

**COMMISSION de SURVEILLANCE
du SECTEUR FINANCIER**

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

Luxembourg, 24 October 2012

To all Luxembourg management companies subject to Chapter 15 of the Law of 17 December 2010 relating to undertakings for collective investment and to investment companies which have not designated a management company within the meaning of Article 27 of the Law of 17 December 2010 relating to undertakings for collective investment.

**CIRCULAR CSSF 12/546
as amended by Circular CSSF 15/633**

Re: Authorisation and organisation of Luxembourg management companies subject to Chapter 15 of the Law of 17 December 2010 relating to undertakings for collective investment as well as investment companies which have not designated a management company within the meaning of Article 27 of the Law of 17 December 2010 relating to undertakings for collective investment.

Ladies and Gentlemen,

The purpose of this Circular is to replace the Circulars CSSF 03/108 and 05/185 applicable to every Luxembourg management company subject to Chapter 15 of the Law of 17 December 2010 relating to undertakings for collective investment (hereafter the "2010 Law") and to every investment company which has not designated a management company within the meaning of Article 27 of the 2010 Law (hereafter "SIAG") following the amendments introduced by the 2010 Law and CSSF Regulation No. 10-4 transposing Commission Directive 2010/43/EU of 1 July 2010 (hereafter "Regulation 10-4").

It incorporates Circular CSSF 11/508 so that the conditions for obtaining and maintaining the authorisation for a management company and a SIAG will be presented within one single text.

In addition, its purpose is to provide additional clarifications on certain conditions for authorisation, more particularly in the area of the use of own funds, administrative bodies, arrangements concerning the central administration and rules of delegation.

It also applies to branches of a management company and to representative offices, as the case may be, which have been established abroad.

This Circular does not apply to management companies subject to Chapters 16, 17 and 18 of the 2010 Law.

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I. Conditions for obtaining and maintaining the authorisation for a management company whose activity is limited to collective portfolio management as provided for in Article 101 (2) of the 2010 Law

1. Basic principles

Access to the activity of management company within the meaning of Chapter 15 of the 2010 Law (hereafter "management company") is subject to prior authorisation by the CSSF (Article 101 of the 2010 Law).

The same applies to the opening by a Luxembourg management company of agencies in Luxembourg, representative offices and branches abroad.

2. Shareholding (Articles 103 and 108 of the 2010 Law)

2.1. The CSSF does not grant authorisation to a management company unless it has obtained information of the identity of the shareholders or members, direct or indirect¹, natural or legal persons, who have qualifying holdings and of the amount of those holdings. The CSSF has to be satisfied that the holder of a qualifying holding does not only fulfil the conditions of good repute, but will exercise his powers in such a way that the sound and prudent management of the management company is ensured. Qualifying holding means holding in an undertaking, directly or indirectly, at least 10% of the capital or of the voting rights or having any other possibility to exercise a significant influence over the management of the undertaking in which this holding is held (Article 1 (28) of the 2010 Law).

Furthermore, it is required that the direct and indirect shareholding structure is organised in such a way that the authorities responsible for the prudential supervision of the establishment and, as the case may be, of the persons with whom the company has close links are clearly determined and that this supervision can be exercised without obstruction (Article 102 (2) of the 2010 Law).

Authorisation for the shareholding structure is subject to the condition that the shareholders or members who have taken the decision to acquire a qualified holding in a management company possess the qualities required to guarantee the sound and prudent management of the management company. The concept of sound and prudent management is considered in light of the evaluation criteria set out in Article 108 of the 2010 Law which refers to Article 18 of the Law of 5 April 1993 on the financial sector. The five criteria are: the professional reputation of the proposed acquirer; the professional reputation and experience of any person who will direct the business of the management company after the acquisition; the financial soundness of the proposed acquirer; compliance with prudential and supervisory requirements at group level and the risk of money laundering and terrorist financing.

¹ Indirect shareholders means the ultimate shareholders and effective beneficial owners of the shareholding structure of the management company.

Each company entering into the direct shareholding structure of a management company must, in principle, dispose of own funds at least equivalent to the amount it intends to invest in the capital of the management company, after deduction, where appropriate, of other holdings held.

In the case where the depositary bank has a direct or indirect qualifying holding in a management company, the management company must identify the conflicts of interest which could result from this holding and has to strive to avoid them in accordance with the procedures provided for in the conflicts of interest policy of the management company.

The management company is required to inform the CSSF in advance of any changes regarding the holders of a qualifying holding or permitting the exercise of a significant influence, as soon as it has knowledge thereof (Article 108 (1) of the 2010 Law).

2.2. In order to strengthen compliance with prudential requirements and rules of conduct, the CSSF may request a "sponsorship letter" (*lettre de patronage*). The issuer of this letter undertakes, *vis-à-vis* the CSSF, that the sponsored entity complies/will comply with the prudential requirements imposed by the applicable law, particularly regarding the requirements relating to own funds. This letter may be requested:

- at the time of authorisation of the management company,
- at the time of a change of the shareholding and
- when during the lifetime of the management company, the financial soundness of the existing shareholder(s) is not ensured anymore.

3. Own funds (Article 101 (4) and 102 (1) a) and b) of the 2010 Law)

3.1. Every management company must have suitable and sufficient financial means in relation to its activity.

In this regard, at the moment of its incorporation it must have an initial capital of at least Euro 125,000, or a fully paid-up equivalent amount in another currency which is at least as high as this amount.

The CSSF does not, in principle, accept contributions in kind, such as debt contributions, either at the time of incorporation of the management company, or in the case of capital increase during its lifetime.

Every management company whose authorisation exclusively covers collective management within the meaning of Article 101 (2) of the 2010 Law must at any time be able to prove an amount of own funds at least equal to the greater of the two following amounts:

- Euro 125,000 (supplemented by an additional amount of own funds equal to 0.02% of the amount by which the value of the portfolios of the management company exceeds 250 million euros. The required total sum of initial capital and additional amount does however not exceed 10 million euros);
- one quarter of the preceding year's fixed overheads (Article 102 (1) a), third indent, with reference to Article 21 of the Directive 2006/49/EC).

Upon authorisation of the management company, the minimum amount of own funds is calculated on the basis of estimated indications of the overheads for the financial year.

"Overheads" means the costs for staff and administrative bodies as well as the operating costs.

Within the limit of the provisions of Article 102 (1) a) of the 2010 Law, a management company does not have to provide up to 50% of additional own funds calculated according to the value of the portfolios managed exceeding 250 million euros, if it benefits from a guarantee of this amount provided by a credit institution or an insurance company.

The provision of such a guarantee as well as all changes regarding the conditions of this guarantee must be notified without delay to the CSSF.

3.2. Article 102 (1) b) of the 2010 Law requires that the own funds referred to in point 3.1 above are to be kept at the permanent disposal of the management company and to be invested for its own interest. In view of the aforementioned, the CSSF requires that the legally required own funds are at the permanent disposal of the management company in order to guarantee the continuity and regularity of the activities and the services provided by a management company. It follows that the own funds can neither be used for investment in the shareholder of the management company nor for granting a loan to this shareholder.

It is however permissible for the own funds in question to be invested in liquid assets or assets easily convertible into liquid short term assets and not containing any speculative positions. Every holding by a management company in another company must be notified without delay to the CSSF. In this context, the CSSF requires that the holding is exclusively financed by the surplus own funds which the management company may have in relation to the financial resources legally required under the terms of Article 101 (4) and 102 (1) a) of the 2010 Law. Furthermore, the activity of the subsidiary must remain within the line of activities which may be exercised by the management company.

4. The bodies of the management company (Articles 102 (1) c), f) and 129 (5) of the 2010 Law)

4.1. The members of the board of directors and the members of every other management body, respectively, which represent the management company by virtue of the law or the instruments of incorporation (Article 102 (1) f) and 129 (5) of the 2010 Law).

The members of the board of directors and the permanent representative, if a legal person has been appointed as director, respectively, as well as the members of every other management body, which represent the management company by virtue of the law or the instruments of incorporation (at least three) must be of sufficiently good repute and sufficiently experienced in relation to the type of UCITS and UCI concerned. To that end, the identity of these persons as well as every person succeeding them in office must be communicated forthwith to the CSSF for approval.

This notification must be accompanied by the following pieces of information:

- a recent curriculum vitae, signed and dated;
- a copy of the passport/identity card;
- a declaration of honour, as may be downloaded on the CSSF website (www.cssf.lu) and
- if available in the jurisdiction of the person concerned, a recent extract of the criminal record.

