

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

Luxembourg, 30 July 2003

To all the Luxembourg UCIs and
management companies

CSSF CIRCULAR 03/108

Re: Luxembourg management companies subject to Chapter 13 of the Law of 20 December 2002 concerning undertakings for collective investment, as well as Luxembourg self-managed investment companies subject to Article 27 or Article 40 of the Law of 20 December 2002 concerning undertakings for collective investment.

Dear Sir, Madam,

This Circular primarily aims to clarify the application modes of certain articles of Chapter 13 of the Law of 20 December 2002 concerning undertakings for collective investment and modifying the amended Law of 12 February 1979 concerning the value added tax (“Law of 20 December 2002”), introducing a specific regime applicable to management companies managing UCITS governed by Directive 85/611 as amended (hereinafter “Directive 85/611”). Moreover, the Circular specifies the financial information that management companies under Chapter 13 must pass on to the CSSF.

Chapter 13 of the Law of 20 December 2002 applies to all the Luxembourg management companies that manage at least one authorised UCITS according to Directive 85/611, including their branches.

Management companies subject to Chapter 14 of the Law of 20 December 2002 and management companies which manage neither a Luxembourg UCI nor a UCITS, do not fall under the provisions of this Circular.

It has to be noted that according to the transitional provisions of Article 135 of the Law of 20 December 2002, authorised management companies or those which will be authorised by 13 February 2004, may either opt to submit themselves to Chapter 13 or to Chapter 14 of the Law of 20 December 2002. Those management companies that are submitted to Chapter 14 and manage UCITS under Directive 85/611 must comply with the provisions of Chapter 13 by 13 February 2007 at the latest. Management companies of UCITS authorised after 13 February 2004 automatically fall under Chapter 13 of the Law of 20 December 2002.

Moreover, this Circular applies *mutatis mutandis* to investment companies under Directive 85/611 as amended by the Directive of the European Parliament and of the Council of 21 January 2002, and which have not designated a management company (Articles 27(2) and 40), except for points I.4 (shareholders), I.6. (own funds) and II. (prudential supervision of a management company under the terms of Chapter 13 of the Law of 20 December 2002).

Finally, the transitional provisions of Article 134 applicable to them must be taken into account.

I. Conditions for obtaining and maintaining authorisation for management companies, whose activities are restricted to collective management as provided by Article 77(2).

1. Basic principles

Access to the business of management companies as referred to under Chapter 13 of the Law of 20 December 2002 (“management companies”) is subject to prior authorisation to be granted by the CSSF (Article 77).

The same condition applies to the opening of agencies in Luxembourg and branches abroad by Luxembourg management companies.

The principles of free establishment and free provision of services applies to Luxembourg branches of UCITS management companies that are authorised and supervised by the relevant authorities in another Member State.

2. Programme of activity

The request for authorisation must include a programme of activity as provided by Article 78(1)c), containing, inter alia, a description of the business development plan. Information contained in the programme of activity include:

- a) the scope of the proposed services for the next three financial years as regards:
 - collective management (number of UCITS directly managed or under delegation, law under 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 or under delegation, created at the initiative of a company not belonging to the same group as the management company);

- b) investment policies of the managed UCITS, as well as the instruments and financial markets concerned;
- c) the risk management method (Article 42(1)).

3. Central administration and infrastructure

The central administration of a management company must be located in Luxembourg. This requirement implies that the presence of a management company in Luxembourg must not be restricted to a legal or statutory head office. This notion must be read in a broader context and notably includes areas concerning the infrastructure and accounting and IT systems (Article 78(1)).

a) Human infrastructure

The staff of the management company must be permanent and qualified to carry out the envisaged activities. The CSSF must at all times be informed about the number of personnel, who must in principle be on the payroll of the company.

The CSSF may grant an exemption concerning this point and allow that the entire, or only part of the personnel 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 availability must be submitted to the CSSF. Furthermore, the contract must stipulate rules concerning the management of conflicts of interests between the persons concerned and the undertaking, if the latter belongs to the same group.

The CSSF must be notified of the identity of the persons who conduct the business of the management company. The business must be conducted by at least two persons fulfilling the requirements as regards professional repute and experience as referred to under point 5 of this circular. The CSSF must be able to contact the persons who conduct the business of the management company directly. These persons must be in a position to provide all the information required by the CSSF for its supervisory mission. At least one of these persons must be on site.

