

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

Luxembourg, 21 January 2003

To all the Luxembourg undertakings for collective investment and those intervening in the functioning and supervision thereof

CSSF CIRCULAR 03/87

Re: Coming into effect of the Law of 20 December 2002 regarding undertakings for collective investment

Dear Sir, Madam,

We are pleased to draw your attention to the adoption of the Law of 20 December 2002 regarding undertakings for collective investment (*Mémorial A* – No 151 of 31 December 2002).

The Law of 20 December 2002 translates Directives 2001/107/EC and 2001/108/EC into Luxembourg legislation and brings about a set of amendments to the Luxembourg legal framework regarding undertakings for collective investment (UCIs).

This Circular aims to succinctly present to the professionals of collective management the main amendments introduced by the Law of 20 December 2002, which concern:

- I. the definitions specified by the Law;
- II. the extension of the investment policy of UCIs subject to Part I of the Law;
- III. the rules regarding management companies;
- IV. the simplified prospectus and the publication of UCI documents;
- V. the transitional provisions.

I. - Definitions

Article 1 of the Law provides a set of definitions, which are largely drawn from those contained in Directives 2001/107/EC and 2001/108/EC.

Therefore, the Law provides a definition for the term “transferable securities”.

According to Article 1, point 26, “transferable securities” shall be understood as:

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

excluding the techniques and instruments referred to in Article 42 of the Law.

II. - Extension of the investment policy of UCITS subject to Part I of the Law

Compared to the Law of 30 March 1988 relating to UCIs, the Law extends the range of assets in which UCITS subject to Part I of the Law may invest and allows, under certain conditions, investments in money market instruments, units of UCITS and/or other UCIs, deposits and derivative financial instruments.

Transferable securities and other liquid financial assets in which UCITS subject to Part I of the Law may invest must fulfil a set of criteria, which are laid down in Article 41(1) of the Law.

In addition to broadening the range of eligible assets for UCITS subject to Part I of the law, the law also adjusts the specific limits regarding investments in transferable securities and other liquid financial assets referred to in Article 41(1).

Under specific circumstances, the law also allows UCITS subject to Part I to depart from certain investment limits, permitting them to replicate certain recognised stock or debt securities indices.

Detailed rules concerning the investment policy and limits applicable to UCITS subject to Part I are set out in Chapter 5 of the Law.

III – Rules governing management companies

Part IV of the Law (Chapters 13 and 14), which contains detailed rules on management companies, distinguishes between management companies managing one or more UCITS in accordance with the Directive 85/611/EEC as amended and other Luxembourg management companies which are not managing UCITS in accordance with the aforementioned Directive.

A. - General provisions for all management companies

The Law stipulates that the access to the business of management companies managing at least one Luxembourg UCI is subject to prior authorisation granted by the CSSF.

Under the terms of the Law, the CSSF may only authorise a management company if its central administration and registered office are located in Luxembourg.

The Law further stipulates that the application for authorisation must set out the organisational structure of the management company.

The authorisation of a management company is subject to the condition that its annual accounting records are audited by at least one suitably experienced external auditor. Management companies existing before the effective date of the Law, have 12 months from this date to comply with the aforementioned provision.

B. - Provisions relating to management companies under Directive 2001/107/EC

Chapter 13 of the Law contains detailed rules governing management companies under Directive 2001/107/EC and refers to all management companies that manage at least one UCITS under the terms of the Directive 85/611/EEC as amended. These management companies may also manage UCIs which are not covered by the Directive 85/611/EEC as amended.

The Law extends the scope of activities of management companies complying with Directive 2001/107/EC.

The Law stipulates that these management companies, in addition to the collective management for UCIs, may also provide discretionary portfolio management services for individual and institutional investors, including pension funds.

The Law defines the conditions for access to and the conduct of business of management companies under Directive 2001/107/EC.

Article 78 of the Law lays down the conditions for access to this activity and contains, inter alia, capital requirements applicable to management companies which manage at least one UCITS under the terms of the Directive 85/611/EEC as amended.

These capital requirements concern initial capital and the additional amount of own funds, which is required when the value of the portfolios of the management company exceeds EUR 250 million.

For the purpose of calculating the amount of own funds, the portfolios for which the management has been delegated to a third party are taken into account, whereas portfolios managed under delegation are excluded.

The Law stipulates that the management company's own funds shall never be less than the amount prescribed in Annexe IV to Directive 93/6/EEC.

Article 78, paragraph (1), point b) specifies that the persons who effectively conduct the business of the management company and which must be at least two in number, must be of sufficiently good repute and sufficiently experienced in relation to the type of UCITS managed.

IV. - Simplified prospectus and publication of UCI documents

The Law introduces the simplified prospectus, which shall contain, in a summarised form, the key information enabling investors to make an informed judgement of the investment proposed to them and, in particular, of the inherent risks.