With regard to sufficient experience, the directors and the permanent representative, in the case where a legal person has been appointed as director, respectively, must have adequate professional experience gained through having already performed similar activities to a high level of responsibility and autonomy.

Furthermore, every member of the board of directors of the management company must dedicate the required time and attention to his duties. Consequently, he must ensure that he limits the number of other professional engagements, in particular mandates held in other companies, to the extent necessary in order to perform his tasks correctly.

Insofar as every management company must have solid governance arrangements, its shareholder or its shareholders must take this principle into account when composing the board of directors of the management company. Thus, for example, when a bank is a shareholder of a management company and when this bank assumes the function of depositary bank of one or more funds managed by the management company, it must be ensured that the board of directors of the management company is not predominantly composed of representatives of the business line "depositary bank". In addition, in the case of a SICAV having appointed a management company, it is recommended that the board of directors of the two entities is not predominantly composed of the same people.

This point 4.1. also applies to members of the supervisory board in the case where the management company has adopted a dual structure.

4.2. Senior management (Article 102 (1) c) of the 2010 Law)

Senior management means the persons who effectively conduct the business of the management company within the meaning of Article 102 (1) c) of the 2010 Law (hereafter the "conducting officers") irrespective of the legal structure that it has adopted. The number of conducting officers must be at least two.

The conducting officers must also fulfil the conditions as to good repute and professional experience required for the type of UCITS or UCI managed. To that end, the identity of each conducting officer as well as of every person succeeding him in office must be communicated forthwith to the CSSF for approval.

This notification must be accompanied by the following pieces of information:

- a recent curriculum vitae, signed and dated;
- a copy of the passport/identity card;
- a declaration of honour, as may be downloaded on the CSSF website (www.cssf.lu) and
- if available in the jurisdiction of the person concerned, a recent extract of the criminal record.

With regard to required experience, the conducting officers must have adequate professional experience gained through having already performed similar activities to a high level of responsibility and autonomy.

The CSSF must be able to contact the conducting officers directly. These persons must be able to provide all information that the CSSF deems essential for its supervision.

For the accomplishment of their task, the two conducting officers must, in principle, permanently reside in Luxembourg. This does not however prevent the conducting officers from having their domicile in a place permitting them, in principle, to come to Luxembourg every day.

Having regard to the nature, scale and complexity of the activities of the management company, the CSSF may nevertheless agree, through a duly supported request for derogation made in advance, that only one of the conducting officers of the management company shall permanently reside in Luxembourg.

The conducting officers form a management committee. The members of this committee work together in close partnership to take all actions falling within the scope of their responsibilities.

The management committee is among other things, responsible, under the ultimate responsibility of the board of directors, for:

- the implementation of strategies and guiding principles for central administration and internal governance referred to in point 5 below through specific written internal policies and procedures;
- the implementation of adequate internal control mechanisms (i.e. permanent compliance, permanent internal audit function and permanent risk management function);
- ensuring that the management company has the technical infrastructure and human resources necessary for performing its activity;
- for each UCITS that the management company manages, the implementation of the general investment policy, as defined, as the case may be, in the prospectus, the management regulations of the fund or the instruments of incorporation of the investment company, pursuant to Article 10.2. a) of Regulation 10-4;
- supervising, pursuant to Article 10.2. b) of Regulation 10-4, the adoption of investment strategies for each UCITS that the management company manages;
- adopting, and consequently filing for regular review, pursuant to Article 10.2. f) of Regulation 10-4, the risk management policy as well as the provisions, procedures and implementing techniques of this policy, as provided for in Article 43 of Regulation 10-4, and in particular the risk limitation system for each UCITS managed, and
- the implementation and follow-up of the marketing policy and the distribution network of UCITS/UCIs managed by the management company.

In order to fulfil its responsibilities, the management committee shall work in accordance with a method of operation adapted to the activities of the management company. Thus, for example, the conducting officers shall be in regular contact with each other and hold periodic meetings. These meetings shall be formalised in written minutes, available at the offices of the management company in Luxembourg. It is important that the agenda of these periodic conducting officers' meetings includes, amongst other things, a discussion on the management information provided for in point 5.2.1.2. below.

The management committee regularly informs the board of directors, in an exhaustive manner and in writing, on the activities of the management company and the UCITS/UCIs it manages.

Each new request for approval of a management company must include a description of the method of operation of the management committee.

In the context of the operation of the management committee, each conducting officer is assigned specific areas of responsibility with regard to the functions included in the collective portfolio management activity, including risk management. This split of tasks must be organised so as to avoid conflicts of interest. Thus, the functions of risk-taking and the independent control of these same risks shall not be assigned to the same conducting officer (i.e. the performance and/or control of the risk management function

and the investment management function shall not be carried out by the same conducting officer, for example).

The conducting officers are not necessarily required to be employees of the management company that they manage, provided that an agreement exists that precisely defines their rights and duties and, as the case may be, to whom they are reporting (i.e. the board of directors of the management company, any organisational unit existing at group level to which the management company belongs and with which a functional link exists, etc.).

It is also not excluded that the persons in question manage the business of several management companies, on the condition that the CSSF has proof that the exercise of multiple functions does not and is not likely to prevent the relevant persons from discharging any one particular function soundly, honestly and professionally. Thus, the conducting officers must be supported in their daily work by enough qualified staff working in Luxembourg.

This does not exclude the possibility for the conducting officers, on the basis of a service agreement, to use the expertise and/or existing technical means at the level of other organisational/operational units in existence within the group to which the management company belongs and/or at the level of a third party having the capacities, quality and authorisations required to provide the requested support in a reliable and professional way.

The principle of independence of the management company from the depositary prevents a conducting officer from being employed by the depositary of a UCITS which the management company manages.

This point 4.2. also applies to members of the management board in the case where the management company has adopted a dual structure.

5. Arrangements regarding central administration and internal governance

5.1. *Arrangements regarding central administration (Article 102 (1) e) of the 2010 Law*

Every management company must have a head office in Luxembourg, consisting of a "decision-making centre" and an "administrative centre". This requirement implies that the management company cannot only have a registered or statutory office in Luxembourg.

The central administration, which comprises in a broad sense the functions of direction and management, of execution and of control, must permit the establishment to have control of all of its activities.

1. The concept of decision-making centre not only comprises the activity of conducting officers (a minimum of two) according to Article 102 (1) c) of the 2010 Law, but also, as the case may be, that of persons responsible for the different administrative

and control functions or the different departments or occupations existing inside the management company.

2. The administrative centre comprises in particular sound administrative and accounting organisation which ensures, amongst others, the adequate execution of operations, the correct and complete recording of operations, the production of sound and rapidly available management information, the monitoring of delegated activities, the management of conflicts of interest and the respect of applicable rules of conduct. To that effect, the management company must have in Luxembourg the human and technical resources necessary and sufficient to exercise the activities that it wants to implement and in order to control the delegated functions. This implies that it has in place the following elements (the list of which is not exhaustive):
 - i. enough own competent operating staff in order to execute the decisions taken (point 5.1.1.),
 - ii. its own systems of execution, meaning procedures and technical and IT infrastructure (point 5.1.2.),
 - iii. documentation relating to its operations and those undertaken by its delegates on behalf of the management company. Access to the documentation relating to the operations undertaken by its delegates may be gained either by electronic means or on simple demand, and
 - iv. an accounting function (point 5.1.3.).

The concept of central administration also implies that the management company must have its own office in Luxembourg.

5.1.1. Clarifications on the operating staff of a management company referred to in point 5.1., sub-point 2. i. "administrative centre" above.

In accordance with Article 6 of Regulation 10-4, every management company must employ enough staff in Luxembourg with the skills, knowledge and expertise necessary to fulfil the tasks that it wishes to perform and in order to efficiently supervise the activities of delegates.

In principle, the staff is employed by the management company. The CSSF may grant an exemption concerning this point and can authorise that the entire or only part of the staff is either on secondment or made available by an undertaking belonging to the same group or by a non-affiliated company. In this case, the contract governing this secondment or this availability must be submitted to the CSSF for prior approval. Furthermore, the contract must stipulate rules concerning the management of conflicts of interest between the staff concerned and the entity. The staff thus made available or on secondment must be reachable in Luxembourg during normal business hours.

The staff of a management company may in accordance with Article 6.3. of Regulation 10-4 assume multiple functions. The exercise of multiple functions does not and is not

likely to prevent the relevant persons from discharging any particular one of these functions soundly, honestly and professionally.