These persons must not necessarily be employees of the management company they manage, provided that an agreement exists that precisely defines their rights and duties and, where applicable, to whom they are reporting. The persons concerned are allowed to manage several management companies, on condition that it is proved to the CSSF that each of these persons is in the position to accomplish his function at all times, taking account in particular of the activities of the management companies concerned.

The principle of independence of the management company from the depositary prevents the persons who conduct the business of the management company from being employed by the depositary of a UCITS, which it manages.

b) Technical infrastructure

A description of the IT equipment, the information sources and the software that is being used must be submitted to the CSSF.

The management company must have sound administrative and accounting procedures, control and safeguard arrangements for electronic data processing and adequate internal control mechanisms; it must be structured and organised in such a way as to minimise the risk of UCITS' or clients' interests being prejudiced by conflicts of interest between the company and its clients, between one of its clients and another, between one of its clients and a UCTIS or between two UCITS (article 84(1)). These prudential rules will be specified in a circular at a later stage.

c) Precondition for authorisation of delegation

Management companies are authorised to delegate to third parties one or several of their own functions for the purpose of more efficient conduct of the companies' business (Article 85(1)).

The fact that the management company delegated some functions to third parties does not affect the management company's and the depositary's liabilities.

The following preconditions must be met in order to be able to obtain an authorisation of delegation from the CSSF:

- *Common preconditions for the authorisation of delegation*
 - The CSSF must be informed in an appropriate manner about the delegation of functions. To this end, the management company must submit to the supervisory authority, for each managed UCITS, a description specifying the functions it intends to delegate, the undertakings to which they are delegated, as well as the management company's procedures to monitor the activities of the entities concerned. This specification must contain the necessary elements enabling the CSSF to verify whether the preconditions are effectively met.
 - The mandate must not prevent the effectiveness of supervision over the management company; in particular, it must not prevent the management company from acting, nor the UCTIS from being managed, in the best interest of its investors.

In this respect, the delegation must notably be structured so as to guarantee compliance with the rules of conduct according to Article 86 and ensure that it can be controlled at any moment.

The rules of conduct will be specified in a circular at a later stage.

- Measures enabling the persons who conduct the business of the management company to effectively monitor at any time the activity of the undertaking to which the mandate was given, must be set up.

This requirement demands that the management company sets up a monitoring infrastructure enabling its directors to access the data documenting the activities accomplished for and on behalf of the management company and the UCITS under its management by the delegate(s).

According to the delegated functions, the directors receive, for each UCTIS managed and on a regular basis, detailed statements allowing them to assess in particular:

- That the assets of the UCITS managed are invested in conformity with the constitutive documents and applicable legal provisions;
- That a risk management method is set up and being applied, allowing to monitor and measure at any time the risks of the positions and the contribution thereof to the general risk profile of the UCITS portfolio;
- The monitoring of the marketing policy of the UCITS.

The frequency and the detail of such reports are determined by the profile of the UCITS and their inherent risks.

The delegation of certain functions to third parties should not prevent the persons who conduct the business of management companies to gain access to the accounting data relating to UCITS in real time or upon simple request.

- The mandate shall not prevent the persons who conduct the business of the management company from giving any additional instructions to the undertaking to which functions have been delegated at any time, nor from withdrawing the mandate with immediate effect when the interest of the investors so warrants.

The delegation agreement must take into account these requirements and specify the details thereof, notably where the agreement can be terminated with immediate effect.

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

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

- The prospectus of the UCITS lists the functions which the management company has been permitted to delegate.

The CSSF may require, if the interest of investors so warrants, that the identity of the undertakings to which functions have been delegated by the management company, is published in the prospectus.

- *Preconditions specific to the investment management function*
 - Where the delegation concerns the investment management, the mandate may only be given to undertakings authorised or registered for the purpose of asset management and subject to prudential supervision.

In this respect, the undertakings to which the management of investments has been delegated must be authorised under their domestic law, and, where applicable, under any law applicable to the services provided.

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

- The identity of the entities to which the investment management function has been delegated must, in principle, be published in the prospectus of the UCITS concerned.
- The delegation must be in accordance with the investment allocation criteria periodically laid down by the management company.

Consequently, the delegation agreement will indicate the investment policy as well as the investment restrictions applicable to the UCITS (and 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. 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, or the persons who conduct the business of the management company. Where one of these elements is subject to modifications, 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.

