free of charge.

Article 162. Key investor information may be provided in a durable medium or by means of a website. A paper copy shall, in any case, be delivered to investors on request and free of charge.

In addition an up to date version of the key investor information shall moreover be published on the Website of the investment company or the management company.

Article 163. (1) UCITS shall provide the CSSF with key investor information and any amendment thereto.

(2) The essential elements of the key investor information shall be kept up to date.

D. – Protection of name

Article 164. (1) No entity shall make use of designations or of a description giving the impression that its activities are subject to this Law if it has not obtained the authorisation provided for in Article 130. The UCIs referred to in Chapter 7 and in Article 100 may use the designation they bear according to their national law. However, should this be misleading, these undertakings shall accompany the designation they use with adequate particulars.

(2) The *Tribunal d'Arrondissement* (District Court) dealing with commercial matters of the place where the UCI is situated or of the place where the designation has been used, may, at the request of the State Prosecutor's office, issue an injunction prohibiting anyone from using the designation as defined in paragraph 1, if the conditions provided for by this Law are not or no longer met.

(3) The final judgement or court decision which delivers this injunction, is published by the State Prosecutor's office and at the expense of the person convicted in two Luxembourg or foreign newspapers with adequate circulation.

Chapter 22 – Criminal law provisions

Article 165. A penalty of imprisonment of one month to one year and a fine of five hundred to twenty-five thousand euro or either of these penalties shall be imposed upon:

- (1) any person who has issued or redeemed or caused to be issued or redeemed units of a common fund in the cases referred to in Articles 12(3), 22(3) and in Article 90 to the extent that this Article provides that Chapter 11 is subject to Articles 12(3) and 22(3);
- (2) any person who has issued or redeemed units of a common fund at a price other than that obtained by application of the criteria provided for in Articles 9(1), 9(3), 11(3) and in Article 90 to the extent that this Article provides that Chapter 11 is subject to Articles 9(1) and 9(3);
- (3) any person who, as director or member of the management board, as the case may be, or as manager or supervisory auditor of the management company or the depositary has made loans or advances on units of the common fund using assets of the common fund, or who has by any means at the expense of the common fund, made payments in order to pay up units or acknowledged payments to have been made which have not actually been so made.

Article 166. (1) A penalty of imprisonment of one to six months and a fine of five hundred to twenty-five thousand euro or either of these penalties shall be imposed upon:

- (a) the directors or members of the management board, as the case may be, or managers of the management company who has failed to inform the CSSF without delay that the net assets of the common fund have fallen below two thirds and one fourth, respectively, of the legal minimum for the net assets of the common fund;
- (b) the directors or members of the management board, as the case may be, or managers of the management company who has infringed Article 10 and Articles 41 to 52 or Article 90 to the extent that this Article provides that Chapter 11 is subject to Article 10 and the regulations made pursuant to Article 91.

¹³² Law of 17 April 2018

¹³³ Law of 12 July 2013

(2) A fine of five hundred to twenty-five thousand euro shall be imposed upon any persons who, in violation of Article 164, use a designation or description giving the impression that they relate to the activities subject to this Law if they have not obtained the authorisation provided for in Article 130.

Article 167. A fine of five hundred to ten thousand euro shall be imposed on the directors or members of the management board, as the case may be, or managers of the management company or the investment company who have not caused the issue and repurchase price of the units of the UCI to be determined at the specified intervals or who have not made such prices public according to Article 157.

Article 168. A penalty of imprisonment of one month to one year and a fine of five hundred to twenty-five thousand euro or either of these penalties shall be imposed upon the founders, directors or members of the management board, as the case may be, or managers of an investment company who have infringed the provisions of Articles 28(2), 28(4) and 28(10); of Article 39 to the extent that it provides that Chapter 4 is subject to Articles 28(2), 28(4) and 28(10); of Articles 41 to 52; of Article 95 to the extent that it provides that Chapter 12 is subject to Articles 28(2)(a), 28(4) and 28(10); of the regulations made pursuant to Article 96 and of the regulations made pursuant to Article 99.

Article 169. A penalty of imprisonment of one month to one year and a fine of five hundred to twenty-five thousand euro or either of these penalties shall be imposed upon the directors or members of the management board, as the case may be, or managers of an investment company who have not convened the extraordinary general meeting in accordance with Article 30; Article 39 to the extent that it provides that Chapter 4 is subject to Article 30; Article 95 to the extent that it provides that Chapter 12 is subject to Article 30 and Article 98(2) to (4).

Article 170. A penalty of imprisonment of three months to two years and a fine of five hundred to fifty thousand euro or either of these penalties shall be imposed on anyone who has carried out or caused to be carried out operations involving the receipt of savings from the public with a view to investment if the UCI for which they acted was not entered on the list.

(Law of 10 May 2016)

“Article 170-1. A penalty of imprisonment of three months to two years and a fine of five hundred to fifty thousand euro or either of these penalties shall be imposed on anyone carrying out the activity of management company within the meaning of Chapters 15, 16 and 17 or the activity of an investment company within the meaning of Article 27 without prior authorisation by the CSSF.”

Article 171. (1) A penalty of imprisonment of one month to one year and a fine of five hundred to twenty-five thousand euro or either of these penalties shall be imposed on the *dirigeants* of UCIs referred to in Articles 97 and 100 who have failed to observe the conditions imposed upon them by this Law.

