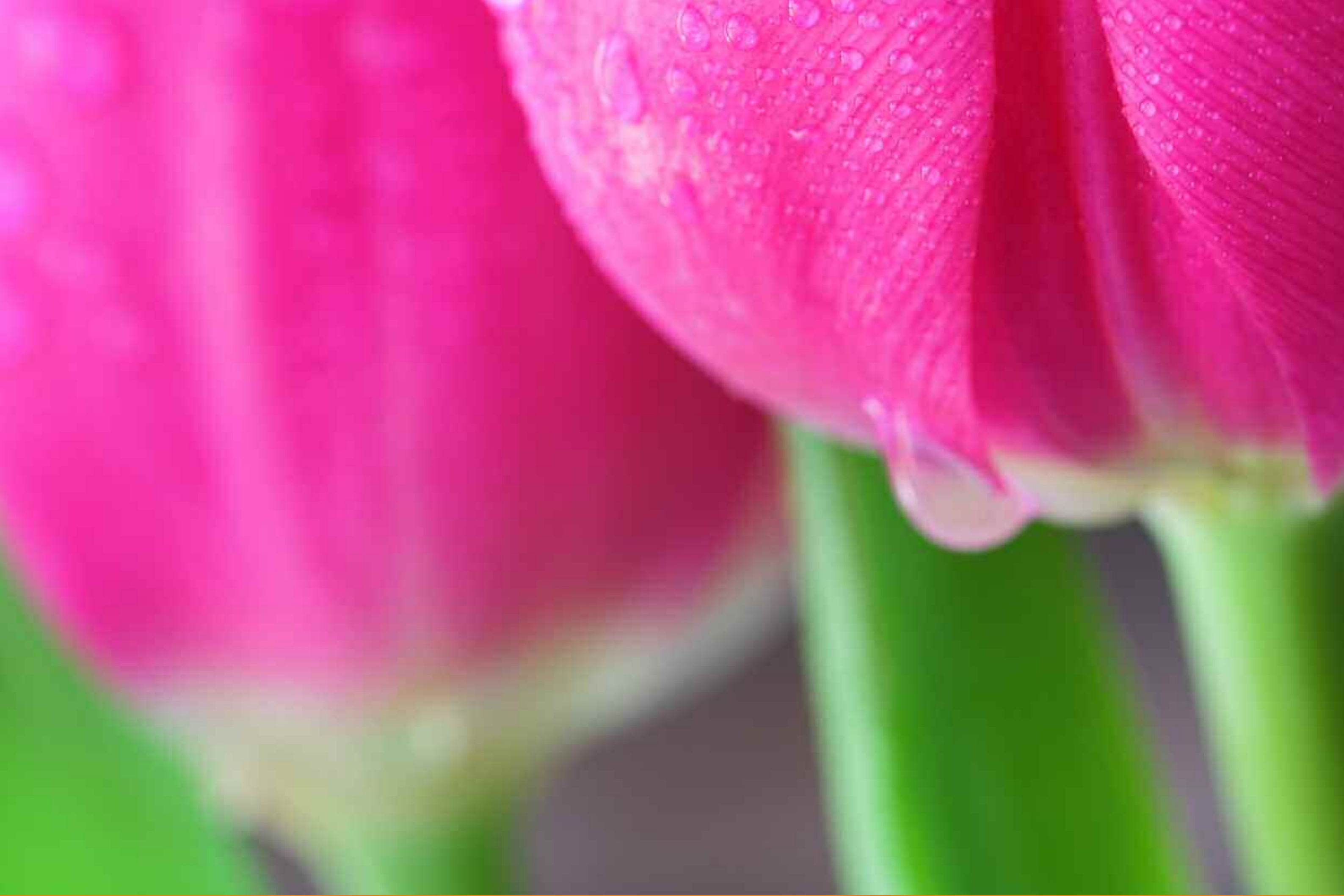

CLIFFORD CHANCE

Law dated 17 December 2010 on undertakings for collective investment

contents

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Preface

The amended law dated 17 December 2010 relating to undertakings for collective investment has transposed into Luxembourg law the Directive of the European Parliament and of the Council of the European Union of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (2009/65/EC).

The terms used in the Luxembourg law correspond to a large extent to those of the European Directive. In certain cases, deviations from the terms of the Directive are referred to in footnotes. The footnotes also provide certain explanations *inter alia* relating to the specific structures and procedures existing in Luxembourg.

Introductory part – Definitions

Art. 1

For the purposes of this Law:

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

2) "depositary" means a credit institution entrusted with the duties as set out in Articles 17, 18, 33 and 34 of this Law for Luxembourg UCIs;

3) "initial capital" means the funds as referred to in Article 57, items a) and b) of Directive 2006/48/EC;

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

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

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

7) "Directive 97/9/EC" means the Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor compensation schemes;

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

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

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

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

12) "parent undertaking" means an undertaking which owns the following rights:

    a) it has the majority of shareholders' or members' voting rights of another undertaking; or

    b) it has the right to appoint or remove the majority of the members of the administrative, management or supervisory board of another undertaking and is at the same time a shareholder or member of that undertaking; or

    c) it has the right to exercise a dominant influence over an undertaking of which it is a shareholder or member, pursuant to a contract entered into with that undertaking or to a statutory provision in its articles of incorporation where the law governing that undertaking allows it to be subject to such contracts or statutory provisions; or

    d) it is a shareholder or member of an undertaking and controls alone, pursuant to an agreement entered into with other shareholders or members of this undertaking, the majority of the voting rights of the shareholders or members of the latter; or

e) it may exercise or effectively exercises a dominant influence over another undertaking; or

f) it is placed under management on a unified basis with another undertaking;

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

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

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

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

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

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

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

20) "merger" means an operation whereby:

a) one or more UCITS or investment compartments thereof, the "merging UCITS", on being dissolved without going into liquidation, transfer all of their assets and liabilities to another existing UCITS or an investment compartment thereof, the "receiving UCITS", in exchange for the issue to their unitholders of units of the receiving UCITS and, if applicable, a cash payment not exceeding 10% of the net asset value of those units;

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

c) one or more UCITS or investment compartments thereof, the "merging UCITS", which continue to exist until the liabilities have been discharged, transfer their net assets to another investment compartment of the same UCITS, to a UCITS which they form or to another existing UCITS or an investment compartment thereof, the "receiving UCITS";

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

    a) at least two of which are established in different Member States; or

    b) established in the same Member State into a newly constituted UCITS established in another Member State;

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

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

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

    a) “participation”, which means the ownership, direct or by way of control, of 20% or more of the voting rights or capital of an undertaking; or

    b) “control”, which means the relationship between a “parent undertaking” and a “subsidiary”, as defined in Articles 1 and 2 of Seventh Council Directive 83/349/EEC of 13 June 1983 based on Article 54, paragraph (3), point g), of the Treaty on consolidated accounts and in all the cases referred to in Article 1 paragraphs (1) and (2) of Directive 83/349/EEC, or a similar relationship between any natural or legal person and an undertaking.

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

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

25) “UCI” means undertaking for collective investment;

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

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

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

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

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

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

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

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

34) “transferable securities” means:

- shares in companies and other securities equivalent to shares in companies (“shares”);
- bonds[1] and other forms of securitised debt (“debt securities”);
- any other negotiable securities which carry the right to acquire any such transferable securities by subscription or exchange.

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

[1] The French version of Directive 2009/65/EC uses “bonds” (*obligations*) as a defined term whereas the English version uses the term “debt securities”.

Part I – UCITS
Chapter 1 – General provisions and scope

Art. 2

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

(2) For the purposes of this Law, but subject to Article 3, UCITS shall be undertakings:

- the sole object of which is the collective investment in transferable securities or in other liquid financial assets referred to in Article 41, paragraph (1) of this Law of capital raised from the public and which operate on the principle of risk spreading; and
- the units of which are, at the request of holders, redeemed[2] directly or indirectly, out of those undertakings' assets. Action taken by a UCITS to ensure that the stock exchange value of its units does not significantly vary from their net asset value shall be regarded as equivalent to such redemption.