- Where the mandate concerns the investment management and 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 determines which are the supervisory authorities fulfilling these conditions.

- A mandate relating to the core function of investment management may not be given to a depositary, nor to any other undertaking whose interests may conflict with those of the management company or the unit-holders.

This provision does not exclude the delegation of the investment management function to a company belonging to the same group as the depositary. In such event, the CSSF will only authorise the delegation if it has evidence that measures protecting the interests of the management company and the unit-holders are set up.

4. Shareholders

Prior to granting the authorisation to carry out the business of a management company, the CSSF must be notified of the identities of the direct or indirect shareholders or partners, natural or legal persons, who have qualifying holdings, and of the amounts of these holdings (Article 79(1)). The CSSF must be convinced that the holders of a qualified holding are of sufficiently good repute, and perform their powers so as to ensure a sound and prudent management of the entity. A qualifying

holding means any direct or indirect holding which represents 10% or more of the capital or voting rights of a company, or which makes it possible to exercise a significant influence over the management of the management company in which that holding subsists (Article 1(23)).

Furthermore, the direct or indirect shareholders must be structured in such a way so that the authorities competent for the prudential supervision of the company or, where applicable, the persons with whom the company has close links, are clearly determined and that the performance of this supervision is not hindered (Article 78(2)).

Finally, the management company must inform the CSSF of any changes in the natural or legal persons that have qualifying holdings or holdings allowing them to exercise a notable influence, as soon as it becomes aware thereof (Article 83(1)).

5. Professional repute and experience

The directors of a UCITS must be of sufficiently good repute and sufficiently experienced in relation to the type of UCITS to be managed. To that end, the names of these directors and of every person succeeding them in office must be communicated forthwith to the CSSF (Article 93(3)). Directors shall mean those persons who, under the law or the instruments of incorporation, in this case the members of the board of directors, represent the UCITS or who effectively determine the policy of the UCITS.

The persons who conduct the business of the management company must also be of sufficiently good repute and sufficiently experienced in relation to the type of UCITS managed by the said company (Article 78(1)b)) in order to be granted authorisation prior to their appointment.

6. Own funds

One of the major changes brought about by the new law concerns the conditions relating to the management companies' own funds. Management companies must henceforth have an initial capital of at least 125,000 euros and are required to provide an additional amount of own funds depending on the portfolios under management (Article 78(1)a)).

Irrespective of the amount of these requirements, the own funds of the management company shall never be less than the amount prescribed in Annexe IV of Directive 93/6/EEC.

In case a management company of UCITS also provides services of management of investment portfolios, including those owned by pension funds, on a discretionary and client-by-client basis, in accordance with a mandate given by investors, the provisions of CSSF Circular 00/12 defining the ratios of own funds applicable by virtue of Article 56 of the amended law of 5 April 1993 on the financial sector are applicable.

7. External audit

Management companies must entrust the audit of their annual accounting documents to one or several external auditors who have sufficient professional experience (Article 80(1)).

II. Conditions for obtaining and maintaining the authorisation as management company carrying out activities of collective portfolio management and management of portfolios of investments on a client-by-client basis in accordance with Article 77(3)

Further to the conditions set forth under Chapter I, which remain applicable, additional requirements specific to the activities of management of portfolios of investments on a client-by-client basis apply.

Thus, the programme of activity as set forth under Chapter I.2 contains, inter alia, information concerning the scope of services proposed for each of the next three financial years as regards:

- management on a client-by-client basis of portfolios of investments (number of private and institutional clients, pension funds, as well as assets managed according to the type of client);
- The proposed ancillary services, where applicable.

In addition, insofar as the services provided by the management companies referred to in the present 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 B) of the amended Law of 5 April 1993 on the financial sector, the same prudential rules are, in principle, applicable.

For instance, the (two) persons who conduct the business of the management company must be on site. These supplementary specific requirements will be specified in a circular at a later stage, if necessary.

III. Prudential supervision of a management company under Chapter 13 of the Law of 20 December 2002

Article 85(2) provides that the CSSF is in charge of the supervision of management companies. Henceforth, management companies, including their branches, are invited to submit financial information to the CSSF on a quarterly basis. This financial information is used by the CSSF for the purpose of the prudential supervision of the management companies.

The schedules of financial information to be periodically submitted to the CSSF are appended to the present Circular. The information concerned is divided into two parts.