(2) The same penalties, or either one of them only, shall be imposed upon the *dirigeants* of UCIs referred to in Articles 2 and 87 who, notwithstanding the provisions of Article 142(3), have taken measures other than protective measures without being authorised for that purpose by the supervisory commissioner.

Chapter 23 – Tax provisions

Article 172. The tax provisions of this Law apply to UCIs which are subject to this Law as well as UCIs which are subject to the Law of 20 December 2002 on undertakings for collective investment, as amended.

Article 173. (1) Without prejudice to the collection of registration fees and transcription and implementation of national legislation on value added tax, there is no other tax payable by UCIs located or established in Luxembourg within the meaning of this Law, apart from the subscription tax mentioned below in Articles 174 to 176.

(2) The amounts distributed by such undertakings shall not be subject to withholdings and are not taxable if received by non-residents.

Article 174. (1) The rate of the annual subscription tax payable by the undertakings referred to in this Law shall be 0.05%.

(2) This rate is 0.01% for:

- (a) undertakings whose sole object is the collective investment in money market instruments and the placing of deposits with credit institutions;
- (b) undertakings whose sole object is the collective investment in deposits with credit institutions;
- (c) individual compartments of UCIs with multiple compartments referred to in this Law as well as for individual classes of securities issued within a UCI or within a compartment of a UCI with multiple compartments, provided that the securities of such compartments or classes are reserved to one or more institutional investors.

(Law of 19 December 2020)

“(3) Where the proportion of net assets of a UCI or of an individual compartment of a UCI with multiple compartments invested in sustainable economic activities as defined in Article 3 of Regulation (EU) 2020/852 of

the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (hereinafter “Regulation (EU) 2020/852”), which is disclosed in accordance with that regulation, represents at least 5 per cent of the aggregate net assets of the UCI or of the individual compartment of a UCI with multiple compartments, this rate amounts to 0.04 per cent for the proportion of net assets as defined in subparagraph 6.

Where the proportion of net assets of a UCI or of an individual compartment of a UCI with multiple compartments invested in sustainable economic activities as defined in Article 3 of Regulation (EU) 2020/852, which is disclosed in accordance with that regulation, represents at least 20 per cent of the aggregate net assets of the UCI or of the individual compartment of a UCI with multiple compartments, this rate amounts to 0.03 per cent for the proportion of net assets as defined in subparagraph 6.

Where the proportion of net assets of a UCI or of an individual compartment of a UCI with multiple compartments invested in sustainable economic activities as defined in Article 3 of Regulation (EU) 2020/852, which is disclosed in accordance with that regulation, represents at least 35 per cent of the aggregate net assets of the UCI or of the individual compartment of a UCI with multiple compartments, this rate amounts to 0.02 per cent for the proportion of net assets as defined in subparagraph 6.

Where the proportion of net assets of a UCI or of an individual compartment of a UCI with multiple compartments invested in sustainable economic activities as defined in Article 3 of Regulation (EU) 2020/852, which is disclosed in accordance with that regulation, represents at least 50 per cent of the aggregate net assets of the UCI or of the individual compartment of a UCI with multiple compartments, this rate amounts to 0.01 per cent for the proportion of net assets as defined in subparagraph 6.

In order to benefit from one of the rates referred to in subparagraphs 1 to 4, the proportion of net assets invested in sustainable economic activities as defined in Article 3 of Regulation (EU) 2020/852, on the last day of the UCI's financial year, and which is disclosed in accordance with Regulation (EU) 2020/852, shall be audited in accordance with the requirements deriving from Article 154(1) by a *réviseur d'entreprises agréé* (approved statutory auditor), or, where applicable, certified by a *réviseur d'entreprises agréé* (approved statutory auditor) in the context of a reasonable assurance audit according to the international audit standard adopted by the Institut des Réviseurs d'Entreprises by virtue of Article 62(b) of the Law of 23 July 2016 concerning the audit profession. This proportion and the percentage corresponding to this proportion relating to the aggregate net assets of the UCI or of the individual compartment of a UCI with multiple compartments shall be included in the annual report or in an assurance report.

A statement certified by the *réviseur d'entreprises agréé* (approved statutory auditor), including the percentage of net assets invested in sustainable economic activities as set out in the annual report or in the assurance report drawn up in accordance with the requirements set out in subparagraph 5, shall be transmitted to the Administration de l'enregistrement, des domaines et de la TVA for the first declaration for the subscription tax (*taxe d'abonnement*) which follows the finalisation of the annual report, or, where applicable, the assurance report. Without prejudice to Article 177, the percentage of net assets invested in sustainable economic activities indicated in the statement which has been transmitted shall serve as a basis to fix the tax rate applicable to the proportion of net assets invested in sustainable economic activities as defined in Article 3 of Regulation (EU) 2020/852, disclosed in accordance with Regulation (EU) 2020/852, and valued on the last day of each quarter, for the four quarters following the transmission of the statement to the Administration de l'enregistrement, des domaines et de la TVA.

During a transitional period ending on 1 January 2022, the declaring entities intending to benefit from the rates referred to in subparagraphs 1 to 4 shall submit their quarterly declaration at a rate of 0.05 per cent electronically, as well as a rectifying declaration on a form available in paper or electronic form from the Administration de l'enregistrement, des domaines et de la TVA.”