(3) Such undertakings may be constituted in accordance with contract law (common fund[3] managed by a management company[4]) or under statute (investment company[5]).

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

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

Art. 3

The following shall not be subject to this Part:

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

Art. 4

A UCITS shall be deemed to be established in Luxembourg if this UCITS is authorised in accordance with Article 129 of this Law.

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[2] Whilst the English version of the Directive 2009/65/EC uses the terms "repurchase or redeem" (in French "*rachat ou remboursement*"), the law only uses the term "*rachat*" which corresponds to the term "repurchase". This translation will however use "redemption" which is the term most commonly used in the industry.

[3] The French version of the law uses the term "*fonds commun de placement*".

[4] The French version of the law uses the term "*société de gestion*".

[5] The French version of the law uses the term "*société d'investissement*".

Chapter 2 – Common funds in transferable securities

Art. 5

For the purposes of this Part, there shall be regarded as a common fund any undivided collection of transferable securities and/or other liquid financial assets referred to in Article 41, paragraph (1), made up and managed according to the principle of risk-spreading on behalf of joint owners who are liable only up to the amount contributed by them and whose rights are represented by units intended for placement with the public by means of a public or private offer.

Art. 6

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

Art. 7

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

Art. 8

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

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

Such signatures may be reproduced mechanically.

(2) Ownership of units shall be determined and transfer thereof shall be effected in accordance with the rules laid down in Articles 40 and 42 of the Law of 10 August 1915 on commercial companies, as amended[6].

Art. 9

(1) Units shall be issued at a price obtained at by dividing the net asset value of the common fund by the number of units outstanding; such price may be increased by expenses and commissions, the maximum amounts and procedures for

[6] Articles 40 and 42 of the law of 10 August 1915 concerning commercial companies, as amended, reads:

"40. Ownership of registered shares shall be established by an entry in the register prescribed in the foregoing Article.

Certificates recording such entries shall be issued to the shareholders.

Transfers shall be carried out by means of a declaration of transfer entered in the said register, dated and signed by the transferor and the transferee or by their duly authorised representatives, and in accordance with the rules on the assignment of claims laid down in Article 1690 of the Civil Code. The company may accept and enter in the register a transfer on the basis of correspondence or other documents recording the agreement between the transferor and the transferee.

Subject to any contrary provisions of the articles, transmission, in the case of death, shall be validly established vis-à-vis the company, provided that no objection is lodged, on production of a death certificate, the certificate of registration and an affidavit (*acte de notoriété*) attested by a *juge de paix* or a notary.

42. The transfer of bearer shares shall be made by the mere delivery of the certificate."

collection of which may be determined by a CSSF regulation[7].

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

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

Art. 10

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

Art. 11

(1) Neither the unit-holders nor their creditors may require the distribution or the dissolution of the common fund.

(2) A common fund must redeem its units at the request of any unit-holder.

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

Art. 12

(1) By way of derogation from Article 11, paragraph (2):

a) the management company may in the cases and according to the procedures provided for by the management regulations of the fund temporarily suspend the redemption of units. Suspension may be provided for only in exceptional cases where circumstances so require and where suspension is justified having regard to the interest of the unit-holders;

b) the CSSF may, in the interest of the unit-holders or of the public, require the suspension of the redemption of units, in particular where the provisions of laws, regulations or agreements concerning the activity and operation of the common fund are not observed.

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

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

a) during any period where there is no management company or depositary;

b) where the management company or the depositary is put into liquidation or declared bankrupt or seeks a composition with creditors, a suspension of payment or a controlled management or is the subject of a similar measure.

[7] No such regulation exists at this time.

Art. 13

(1) The management company shall draw up the management regulations for the common fund. These management regulations must be lodged with the registry[8] of the district court[9] and their publication in the *Mémorial*[10] will be made through a notice advising of the deposit of the document with the registry, all in accordance with the provisions of the Law of 10 August 1915 on commercial companies, as amended. The provisions of such management regulations shall be deemed accepted by the unit-holders by the mere fact of the acquisition of such units.

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

a) the name and duration of the common fund, the name of the management company and of the depositary;

b) the investment policy according to its proposed specific objectives and the criteria therefore;

c) the distribution policy within the scope of Article 16;

d) the remunerations and expenditures which the management company is empowered to charge to the common fund as well as the method of calculation of such remunerations;

e) the provisions as to publications;

f) the date of the closing of the accounts of the common fund;

g) the cases where, without prejudice to legal grounds, the common fund shall be dissolved;

h) the procedures for amendment of the management regulations;

i) the procedure for the issue of units;

j) the procedure for the redemption of units and the conditions under which redemptions are carried out and may be suspended.

Art. 14

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

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

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

Art. 15

The management company must fulfill its obligations with the diligence of a salaried agent[11]; it shall be liable to the unit-holders for any loss resulting from the non-fulfilment or improper fulfilment of its obligations.

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[8] The lodging is in fact made with the *Registre de Commerce et des Sociétés*.

[9] The French version of the law uses the term "*tribunal d'arrondissement*".

[10] The *Mémorial C, Recueil des Sociétés et Associations* is the part of the official gazette in which certain required corporate publications and notifications are made.

[11] The French version of the law uses the term "*mandataire salarié*".

Art. 16

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

Art. 17

(1) The custody of the assets of a common fund must be entrusted to a depositary.

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

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

(4) The depositary's liability shall not be affected by the fact that it has entrusted all or some of the assets in its custody to a third party.

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

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

(6) The depositary is required to provide the CSSF on request with all the information that the depositary has obtained in the exercise of its duties and which is necessary to enable the CSSF to monitor compliance by the common fund with this Law.

Art. 18

(1) The depositary shall carry out all operations concerning the day-to-day administration of the assets of the common fund.

(2) The depositary must moreover:

a) ensure that the sale, issue, redemption and cancellation of units effected on behalf of the common fund or by the management company are carried out in accordance with the law and the management regulations;

b) ensure that the value of units is calculated in accordance with the law and the management regulations;

c) carry out the instructions of the management company, unless they conflict with the law or the management regulations;

d) ensure that in transactions involving the assets of the common fund, the consideration is remitted to it within the usual time limits;

e) ensure that the income of the common fund is applied in accordance with the management regulations.

(3) Where the management company's home Member State is not the same as that of the common fund, the depositary must sign a written agreement with the management company regulating the flow of information deemed necessary to allow it to perform the functions described in Articles 17 (1) and (4) and 18 (2) and in other laws, regulations or administrative provisions which are relevant for the depositary.

Art. 19

(1) The depositary shall be liable in accordance with Luxembourg law to the management company and the unit-holders for any loss suffered by them as a result of its unjustifiable failure to perform its obligations or its improper performance of them.

(2) Liability to unit-holders shall be invoked indirectly through the management company. Should the management company fail to act despite a written notice to that effect from a unit-holder within a period of three months following receipt of such a notice, such unit-holder may directly invoke the liability of the depositary.

Art. 20

In the context of their respective roles, the management company and the depositary must act independently and solely in the interest of the unit-holders.

Art. 21

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

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

b) in the case of voluntary withdrawal of the depositary or of its removal by the management company; until the replacement of the depositary, which must happen within two months, the depositary shall take all necessary steps to ensure the good preservation of the interests of the unit-holders;

c) where the management company or the depositary has been declared bankrupt, has entered into a composition with creditors, has obtained a suspension of payment, has been put under court controlled management, or has been the subject of similar proceedings or has been put into liquidation;

d) where the authorisation of the management company or the depositary has been withdrawn by the competent authority;

e) in all other cases provided for in the management regulations.

Art. 22

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

a) upon the expiry of any period as may be fixed by the management regulations;

b) in the event of cessation of their duties by the management company or by the depositary in accordance with Article 21, points b), c), d) and e), if they have not been replaced within two months, without prejudice of the specific circumstance referred to under point c) below;

c) in the event of bankruptcy of the management company;

d) if the net assets of the common fund have fallen for more than six months below one fourth of the legal minimum provided for in Article 23 hereafter;

e) in all other cases provided for in the management regulations.