Long term absences or resignations of staff must not prevent, at end, the good functioning of the management company.

5.1.2. Clarifications on the systems of execution of a management company referred to in point 5.1., sub-point 2. ii. "administrative centre" above.

5.1.2.1. Every management company must have in its office a suitable technical and IT infrastructure for the activity that it wants to realise.

Generally, the management company must organise its technical and IT infrastructure so as to safeguard, in accordance with Article 5.2. of Regulation 10-4, the security, confidentiality and integrity of information.

The requirements in the above paragraph are best met when the management company has its own IT infrastructure which is supported by its own IT department organised and surrounded by an internal control system determined by the management authority. As a general rule, the management company must have its own computers and relevant, duly documented computer programs at its premises in Luxembourg.

The abovementioned provisions do not however prevent a management company from having recourse to the services of a third party specialised in the advice, programming, maintenance or management of electronic systems. Any recourse to third party services shall be formalised in a services agreement.

Moreover, the management company must be able to function normally in the event that its electronic system is unavailable. For this purpose, it must implement a back-up solution in line with a business continuity plan as provided by Article 5.3. of Regulation 10-4. The purpose of this continuity plan is to describe the actions to be implemented by the management company in order to continue operations in the case of an incident or disaster linked to abnormal events.

It is however permissible for a management company to be linked by way of telecommunication to a data processing centre at its parent company or a subsidiary thereof. If the services of a parent company or a subsidiary of the latter are used, the management company must verify that it is qualified for and capable of providing the service in question.

In the case where the management company does not have its own IT infrastructure, it must ensure that it has rapid and unlimited access to the information concerning it, stored at the data processing centre. This information must be encrypted or otherwise protected according to other available technical means in order to ensure the security of communications and the confidentiality of client data.

5.1.2.2. A management company must have suitable electronic systems enabling it to comply with the provisions on sound administrative organisation provided in Article 109 (1) a) of the 2010 Law. In this context, a distinction must however be made between a management company which itself exercises one or several functions included in the activity of collective portfolio management and one which has delegated one or more of these functions to one or several third parties.

- Management company itself exercising one or several of the functions included in the activity of collective portfolio management.
 - i. A management company which is directly in charge of the portfolio management of one or several undertaking(s) for collective investment, without using an external manager, must make appropriate arrangements for suitable electronic systems so as to permit a timely and proper recording of each portfolio transaction according to Articles 8 and 15 of Regulation 10-4.
 - ii. A management company which is directly in charge of the administration of undertakings for collective investment, including the maintenance of the register of the unitholders, must make the appropriate arrangements to equip itself with suitable electronic systems permitting the timely and proper recording of each subscription or redemption order in accordance with Articles 8 and 16 of Regulation 10-4.

In view of the provisions of Article 9 of Regulation 10-4, every management company also has the obligation to establish, implement and maintain accounting policies and procedures compliant to the accounting rules of the UCITS home Member state. If the UCITS in question has different compartments, each compartment must be the object of separate accounting. In addition, a management company must establish appropriate procedures permitting the correct and precise identification and valuation of all the elements of the assets and liabilities of UCITS or, as the case may be, of its compartments. The principles set out above must not only be applicable to UCITS but also to all types of UCI, SIF or other undertakings for collective investment managed, as the case may be, by the management company.

Consequently, the management company must have an IT environment that allows compliance with the above accounting principles.

- Management company delegating one or several functions included in the activity of collective portfolio management.

In the case where a management company has delegated the portfolio management and/or the administration, including the maintenance of the register of unitholders, to a third party, it must monitor continuously from the start of the relationship that every delegate

has suitable electronic systems in order to satisfy the requirements of Articles 8, 9, 15 and 16 of Regulation 10-4.

These controls may, for example, take the form of receiving the procedures and policies of the delegates in this area, regular confirmations in relation thereto, the ISAE 3402 reports or equivalent and on-site visits at the delegate.

Furthermore, the management company must have a suitable infrastructure permitting its operating staff to control effectively at any time the activity of the undertaking to which the mandate has been given. This requires, amongst others, that the management company performs initial and ongoing due diligence on the service provider(s) which it uses, respectively that it implements control arrangements permitting the monitoring of the activity of the administrative agent, including the registrar and transfer agent, the investment manager(s), the distributor(s) and all the risks incurred by the UCITS. Besides the general and specific conditions by virtue of which a management company may delegate one or several of the functions included in the collective management referred to in Chapter 7 "Conditions for authorisation of delegation" of this Circular, points 7.1.4. and 7.1.8. of the same chapter provide additional clarifications on the content of control procedures referred to in the preceding paragraph.

The provisions in this regard are also applicable in the case where the management company has partly delegated one or more functions included in the activity of collective management.

5.1.3. Clarifications on the accounting function referred to in point 5.1., sub-point 2. iv. "administrative centre" above

According to Article 5 (4) of Regulation 10-4, every management company must establish, implement and maintain accounting policies and procedures permitting the delivery of financial reports which reflect a true and fair view of the management company's financial situation.

Consequently, every management company must communicate to the CSSF the name of the person responsible within the management company who can provide information on the financial situation of the management company.

Regarding the organisation of the accounting function, the management company can either put in place its own accounting function, or use, under its responsibility, the expertise of a third party in the area of accounting. Every use of a third party must be notified to the CSSF in advance.

Independently of the organisation of the accounting function, the accounting records relating to the activity of the management company must always be available and/or electronically accessible at the registered office of the management company in Luxembourg to enable the management company to draw up a balance sheet and a profit and loss account in an independent way.

5.2. Arrangements in the area of internal governance (Articles 109 and 111 of the 2010 Law)

Every management company must have solid arrangements for internal governance which ensure the sound and prudent management of its activities and the risks inherent therein.

These arrangements for internal governance, which have essentially been elaborated in Regulation 10-4, must notably include the following areas:

- organisational requirements, including mechanisms for internal control;
- conflicts of interest;
- the rules of conduct;
- the remuneration policy;
- the risk management.

Every management company promotes an internal culture of control and of risk which aims to ensure that all members of staff actively take part in the detection, declaration and control of risks incurred by the establishment.

5.2.1. General requirements regarding procedures and organisation (Article 5 of Regulation 10-4)

5.2.1.1. Every management company must, in accordance with Article 5 (1) a), b) and d) of Regulation 10-4, establish a precise and clear procedures manual which describes more specifically its internal functioning, the allocation of tasks amongst its staff, hierarchical lines, and, where applicable, the procedures for exchanging information with, and controls undertaken on delegates. This procedures manual must be available at the registered office of the management company, accessible to its staff and kept up-to-date taking into account the evolution of the management company's activity.

Every new request for authorisation of a management company must include a confirmation relating to the establishment of such a manual.

5.2.1.2. According to Article 5 (1) e) of Regulation 10-4, every management company must maintain in an adequate and orderly manner records of its activities and its internal organisation.

To this end, every management company must put in place "management information" permitting the follow-up of its activity and that of its delegates.

This management information must, amongst others, cover the results of controls carried out on the delegated activities, the analyses in the area of risk management, the incidents linked to the activity of collective management (significant and non-significant NAV errors, breaches of limits, valuation problems, problems of reconciliation, situations

giving rise to conflicts of interest and to other problems), execution policy, complaints, minutes of previous meetings, etc..

As the management information must also provide information about the controls made on the delegated activities, every management company must ensure that it receives from the delegates all necessary information in order to effect an efficient control of this delegate.

Finally, it must be ensured that this management information is available in Luxembourg and preferably kept in a central database accessible at any time in Luxembourg.

5.2.1.3. According to Article 5 (2) of Regulation 10-4, every management company must establish, implement and maintain systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information, taking into account the nature of the information in question.

5.2.1.4. Every management company, in accordance with Article 5(3) of Regulation 10-4, establishes, implements and maintains an adequate business continuity policy of its activities and of its services enabling the restoration of its activities and services after a disaster and providing for regular testing of its backup facilities. It shall also verify that the service provider to which the management company has, where appropriate, delegated one or several of the functions included in the collective portfolio management activity, including risk management, has implemented an adequate business continuity plan. The abovementioned requirement also applies to partial delegation of one or several of these functions.

5.2.2. *Complaints handling*

Every management company must, in accordance with Article 7 of Regulation 10-4, implement and maintain effective and transparent procedures for the reasonable and prompt handling of complaints received from investors. The information concerning these procedures shall be made available to investors free of charge.