Article 175. Are exempt from the subscription tax:

- (a) the value of the assets represented by units held in other UCIs, provided such units have already been subject to the subscription tax provided for in Article 174 or in Article 68 of the Law of 13 February 2007 on specialised investment funds “or in Article 46 of the Law of 23 July 2016 on reserved alternative investment funds”¹³⁴;
- (b) UCIs as well as individual compartments of UCIs with multiple compartments:
 - (i) whose securities are reserved for institutional investors, and
 - (ii) whose sole object is the collective investment in money market instruments and the placing of deposits with credit institutions, and
 - (iii) whose weighted residual portfolio maturity does not exceed 90 days, and
 - (iv) that have obtained the highest possible rating from a recognised rating agency.

Where several classes of securities exist within the UCI or the compartment, the exemption only applies to classes whose securities are reserved for institutional investors;

¹³⁴ Law of 23 July 2016

- (c) UCIs whose securities are reserved for (i) institutions for occupational retirement pension or similar investment vehicles, set up on one or more employers' initiative for the benefit of their employees and (ii) companies of one or more employers investing funds they hold, to provide retirement benefits to their employees.
- (d) UCIs as well as individual compartments of UCIs with multiple compartments whose main objective is the investment in microfinance institutions.
- (e) UCIs as well as individual compartments of UCIs with multiple compartments:
 - (i) whose securities are listed or traded on at least one stock exchange or another regulated market operating regularly, recognised and open to the public; and
 - (ii) whose exclusive object is to replicate the performance of one or more indices.

If several classes of securities exist within the UCI or the compartment, the exemption only applies to classes fulfilling the condition of sub-point (i).

Article 176. (1) The taxable basis of the subscription tax shall be the aggregate net assets of the UCI as valued on the last day of each quarter.

(2) A grand-ducal regulation shall determine the conditions necessary for the application of the rate of 0.01% and the exemption, and shall determine the criteria with which the money market instruments referred to in Articles 174 and 175 shall comply.

(3) A grand-ducal regulation shall determine the criteria which shall be met by UCIs as well as by individual compartments of UCIs with multiple compartments referred to in Article 175, point (d).

(4) Without prejudice to additional or alternative criteria that may be determined by grand-ducal regulation, the index referred to in Article 175, point (e)(ii) shall represent an adequate benchmark for the market to which it refers and shall be published in an appropriate manner.

(5) Any condition of pursuing a sole objective as laid down in Article 174(2) and Article 175 does not preclude the management of liquid assets, if any, on an ancillary basis by means of placement of securities issued by undertakings referred to in Article 174(2)(a) and (2)(b), or the use of techniques and instruments used for hedging or for purposes of efficient portfolio management.

(6) The provisions of Articles 174 and 176 apply *mutatis mutandis* to the individual compartments of a UCI with multiple compartments.

Article 177. The duties of the registration administration include the fiscal control of UCIs.

If, at any date after the constitution of the UCIs referred to in this Law, the said administration ascertains that such UCIs are engaging in operations which exceed the framework of the activities authorised by this Law, the tax provisions provided for in Articles 172 to 175 shall cease to be applicable.

Moreover, the registration administration may levy a fiscal fine of a maximum of 0.2% on the aggregate amount of the assets of the UCIs.

Article 178. Article 156, number (8), lit. (c) of the Law of 4 December 1967 on income tax, as amended, is amended and supplemented as follows: "(c), However, revenues from the sale of a holding in an undertaking for collective investment in corporate form, in an investment company in risk capital or in a family estate management company are not concerned by number 8a and 8b."

Article 179. UCIs which are established outside the territory of Luxembourg are exempt from corporate income tax, local business tax and wealth tax when they have their effective centre of management or head office within the territory of Luxembourg.

Chapter 24 – Special provisions in relation to the legal form

Article 180. (1) Investment companies entered in the list provided for by Article 130(1) may be converted into SICAVs and their articles of incorporation may be harmonised with the provisions of Chapter 3 or, as the case may be, Chapter 12 by resolution of a general meeting passed with a majority of two thirds of the votes of the unit-holders present or represented regardless of the portion of the capital represented.

(2) The common funds referred to in Chapter 2 or, as the case may be, in Chapter 11 may, under the same conditions as those laid down in paragraph 1 above, convert themselves into a SICAV governed by Chapter 3 or, as the case may be, Chapter 12.

Article 181. (1) UCIs may be comprised of multiple compartments, each compartment corresponding to a distinct part of the assets and liabilities of the UCI.

(2) The management regulations or the instruments of incorporation of the UCI shall expressly provide for that possibility and the applicable operational rules. The prospectus shall describe the specific investment policy of each compartment.

(3) The units of UCIs with multiple compartments may be of different value with or without indication of a par value depending on the legal form which has been chosen.

(4) Common funds with multiple compartments may, by separate management regulations, determine the characteristics of and rules applicable to each compartment.

(5) The rights of unit-holders and of creditors concerning a compartment or which have arisen in connection with the creation, operation or liquidation of a compartment are limited to the assets of that compartment, unless a clause included in the management regulations or instruments of incorporation provides otherwise.

The assets of a compartment are exclusively available to satisfy the rights of investors in relation to that compartment and the rights of those creditors whose claims have arisen in connection with the creation, the operation or the liquidation of that compartment, unless a clause included in the management regulations or instruments of incorporation provides otherwise.

For the purpose of the relations between unit-holders, each compartment will be deemed to be a separate entity, unless a clause included in the management regulations or instruments of incorporation provides otherwise.