(2) Notice of the event giving rise to liquidation shall be published without delay by the management company or the depositary. If they fail to do so, such notice will be published by the CSSF at the expense of the common fund. This notice shall be published in the *Mémorial* and in at least two newspapers with adequate circulation, one of which at least must be a Luxembourg newspaper.

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

Art. 23

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

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

A CSSF regulation may increase such minimum amount to a maximum of two million five hundred thousand euro (EUR 2,500,000)[12].

Art. 24

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

The order addressed to the management company by the CSSF to put a common fund into liquidation shall be published without delay by the management company or the depositary. If they fail to do so, such notice shall be published by the CSSF at the expense of the common fund. The notice shall be published in the *Mémorial* and in at least two newspapers with adequate circulation, one of which at least must be a Luxembourg newspaper.

[12] No such regulation exists at this time.

Chapter 3 – SICAVs investing in transferable securities

Art. 25

For the purposes of this Part, SICAVs shall be taken to mean those companies which have adopted the form of a public limited company[13] governed by Luxembourg law,

- whose exclusive object is to invest their funds in transferable securities and/or other liquid financial assets referred to in Article 41, paragraph (1) of this Law in order to spread the investment risks and to ensure for their unit-holders the benefit of the result of the management of their assets; and
- whose units are intended to be placed with the public by means of a public or private offer; and
- whose articles of incorporation provide that the amount of the capital shall at any time be equal to the net asset value of the company.

Art. 26

(1) SICAVs shall be subject to the provisions applicable to public limited companies, insofar as this Law does not derogate therefrom.

(2) The articles of incorporation of a SICAV and any amendment thereto shall be recorded in a special notarial deed drawn up in French, German or English as the appearing parties may decide. By derogation from the provisions of the Decree of 24 Prairial, year XI, where this deed is drawn up in English, the requirement to attach a translation into an official language to that deed when it is filed with the registration authorities, does not apply.

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

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

Art. 27

(1) The minimum capital of a SICAV which has not designated a management company may not be less than three hundred thousand euro (EUR 300,000) at the time of authorisation. The minimum capital of any SICAV, including SICAVs which have designated a management company, must reach one

[13] The French version of the law uses the term "*société anonyme*".

million two hundred and fifty thousand euro (EUR 1,250,000) within a period of six months following the authorisation of the SICAV. A CSSF regulation may raise such minimum amounts up to a respective maximum of six hundred thousand euro (EUR 600,000) and two million five hundred thousand euro (EUR 2,500,000)[14].

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

- the application for authorisation shall be accompanied by a business plan setting out, *inter alia*, the organisational structure of the SICAV;
- the directors[15] of the SICAV shall be of sufficiently good repute and be sufficiently experienced also in relation to the type of business carried out by such company. To that end, the names of the directors and of every person succeeding them in office must be communicated forthwith to the CSSF. The conduct of the SICAV's business must be decided by at least two persons meeting such conditions. "Directors" shall mean those persons who, under the law or the instruments of incorporation, represent the SICAV, or who effectively determine the policy of the company;
- moreover, where close links exist between the SICAV and other natural or legal persons, the CSSF shall grant authorisation only if those links do not prevent the effective exercise of its supervisory functions.

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

The SICAV shall communicate to the CSSF the information it requires.

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

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

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

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

a) does not make use of its authorisation within twelve months, expressly renounces the authorisation or has ceased the activity covered by this Law for more than six months;

b) has obtained the authorisation by making false statements or by any other irregular means;

[14] No such regulation exists at this time.

[15] The French version of amended Directive 2009/65/EC and the law use the term "*dirigeants*" and the German version of amended Directive 2009/65/EC uses the term "*Geschäftsleiter*".

c) no longer fulfils the conditions under which authorisation was granted;

d) has seriously and/or systematically infringed the provisions of this Law or the regulations adopted pursuant to this Law;

e) falls within any of the cases where this Law provides for withdrawal.

(2) Articles 110, 111 and 112 of Chapter 15 shall apply to SICAVs that have not designated a management company authorised pursuant to Directive 2009/65/EC, provided that the words “management company” shall be construed as “SICAV”.

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

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

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

Art. 28

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

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

(2) a) The units shall be issued at a price obtained at by dividing the net asset value of the SICAV by the number of units outstanding; such price may be increased by expenses and commissions, the maximum amounts and procedures for collection of which may be determined by a CSSF regulation[16].

b) The units shall be redeemed at a price obtained at by dividing the net asset value of the SICAV by the number of shares outstanding; such price may be decreased by expenses and commissions, the maximum amounts and procedures for collection of which may be determined by a CSSF regulation[17].

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

[16] No such regulation exists at this time.

[17] No such regulation exists at this time.

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

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

Where the interest of the unit-holders so requires, redemptions may be suspended by the CSSF, if the provisions of laws, regulations or articles of incorporation concerning the activity and operation of the SICAV are not observed.

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

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

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

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

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

Art. 29

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

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

(3) In the case of issue of new units, pre-emptive rights may not be claimed by existing unit-holders unless the articles of incorporation provide for such a right by an express provision.

Art. 30

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

(2) If the capital of the SICAV falls below one fourth of the minimum capital, the directors or the management organ, as the case may be, shall submit the question of the dissolution

of the SICAV to a general meeting for which no quorum shall be prescribed; dissolution may be resolved by unit-holders holding one quarter of the units represented at the meeting.

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

Art. 31

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

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

(3) SICAVs are not subject to the provisions in respect of payment of interim dividends as set out in Article 72-2[18] of the Law of 10 August 1915 on commercial companies, as amended.

Art. 32

For companies to which this chapter applies, the words “public limited company”[19] or “European company (SE)” shall be replaced by the words “investment company with variable capital”[20] or the letters “SICAV”, or by the words “European investment company with variable capital”[21] or “SICAV-SE”.

Art. 33

(1) The safekeeping of the assets of a SICAV must be entrusted to a depositary.

(2) The depositary’s liability shall not be affected by the fact that it has entrusted all or some of the assets in its custody to a third party.

(3) The depositary must moreover:

a) ensure that the sale, issue, redemption and cancellation of units effected by or on behalf of the SICAV are carried out in accordance with the law and the articles of incorporation of the SICAV;

b) ensure that in transactions involving the assets of the SICAV, the consideration is remitted to it within the usual time limits;

c) ensure that the income of the SICAV is applied in accordance with its articles of incorporation.

(4) In the case where a SICAV has designated a management company, if the management company’s home Member State is not the same as that of the SICAV, the depositary must sign a written agreement with the management company regulating the flow of information deemed necessary to allow it to perform the functions set out in Article 33 (1), (2) and (3) and in other laws, regulations or administrative provisions which are relevant for the depositary.

Art. 34

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

[18] Article 72-2 sets out the conditions under which a company may pay out interim dividends.

[19] The French version of the law uses the term “*société anonyme*” or S.A.

[20] The French version of the law uses the term “*société d’investissement à capital variable*”.

[21] The French version of the law uses the term “*société européenne d’investissement à capital variable*”.

(2) The depositary must be a credit institution within the meaning of the Law of 5 April 1993 concerning the financial sector, as amended.

(3) The directors of the depositary shall be of sufficiently good repute and be sufficiently experienced also in relation to the type of SICAV concerned. To that end, the names of the directors and of every person succeeding them in office must be communicated forthwith to the CSSF.

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

(4) The depositary is required to provide the CSSF on request with all information that the depositary has obtained in the exercise of its duties and which is necessary to enable the CSSF to monitor compliance by the SICAV with this Law.

Art. 35

The depositary shall be liable in accordance with Luxembourg Law to the investment company and the unit-holders for any loss suffered by them as a result of its unjustifiable failure to perform its obligations or its improper performance of them.