The management company must designate amongst its staff one person responsible for the handling, centralisation and follow-up of complaints. The name of this person must be communicated to the CSSF. A specific mandate for the handling of complaints can be given to a specialised third party established in Luxembourg or abroad. Furthermore, the activity plan shall comprise a description of the complaints handling procedures established by the management company.

The management company must communicate to the CSSF a list of third parties authorised to handle complaints and an annual report indicating the number of complaints filed by investors, the reason for these complaints as well as the progress made in handling them.

This statement must be obtained by the CSSF at the latest one month after the ordinary general meeting that approved the annual accounts of the management company.

5.2.3. Permanent compliance and internal audit function (Articles 11 and 12 of Regulation 10-4)

In accordance with Regulation 10-4, every management company must establish and maintain operational a permanent compliance and internal audit function.

Circular CSSF 04/155 (relating to the compliance function) as well as Circular IML 98/143 (relating to internal control and internal audit) are applicable to management companies.

However, point bd)² of chapter VIII of Circular CSSF 04/155 does not apply to a management company whose activity only covers collective portfolio management.

The compliance and internal audit functions must also cover the activity of branches, representative offices, agencies and subsidiaries owned by a management company, where appropriate.

It should be noted that the compliance and the internal audit functions cannot be undertaken concurrently by the same natural person. Similarly, where the permanent compliance and internal audit functions have been delegated, the monitoring of these functions cannot be carried out by the same individual.

In addition, it should be remembered that pursuant to the two aforementioned Circulars the compliance and the internal audit functions shall both submit annual reports to the CSSF. These reports must be obtained by the CSSF at the latest one month after the ordinary general meeting that approved the annual accounts of the management company. Finally, the principle of proportionality as detailed under chapter IV below can be applied by a management company in the organisation of its compliance and internal audit functions. This principle however does not authorise a management company to have no compliance and internal audit function.

5.2.3.1. The compliance function

A management company must have its own compliance function in Luxembourg which shall be organised in accordance with the provisions of Circular CSSF 04/155.

The compliance function must be able to operate independently and in compliance with the separation of tasks in order to identify any risk of non-compliance of the management company with the requirements imposed by the 2010 Law, Regulation 10-4 and all other regulations applicable to management companies.

² The compliance function shall not be outsourced to third parties. This principle shall not preclude the possibility of using the expertise or technical means of third parties [...] or the possibility of establishing, where appropriate, a functional link with the compliance function of the group [...].

A management company whose authorisation is limited to collective management may invoke, via a specific prior derogation request based on an adequate justification, the possibility of delegating the compliance function to a third party in accordance with Article 10 (2) c) of Regulation 10-4.

However, a management company providing, in addition to collective management, one or more of the services referred to in Article 101 (3) of the 2010 Law is not authorised to delegate the compliance function. The management company must communicate to the CSSF the name of its Compliance Officer, together with his/her curriculum vitae.

The function of Compliance Officer cannot be exercised by a member of the board of directors of the management company.

It is possible for the Compliance Officer to provide legal services to the management company.

5.2.3.2. *The internal audit function*

A management company must have its own internal audit function in Luxembourg which shall be organised in accordance with the provisions of Circular IML 98/143.

The internal audit function must be able to operate independently and in compliance with the separation of tasks in order to identify any risk of non-compliance of the management company with the requirements imposed by the 2010 Law, Regulation 10-4 and all other regulations applicable to management companies.

In accordance with item 5.4.9. a) of Circular IML 98/143, the internal audit function may be delegated to an external expert specialised in internal audit. This external expert may be the internal auditor of the group to which the management company belongs. The name of the third party so mandated shall be communicated to the CSSF together with a description of its competences and internal organisation.

In any event, the external expert appointed must be independent from the *réviseur d'entreprises agréé* (approved statutory auditor) of the management company or from the *cabinet d'audit agréé* (approved audit firm) as well as from the group which the *réviseur d'entreprises agréé* (approved statutory auditor) belongs to.

It should be remembered that, in accordance with item 5.4.9. f) of Circular IML 98/143, a management company having one or more branches is not generally authorised to use an external expert specialised in internal audit. However, the CSSF may derogate based on an adequate justification from this abovementioned general principle to the extent that the importance of the activity and the scale of the branch(es) so justify.

The management company must communicate to the CSSF the name of the person responsible for the internal audit function, together with his/her curriculum vitae and, in case of delegation of the internal audit function, the name of a person, who may or may

not be part of the governing bodies, having sufficient knowledge in the area of audit to monitor the work performed by the external expert.

The function of internal auditor cannot be exercised by a member of the board of directors of the management company.

5.2.4. The permanent risk management function and the risk management process

5.2.4.1. The permanent risk management function (Article 13 of Regulation 10-4)

In accordance with Regulation 10-4, a management company must, amongst others, establish and maintain operational a permanent risk management function.

The permanent risk management function must be hierarchically and functionally independent from operating units.

However, the CSSF may allow a management company to derogate from that requirement where such derogation is appropriate and proportionate in view of the nature, scale and complexity of the management company's activities and of the UCITS it manages.

In this case, a management company must be able to demonstrate that appropriate measures of protection have been taken against conflicts of interest, in order to allow the independent performance of risk management activities, and that its risk management method meets the requirements of Article 42 of the 2010 Law.

This function is responsible for:

- a) implementing the risk management policy and procedures;
- b) ensuring compliance with the UCITS' risk limitation system, and notably the legal limits concerning global exposure and counterparty risk, in accordance with Articles 46, 47 and 48 of Regulation 10-4;
- c) advising the board of directors as regards the definition of the risk profile of each managed UCITS;
- d) providing regular reports to the board of directors and, where it exists, to the supervisory function of the management company on the items listed under Article 13 (3) d) of Regulation 10-4;
- e) reporting regularly to the governing bodies of the management company on the items mentioned in Article 13 (3) e) of Regulation 10-4, and

- f) reviewing and reinforcing, where appropriate, the tools and procedures for the valuation of OTC-traded derivative instruments under Article 49 of Regulation 10-4.

The objective of the permanent risk management function shall be to follow, in an integrated and centralised manner, the exposure of UCITS managed by the management company to market risks, liquidity risks, counterparty risks and the exposure of UCITS to any other risks, including operational risks, which could be significant for the UCITS.

Pursuant to Article 10 (2) d) and Article 26 (4) of Regulation 10-4, the exercise of part or all of the risk management may be delegated by contract to a specialised third party.

The contract and the name of the mandated third party(ies) together with, where applicable, a description of the expertise and internal organisation of this/these third party(ies) must be communicated to the CSSF. The fact that the management company has delegated part or all of the risk management to a specialised third party does not have any impact on the management company's responsibility for the adequacy and effectiveness of the risk management policy or on its responsibility to ensure adequate monitoring of the UCITS risks.

In light of the foregoing, every management company shall therefore, in principle, appoint from among its staff a person who shall be responsible for the permanent risk management function and who possesses the necessary qualifications, knowledge and expertise in the area. This person must perform his mandate under the direct responsibility of the conducting officer of the management company responsible for the risk management function.

By virtue of the principle of proportionality, one of the conducting officers of the management company may also be directly appointed as the person responsible for the permanent risk management function provided that he has the necessary qualifications, knowledge and expertise in the area. Without prejudice to the operational model chosen, the conducting officer responsible or directly in charge of the permanent risk management function may not, at the same time, be the conducting officer responsible for investment management, even if this function is delegated to a third party.

The permanent risk management function may not be combined with the internal audit function of the management company. By contrast, it is permissible to combine the compliance function with the permanent risk management function.

The permanent risk management function cannot be exercised by a member of the board of directors of the management company. The regular report assessing the adequacy and effectiveness of the risk management, to be established pursuant to Article 10 (4) of Regulation 10-4 by the permanent risk management function, must be submitted to the CSSF at least once a year and at the latest one month after the ordinary general meeting approving the annual accounts of the management company. This report may take the

form of a consolidated report covering all the UCITS managed by the management company.

5.2.4.2. The risk management process (Article 42 (1) of the 2010 Law)

Article 42 (1) of the 2010 Law introduces the requirement for a management company to employ a risk management process which enables it to control and measure at any time the risk of the positions and their contribution to the overall risk profile of the portfolio. In addition, it must employ a process for accurate and independent assessment of the value of OTC derivatives.

Articles 42 to 50 of Regulation 10-4 clarify the risk management policy and risk measurement to be put in place by a management company in order to comply with the abovementioned Article 42 (1).