(6) Each compartment of a UCI may be liquidated separately without that separate liquidation resulting in the liquidation of another compartment. Only the liquidation of the last remaining compartment of the UCI will result in the liquidation of the UCI as referred to in Article 145(1). In this case, where the UCI is in corporate form as from the event giving rise to the liquidation of the UCI, and under penalty of nullity, the issue of shares shall be prohibited except for the purposes of liquidation.

(7) The authorisation of a compartment of a UCI, as referred to in Articles 2 and 87, is subject to the condition that all provisions of the laws, regulations or agreements relating to its organisation and operation are complied with. The withdrawal of authorisation of the compartment does not give rise to the withdrawal of the UCI from the list provided for in Article 130(1).

(8) A compartment of a UCI may, subject to the conditions provided for in the management regulations or the instruments of incorporation as well as in the prospectus, subscribe, acquire and/or hold securities to be issued or issued by one or more other compartments of the same UCI without that UCI being subject to the requirements of the Law of 10 August 1915 on commercial companies, as amended, when it is constituted in corporate form, with respect to the subscription, acquisition and/or the holding by a company of its own shares, under the condition, however, that:

- the target compartment does not, in turn, invest in the compartment invested in this target compartment; and
- no more than 10% of the assets of the target compartments whose acquisition is contemplated may be invested pursuant to their management regulations or their instruments of incorporation in units of other target compartments of the same UCIs; and
- voting rights, if any, attaching to the relevant securities are suspended for as long as they are held by the compartment concerned and without prejudice to the appropriate processing in the accounts and the periodic reports; and
- in any event, for as long as these securities are held by the UCI, their value will not be taken into consideration for the calculation of the net assets of the UCI for the purposes of verifying the minimum threshold of the net assets imposed by this Law¹³⁵.

“(…)”¹³⁶

Article 182. All the provisions of this Law referring to “*société anonyme*”¹³⁷, shall be understood as referring also to “European company (SE)”.

Chapter 25 – Transitional provisions

(…) ¹³⁸

(…) ¹³⁹

(…) ¹⁴⁰

(…) ¹⁴¹

¹³⁵ Law of 12 July 2013

¹³⁶ Law of 12 July 2013

¹³⁷ public limited company

¹³⁸ Law of 10 May 2016

¹³⁹ Law of 10 May 2016

¹⁴⁰ Law of 10 May 2016

¹⁴¹ Law of 10 May 2016

(Law of 12 July 2013)

“Article 186-1. (1) Without prejudice to the transitional provisions provided for in Article 58 of the Law of 12 July 2013 on alternative investment fund managers or, if it concerns an AIFM established in a third country, provided for in Article 45 of the Law of 12 July 2013 on alternative investment fund managers, UCIs subject to Part II established before 22 July 2013, and whose management is the responsibility of an AIFM authorised under Chapter 2 of the Law of 12 July 2013 on alternative investment fund managers or under Chapter II of Directive 2011/61/EU, will have until 22 July 2014 to comply with the provisions of Chapter 10a. For those UCIs, Articles 78, 79, 80, 81, 83, 86 and 87 of the Law of 12 July 2013 on alternative investment fund managers shall only be applicable from the date when they comply with the provisions of Chapter 10a, or from 22 July 2014 at the latest.

(2) Without prejudice to the transitional provisions provided for in Article 58 of the Law of 12 July 2013 on alternative investment fund managers or, if it concerns an AIFM established in a third country, provided for in Article 45 of the Law of 12 July 2013 on alternative investment fund managers, UCIs subject to Part II, established between 22 July 2013 and 22 July 2014, shall qualify as AIFs within the meaning of the Law of 12 July 2013 on alternative investment fund managers, from the date they are established. These UCIs subject to Part II whose management is the responsibility of an AIFM authorised under Chapter 2 of the Law of 12 July 2013 on alternative investment fund managers or under Chapter II of Directive 2011/61/EU shall comply with the provisions of Chapter 10a from the date they are established. By way of derogation from this principle, these UCIs of Part II, established between 22 July 2013 and 22 July 2014 with an external AIFM which exercises the activities of AIFM before 22 July 2013, will have until 22 July 2014 at the latest to comply with the provisions of Chapter 10a. For those UCIs, Articles 78, 79, 80, 81, 83, 86 and 87 of the Law of 12 July 2013 on alternative investment fund managers shall only be applicable from the date when they comply with the provisions of Chapter 10a or from 22 July 2014 at the latest.

(3) All UCIs subject to Part II, established after 22 July 2014, shall be *ipso jure* governed by Chapter 10a. These UCIs of Part II or, where applicable, their AIFM, shall be *ipso jure*, subject to the derogations provided for in Article 3 of the Law of 12 July 2013 on alternative investment fund managers and the derogation provided for in Article 45 of the Law of 12 July 2013 on alternative investment fund managers, governed by the provisions of the Law of 12 July 2013 on alternative investment fund managers.

(4) UCIs subject to Part II established before 22 July 2013 which qualify as AIFs of the closed-ended type within the meaning of the Law of 12 July 2013 on alternative investment fund managers and which do not make any additional investments after such date, do not need to be managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013 on alternative investment fund managers. These Part II UCIs shall only comply with the articles of this Law which are applicable to UCIs whose AIFM benefits from and makes use of the derogations provided for in Article 3 of the Law of 12 July 2013 on alternative investment fund managers, except for Article 128.