Art. 36

The duties of the depositary or of the management company in the case of a SICAV having designated a management company, shall cease, respectively, regarding the SICAV:

a) in the case of voluntary withdrawal of the depositary or of its removal by the SICAV; until the replacement of the depositary, which must happen within two months, the depositary must take all necessary measures for the good preservation of the interests of the unit-holders;

b) in the case of voluntary withdrawal of the designated management company or of its removal by the SICAV, provided that it is replaced by another management company authorised in accordance with Directive 2009/65/EC;

c) in the case of withdrawal of the designated management company or of its removal by the SICAV, the SICAV having decided to adopt the status of a self-managed SICAV;

d) where the SICAV, the depositary or the designated management company has been declared bankrupt, has entered into a composition with creditors, has obtained a suspension of payment, has been put under court-controlled management, or has been the subject of similar proceedings, or has been put into liquidation;

e) where the authorisation of the SICAV, the depositary or the designated management company has been withdrawn by the competent authority;

f) in all other cases provided for in the articles of incorporation.

Art. 37

In carrying out its role as depositary, the depositary must act solely in the interest of the unit-holders.

Chapter 4 – Other investment companies in transferable securities

Art. 38

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

- whose exclusive object is to invest their funds in transferable securities and/or in other liquid financial assets referred to in Article 41, paragraph (1) of this Law in order to spread the investment risks and to ensure for their unit-holders the benefit of the results of the management of their assets; and
- whose shares or units are intended to be placed with the public by means of a public or private offer provided that the words "investment company"[22] appear on all their deeds, announcements, publications, letters and other documents.

Art. 39

Articles 26, 27, 28 with the exception of paragraphs (8) and (9), 30, 33, 34, 35, 36 and 37 of this Law are applicable to investment companies subject to this Chapter.

[22] The French version of the law uses the term "*société d'investissement*".

Chapter 5 – Investment policy of a UCITS

Art. 40

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

Art. 41

(1) The investments of a UCITS must comprise only one or more of the following:

a) transferable securities and money market instruments admitted to or dealt in on a regulated market within the meaning of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments;

b) transferable securities and money market instruments dealt in on another regulated market in a Member State which is regulated, operates regularly and is recognised and open to the public;

c) transferable securities and money market instruments admitted to official listing on a stock exchange in a non-Member State of the European Union or dealt in on another regulated market in a non-Member State of the European Union which is regulated, operates regularly and is recognised and open to the public, provided that the choice of the stock exchange or the market has been provided for in the management regulations or in the instruments of incorporation of the UCITS;

d) recently issued transferable securities and money market instruments, provided that:

- the terms of issue include an undertaking that application will be made for admission to official listing on a stock exchange or to another regulated market which operates regularly and is recognised and open to the public, provided that the choice of the stock exchange or the market has been provided for in the management regulations or in the instruments of incorporation of the UCITS;
- such admission is secured within one year of issue.

e) units of UCITS authorised according to Directive 2009/65/EC and/or other UCIs within the meaning of Article 1, paragraph (2), points a) and b) of Directive 2009/65/EC, whether established in a Member State of the European Union or not, provided that:

- such other UCIs are authorised under laws which provide that they are subject to supervision considered by the CSSF to be equivalent to that laid down in Community law, and that cooperation between authorities is sufficiently ensured;
- the level of protection for unit-holders in the other UCIs is equivalent to that provided for unit-holders in a UCITS, and in particular that the rules on assets segregation, borrowing, lending, uncovered sales of transferable securities and money market instruments are equivalent to the requirements of Directive 2009/65/EC;
- the business of the other UCIs is reported in half-yearly and annual reports to enable an assessment of the assets and liabilities, income and operations over the reporting period;
- no more than 10% of the assets of the UCITS or of the other UCIs, whose acquisition is contemplated,

can, according to their management regulations or their instruments of incorporation, be invested in aggregate in units of other UCITS or other UCIs;

f) deposits with credit institutions which are repayable on demand or have the right to be withdrawn, and maturing in no more than twelve months, provided that the credit institution has its registered office in a Member State or, if the registered office of the credit institution is established in a third country, provided that it is subject to prudential rules considered by the CSSF as equivalent to those laid down in Community law;

g) financial derivative instruments, including equivalent cash-settled instruments, dealt in on a regulated market referred to in points a), b) and c) above or financial derivative instruments dealt in over-the-counter ("OTC derivatives"), provided that:

- the underlying consists of instruments covered by Article 41, paragraph (1), financial indices, interest rates, foreign exchange rates or currencies, in which the UCITS may invest according to its investment objectives as stated in the UCITS' management regulations or instruments of incorporation;
- the counterparties to OTC derivative transactions are institutions subject to prudential supervision and belonging to the categories approved by the CSSF; and
- the OTC derivatives are subject to reliable and verifiable valuation on a daily basis and can be sold, liquidated or closed by an offsetting transaction at any time and at their fair value at the UCITS' initiative;

h) money market instruments other than those dealt in on a regulated market and which fall under Article 1 of this Law, if the issue or issuer of such instruments is itself regulated for the purpose of protecting investors and savings, and provided that such instruments are:

- issued or guaranteed by a central, regional or local authority or central bank of a Member State, the European Central Bank, the European Union or the European Investment Bank, a third-country or, in the case of a Federal State, by one of the members making up the federation, or by a public international body to which one or more Member States belong; or
- issued by an undertaking any securities of which are dealt in on regulated markets referred to in points a), b) or c) above; or
- issued or guaranteed by an establishment subject to prudential supervision, in accordance with criteria defined by Community law, or by an establishment which is subject to and complies with prudential rules considered by the CSSF to be at least as stringent as those laid down by Community Law; or
- issued by other bodies belonging to the categories approved by the CSSF, provided that investments in such instruments are subject to investor protection equivalent to that laid down in the first, the second or the third indent and provided that the issuer is a company whose capital and reserves amount to at least ten million euro (EUR 10,000,000) and which presents and publishes its annual accounts in accordance with the fourth Directive 78/660/EEC, is

an entity which, within a group of companies which includes one or several listed companies, is dedicated to the financing of the group or is an entity which is dedicated to the financing of securitisation vehicles which benefit from a banking liquidity line.

(2) A UCITS shall not, however:

a) invest more than 10% of its assets[23] in transferable securities and money market instruments other than those referred to in paragraph (1);

b) acquire either precious metals or certificates representing them.

A UCITS may hold ancillary liquid assets.

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

Art. 42

(1) A management company having its registered office in Luxembourg must employ a risk management process which enables it to monitor and measure at any time the risk of the positions and their contribution to the overall risk profile of the portfolio; it must employ a process for accurate and independent assessment of the value of OTC derivative instruments. It must regularly communicate to the CSSF, for each UCITS it manages, in accordance with the detailed rules defined by the latter, in regard to the types of derivative instruments, the underlying risks, the quantitative limits and the methods which are chosen in order to estimate the risks associated with transactions in derivative instruments.

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

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

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

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

The exposure is calculated taking into account the current value of the underlying assets, the counterparty risk, future market movements[24] and the time available to liquidate the positions. This shall also apply to the following sub-paragraphs.

[23] In the French version of the law, the term "*actifs*" is used which the Luxembourg supervisory authorities consider to mean net assets.

[24] The French version of Directive 2009/65/EC and the law use the term "*évolution prévisible des marchés*" (foreseeable market movements) whereas the English version of Directive 2009/65/EC uses the term "future market movements" like the German version: "*künftige Marktflukituationen*".

A UCITS may invest, as a part of its investment policy and within the limits laid down in Article 43, paragraph (5), in financial derivative instruments provided that the exposure to the underlying assets does not exceed in aggregate the investment limits laid down in Article 43. Where a UCITS invests in index-based financial derivative instruments, these investments do not necessarily have to be combined to the limits laid down in Article 43.

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

Art. 43

(1) A UCITS may invest no more than 10% of its assets in transferable securities or money market instruments issued by the same body. A UCITS may not invest more than 20% of its assets in deposits made with the same body. The risk exposure to a counterparty of the UCITS in an OTC derivative transaction may not exceed 10% of its assets when the counterparty is a credit institution referred to in Article 41, paragraph (1), point f), or 5% of its assets in other cases.