The first part generally applies to all the management companies of UCITS and concerns the “Financial situation of the management company” (Table SG 1A), the “Profit and loss account” (Table SG 1B) and “Management of UCIs” (Table SG 1C).

The second part concerns financial information regarding the other possible activities carried out by the management company (Table SG 2).

All the tables have to 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 CSSF must receive the tables before the 20th of the month following the reference date. The tables have to be submitted to the CSSF for the first time on 31 December 2003.

IV. Prudential supervision of a self-managed investment company in transferable securities (“SIAG”, *société d’investissement en valeurs mobilières auto-gérée*)

Articles 27 and 40 impose on SIAGs to comply with the provisions applicable as regards prudential supervision. The SIAGs, including their branches, are invited to submit specific financial information to the CSSF, which must be drawn up on a quarterly basis. This financial information is used by the CSSF for the purpose of the prudential supervision of the SIAGs.

The schedules for the financial information to be periodically submitted to the CSSF are appended hereto. The information to be supplied concerns the “Financial situation of the SIAG” (Table SIAG 1A) and the “Profit and loss account” (Table SIAG 1B).

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 CSSF must receive the tables before the 20th of the month following the reference date. The tables have to be submitted to the CSSF for the first time on 31 December 2003.

Yours sincerely,

COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER

Charles KIEFFER
Director

Arthur PHILIPPE
Director

Jean-Nicolas SCHAUS
Director general

Annexes: 6

Table SG 1A**FINANCIAL SITUATION AS AT ...**

(In the currency of the capital)

Company:

Person in charge:

Periodicity: quarterly

ASSETS	AMOUNT
1. Subscribed, but not paid-in capital	
2. Incorporation expenses	
3. Fixed assets	
3.1. Intangible fixed assets	
3.2. Tangible fixed assets	
3.3. Financial fixed assets	
Shares in affiliated undertakings	
Loans and advances to affiliated undertakings	
Participating interests	
Loans and advances to undertakings in which the company has participating interests	
Securities held as fixed assets	
Others	
4. Current assets	
4.1. Cash	
4.2. Assets lodged with a bank, assets in postal cheque accounts	
4.3. Loans and advances	
4.4. Transferable securities	
4.5. Others	
5. Accruals and deferrals	
6. Various	
7. Loss for the financial year	
Total (1+2+3+4+5+6+7)	

LIABILITIES	AMOUNT
1. Equity capital	
1.1. Subscribed capital or endowment capital	
1.2. Premiums	
1.3. Revaluation reserve	
1.4. Legal reserve	
1.5. Other reserves	
1.6. Profit or loss brought forward	
2. Subordinated debts	
3. Provisions for liabilities and charges	
3.1. Provisions for pensions and similar commitments	
3.2. Provisions for taxes	
3.3. Other provisions	
4. Debts	
5. Profit for the financial year	
Total (1+2+3+4+5)	

TABLE SG 1B**PROFIT AND LOSS ACCOUNT AS AT ...**

(in the currency of the capital)

Company:

Person in charge:

Periodicity: quarterly

WORDING		AMOUNT
1. Interests and commissions received	+	
2. Interests and commission paid	-	
3. Other operating income	+	
4. Gross profit or loss		
5. Income from transferable securities	+	
a) Income from participating interests		()
b) Income from other transferable securities		()
c) Income from participating interests or shares in affiliated undertakings		()
6. General administrative expenses	-	
6.1. Staff costs		
Wages and salaries		()
Social security contribution		()
Of which social security contributions covering pensions		()
6.2. Other administrative expenses		()
7. Value adjustments regarding:	-	
7.1. Intangible and tangible assets		()
7.2. Financial fixed assets and transferable securities being part of the current assets		()
7.3. Others		()
8. Value re-adjustments	+	
9. Provisions for general risks	-	
10. Tax on profits from ordinary activities	-	
11. Profit or loss on ordinary activities after tax	+/-	
12. Extraordinary income	+	
13. Extraordinary charges	-	
14. Extraordinary profit or loss	+/-	
15. Tax on extraordinary profit or loss	-	
16. Other taxes not shown under the preceding items	-	
17. Profit or loss for the financial year	+/-	

TABLE SG 1C**MANAGEMENT OF UCIs AS AT...**

(in the currency of the capital)

Company:

Person in charge:

Periodicity: quarterly

Portfolios of the UCIs managed	Number	Evaluation value
I. UCIs managed		
FCP Part I		
Others		
SICAV Part I		
Others		
Other UCIs		
Total		
II. UCIs managed under delegation		

	Amount
Own funds of the management company	

N.B.