(5) UCIs subject to Part II which qualify as AIFs of the closed-ended type within the meaning of the Law of 12 July 2013 on alternative investment fund managers and whose subscription period for investors has closed prior to 22 July 2011 and which are established for a period of time expiring at the latest three years after 22 July 2013, do not need to comply with the provisions of the Law of 12 July 2013 on alternative investment fund managers, except for Article 20 and, where applicable, Articles 24 to 28 of the Law of 12 July 2013 on alternative investment fund managers, nor do they need to submit an application for authorisation under the Law of 12 July 2013 on alternative investment fund managers.

(6) Subject to the application of Article 58(3) and (4) of the Law of 12 July 2013 on alternative investment fund managers, management companies authorised under Chapter 15 which manage, before 22 July 2013, as appointed management company, one or more AIFs within the meaning of Directive 2011/61/EU, will have until 22 July 2014 to comply with the provisions of Article 101-1.

(7) Subject to the application of Article 58(3) and (4) of the Law of 12 July 2013 on alternative investment fund managers, management companies authorised under Chapter 16 which manage, before 22 July 2013, as appointed management company, one or more AIFs within the meaning of Directive 2011/61/EU, in the case referred to in Article 125-2, will have until 22 July 2014 to comply with the provisions of this Article 125-2.”

(Law of 10 May 2016)

“Article 186-2. (1) Without prejudice to the provisions of paragraphs 2, 3 and 4, UCITS subject to Part I as well as their depositaries shall comply by 18 March 2016, at the latest, with the new provisions of Articles 17 to 20, 33 to 35, 37 and 39 subject to the legal form of the relevant UCITS.

This paragraph shall apply to both UCITS established prior to the entry into force of the Law of 10 May 2016 transposing Directive 2014/91/EU and UCITS established after the entry into force of said Law.

(2) For common funds governed by Chapter 2 as well as their depositaries which will not yet be compliant with the new provisions set out in paragraph 1, the following old provisions shall remain in force and they shall continue to refer to the Law of 17 December 2010 relating to undertakings for collective investment, as amended, prior to its amendment by the Law of 10 May 2016 transposing Directive 2014/91/EU:

“Article 17. (1) The assets of the common fund shall be entrusted to a depositary for safekeeping.

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

(3) The depositary shall be a credit institution within the meaning of the Law of 5 April 1993 on the financial sector, as amended.

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

(5) The *dirigeants* of the depositary shall be of sufficiently good repute and be sufficiently experienced, also in relation to the common fund concerned. To that end, the identity of the *dirigeants* and of any person succeeding them in office shall be communicated forthwith to the CSSF.

“*Dirigeants*” shall mean those persons, who under law or the instruments of incorporation represent the depositary or effectively determine the conduct of its activity.

(6) The depositary is required to provide the CSSF on request with all information that the depositary has obtained in the exercise of its duties and which is necessary to enable the CSSF to monitor compliance by the common fund with this Law.

Article 18. (1) The depositary shall carry out all transactions concerning day-to-day administration of the assets of the common fund.

(2) The depositary shall moreover:

- (a) ensure that the sale, issue, repurchase and cancellation of units effected on behalf of the common fund or by the management company are carried out in accordance with the law and the management regulations;
- (b) ensure that the value of units is calculated in accordance with the law and the management regulations;
- (c) carry out the instructions of the management company, unless they conflict with the law or the management regulations;
- (d) ensure that in transactions involving the common fund’s assets, any consideration is remitted to it within the usual time limits;
- (e) ensure that the common fund’s income is applied in accordance with the management regulations.

(3) Where the management company’s home Member State is not the same as that of the common fund, the depositary shall sign a written agreement with the management company regulating the flow of information deemed necessary to allow the depositary to perform the functions set out in Articles 17(1) and (4) and 18(2) and in other laws, regulations and administrative provisions which are relevant for the depositary.

Article 19. (1) The depositary shall be liable, in accordance with Luxembourg law, to the management company and the unit-holders, for any losses suffered by them as a result of its unjustifiable failure to perform its obligations or its improper performance of them.

(2) Liability to unit-holders shall be invoked through the management company. Should the management company fail to act despite a written notice to that effect from a unit-holder within a period of three months following receipt of such a notice, that unit-holder may directly invoke the liability of the depositary.

Article 20. In the context of their respective roles, the management company and the depositary shall act independently and solely in the interest of the unit-holders.”

(3) For SICAVs governed by Chapter 3 as well as their depositaries which will not yet be compliant with the new provisions set out in paragraph 1, the following old provisions shall remain in force and they shall continue to refer to the Law of 17 December 2010 relating to undertakings for collective investment, as amended, prior to its amendment by the Law of 10 May 2016 transposing Directive 2014/91/EU:

“Article 33. (1) The assets of a SICAV shall be entrusted to a depositary for safekeeping.

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

(3) The depositary shall moreover:

- (a) ensure that the sale, issue, repurchase and cancellation of units effected by or on behalf of the SICAV are carried out in accordance with the law and the articles of incorporation of the SICAV;
- (b) ensure that in transactions involving the assets of the SICAV any consideration is remitted to it within the usual time limits;
- (c) ensure that the income of the SICAV is applied in accordance with its articles of incorporation.

(4) In the case where a SICAV has designated a management company, if the management company's home Member State is not the same as that of the SICAV, the depositary shall sign a written agreement with the management company regulating the flow of information deemed necessary to allow the depositary to perform the functions set out in Article 33(1), (2) and (3) and in other laws, regulations and administrative provisions which are relevant for the depositary.