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

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

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

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

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

If a UCITS invests more than 5% of its assets in the bonds referred to in the first sub-paragraph and issued by one issuer, the total value of such investments may not exceed 80% of the value of the assets of the UCITS.

[25] The English version of Directive 2009/65/EC makes reference to the “failure of the issuer” as does the German version: “*Ausfall des Emittenten*”.

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

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

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

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

Art. 44

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

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

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

Art. 45

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

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

These UCITS must hold securities from at least six different issues, but securities from any one issue may not account for more than 30% of the total amount.

(2) The UCITS referred to in paragraph (1) must make express mention, in their management regulations or instruments of incorporation, of the States, local public authorities or public

international bodies issuing or guaranteeing securities in which they intend to invest more than 35% of their assets.

(3) In addition, the UCITS referred to in paragraph (1) must include a prominent statement in the prospectuses and marketing communications, drawing attention to such authorisation and indicating the States, local public authorities and public international bodies in the securities of which they intend to invest or have invested more than 35% of their assets.

Art. 46

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

For the purpose of the application of this investment limit, each compartment of a UCI with multiple compartments[26] is to be considered as a separate issuer, provided that the principle of segregation of the obligations of the various compartments *vis-à-vis* third parties is ensured.

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

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

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

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

Art. 47

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

(2) When a UCITS invests principally in any category of assets defined in Article 41 other than transferable securities and money market instruments or replicates a stock or debt securities index in accordance with Article 44, its prospectus

[26] These are commonly referred to as umbrella funds.

and, where necessary, marketing communications must include a prominent statement drawing attention to its investment policy.

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

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

Art. 48

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

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

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

The limits laid down in the second, third and fourth indents may be disregarded at the time of acquisition if, at that time, the gross amount of bonds[27] or money market instruments, or the net amount of the securities in issue[28] cannot be calculated.

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

a) transferable securities and money market instruments issued or guaranteed by a Member State or its public local authorities;

b) transferable securities and money market instruments issued or guaranteed by a non-Member State of the European Union;

c) transferable securities and money market instruments issued by public international bodies of which one or more Member States of the European Union are members;

d) shares held by UCITS in the capital of a company incorporated in a non-Member State of the European Union, which invests its assets mainly in the securities of issuing bodies having their registered office in that State, where under the legislation of that State, such a holding

[27] See footnote 1.

[28] The French version of Directive 2009/65/EC and the law use the term "*titres émis*" which comprises securities and instruments. The German version of Directive 2009/65/EC uses the term "*ausgegebene Anteile*" whereas the English version uses the term "*securities*".

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

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

Art. 49

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

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

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

Art. 50

(1) The following shall not borrow:

- an investment company; nor
- a management company or depositary acting on behalf of the common fund.

However, a UCITS may acquire foreign currency by means of a back-to-back loans.

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

a) on a temporary basis and represents:

- in the case of investment companies, no more than 10% of their assets; or
- in the case of common funds, no more than 10% of the value of the fund; or

b) to enable the acquisition of immovable property essential for the direct pursuit of its business and represents, in the case of an investment company, no more than 10% of its assets.

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

Art. 51

(1) Without prejudice to the application of Articles 41 and 42, neither:

- an investment company; nor
- a management company or depositary acting on behalf of common funds;

may grant loans or act as a guarantor for third parties.

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

Art. 52

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

- an investment company;
- nor a management company or depositary acting on behalf of common funds.

Chapter 6 – UCITS established in Luxembourg which market their units in other Member States of the European Union

Art. 53

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

Art. 54

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

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

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

a) its management regulations or its instruments of incorporation, its prospectus and, where appropriate, its latest annual report and any subsequent half-yearly report translated in accordance with the provisions of Article 55, paragraph (1), points c) and d); and

b) its key investor information referred to in Article 159, translated in accordance with Article 55, paragraph (1), points b) and d).

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

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

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

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

Art. 55

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

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

a) without prejudice to the provisions of Chapter 21 of this Law, such information or documents shall be provided to investors in the way prescribed by the laws, regulations or administrative provisions of the UCITS' host Member State;

b) key investor information referred to in Article 159 of the Law shall be translated into the official language, or one of the official languages, of the UCITS' host Member State or into a language approved by the competent authorities of that Member State;

c) information and documents other than key investor information referred to in Article 159 of the Law shall be translated, at the choice of the UCITS, into the official language, or one of the official languages, of the UCITS' host Member State, into a language approved by the competent authorities of that Member State or into a language customary in the sphere of international finance; and

d) translations of information and documents under points b) and c) shall be produced under the responsibility of the UCITS and shall faithfully reflect the content of the original information.

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

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

Art. 56

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

Art. 57

For the purposes of this Chapter, the term "UCITS" refers also to investment compartments of a UCITS.

Art. 58

The provisions of Articles 53 to 57 of this Law are also applicable, within the limits provided by the Agreement on the European Economic Area and the instruments relating thereto, where a UCITS established in Luxembourg markets its units on the territory of a State other than a Member State[29] which is a party of that Agreement.

[29] Currently: Iceland, Liechtenstein and Norway.

Chapter 7 – UCITS established in other Member States of the European Union which market their units in Luxembourg

Art. 59

UCITS established in other Member States of the European Union which market their units in Luxembourg must appoint a credit institution to ensure that facilities are available in Luxembourg for making payments to unit-holders and repurchasing or redeeming units.

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

Art. 60

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

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

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

Art. 61

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

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

a) without prejudice to the provisions of Chapter IX of Directive 2009/65/EC, such information or documents shall be provided to investors in the way prescribed by the laws, regulations or administrative provisions in force in Luxembourg;

b) key investor information referred to in Article 78 of Directive 2009/65/EC, as well as information and documents other than key investor information referred to in Article 78 of Directive 2009/65/EC, shall be translated into Luxembourgish, French, German or English;

c) translations of information and documents under point b) shall be produced under the responsibility of the UCITS and shall faithfully reflect the content of the original information.

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

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

Art. 62

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

Art. 63

For the purposes of this Chapter, the term "UCITS" refers also to investment compartments of a UCITS.

Art. 64

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

Chapter 8 – Mergers of UCITS

A. – Principle, authorisation and approval

Art. 65

For the purposes of this Chapter, the term "UCITS" also refers to investment compartments of a UCITS.

Art. 66

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

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

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

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

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

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

For any merging UCITS which ceases to exist, the effective date of the merger must be recorded by notarial deed.

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

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

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

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

Art. 67

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

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

a) the common draft terms of the proposed merger duly approved by the merging UCITS and the receiving UCITS;

b) an up-to-date version of the prospectus and the key investor information, referred to in Article 78 of Directive 2009/65/EC, of the receiving UCITS, if it is established in another Member State;

c) a statement by each of the depositaries of the merging and the receiving UCITS confirming that, in accordance with Article 70, they have verified compliance of the particulars set out in Article 69, paragraph 1, points a), f) and g) with the requirements of this Law and the management regulations or the instruments of incorporation of their respective UCITS. In the case where the receiving UCITS is established in another Member State, this statement issued by the depositary of the receiving UCITS confirms that, in accordance with Article 41 of Directive 2009/65/EC, compliance of the particulars set out in Article 40, paragraph (1) points a), f) and g) with the requirements of Directive 2009/65/EC and the management regulations or the instruments of incorporation of the receiving UCITS has been verified; and

d) the information on the proposed merger that the merging and the receiving UCITS intend to provide to their respective unit-holders.

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

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

(4) a) Where the receiving UCITS is not established in Luxembourg and once the file is complete, the CSSF shall immediately transmit copies of the information referred to in paragraph (2) to the competent authorities of the receiving UCITS' home Member State. The CSSF and the competent authorities of the receiving UCITS' home Member State shall, respectively, consider the

potential impact of the proposed merger on unit-holders of the merging UCITS and the receiving UCITS to assess whether appropriate information is being provided to unit-holders.