Thus, Article 43 (1) of Regulation 10-4 provides, amongst others, that the risk management policy must not only cover market and counterparty risks, but also operational, liquidity and any other risk which may be significant for the UCITS managed.

Furthermore, Article 46 (2) lays down the requirement for a management company to calculate the UCITS global exposure at least once a day.

The Articles of the 2010 Law and Regulation 10-4 mentioned above are further clarified by Circular CSSF 11/512 presenting, amongst others, the main changes in the regulatory framework in the area of risk management and providing clarifications in respect of the rules covering risk management.

In this context, it is pertinent to bear in mind Chapter V of this Circular in particular, according to which every management company must communicate to the CSSF a certain amount of information in relation to the risk management policy while strictly respecting the form set out in the annex of Circular CSSF 11/512.

This information must also be provided to the CSSF at the moment of authorisation of a new management company. An update of the risk management process must be transmitted to the CSSF at least once a year at the closing date of the management company's financial year. This transmission shall be done, at the latest, one month after this closing date.

If there are significant amendments to the risk management policy (e.g. new financial products), the management company must update the risk management procedure and inform the CSSF by submitting an up-to-date version of this procedure.

Finally, it should be remembered that pursuant to Article 50 of Regulation 10-4 a management company must provide the CSSF with a report, at least once a year at the closing date of the management company's financial year, containing information giving

a true picture of the types of financial derivative instruments used for each managed UCITS, the underlying risks, the quantitative limits and the methods chosen for assessing the risks associated with financial derivative instrument transactions.

5.2.5. Personal transactions (Article 14 of Regulation 10-4)

A management company must establish written procedures regarding personal transactions. A list of all personal transactions notified to or identified by the management company shall be available at its registered office in Luxembourg.

At the moment of its authorisation, the management company must confirm that a written procedure regarding personal transactions has been put in place. This procedure may be based on the one established in this respect at the level of the group to which the management company belongs. It must be updated regularly. The CSSF reserves the right to demand a copy of this procedure at any moment.

5.2.6. Conflicts of interest (Articles 109 (1) b) and 111 d) of the 2010 Law)

Every management company must take reasonable measures so 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 clients.

Furthermore, it must try to avoid conflicts of interest and, when they cannot be avoided, ensure that the UCITS it manages are treated fairly.

5.2.6.1. Conflicts of interest policy (Articles 18 to 22 of Regulation 10-4)

To this end, the management company must establish, implement and maintain operational an effective conflicts of interest policy. This policy must be in writing and must be appropriate in relation to the size and organisation of the management company and the nature, scale and complexity of its activity. This policy must identify in particular the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interests of the UCITS, taking also into account the relationships with other members of the group. Likewise, the policy must include the procedures to be followed and the measures to be adopted in order to manage such conflicts of interest.

In accordance with Article 22, paragraph 1, of Regulation 10-4, the management company must maintain at its registered office and regularly update a record of the types of situation which may give rise to a conflict of interest.

In accordance with Article 22, paragraph 3 of Regulation 10-4, the management company must inform investors about the situations where the organisational or administrative arrangements made by the management company to manage conflicts of interest have not been sufficient to ensure, with reasonable confidence, that risks of damage to the interests

of the UCITS or its unitholders will be prevented. The transmission of such information must be made by any durable medium considered appropriate. In addition, the management company must indicate to investors the reasons for its decision in relation to these arrangements.

At the moment of its authorisation, the management company must confirm that the written procedures regarding conflicts of interest have been put in place. These procedures must regularly be updated so as to adapt them to the evolution of the management company's activity. The CSSF reserves the right to demand a written copy of these written procedures at any moment.

5.2.6.2. Strategy for the exercise of voting rights (Article 23 of Regulation 10-4)

The management company must, amongst others, develop an adequate and effective strategy for determining when and how voting rights attached to instruments held in the managed portfolios are to be exercised, so that these rights benefit exclusively the UCITS concerned.

An investment company that has designated a management company but has not specifically mandated the management company to exercise the voting rights attached to the instruments held in its portfolio, must develop its own strategy for the exercise of voting rights.

It is also acceptable for a management company, when establishing its own strategy for exercising voting rights, to refer either to the strategies established in this regard by the group to which it belongs or to recognised international standards.

A brief description of this strategy must be made available to investors free of charge, in particular by way of a website.

At the moment of its authorisation, the management company must confirm that a suitable and efficient strategy has been put in place permitting the exercise of voting rights attached to the instruments held in the portfolios in the exclusive interest of the UCITS concerned. This strategy must regularly be updated. The CSSF reserves the right to demand a copy of this strategy at any moment.

5.2.7. Rules of conduct (Article 111 a) and b) of the 2010 Law)

Regulation 10-4 specifies the content of certain rules of conduct provided for in Article 111 of the 2010 Law.

On the basis of the details provided for in Regulation 10-4, a management company must establish procedures, arrangements and policies which ensure, amongst others:

- that it acts in the best interests of the UCITS and their unitholders;

- that it executes the investment decisions taken for account of the UCITS in accordance with the objectives, the investment strategy and the risk limitations of such UCITS;
- that it takes all reasonable measures in order to execute directly all orders itself to obtain the best possible result, respectively in order to ensure that orders placed with other entities for execution are executed to obtain the best possible result. Contracts for execution of orders concluded with third parties must take this obligation into account;
- that it executes rapidly and equitably portfolio transactions on behalf of the UCITS it manages.

At the moment of its authorisation, the management company must confirm that the procedures, arrangements and policies regarding rules of conduct are in place. These procedures, arrangements and policies must regularly be updated in order to adapt them to the evolution of the management company's activity. The CSSF reserves the right to demand a copy of these procedures, arrangements and policies at any moment.

5.2.8. *Remuneration policy*

So as to promote sound and prudent risk management, every management company must implement a remuneration policy in conformity with Circular CSSF 10/437.

5.2.9. *Obligation to verify the existence of arrangements for internal governance regarding delegates*

In the case where the management company partly or wholly delegates one or several functions included in the collective management, it must verify that the delegates have taken suitable measures so as to comply with the requirements in the area of organisation, conflicts of interest and rules of conduct set out in Regulation 10-4. The abovementioned requirement also applies to partial delegation of one or several functions.

It must also effectively monitor the compliance with these requirements by the third party.

6. External audit (Article 104 of the 2010 Law)

Every management company must entrust the audit of its annual accounting documents to one or more *réviseurs d'entreprises agréés* (approved statutory auditors) who can prove that they have adequate professional experience.

Any change regarding the *réviseurs d'entreprises agréés* (approved statutory auditors) must be previously approved by the CSSF.

7. Conditions for authorisation to delegate (Article 110 (1) of the 2010 Law)

7.1. General principles

Every management company may be authorised to delegate to third parties, for the purpose of more efficient conduct of its activities, the power to carry out, on its behalf, one or more of its functions.

7.1.1. Regarding the activities that a management company may, in principle, delegate, the following tasks, amongst others, may be mentioned:

1. the functions included in the activity of collective portfolio management set out in annex II of the 2010 Law;
2. the risk management within the limit of point III.3. of Circular CSSF 11/512;
3. complaints handling within the limit of point 5.2.2. of this Circular;
4. the compliance function within the limit of point 5.2.3.1. of this Circular;
5. the audit function within the limit of 5.2.3.2. of this Circular and
6. the operation of the electronic system.

The monitoring of delegated activities to a third party cannot itself be delegated under any circumstances.

Any delegation of such significance that the management company would be transformed into a letterbox entity shall be considered as contravening the conditions which the management company is required to meet to obtain and maintain its authorisation.

The fact that the management company has delegated some functions to third parties does not affect the management company's liability.

7.1.2. Regarding the activities which must be assumed by a management company, the following tasks, amongst others, may be mentioned:

1. the determination of the general investment policy for each UCITS not having taken the form of a company;
2. the fixing, where applicable together with the board of directors of the UCITS having taken the form of a company, of the risk profile of each managed UCITS;
3. the interpretation of analyses of the risk management, including corrective measures which may be necessary, as the case may be;
4. the implementation and monitoring of a conflicts of interest policy;
5. the implementation and monitoring of a best execution policy;

6. in the absence of a representative price, assurance that the governing bodies of the UCITS have taken a decision relating to the determination of the probable realisation value estimated with care and in good faith and to give the governing bodies of the UCITS the necessary support for this kind of decision;
7. the decision regarding the choice of service providers to be appointed, and
8. the monitoring and control of delegated functions.

