

In case of discrepancies between the French and English text, the French text shall prevail

Luxembourg, 24 May 2005

To all UCIs and management
companies subject to
Luxembourg law

CIRCULAR CSSF 05/185

Re: Luxembourg management companies subject to the provisions of chapter 13 of the law of 20 December 2002 relating to undertakings for collective investment, as well as self-managed investment companies subject to the provisions of article 27 or article 40 of the law of 20 December 2002 relating to undertakings for collective investment

Ladies and Gentlemen,

The purpose of this circular is to supplement Circular CSSF 03/108 as regards the conditions for obtaining and maintaining authorisation for management companies which do not engage in activities other than collective portfolio management as provided for by article 77(2) of the law of 20 December 2002 (section I of Circular CSSF 03/108).

It is recalled that in the description of the human infrastructure, which must be available to a management company, Circular CSSF 03/108 provides that the staff of the management company must be permanent and adapted to the contemplated activities. In compliance with the law of 20 December 2002, Circular CSSF 03/108 provides that the conduct of the management companies' business must be decided by at least two persons (the "managers")¹ that the CSSF must be able to contact directly and that must be in a position to provide all the information which the CSSF considers essential for the performance of its supervision.

¹ In French : « les dirigeants ».

Circular CSSF 03/108 also requires that at least one of these managers must be on site.

On the basis of the experience acquired in the analysis of applications for authorisation, the CSSF can also authorise a management company subject to chapter 13 of the amended law of 20 December 2002 if the specific elements of a file enable the CSSF to conclude that the management company does not have in Luxembourg a registered or statutory office only. These elements can be multiple and should, inter alia, be inspired by a concern for compliance with principles of corporate governance and risk controls. Luxembourg resident board members, the holding of regular board meetings in Luxembourg or the performance of certain activities in Luxembourg are examples which, individually, are not necessarily sufficient or, in the presence of other elements, not necessarily required. Each file will be analysed on a case-by-case basis, considering the specific elements that are submitted to the CSSF to support the application for authorisation.

In all cases, the managers must have at their disposal all technical and IT equipment necessary to enable them to assume all the responsibilities and to perform the functions which are imposed on them by the law of 20 December 2002 and Circular CSSF 03/108. In particular, it is important that appropriate procedures and processes are put in place to enable the managers to conduct together the business of the management company.

The regime provided for by this Circular is not applicable to management companies which engage in activities of collective portfolio management and in the management of portfolios of investments on a discretionary client-by-client basis as contemplated in article 77(3) of the law of 20 December 2002 (section II of Circular CSSF 03/108).

This Circular is applicable mutatis mutandis to investment companies subject to Directive 85/611 which have not designated a management company.

Yours faithfully,

COMMISSION OF THE SUPERVISION OF THE FINANCIAL SECTOR

Simone DELCOURT
Director

Arthur PHILIPPE
Director

Jean-Nicolas SCHAUS
Director General