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

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

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

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

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

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

a) the proposed merger complies with all of the requirements of Articles 67, 69, 70 and 71 of this Law; and

b) the receiving UCITS has been notified, in accordance with Article 60 of this Law, to market its units in Luxembourg and in all Member States where the merging UCITS is either authorised or has been notified to market its units in accordance with Article 60 of this Law; and

c) the CSSF and the competent authorities of the receiving UCITS home Member State are satisfied with the proposed information to be provided to unit-holders, or no indication of dissatisfaction from the competent authorities of the receiving UCITS home Member State has been received under the fourth sub-paragraph of paragraph (4) a);

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

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

a) the proposed merger complies with all of the requirements of Articles 67, 69, 70 and 71 of this Law; and

b) the receiving UCITS has been notified, in accordance with Article 60 of this Law, to market its units in all Member States where the merging UCITS is either authorised or has been notified to market its units in accordance with Article 60 of this Law; and

c) the CSSF is satisfied with the proposed information to be provided to unit-holders of the merging and receiving UCITS;

the CSSF authorises the proposed merger if these conditions are met.

Art. 68

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

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

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

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

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

Art. 69

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

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

a) an identification of the type of merger and of the UCITS involved;

b) the background to and rationale for the proposed merger;

c) the expected impact of the proposed merger on the unit-holders of both the merging and the receiving UCITS;

d) the criteria adopted for valuation of the assets and, where applicable, the liabilities on the date for calculating the exchange ratio as referred to in Article 75, paragraph (1);

e) the calculation method of the exchange ratio;

f) the planned effective date of the merger;

g) the rules applicable, respectively, to the transfer of assets and the exchange of units; and

h) in the case of a merger pursuant to Article 1, point (20) b) and Article 1, paragraph 20) c) of this Law or, as the case may be, Article 2, paragraph (1), point p) ii) and, as the case may be, Article 2, paragraph (1), point p) iii) of Directive 2009/65/EC, the management regulations or the instruments of incorporation of the newly constituted receiving UCITS.

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

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

Art. 70

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

Art. 71

(1) The merging UCITS established in Luxembourg shall entrust either an approved statutory auditor[30] or, as the case may be, an independent auditor[31] to validate the following:

a) the criteria adopted for valuation of the assets and, as the case may be, the liabilities on the date for calculating the exchange ratio, as referred to in Article 75, paragraph (1) of this Law;

b) where applicable, the cash payment per unit; and

c) the calculation method of the exchange ratio as well as the actual exchange ratio determined at the date for calculating that ratio, as referred to in Article 75, paragraph (1) of this Law.

(2) The approved statutory auditor or the independent auditor of the merging UCITS or the approved statutory auditor or the independent auditor of the receiving UCITS shall be considered approved statutory auditors, or, independent auditors for the purposes of paragraph (1).

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

Art. 72

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

(2) This information shall be provided to unit-holders of the merging UCITS and of the receiving UCITS established in

[30] The English version of Directive 2009/65/EC uses the term “depositary” and the French version uses the term “*dépositaire*”. The French version of the law uses the term “*réviseur d’entreprises agréé*”.

[31] The French version of Directive 2009/65/EC and the law use the term “*contrôleur légal des comptes*”.

Luxembourg only after the CSSF has authorised the proposed merger under Article 67 of this Law.

This information shall be provided at least thirty days before the last date for requesting repurchase or redemption or, where applicable, conversion without additional charge under Article 73, paragraph (1) of this Law.

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

It shall include the following:

a) the background to and the rationale for the proposed merger;

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

c) any specific rights unit-holders have in relation to the proposed merger, including but not limited to the right to obtain additional information, the right to obtain on request a copy of the report of the approved statutory auditor or the independent auditor or the depositary (if applicable in the receiving or merging UCITS home Member State) and the right to request the repurchase or redemption or, where applicable, the conversion of their units without charge as specified in Article 73, paragraph (1) and the last date for exercising that right;

d) the relevant procedural aspects and the planned effective date of the merger; and

e) a copy of the key investor information of the receiving UCITS, referred to in Article 159 of this Law, or, as the case may be, in Article 78 of Directive 2009/65/EC.

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

Art. 73

(1) Where the merging UCITS and/or the receiving UCITS are established in Luxembourg, their unit-holders have the right to request, without any charge other than those retained by the UCITS to meet disinvestment costs, the repurchase or redemption of their units or, where possible, to convert them into units in another UCITS with similar investment policy and managed by the same management company or by any other company with which the management company is linked by common management or control, or by a

substantial direct or indirect holding. This right shall become effective from the moment that the unit-holders of the merging UCITS and those of the receiving UCITS have been informed of the proposed merger in accordance with Article 72 and shall cease to exist five working days before the date for calculating the exchange ratio referred to in Article 75, paragraph (1) of this Law.

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

C. - Costs and entry into effect

Art. 74

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

Art. 75

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

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

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

Art. 76

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

a) all the assets and liabilities of the merging UCITS are transferred to the receiving UCITS or, where applicable, to the depositary of the receiving UCITS;

b) the unit-holders of the merging UCITS become unit-holders of the receiving UCITS and, where applicable, they are entitled to a cash payment not exceeding 10% of the net asset value of their units in the merging UCITS; and

c) the merging UCITS established in Luxembourg ceases to exist on the entry into effect of the merger.

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

a) all the assets and liabilities of the merging UCITS are transferred to the newly constituted receiving UCITS or, where applicable, to the depositary of the receiving UCITS;

b) the unit-holders of the merging UCITS become unit-holders of the newly constituted receiving UCITS and, where applicable, they are entitled to a cash payment not exceeding 10% of the net asset value of their units in the merging UCITS; and

c) the merging UCITS established in Luxembourg cease to exist on the entry into effect of the merger.

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

a) the net assets of the merging UCITS are transferred to the receiving UCITS or, where applicable, to the depositary of the receiving UCITS;

b) the unit-holders of the merging UCITS become unit-holders of the receiving UCITS; and

c) the merging UCITS established in Luxembourg continues to exist until the liabilities have been discharged.

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

Chapter 9 – Master-feeder structures

A. – Scope and approval

Art. 77

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

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

a) ancillary liquid assets in accordance with Article 41, paragraph (2), second sub-paragraph;

b) financial derivative instruments, which may be used only for hedging purposes, in accordance with Article 41, paragraph (1), point g) and Article 42, paragraphs (2) and (3);

c) movable and immovable property which is essential for the direct pursuit of its business, if the feeder UCITS is an investment company.

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

a) either the master UCITS' actual exposure to financial derivative instruments in proportion to the feeder UCITS investment into the master UCITS;

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

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

a) has, among its unit-holders, at least one feeder UCITS;

b) is not itself a feeder UCITS; and

c) does not hold units of a feeder UCITS.

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

a) if a master UCITS has at least two feeder UCITS as unit-holders, Article 2, paragraph (2), first indent and Article 3, second indent of this Law shall not apply, giving the master UCITS the choice whether or not to raise capital from other investors;

b) if a master UCITS does not raise capital from the public in a Member State other than that in which it is established, but only has one or more feeder UCITS in that Member State, Chapter XI and Article 108, paragraph (1), second sub-paragraph of Directive 2009/65/EC shall not apply.

Art. 78

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

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

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

a) the management regulations or instruments of incorporation of the feeder UCITS and the master UCITS;

b) the prospectus and the key investor information referred to in Article 159 of the feeder UCITS and the master UCITS;

c) the agreement between the feeder UCITS and the master UCITS or the internal conduct of business rules referred to in Article 79, paragraph (1);

d) where applicable, the information to be provided to unit-holders referred to in Article 83, paragraph (1);

e) if the master UCITS and the feeder UCITS have different depositaries, the information-sharing agreement referred to in Article 80, paragraph (1) between their respective depositaries; and

f) if the master UCITS and the feeder UCITS have different approved statutory auditors, the information-sharing agreement referred to in Article 81, paragraph (1) between their respective auditors.