In the case where a management company delegates one or several of the functions mentioned above in point 7.1.1., the following preconditions have to be complied with:

7.1.3. The CSSF must be informed in an appropriate manner about the partial or total delegation of one or several functions. This requirement also applies to partial delegation of one or several functions. To this end, the management company must submit to the supervisory authority, for each managed UCITS, a description detailing the functions it intends to delegate, the undertakings to which they are delegated, as well as the management company's procedures to control the activities of the entities to whom the functions have been delegated. This description must contain the necessary elements enabling the CSSF to verify whether the preconditions have been effectively met.

The management company must also inform the CSSF if the delegates proceeds to a partial or total sub-delegation of its activity. The conditions linked to the sub-delegation are subject to the same requirements as those mentioned in the preceding paragraph.

7.1.4. Every use of an external service provider must be preceded by written due diligence by the management company on the provider. In the context of this requirement of diligence, the management company must, amongst others, identify the operational risks deriving from this delegation.

This due diligence must be available at the request of the CSSF.

7.1.5. A written contract must be concluded between the management company and the delegate.

7.1.6. The mandate must not prevent the effectiveness of the supervision over the management company; in particular, it must not prevent the management company from acting or the UCITS from being managed in the best interests of its investors.

In this respect, the delegation must notably be structured so as to guarantee compliance with the rules of conduct set forth in Article 111 of the 2010 Law and clarified by point 5.2.7. above and so as to ensure that this compliance can be controlled at any moment.

7.1.7. The management company and the delegate must establish, implement and maintain operational a business continuity plan permitting the re-establishment of the activity after a disaster and foreseeing a regular control of its capacities of preservation, in all cases where this appears necessary regarding the nature of the task or outsourced function.

7.1.8. Measures exist permitting the persons who conduct the business of the management company to effectively control at any time the activity of the undertaking to which the mandate was given. This requirement demands that the management company implements arrangements for control which allow the conducting officers and their staff access to the data documenting the activities performed by the delegate(s) for and on behalf of the management company and the UCITS under its management.

The control arrangements must cover the following elements the list of which is not exhaustive:

- a) the monitoring of the administration agent, including the registrar and transfer agent, with the verification of the existence of a second level monitoring system as regards the calculation of the NAV, the follow-up of the delivery time of the NAV, the follow-up of transactions which were not accounted for within the usual time limits, the approval of the valuation source used for the transferable securities, financial derivative instruments and unlisted instruments and control of the fees and commissions charged to the UCITS, of a procedure to reconcile the number of shares outstanding, etc. Where a second level monitoring system does not exist at the level of the service provider(s), the management company must implement its own second level monitoring system covering at least the abovementioned elements;
- b) the monitoring of the activity of the investment manager(s) with the implementation of a procedure to ensure that the assets of the UCITS managed are invested in accordance with the constitutional documents and the legal provisions in force, the monitoring of the number of pre-trade and post-trade incidents accompanied by the process for regularising incidents, to ensure that the managers respect the best execution policy, etc.;
- c) the monitoring of the marketing policy with the implementation of a procedure enabling the management company to be involved in decision-making concerning new countries of registration, the reimbursements to be paid to distributors, etc.;
- d) the monitoring of the exposure of the UCITS to market, liquidity, counterparty and concentration risks as well as to all other risks, including operational risks, which may be significant for the UCITS.

The conducting officers will regularly receive for all of the UCITS managed by the management company detailed reports on the results of these control arrangements.

The frequency of submission and the detail of such reports will be determined by the profile of the UCITS managed and their inherent risks.

The delegation of certain functions to third parties should not prevent the persons who conduct the business of the management company from having either electronic access to the data relating to UCITS or access upon simple request.

In the case where the delegate respects a system of internal control such as for example the ISAE 3402, it may take these elements into account in the organisation of its activity of control of the delegate. The same applies even if the third party to whom the management company delegates activities is subject to Directive 2004/39/EC of the European Parliament and the Council of 21 April 2004 on markets and financial instruments.

In addition, the management company can take into account when implementing its control arrangements transversal or specific competences existing within the group to which it belongs.

7.1.9. In accordance with Article 110 (1) f) of the 2010 Law, the mandate must not prevent the persons who conduct the business of the management company from giving additional instructions to the undertaking to which functions have been delegated at any time or from withdrawing the mandate with immediate effect when the interests of the investors so warrants.

The drafting of the agreements must take these requirements into account and specify the details thereof.

7.1.10. The undertaking to which functions will be delegated must be qualified and capable of exercising the functions in question, according to the nature of the functions to be delegated.

In addition to the authorisations which may be required by applicable regulations, the entities to which functions are delegated must prove that they have adequate human and technical resources with regard to the delegated functions.

7.1.11. The prospectuses of the UCITS list the functions which the management company has been authorised to delegate.

7.2. *Specific conditions for the delegation of the investment management function*

In addition to general provisions elaborated under point 7.1. "General principles" above, the following specific conditions are applicable.

7.2.1. Where the delegation concerns the investment management, the mandate may only be given to undertakings authorised or registered for the purpose of portfolio management and subject to prudential supervision.

In this respect, the entities to which the investment management has been delegated must be authorised under their national law, and, where applicable, under any other law applicable to the services provided.

The entities to which investment management has been delegated must be subject in their home Member State to permanent supervision by a supervisory authority set up by law with the aim of protecting investors.

Where the mandate concerning the investment management has been given to a third-country undertaking, the co-operation between the CSSF and the supervisory authority of this country must be ensured. The CSSF will determine which are the supervisory authorities fulfilling this condition.

No mandate relating to the core function of investment management can be given to the depositary, or to any other entity whose interests may conflict with those of the management company or the unitholders.

This provision does not prohibit the delegation of the investment management function to a company belonging to the same group as the depositary. In this event, the CSSF will only authorise the delegation if it has proof that measures protecting the interests of the management company and the unitholders have been put in place.

7.2.2. The identity of the entities to which the investment management function has been delegated must be published in the prospectus of the UCITS concerned.

7.2.3. While respecting the investment policy and limits contained in the UCITS' prospectus, the entities to which the investment management function has been delegated must manage the portfolio in accordance with the investment diversification criteria periodically laid down by the management company and the board of directors of the SICAV, respectively, in the case of a UCITS taking the form of a company.

Therefore, the delegation agreement will indicate the investment policy as well as the investment restrictions applicable to the UCITS (and to each compartment, if the delegation concerns one or more compartments of a UCITS with multiple compartments), and, where applicable, the specific asset allocation criteria defined by the board of directors of the management company and the UCITS having taken the form of a company, respectively. These provisions may be included in the delegation agreement by means of a reference to provisions contained in the prospectus of the UCITS concerned, without prejudice to specific instructions, which may be given from time to time by the board of directors of the management company of the UCITS having taken the form of a company, or by the persons who conduct the business of the management company. Where one of these elements is subject to modification, the agreement must be amended in due time in order to allow the delegates to comply with the new rules as soon as they come into force.

7.2.4. In view of the obligation of diligence provided for in Article 26 of Regulation 10-4, the management company must ensure that the investment decisions taken are based on qualitative, quantitative, reliable and up-to-date research. Furthermore, it must ensure that the investment decisions are executed according to the investment objectives and strategy and the risk restrictions of the UCITS managed.

7.3. Specific conditions for the delegation of the administration function of undertakings for collective investment

In addition to the general provisions elaborated under point 7.1. "General principles" above, the following specific conditions are applicable:

7.3.1. A management company established in Luxembourg may be authorised to delegate the administration of a UCITS that it manages to a third party having all the necessary authorisations and a suitable organisation in order to accomplish this function.

However, different rules of delegation in the area of administration of UCITS are applicable depending on the home Member State of the UCITS.

Therefore, the following scenarios must be distinguished:

a) a Luxembourg management company and a Luxembourg UCITS

In the case where a Luxembourg management company manages a Luxembourg UCITS, it is authorised to delegate the administration of this UCITS to a service provider established in the territory of Luxembourg (i.e. bank, professional of the financial sector, management company) and having all the necessary authorisations and a suitable organisation to perform this function.

b) a Luxembourg management company and a UCITS established in a Member State other than Luxembourg

In the case where a Luxembourg management company intends to manage UCITS established in a Member State other than Luxembourg, it can entrust the administration of this UCITS to a specialised third party established either in Luxembourg or in the home Member State of this UCITS. In these cases, the third party must have all the necessary authorisations and a suitable organisation to perform this function.