The obligation to publish a simplified prospectus does not apply to UCIs subject to Part II of the Law. Thus, only UCITS subject to Part I of the Law are required to publish such a simplified prospectus, whereas UCIs subject to Part II of the Law are authorised, but are not obliged, to do so.

The simplified prospectus should be structured and written in such a way as to be easily understood by the average investor. It may be enclosed to the full prospectus in a detachable form.

It should be noted that the simplified prospectus can be used as a marketing tool in all Member States without alteration except for its translation.

The contents of the simplified prospectus are set out in Schedule C of Annexe I to the Law.

As far as the publication of UCI documents are concerned, Article 114 of the Law introduces a new provision according to which the CSSF can publish UCI documents or have them published by whatever means it seems fit.

This text aims to remove any legal obstacles from the publication of UCI documents within the context of a project such as that generally referred to as “*référentiel de la place*”, which aims to create a database centralising information on Luxembourg UCIs.

V. - Transitional provisions

The Law is effective as from 1 January 2003.

Owing to the conditions governing the transposition provided for by Directives 2001/107/EC and 2001/108/EC, it was decided to draw up a new Law on UCIs rather than modify the Law of 30 March 1988 as amended.

As Directives 2001/107/EC and 2001/108/EC contain transitional provisions setting a time limit expiring on 13 February 2007 to allow UCITS existing before 13 February 2002 and management companies authorised before 13 February 2004 to comply with the new provisions, the transitional and repealing provisions of the law contain detailed provisions designed to transpose these transitional provisions of the Directives.

A. – Transitional provisions regarding UCIs

The Law provides that UCITS subject to Part I of the Law of 30 March 1988 relating to UCIs as amended, set up before 13 February 2002, may opt, until 13 February 2007, to remain subject to the Law of 30 March 1988 as amended or to conform to the Law of 20 December 2002.

From 13 February 2007 onwards, they shall ipso jure be governed by the Law of 20 December 2002.

The Law stipulates that the creation of a new compartment does not invalidate the aforementioned option, which must be exercised by the UCITS as a whole, all compartments included.

UCITS subject to Part I of the Law of 30 March 1988 relating to UCIs as amended, created between 13 February 2002 and 1 January 2003 may opt, until 13 February 2004, to remain subject to the Law of 30 March 1988 as amended or to submit to the Law of 20 December 2002.

From 13 February 2004 onwards, they shall ipso jure be governed by the Law of 20 December 2002.

UCITS under Article 1 of the Law of 30 March 1988 relating to UCIs as amended, excluding those governed by Article 2 of the same Law, created between 1 January 2003 and 13 February 2004, may opt to submit to the Law of 30 March 1988 as amended or to the Law of 20 December 2002.

From 13 February 2004, they shall ipso jure be governed by the Law of 20 December 2002.

UCIs created before 1 January 2003 and governed by Part II of the Law of 30 March 1988 as amended remain subject to the provisions of the Law of 30 March 1988 relating to UCIs as amended until 13 February 2004. They may however submit to the Law of 20 December 2002 as from 1 January 2003.

As from 13 February 2004, they shall ipso jure be governed by the Law of 20 December 2002.

UCIs created between 1 January 2003 and 13 February 2004 may opt to submit to the provisions of the Law of 20 December 2002 or to the provisions of the Law of 30 March 1988 relating to UCIs as amended.

As from 13 February 2004, they shall ipso jure be governed by the Law of 20 December 2002.

All UCIs created after 13 February 2004 fall ipso jure under the Law of 20 December 2002, unless they fall under a special law.

An investment company is considered created as from the date of its incorporation by notarial deed.

A *fond commun de placement* (FCP) is deemed created as of the date of the signature of the management agreement or the date of entry into force thereof, if expressly provided for in the management agreement.

B. – Transitional provisions for management companies

Management companies existing before 1 January 2003 are ipso jure subject to the provisions of Chapter 14 and deemed authorised in accordance with Article 91(1) of the Law of 20 December 2002.

Where such management companies manage UCITS falling under the Directive 85/611/EEC as amended, they must comply with the provisions laid down in Chapter 13 of the Law of 20 December 2002 by 13 February 2007.

Management companies, which manage UCITS under Directive 85/611/EEC as amended and which are authorised between 1 January 2003 and 13 February 2004, must comply with the provisions of Chapter 13 by 13 February 2007 at the latest.

In this context, it is particularly noteworthy that the Law of 30 March 1988 as amended will remain effective until 13 February 2007 and that, consequently, two laws will simultaneously govern UCIs until that date.

The CSSF will provide further details on other issues raised by the Law of 20 December 2002 by means of Circulars. These CSSF Circulars will, inter alia, deal with the following:

- rules concerning Luxembourg management companies;
- rules of conduct for professionals carrying out collective management services in Luxembourg;
- risk management and valuation techniques for derivative transactions.

The rules set forth in Circular IML 91/75 will also be amended and realigned by means of a new CSSF Circular.

Yours faithfully,

COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER

Arthur PHILIPPE
Director

Jean-Nicolas SCHAUS
Director General