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

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

B. – Common provisions for feeder and master UCITS

Art. 79

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

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

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

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

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

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

a) the investment of at least 85% of the assets of the feeder UCITS in units of another master UCITS; or

b) the amendment of the management regulations or the instruments of incorporation of the feeder UCITS in order to enable it to convert into a UCITS which is not a feeder UCITS.

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

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

a) continue to be a feeder UCITS of the master UCITS or another UCITS resulting from the merger or division of the master UCITS;

b) invest at least 85% of its assets in units of another master UCITS not resulting from the merger or the division; or

c) amend its management regulations or its instruments of incorporation in order to convert into a UCITS which is not a feeder UCITS.

No merger or division of a master UCITS shall become effective, unless the master UCITS has provided all of its unit-holders and the CSSF with the information referred to, or comparable with that referred to, in Article 72, by sixty days before the proposed effective date.

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

C. – Depositaries and approved statutory auditors

Art. 80

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

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

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

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

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

Art. 81

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

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

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

The approved statutory auditor of the feeder UCITS shall, in particular, report on any irregularities revealed in the audit report of the master UCITS and on their impact on the feeder UCITS.

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

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

Art. 82

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

a) a declaration that the feeder UCITS is a feeder of a particular master UCITS and as such permanently invests 85% or more of its assets in units of that master UCITS;

b) the investment objective and policy, including the risk profile and whether the performance of the feeder UCITS and the master UCITS are identical, or to what extent and for which reasons they differ, including a description of investment made in accordance with Article 77, paragraph (2);

c) a brief description of the master UCITS, its organisation, its investment objective and policy, including the risk profile, and an indication of how the prospectus of the master UCITS may be obtained;

d) a summary of the agreement entered into between the feeder UCITS and the master UCITS or of the internal conduct of business rules pursuant to Article 79, paragraph (1);

e) how the unit-holders may obtain further information on the master UCITS and the agreement entered into between the feeder UCITS and the master UCITS pursuant to Article 79, paragraph (1);

f) a description of all remunerations and reimbursements of costs payable by the feeder UCITS by virtue of its investment in units of the master UCITS, as well as of the aggregate charges of the feeder UCITS and the master UCITS; and

g) a description of the tax implications of the investment into the master UCITS for the feeder UCITS.

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

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

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

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

(5) The feeder UCITS must deliver to investors, on request and free of charge, a paper copy of the prospectus and of the annual and half-yearly reports of the master UCITS.

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

Art. 83

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

a) a statement that the CSSF approved the investment of the feeder UCITS in units of such master UCITS;

b) the key investor information referred to in Article 159 concerning the feeder UCITS and the master UCITS;

c) the date when the feeder UCITS is to start to invest in the master UCITS or, if it has already invested therein, the date when its investment will exceed the limit applicable under Article 46, paragraph (1); and

d) a statement that the unit-holders have the right to request, within thirty days, the repurchase or redemption of their units without any charges other than those retained by the UCITS to cover disinvestment costs; that right shall become effective from the moment the feeder UCITS has provided the information referred to in this paragraph.

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

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

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

F. - Obligations and competent authorities

Art. 84

(1) The feeder UCITS must monitor effectively the activity of the master UCITS. In performing that obligation, the feeder UCITS may rely on information and documents received from the master UCITS or, where applicable, its management company, depositary and approved statutory auditor, unless there is reason to doubt the accuracy of such information and documents.

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

Art. 85

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

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

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

Art. 86

If the master UCITS and the feeder UCITS are both established in Luxembourg, the CSSF immediately informs the feeder UCITS of any decision, measure, observation of non-compliance with the conditions of this Chapter or of any information reported pursuant to Article 154, paragraph (3), with regard to the master UCITS or, where applicable, its management company, depositary or approved statutory auditor.

If the master UCITS is established in Luxembourg and the feeder UCITS is established in another Member State, the CSSF immediately communicates any decision, measure, observation of non-compliance with the conditions of this Chapter or information reported pursuant to Article 154, paragraph (3), with regard to the master UCITS or, where applicable, its management company, depositary or approved statutory auditor, to the competent authorities of the feeder UCITS home Member State.

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

Part II – Other UCIs
Chapter 10 – Scope

Art. 87

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

Art. 88

A UCI shall be deemed to be established in Luxembourg if the registered office of the management company of the common fund or the registered office of the investment company is established in Luxembourg. The head office[32] must be situated in Luxembourg.

[32] The French version of Directive 2009/65/EC and the law use the term "*administration centrale*" whereas the English version of Directive 2009/65/EC uses the term "*head office*" and the German version uses the term "*Hauptverwaltung*".

Chapter 11 – Common funds

Art. 89

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

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

(3) The depositary must either have its registered office in Luxembourg or be established in Luxembourg if its registered office is in another Member State or in a non-Member State.

Art. 90

Articles 6, 8, 9, 10, 11 (1),12 (1) b), 12 (3), 13 (1), 13 (2) a) to i), 14, 15, 16, 17 (1), 17 (3), 17 (4), 18 (1), 18 (2) a) c) d) e), 19, 20, 21, 22, 23 and 24 of this Law are applicable to common funds falling within the scope of this Chapter.

Art. 91

(1) A CSSF regulation may, in particular, determine[33]:

a) the minimum frequency for the determination of the issue and redemption prices for units of the common fund;

b) the minimum percentage of the assets of the common fund which must be represented by liquid assets;

c) the maximum percentage of the assets of the common fund which may be invested in transferable securities which are not quoted on a stock exchange or dealt in on an organised market offering comparable safeguards;

d) the maximum percentage of securities of the same kind issued by the same body which the common fund may hold;

e) the maximum percentage of the assets of the common fund which may be invested in securities issued by the same body;

f) the conditions under which, and possibly the maximum percentages, the common fund may invest in securities of other UCIs;

g) the maximum percentage, in relation to its total assets, of the amounts the common fund is authorised to borrow and the terms and conditions for such borrowings.

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

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

[33] No such regulation exists at this time.

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

Art. 92

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

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

Chapter 12 – SICAVs

Art. 93

For the purpose of this Part SICAVs shall be taken to mean those companies which have adopted the form of a public limited company (*société anonyme*) governed by Luxembourg law,

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

Art. 94

The share capital of a SICAV may not be less than one million two hundred and fifty thousand euro (EUR 1,250,000). This minimum must be reached within a period of six months following the authorisation of the SICAV. A CSSF regulation may raise that minimum amount up to a maximum of two million five hundred thousand euro (EUR 2,500,000)[34].

Art. 95

(1) Articles 26, 28 (1) a), 28 (2) a), 28 (3) to (10), 29, 30, 31, 32, 33 (1) to (3), 34 (2), 35, 36 and 37 of this Law are applicable to the SICAVs falling within the scope of this Chapter.

(2) SICAVs falling within the scope of this Chapter are authorised to delegate to third parties, for the purpose of a more efficient conduct of their activities, to carry out on their behalf one or more of their own functions. In such a case, the following preconditions must be complied with:

a) the CSSF must be informed in an appropriate manner;

b) the mandate shall not prevent the effectiveness of supervision over the SICAV, and in particular it must neither prevent the SICAV from acting, nor from being managed, in the best interests of the investors;

c) when the delegation concerns investment management, the mandate may be given only to undertakings which are authorised or registered for the purpose of asset management and subject to prudential supervision;

d) where the mandate concerns investment management and is given to a third-country undertaking, cooperation between the CSSF and the supervisory authorities of this country must be ensured; and

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

Art. 96

(1) A CSSF regulation may, in particular, determine[35]:

a) the minimum frequency for the determination of the issue and, where the articles of incorporation provide for the right of unit-holders to have their units redeemed, the redemption prices for units of the SICAV;

b) the minimum percentage of the assets of a SICAV which must be represented by liquid assets;

[34] No such regulation exists at this time.
[35] No such regulation exists at this time.

c) the maximum percentage of the assets of the SICAV which may be invested in transferable securities which are not quoted on a stock exchange or dealt in on an organised market offering comparable safeguards;

d) the maximum percentage of securities of the same kind issued by the same body which the SICAV may hold;

e) the maximum percentage of the assets which the SICAV may invest in securities issued by the same body;

f) the conditions under which and possibly the maximum percentages the SICAV may invest in securities of other UCIs;

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

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

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

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

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

Art. 97

This Chapter is applicable to all companies and all undertakings other than common funds or SICAVs[36]

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

Art. 98

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

This minimum must be reached within a period of six months following their authorisation. A CSSF regulation may raise that minimum amount up to a maximum of two million five hundred thousand euro (EUR 2,500,000)[37].