Article 34. (1) The depositary shall either have its registered office in Luxembourg or be established in Luxembourg if its registered office is located in another Member State.

(2) The depositary shall be a credit institution within the meaning of the Law of 5 April 1993 on the financial sector, as amended.

(3) The *dirigeants* of the depositary shall be of sufficiently good repute and be sufficiently experienced, also in relation to the type of SICAV concerned. To that end, the identity of the *dirigeants* and of any person succeeding them in office shall be communicated forthwith to the CSSF.

"*Dirigeants*" shall mean those persons, who under law or the instruments of incorporation represent the depositary or effectively determine the conduct of its activity.

(4) The depositary is required to provide the CSSF on request with all information that the depositary has obtained in the exercise of its duties and which is necessary to enable the CSSF to monitor compliance by the SICAV with this Law.

Article 35. The depositary shall be liable, in accordance with Luxembourg law, to the investment company and the unit-holders, for any losses suffered by them as a result of its unjustifiable failure to perform its obligations or its improper performance of them.

Article 37. In carrying out its role as depositary, the depositary shall act solely in the interest of the unit-holders."

(4) For the other investment companies in transferable securities governed by Chapter 4 as well as their depositaries which will not yet be compliant with the new provisions set out in paragraph 1, the old provisions shall remain in force and they shall continue to refer to the Law of 17 December 2010 relating to undertakings for collective investment, as amended, prior to its amendment by the Law of 10 May 2016 transposing Directive 2014/91/EU:

"**Article 39.** Articles 26, 27, 28, with the exception of paragraphs 8 and 9, 30, 33, 34, 35, 36 and 37 of this Law are applicable to investment companies falling within the scope of this Chapter."

(*Law of 10 May 2016*)

"**Article 186-3.** (1) Without prejudice to the provisions of paragraphs 2 and 3, UCIs subject to Part II shall comply by **18 March 2016**, at the latest, with the new provisions of Article 88-3.

This paragraph shall apply to both UCIs established prior to the entry into force of the Law of 10 May 2016 transposing Directive 2014/91/EU and UCIs established after the entry into force of said Law.

(2) For UCIs which are managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013 on alternative investment fund managers, as amended, which will not yet be compliant with the new provisions set out in paragraph 1, the provisions of Article 19 of the above-mentioned Law of 12 July 2013, as amended, shall remain applicable.

(3) For UCIs whose AIFM benefits from and uses the derogations provided for in Article 3 of the Law of 12 July 2013 on alternative investment fund managers, as amended, which will not yet be compliant with the new provisions set out in paragraph 1, the old provisions under Article 186-2(2) to (4) shall remain in force according to the legal form of the relevant UCI."

(*Law of 10 May 2016*)

"**Article 186-4.** Management companies governed by Chapter 15 and SICAVs within the meaning of Article 27 shall comply by **18 March 2016**, at the latest, with the new provisions of Articles 111a and 111b. This Article shall apply to both management companies and SICAVs established prior to the entry into force of the Law of 10 May

2016 transposing Directive 2014/91/EU and management companies and SICAVs established after the entry into force of said law.”

(...) ¹⁴²

(Law of 8 April 2019)

"**Article 186-6.** (1) ¹⁴³ Where the investment rules of a UCITS established in Luxembourg or of a UCI governed by Part II are no longer complied with as a result of the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union, a maximum period of 12 months shall be granted to the UCITS or UCI governed by Part II for the regularisation of the breaches resulting from such withdrawal. This regularisation shall be made as soon as possible, by taking into account the stability of the financial markets and the interest of the unit-holders. This regularisation period shall be granted only in relation to the breaches resulting from positions taken prior to the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union.

Any UCITS authorised pursuant to Directive 2009/65/EC by the UK authorities and marketing its units in Luxembourg in accordance with the provisions of Chapter 7 at the time of the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union shall be ipso jure authorised to market its units with retail investors in Luxembourg based on the provisions of Article 100(1), for a maximum period of 12 months from the date of the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union, provided this UCITS is managed, at the time of the withdrawal, by a UCITS management company authorised pursuant to Directive 2009/65/EC by the UK authorities.

The UCITS referred to in the second subparagraph which are managed by a UCITS management company authorised pursuant to Directive 2009/65/EC by a competent authority of a Member State other than the United Kingdom may continue to market their units with retail investors in Luxembourg only on condition that the UCITS management company be, at the time of the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union, also authorised by the competent authority concerned as an AIFM pursuant to Chapter II of Directive 2011/61/EU. Where this condition is complied with, the UCIs shall be ipso jure authorised to market their units with retail investors in Luxembourg in accordance with the provisions of Article 46 of the Law of 12 July 2013 on alternative investment fund managers, as amended, for a maximum period of 12 months from the date of the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union.”.

(Law of 25 February 2021)

“(2) Any UCITS authorised pursuant to Directive 2009/65/EC by the UK authorities and marketing its units in Luxembourg in accordance with the second subparagraph of paragraph 1, as at 31 January 2021, shall be ipso jure authorised to market its units with retail investors in Luxembourg based on the provisions of Article 100(1) until 31 July 2021, provided this UCITS is managed, at the time of the expiry of the transition period laid down in the agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, by a UCITS management company authorised pursuant to Directive 2009/65/EC by the UK authorities.