In the case where the management company uses an administrative agent established in a Member State other than Luxembourg, it must verify in the context of its due diligence process that the latter has an organisation equivalent to that of a Luxembourg administrative agent.

It must be remembered that the management company, in the two abovementioned cases, must ensure that the third party in charge of the administration employs accounting procedures and policies (i.e. application of the accounting rules of the home country of the UCITS, separate accounting for UCITS with multiple compartments, means permitting the identification and evaluation of the assets and liabilities of the UCITS) such as referred to in Article 9 of Regulation 10-4.

7.3.2. The management company must designate from amongst its staff a "responsible person for the accounting administration of UCITS". The name of this person must be communicated to the CSSF. This function may be combined with other functions.

7.3.3. The CSSF must be informed in advance of every sub-delegation that the third party undertakes, as the case may be, in the area of administration of UCITS.

8. Programme of activities (Article 102 (1) of the 2010 Law)

The request for authorisation of a management company includes a programme of activity which notably provides a description of the business development plan. The business development plan consists of information covering:

- a) the scope of the proposed services for the next three financial years concerning:
 - collective management (number of UCITS managed directly and under delegation, the law according to which the UCITS concerned have been set up, their net assets as well as the number and the net assets of the UCITS, managed directly and under delegation, created on the initiative of a company not belonging to the same group as the management company);
- b) the investment policies pursued by the UCITS managed, as well as the instruments and financial markets concerned;
- c) the risk management process in accordance with the format set out in the annex of CSSF Circular 11/512 (Article 42 (1) of the 2010 Law);
- d) the provisional accounts (profit and loss account and balance sheet) for three financial years as well as the development strategy for the management company.

II. Conditions for obtaining and maintaining the authorisation of management companies which carry out activities of collective management and management of portfolios of investments on a client-by-client basis as referred to in Article 101 (3) of the 2010 Law

All the conditions set forth under Chapter I above remain applicable. Additional requirements apply that are specific to the activity of the management of portfolios of investments on a client-by-client basis.

Thus, the programme of activity as set forth under Chapter I.8 contains, *inter alia*, information concerning the scope of services proposed for each of the next three financial years as regards:

- the management on a client-by-client basis of portfolios of investments (number of private clients, institutionals and pension funds, as well as assets managed according to the type of client, the instruments and financial markets concerned);

- the indication of the banks where the assets of the clients are deposited;
- the risk management policy applied with regard to discretionary management and
- the proposed ancillary services, where applicable.

The CSSF would like to clarify that certain provisions in the MiFID Directive 2009/49/EC as well as its implementing Directive 2006/73/EC are applicable to management companies providing the services of discretionary management. Accordingly, Articles 1-1, 37-1 and 37-3 of the Law of 5 April 1993 on the financial sector as well as Article 1 of the Grand-Ducal Regulation of 13 July 2007 on the organisational requirements and the rules of conduct in the financial sector are applicable *mutatis mutandis* to the provision by a management company of discretionary management services. In this context, the management company must provide confirmation, at the moment of its authorisation, that it completely adheres to the abovementioned MiFID provisions.

It should be noted that, insofar as the services provided by the management company referred to in this Chapter are the same for the management on a client-by-client basis as those provided by the private portfolio managers falling within the scope of Article 24-3 of the Law of 5 April 1993 on the financial sector, the same prudential rules are applicable. As a result, two of the conducting officers of the management company must permanently reside in Luxembourg.

The management company must also submit to the CSSF standard contracts of discretionary management/investment advice that it intends to have signed by its clients.

Every management company that provides investment portfolio management services, including those held by pension funds on a discretionary, client-by-client basis, in the context of a mandate given by the investors, must also comply, besides point I.3. "Own funds" of this Circular, with the provisions of Circular CSSF 07/290 on the definition of capital ratios pursuant to Article 56 of the Law of 5 April 1993 on the financial sector.

Finally, every management company whose authorisation covers the services set out in Article 101 (3) of the 2010 Law and thus ensuring discretionary management, must participate for these services in an investor compensation system set up in Luxembourg and recognised by the CSSF. It is therefore obliged to join the AGDL (*Association pour la Garantie des Dépôts Luxembourg*). A copy of the confirmation of this membership must be submitted without delay to the CSSF after the authorisation of the management company.

III. The management company and the principle of freedom of establishment and freedom to provide services, respectively (Articles 113, 114, 115, 116 and 117 of the 2010 Law)

1. Freedom to establish a branch

Every management company wishing to exercise activities or to provide services within the territory of another Member State by way of a branch must submit to the CSSF a notification concerning the information mentioned in Article 114 of the 2010 Law.

This notification must be accompanied by the following pieces of information:

- a) the Member State on the territory of which the management company plans to establish a branch;
- b) a programme of operations setting out the activities and services envisaged within the meaning of Article 101, paragraphs (2) and (3) as well as 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 regarding complaints handling as well as the provision of information, at the request of the public or the competent authorities of the home Member State of the UCITS;
- c) the address, in the management company's host Member State from which documents may be obtained, and
- d) the name of the conducting officer(s) responsible for the branch.

The notification file must be established in a language mutually acceptable by the CSSF and the competent authority of the host Member State.

The description of the management process mentioned in point b) above must be appropriate and proportionate to the activity and/or services actually provided at the level of the branch in the host country. It covers, if applicable, the services set out in Article 101 (3) of the 2010 Law, in this case mandates given by investors on a client-by-client basis.

Concerning the conducting officer(s) of a branch, every management company must add to the notification the following pieces of information:

- a recent curriculum vitae, signed and dated;
- a copy of the passport/identity card;
- a declaration of honour, as may be downloaded on the CSSF website (www.cssf.lu) and
- if available in the jurisdiction of the person concerned, a recent extract of the criminal record.

The management company appoints, from within its conducting officers, a person responsible for monitoring the activities of the branch whose name shall be communicated to the CSSF at the time of the notification. This person is responsible for coordinating the exchange of information between the branch(es) and the registered office of the management company in Luxembourg.

The *réviseur d'entreprises agréé* (statutory approved auditor) includes the branches when auditing the annual accounts of the management company.

2. Freedom to provide services

Every management company wishing to pursue activities or provide services within the territory of another Member State under the freedom to provide services must submit to the CSSF a notification containing the information mentioned in Article 115 of the 2010 Law.

This notification must be accompanied by the following pieces of information:

- a) the Member State on the the territory of which the management company intends to operate;
- b) a programme of operations stating the activities and services envisaged as referred to in Article 101, paragraphs (2) and (3), which shall include a description of the risk management process put in place by the management company. It shall also include a description of the procedures and arrangements regarding complaints handling as well as the provision of information, at the request of the public or the competent authorities of the home Member State of the UCITS.

The notification file must be established in a language mutually acceptable by the CSSF and the competent authority of the host Member State.

The description of the management process mentioned in point b) above must be appropriate and proportionate to the activity and/or services actually provided under the freedom to provide services. It covers, if applicable, the services provided for in Article 101 (3) of the 2010 Law, in this case the mandates given by investors on a client-by-client basis.

The management company must also provide a description of the main marketing techniques which it intends to use (regular trips to the host Member State, distance selling, etc.).

It should be clarified that under the terms of Article 113 of the 2010 Law, a management company which intends to provide only the distribution of units of the UCITS it manages in a Member State other than the UCITS' home Member State, without creating a branch, is therefore not subject to the provisions concerning the freedom to provide services.

3. General provisions in relation to freedom of establishment and freedom to provide services respectively

Where a management company wants to manage a UCITS of a Member State on a cross-border basis via the creation of a branch or via the freedom to provide services, it must provide the competent authorities of the UCITS' home Member State with the written agreement concluded with the depositary and with information relating to the modalities of delegation operated by the management company in relation to the functions referred to in Annex II of the 2010 Law as regards administration and investment management.

In addition, a management company which has established a branch or which acts on the basis of freedom to provide services in another Member State must notify any amendment to the information referred to under points b), c) and d) listed under 1. "Freedom to establish a branch" and 2. "Freedom to provide services" above to the competent authority of its host country as well as to the CSSF in writing at least one month prior to the entry into force of the change (Articles 114 (7) and 115 (4), respectively, of the 2010 Law).

IV. Principle of proportionality

The principle of proportionality may be invoked by a management company in the application of certain requirements set forth in Regulation 10-4 taking into account the nature, scale and complexity of its activities.