UCIs managed: i.e. the UCIs managed by the management company, including the portfolios for which it has delegated the management but excluding the portfolios it manages under delegation.

UCIs managed under delegation: i.e. the UCIs managed by the management company under delegation.

TABLE SG 2**OTHER ACTIVITIES AS AT ...**

(in the currency of the capital)

Company:

Person in charge:

Periodicity: quarterly

	Number	Amount
1. Management of portfolios of investment		
Management mandate		
Of which: pension funds		
Commissions received during the quarter	XXXXXXXXXXXXXXXXXXXX	
2. Investment advice		
Existing advisory agreements		
Commissions received during the quarter		
3. Safekeeping and administration of UCIs		
Deposits of UCI units		
Commissions received during the quarter	XXXXXXXXXXXXXXXXXXXX	

N.B.

1. Management of portfolios of investment

- 1) The total value of assets under management must be based on the market value at the time of the drawing up of the table.
- 2) As regards the commissions received during the quarter, the table must indicate the gross amount of the commissions received (management commissions, performance commissions, etc.) for the private portfolio management during the quarter for which the table is drawn up.

2. Investment advice

- 1) Advisory agreements, i.e. agreements signed with a client in order to provide him, over a determined or undetermined period of time, advice on instruments referred to under Section B of Annexe II of the amended Law of 5 April 1993 on the financial sector.
- 2) Amount: i.e. indicate the average volume of the portfolio for which advice was given during the current financial year; calculation, based on the amount determined at the end of each month, of the average amount of the clients' portfolios under the advisory agreement for the current financial year, by including the amount of the portfolio on the date of closing of the previous financial year.
- 3) Amount of commissions received during the current month: on the date of drawing up the table, the amount of commissions received for investment advice during the quarter must be indicated.

3. Safekeeping and administration of UCIs

- 1) Deposit of units/shares of UCIs: indicate the number of deposits as well as the valuation of these deposits.
- 2) Commissions received during the quarter: indicate at the date of the drawing up the table, the amount of commissions received for the deposit service provided for UCIs.

Table SIAG 1A**FINANCIAL SITUATION AS AT ...**
(in the currency of the capital)

Company:

Status: SICAV Others

Person in charge:

Periodicity: quarterly

ASSETS	AMOUNT
1. Incorporation 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 variable-yield transferable securities	
3.1.1.1. Shares, excluding units/shares of UCIs	
3.1.1.2. Shares listed or traded on another regulated market	
3.1.1.3. Non-listed shares	
3.1.1.4. Other participating interest	
3.1.1.5. Units/shares of UCIs	
3.1.2. Bonds and other debt securities	
3.1.2.1. Short-term securities (initial due date: one year or more)	
3.1.2.2. Medium/long-term securities (initial due date: more than one year)	
3.1.3. Money market instruments	
3.1.4. Warrants and other rights	
4. Financial instruments	
4.1. Option contracts	
4.1.1. Options purchased	
4.1.2. Options sold	
4.2. Forward contracts	
4.3. Others	
5. Liquid assets	
6. Other assets	
	Total (1+2+3+4+5+6)
LIABILITIES	AMOUNT
1. Equity capital	
2. Loans	
3. Provisions for liabilities and charges	
3.1. Provisions for pensions and similar commitments	
3.2. Provisions for taxes	
3.3. Other provisions	
4. Debts	
5. Profit for the financial year	
	Total (1+2+3+4+5)

Table SIAG 1B**PROFIT AND LOSS ACCOUNT...**

(in the currency of the capital)

Company:

Status: SICAV Others

Person in charge:

Periodicity: quarterly

	AMOUNT
Total income	
1. Dividends	
2. Interests on bonds and other debt securities	
3. Interests from banks	
4. Other income	
a) Commissions received	
b) Others	
Total charges	
1. Commissions	
a) Advisory and/or management commissions	
b) Depositary bank commissions	
c) Other commissions	
2. Administration charges	
a) Central administration charges	
b) Audit and supervisory charges	
c) Other administration charges	
3. Taxes	
a) Subscription tax	
b) Other taxes	
4. Interests paid	
5. Other charges	
Net profit or loss on investments	
6. Realised net profit or loss	
7. Variation of unrealised net profit or loss	
Net profit or loss on operations	