The UCITS referred to in the first subparagraph which are managed by a UCITS management company authorised pursuant to Directive 2009/65/EC by a competent authority of a Member State other than the United Kingdom may continue to market their units with retail investors in Luxembourg only on condition that the UCITS management company be, at the time of the expiry of the transition period laid down in the agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, also authorised by the competent authority concerned as an AIFM pursuant to Chapter II of Directive 2011/61/EU. Where this condition is complied with, the UCIs shall be ipso jure authorised to market their units with retail investors in Luxembourg in accordance with the provisions of Article 46 of the Law of 12 July 2013 on alternative investment fund managers, as amended, until 31 July 2021.”

¹⁴² Article 186-5. provided for in the Law of 8 April 2019 on the measures to be taken in relation to the financial sector in the event of the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and amending several laws did not enter into force.

¹⁴³ Law of 25 February 2021

“Chapter 26 – Final provisions”¹⁴⁴

(...)¹⁴⁵

(...)¹⁴⁶

(...)¹⁴⁷

(...)¹⁴⁸

(...)¹⁴⁹

(...)¹⁵⁰

Article 193. References to this Law may be made by using the following abridged title: “Law of 17 December 2010 relating to undertakings for collective investment”.

Article 194. This Law shall enter into force on the first day of the month following its publication in the *Mémorial*.

¹⁴⁴ Law of 10 May 2016

¹⁴⁵ Law of 10 May 2016

¹⁴⁶ Law of 10 May 2016

¹⁴⁷ Law of 10 May 2016

¹⁴⁸ Law of 10 May 2016

¹⁴⁹ Law of 10 May 2016

¹⁵⁰ Law of 10 May 2016

ANNEX I

SCHEMA A

1. Information concerning the common fund	1. Information concerning the management company, including an indication whether the management company is established in a Member State other than the home Member State of the UCITS	1. Information concerning the investment company
1.1. Name	1.1. Name, corporate name, legal form, registered office and head office if different from registered office	1.1. Name, corporate name, legal form, registered office and head office if different from registered office
1.2. Date of establishment of the common fund. Indication of duration, if limited	1.2. Date of incorporation of the company. Indication of duration, if limited	1.2. Date of incorporation of the company. Indication of duration, if limited
1.3. In the case of common funds having different investment compartments, indication of the compartments	1.3. If the company manages other common funds, indication of those other funds	1.3. In the case of investment companies having different investment compartments, indication of the compartments
1.4. Statement of the place where the management regulations, if they are not annexed, and periodical reports may be obtained		1.4. Statement of the place where the instruments of incorporation, if they are not annexed, and the periodical reports may be obtained
1.5. Brief indications relevant to unit-holders of the tax system applicable to the common fund. Details of whether deductions are made at source from the income and capital gains paid by the common fund to unit-holders.		1.5. Brief indications relevant to unit-holders of the tax system applicable to the company. Details of whether deductions are made at source from the income and capital gains paid by the company to unit-holders.
1.6. Accounting and distribution dates		1.6. Accounting and distribution dates
1.7. Names of the persons responsible for auditing the accounting information referred to in Article 148		1.7. Names of the persons responsible for auditing the accounting information referred to in Article 148
	1.8. Names and positions in the company of the members of the administrative body, management and supervisory boards. Details of their main activities outside the company where these are of significance with respect to that company	1.8. Names and positions in the company of the members of the administrative, management and supervisory bodies. Details of their main activities outside the company where these are of significance with respect to that company
	1.9. Amount of the subscribed capital with an indication of the capital paid-up	1.9. Capital

<p>1.10. Details of the types and main characteristics of the units and in particular:</p> <ul style="list-style-type: none"> - the nature of the right (real, personal or other) represented by the unit, - original securities or certificates providing evidence of title; entry in a register or in an account, - characteristics of the units: registered or bearer. Indication of any denominations which may be provided for, - indication of "unit-holders"²⁰⁵ voting rights if these exist, - circumstances in which liquidation of the common fund can be decided on and winding-up procedure, in particular as regards the rights of unit-holders 		<p>1.10. Details of the types and main characteristics of the units and in particular:</p> <ul style="list-style-type: none"> - original securities or certificates providing evidence of title; entry in a register or in an account, - characteristics of the units: registered or bearer. Indication of any denominations which may be provided for, - indication of unit-holders' voting rights, - circumstances in which liquidation of the common fund can be decided on and winding-up procedure, in particular as regards the rights of unit-holders
<p>1.11. Where applicable, indication of stock exchanges or markets where the units are listed or dealt in</p>		<p>1.11. Where applicable, indication of stock exchanges or markets where the units are listed or dealt in</p>
<p>1.12. Procedures and conditions of issue and/or sale of units</p>		<p>1.12. Procedures and conditions of issue and/or sale of units</p>
<p>1.13. Procedures and conditions for repurchase or redemption of units, and circumstances in which repurchase or redemption may be suspended. In the case of common funds having different investment compartments, information on how a unit-holder may pass from one compartment into another and the charges applicable in such cases</p>		<p>1.13. Procedures and conditions for repurchase or redemption of units, and circumstances in which repurchase or redemption may be suspended. In the case of investment companies having different investment compartments, information on how a unit-holder may pass from one compartment into another and the charges applicable in such cases</p>
<p>1.14. Description of rules for determining and applying income</p>		<p>1.14. Description of rules for determining and applying income</p>
<p>1.15. Description of the common fund's investment objectives, including its financial objectives (e.g. capital growth or income), investment policy (e.g. specialisation in geographical or industrial sectors), any limitations on that investment policy and an indication of any techniques and</p>		<p>1.15. Description of the company's investment objectives, including its financial objectives (e.g. capital growth or income), investment policy (e.g. specialisation in geographical or industrial sectors), any limitations on that investment policy and an indication of any techniques and</p>