On this basis, a management company may be authorised to apply, subject to a prior and duly motivated application, the principle of proportionality in the organisation of its compliance (point 5.2.3.1.), internal audit (point 5.2.3.2.) and risk management (point 5.2.4.) functions. Under no circumstances may the principle of proportionality be invoked so as not to implement the abovementioned functions.

Furthermore, every management company may in the application of points 5.2.1. "*General requirements regarding procedures and organisation*", 5.1.1. "*Clarifications on the operating staff of a management company*" and 5.2.6.1. "*Conflicts of interest policy*" take into account the nature, scale and complexity of its activity, as well as the nature and range of services and activities undertaken.

In order to assess the principle of proportionality, the number of UCITS and UCIs managed by the management company, the total assets under management, the use of asset classes considered more risky, the extent of delegated functions, the possibility for the management company to benefit from specific intra-group expertise etc. are taken into consideration.

V. A SIAG within the meaning of Article 27 of the 2010 Law

Access to the activity of a SIAG within the meaning of Article 27 of the 2010 Law is subject to prior authorisation by the CSSF.

The conditions for obtaining and maintaining this authorisation are specified in this chapter. In this regard, it should be mentioned, in particular, that a SIAG is obliged:

- to have a capital of Euro 300,000 at the date of its authorisation,
- to submit at the moment of its authorisation a plan of operations (Article 27 (1)),
- to appoint at least two conducting officers (Article 27 (1)),
- to respect a certain number of conditions concerning delegation (Article 27 (2)),
- to act in accordance with the rules of conduct provided for in the 2010 Law (Article 27 (2)),
- to equip itself with procedures to ensure the handling of investors' complaints (Article 27 (2)),
- to have a sound accounting and administrative organisation (Article 27 (3)) and
- to implement a policy on management and measurement of risks (Article 42 (1)).

It follows from the abovementioned Articles that a SIAG must respect the majority of requirements in the area of organisation, rules of conduct, conflicts of interest and risk management which are also applicable to management companies.

As a result, every SIAG must not only have its registered office in Luxembourg but also its decision-making centre and its administrative centre as defined under point 5.1. "*Arrangements regarding central administration*" above.

A SIAG may delegate the administration of its portfolio(s) to a service provider established in Luxembourg (i.e. bank, professional of the financial sector, management company) having all the necessary authorisations and a suitable organisation in order to accomplish this function.

The provisions of Chapter I, points: 1 (basic principles), 2.2. ("sponsorship letter" (*lettre de patronage*)), 4. (board of directors / governing bodies), 6. (external audit), 5.2.2. (complaints handling), 5.2.4. (permanent risk management function and risk management process), 5.2.6. (conflicts of interest), 5.2.7. (rules of conduct), 5.2.8. (remuneration policy), 7. (delegation, with the exception of point 7.3.), 8. (programme of activities) and Chapters VII (prudential supervision) and VIII (final provisions) of this Circular are applicable *mutatis mutandis* to SIAGs.

On the basis of a duly motivated request, a SIAG may invoke the principle of proportionality with regard to the organisation of its permanent risk management function (Chapter I, point 5.2.4.1.). Under no circumstances may the principle of proportionality

be invoked so as not to implement the function mentioned above. Finally, it should be mentioned that the provisions of Chapter III regarding the freedom to provide services, respectively the freedom of establishment, are not applicable to a SIAG.

VI. (...) ³

VII. Prudential supervision of a self-managed investment company in transferable securities (SIAG)

Articles 27 and 39 of the 2010 Law require a SIAG to comply with the provisions applicable as regards prudential supervision. Every SIAG is invited to submit specific financial information to the CSSF, which must be drawn up on a quarterly basis. This financial information will be used by the CSSF for the purpose of the prudential supervision of a SIAG.

The schedules for the financial information to be periodically submitted to the CSSF are set out in appendix 1, 2 and 3. The information in question concerns the "Financial situation of the SIAG" (Table SIAG 1A), the "Profit and loss account" (Table SIAG 1B) and the "Number of staff" (Table SIAG Staff).

The tables must be drawn up on a quarterly basis. The reporting dates are the last day of each calendar-quarter, i.e. 31 March, 30 June, 30 September and 31 December; the tables in question must be received by the CSSF before the 20th of the month following the reference date.

The final tables must be communicated to the CSSF one month after the ordinary general meeting that approved the annual accounts.

VIII. Final provisions

1. Repealing provision

This Circular repeals Circulars CSSF 03/108, CSSF 05/185 and CSSF 11/508.

2. Entry into force

This Circular enters into force with immediate effect.

3. Transitional provisions

Every management company existing at the moment of entry into force of this Circular has until 30 June 2013 to comply with the provisions relating to the use of own funds

³ Chapter repealed by Circular CSSF 15/633

(Chapter I, point 3.), to management bodies (Chapter I, point 4.), to the provisions relating to central administration (Chapter I, point 5.1.) as well as to the rules of delegation (Chapter I, point 7.).

Also, every SIAG existing at the moment of the entry into force of this Circular has until 30 June 2013 to comply with the provisions relating to the management bodies (Chapter I, point 4.) as well as to the rules of delegation (Chapter I, point 7.). Furthermore, it must take the necessary measures to implement a decision-making centre and an administrative centre in Luxembourg as defined under point 5.1. of this Circular.

Yours faithfully,

COMMISSION FOR THE SUPERVISION OF THE FINANCIAL SECTOR

Claude SIMON
Director

Andrée BILLON
Director

Simone DELCOURT
Director

Jean GUILL
General Director

Appendix 1

Table SIAG IA

FINANCIAL SITUATION AS AT ...
(Expressed in the currency of the capital)

Company:
Status: SICAV Other
Responsible person:
Frequency: quarterly

ASSETS	AMOUNT
1. Formation expenses	
2. Fixed assets	
2.1 Intangible fixed assets	
2.2 Tangible fixed assets	
2.3 Financial fixed assets	
3. Current assets	
3.1 Portfolio Securities	
3.1.1 Shares and other transferable securities with variable income	
3.1.1.1 Shares excluding units of UCIs	
3.1.1.2 Shares listed or traded on another regulated market	
3.1.1.3 Unlisted shares	
3.1.1.4 Other holdings	
3.1.1.5 Units of UCIs	
3.1.2 Bonds and other debt instruments	
3.1.2.1 Short-term securities (initial maturity: one year or more)	
3.1.2.2 Medium-/long-term securities (initial maturity: more than one year)	
3.1.3 Money market instruments	
3.1.4 Warrants and other rights	
4. Financial instruments	
4.1 Options	
4.1.1. Call option	
4.1.2. Put option	
4.2 Futures	
4.3 Other	
5. Liquid assets	
6. Other assets	

Overall total (1+2+3+4+5+6)

LIABILITIES	AMOUNT
1. Capital and reserves	
2. Loans	
3. Provisions for risks and expenses	
3.1. Provision for pensions and similar obligations	
3.2. Provisions for taxation	
3.3. Other provisions	
4. Debts	
5. Profits of the financial year	

Overall total (1+2+3+4+5)

Appendix 2

Table SIAG 1B

PROFIT AND LOSS ACCOUNT...
(Expressed in the currency of the capital)

Company:
Status: SICAV Other
Responsible person:
Frequency: quarterly

AMOUNT

Total income

1. Dividend
2. Interest on bonds and other debt securities
3. Bank interest
4. Other income
 - a) Commissions received
 - b) Other

Total costs

1. Commissions
 - a) Advice and/or management commissions
 - b) Depositary bank commission
 - c) Other commissions
2. Administrative expenses
 - a) Central administration expenses
 - b) Audit expenses
 - c) Other administrative expenses
3. Tax
 - a) Subscription tax
 - b) Other taxes
4. Interest paid
5. Other costs

Net investments profit

6. Net realised gains and losses
7. Variation in non realised gains and losses

Operating profit

Appendix 3

Table SIAG Staff

	<u>NUMBER OF STAFF AS AT</u>	00/01/00
Company:	0	
Responsible person:	0	

	Male		Female		Total	
	Luxembourgish **	Foreign **	Luxembourgish **	Foreign **	Luxembourgish **	Foreign **
Conducting officers *					0	0
Employees					0	0
Workers					0	0
Total	0	0	0	0	0	0
Part-time staff					0	0

	Total
Total number of staff of the self-managed investment company	0
Including persons on secondment or made available by a company having its registered office in Luxembourg	

* According to Article 27 (1), second indent of the Law of 17 December 2010 on undertakings for collective investment, the activity of a SIAG must always be conducted by two conducting officers.

** This is to provide information on people according to their nationality: Luxembourgish or foreign.