²⁰⁵ Law of 12 July 2013

	instruments or borrowing powers which may be used in the management of the common fund.		instruments or borrowing powers which may be used in the management of the company.
1.16.	Rules for the valuation of assets		1.16. Rules for the valuation of assets
1.17.	Determination of the sale or issue price and the repurchase or redemption price of units, in particular: <ul style="list-style-type: none"> - the method and frequency of the calculation of those prices, - information concerning the charges relating to the sale or issue and the repurchase or redemption of units, - information concerning the means, places and frequency of the publication of those prices 		1.17. Determination of the sale or issue price and the repurchase or redemption price of units, in particular: <ul style="list-style-type: none"> - the method and frequency of the calculation of those prices, - information concerning the charges relating to the sale or issue and the repurchase or redemption of units, - information concerning the means, places and frequency of the publication of those prices
1.18.	Information concerning the manner, amount and calculation of remuneration payable by the common fund to the management company, the depositary or third parties, and reimbursement of costs by the common fund to the management company, to the depositary or to third parties		1.18. Information concerning the manner, amount and calculation of remuneration paid by the company to its directors, and members of the administrative, management and supervisory bodies, to the depositary, or third parties, and reimbursement of any costs by the company to its directors, the depositary or to third parties

“2. Information concerning the depositary:

- 2.1. Identity of the depositary of the UCITS and description of its duties and of conflicts of interest that may arise
- 2.2. Description of any safekeeping functions delegated by the depositary, list of delegates and sub-delegates and any conflicts of interest that may arise from such a delegation
- 2.3. Statement to the effect that up-to-date information regarding points 2.1 and 2.2 will be made available to investors on request²⁰⁶

3. Information concerning the advisory firms or external investment advisers who give advice under contract which is paid for out of the assets of the UCITS:

- 3.1. Name or corporate name of the firm or name of the adviser
- 3.2. Material provisions of the contract with the management company or the investment company which may be relevant to the unit-holders, excluding those relating to remuneration
- 3.3. Other significant activities

4. Information concerning the arrangements for making payments to unit-holders, repurchasing or redeeming units and making available information concerning the UCITS. Such information shall in any case be given in Luxembourg. In addition, where units are marketed in another Member State, such information shall be given in respect of that Member State in the prospectus published there

²⁰⁶ Law of 10 May 2016

5. Other investment information:

- 5.1. Historical performance of the UCITS (where applicable) – such information may be either included in or attached to the prospectus
- 5.2. Profile of the typical investor for whom the UCITS is designed
- 5.3. In case an investment company or a common fund has different investment compartments, the information referred to in points 5.1 and 5.2 shall be given for each compartment

6. Economic information:

- 6.1. Possible expenses or fees, other than the charges mentioned in point 1.17, distinguishing between those to be paid by the unit-holder or those to be paid out of the assets of the UCITS

SCHEMA B

Information to be included in the periodical reports

I. *Statement of assets and liabilities*

- transferable securities,
- bank balances,
- other assets,
- total assets,
- liabilities,
- net asset value.

II. *Number of units in circulation*

III. *Net asset value per unit*

“IV. *Securities portfolio, distinguishing between:*

- (a) transferable securities admitted to official stock exchange listing;
- (b) transferable securities traded on another regulated market;
- (c) transferable securities referred to in Article 41(1)(d);
- (d) other transferable securities referred to in Article 41(2)(a);

and analysed in accordance with the most appropriate criteria in the light of the investment policy of the UCITS (e.g. in accordance with economic or geographical or currency criteria) as a percentage of net assets; for each of the aforementioned investments, the proportion it represents of the total assets of the UCITS.

Statement of changes in the composition of the securities portfolio during the reference period.”²⁰⁷

V. *Statement of the developments concerning the assets of the UCITS during the reference period, including the following:*

- income from investments,
- other income,
- management charges,
- depositary’s charges,
- other charges and taxes,
- net income,
- distributions and income reinvested,
- increase or decrease of the capital account,
- appreciation or depreciation of investments,
- any other changes affecting the assets and liabilities of the UCITS

“- transaction costs, which are costs incurred by a UCITS in connection with transactions on its portfolio.”²⁰⁸

VI. *A comparative table covering the last three financial years and including, for each financial year, at the end of the financial year:*

- the total net asset value,
- the net asset value per unit.

VII. *Details, by category of transactions within the meaning of Article 42 carried out by the UCITS during the reference period, of the resulting amount of commitments*

²⁰⁷ Law of 12 July 2013

²⁰⁸ Law of 12 July 2013

ANNEX II

Functions included in the activity of collective portfolio management

- Portfolio management
- Administration:
 - (a) legal and fund management accounting services;
 - (b) customer inquiries;
 - (c) valuation of the portfolio and pricing of the units (including tax returns);
 - (d) regulatory compliance monitoring;
 - (e) maintenance of unit-holder register;
 - (f) distribution of income;
 - (g) unit issue and repurchase;
 - (h) contract settlements (including certificate dispatch);
 - (i) record keeping.
- Marketing