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

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

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

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

Art. 99

(1) A CSSF regulation may, in particular, determine[38]:

a) the minimum frequency for the determination of the issue and, in case the instruments of incorporation provide the right for the unit-holders or members to have their units redeemed, the redemption price of the shares or units of the UCI;

b) the minimum percentage of the assets of the UCI which must be represented by liquid assets;

[36] Investment companies that are not established in the form of a SICAV are generally investment companies with fixed capital ("SICAF").
[37] No such regulation exists at this time.
[38] No such regulation exists at this time.

c) the maximum percentage of the assets of the UCI which may be invested in transferable securities which are not quoted on a stock exchange or dealt in on an organised market offering comparable safeguards;

d) the maximum percentage of securities of the same kind issued by the same body which the UCI may hold;

e) the maximum percentage of the assets of the UCI which may be invested in securities issued by the same body;

f) the conditions under which, and possibly the maximum percentages, the UCI may invest in securities of other UCIs;

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

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

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

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

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

(6) Articles 28 (5), 33 (1) to (3), 34 (2), 35, 36 and 37 of this Law are applicable to the UCIs referred to in this Chapter.

UCIs which do not have the legal form of common funds or SICAVs falling within the scope of this Chapter are authorised to delegate to third parties for the purpose of a more efficient conduct of their activities, to carry out on their behalf one or more of their own functions. In this case, the following preconditions must be complied with:

a) the CSSF must be informed in an appropriate manner;

b) the mandate shall not prevent the effectiveness of supervision over the UCI, and in particular it must neither prevent the UCI from acting, nor from being managed, in the best interests of the investors;

c) when the delegation concerns the investment management, the mandate may be given only to undertakings which are authorised or registered for the purpose of asset management and subject to prudential supervision;

d) where the mandate concerns investment management and is given to a third-country undertaking, cooperation between the CSSF and the supervisory authorities of this country must be ensured; and

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

(7) The articles of incorporation of the UCI having adopted the form of one of the companies referred to in Article 2 of the Law of 10 August 1915 on commercial companies, as amended, and any amendment to these articles of incorporation shall be recorded in a special notarial deed, drawn up in French, German or English, as the appearing parties may decide. By derogation from the provisions of the Decree of 24 Prairial, year XI, where this deed is drawn up in English, the requirement to attach a translation into an official language to that deed when it is filed with the registration authorities, does not apply.

(8) By derogation to Article 73, sub-paragraph (2) of the Law of 10 August 1915 on commercial companies, as amended, UCIs subject to this Chapter and which have adopted the form of a public limited company or of a corporate partnership limited by shares, are not required to send the annual accounts, as well as the report of the approved statutory auditor, the management report and, where applicable, the comments made by the supervisory board to the registered unit-holders, at the same time as the convening notice to the annual general meeting. The convening notice indicates the place and the practical arrangements for providing these documents to the unit-holders and shall specify that each unit-holder may request that the annual accounts, as well as the report of the approved statutory auditor, the management report and, where applicable, the comments made by the supervisory board are sent to him.

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

Part III – Foreign UCIs
Chapter 14 – General provisions and scope

Art. 100

UCIs other than of the closed-end type constituted or operating under foreign laws, which are not subject to Chapter 7 of this Law and whose securities are the subject of a public announcement, offer or sale in or from Luxembourg, must be submitted in their home State to a permanent supervision performed by a supervisory authority set up by law in order to ensure the protection of investors. Article 59 of this Law is applicable to such UCIs.

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

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

Art. 101

(1) Access to the business of management companies having their registered office in Luxembourg within the meaning of this Chapter is subject to prior authorisation to be granted by the CSSF. Authorisation granted under this Law to a management company shall be valid for all Member States.

A management company shall be incorporated as a public limited company[39], a private limited company[40], a cooperative company[41], a cooperative company set up as a public limited company[42] or a corporate limited partnership[43]. The capital of that company must be represented by registered shares.

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

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

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

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

a) management of portfolios of investments including those owned by pension funds, in accordance with mandates given by investors, on a discretionary, client-by-client basis, where such portfolios include one or more of the instruments listed in Section B of Annex II of the Law of 5 April 1993 on the financial sector, as amended;

b) as non-core services:

- investment advice concerning one or more of the instruments listed in Section B of Annex II of the Law of 5 April 1993 on the financial sector, as amended;
- safekeeping and administration in relation to units of UCIs.

Management companies may in no case be authorised under this Chapter to provide only the services mentioned in this paragraph

[39] The French version of the law uses the term "*société anonyme*".
[40] The French version of the law uses the term "*société à responsabilité limitée*".
[41] The French version of the law uses the term "*société cooperative*".
[42] The French version of the law uses the term "*société coopérative organisée comme une société anonyme*".
[43] The French version of the law uses the term "*société en commandite par actions*".

or to provide non-core services without being authorised for the services referred to in point a).

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

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

This recommendation has to be adapted to this person or has to be based on the examination of the proper situation of this person and has to recommend the realisation of an operation of the following categories:

a) the purchase, the sale, the subscription, the exchange, the repayment, the holding or the firm commitment of a particular financial instrument;

b) the exercise or non-exercise of the right conferred by a particular financial instrument to purchase, to sell, to subscribe, to exchange or to reimburse a financial instrument.

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

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

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

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

Art. 102

(1) The CSSF shall grant authorisation to a management company only under the following conditions:

a) the management company must have an initial capital of at least one hundred and twenty-five thousand euro (EUR 125,000) taking into account the following:

- When the value of the portfolios of the management company exceeds two hundred and fifty million euro (EUR 250,000,000), the management company shall be required to provide an additional amount of own funds. This additional amount of own funds is equal to 0.02% of the amount by which the value of the portfolios of the management company exceeds two hundred and fifty million euro (EUR 250,000,000). The required total of the initial capital and the additional amount must not, however, exceed ten million euro (EUR 10,000,000).

- For the purposes of this paragraph, the following portfolios are deemed to be the portfolios of the management company:

  (i) common funds managed by the management company including portfolios for which it has delegated the management function but excluding portfolios that it is managing under delegation;

  (ii) investment companies for which the management company is the designated management company;

  (iii) other UCIs managed by the management company including portfolios for which it has delegated the management function but excluding portfolios that it is managing under delegation.

- Irrespective of the amount of these requirements, the own funds of the management company shall at no time be less than the amount prescribed in Article 21 of Directive 2006/49/EC[44].

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

b) the funds referred to in paragraph (1) a) are to be maintained at the permanent disposal of the management company and to be invested in its own interest.

c) the persons who effectively conduct the business of a management company must be of sufficiently good repute and be sufficiently experienced also in relation to the type of UCITS managed by the management company. To that end, the names of these persons and of every person succeeding them in office must be communicated forthwith to the CSSF. The conduct of the business of a management company must be determined by at least two persons meeting such conditions;

d) the application for authorisation must be accompanied by a programme of operations setting out, *inter alia*, the organisational structure of the management company;

e) both its head office[45] and its registered office are located in Luxembourg;

f) directors of a management company within the meaning of Article 129 (5) must be of sufficiently good repute and sufficiently experienced, in relation to the type of UCITS or UCI concerned.

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

[44] Article 21 reads: “Investment firms shall be required to hold own funds equivalent to one quarter of their preceding year’s fixed overheads.
The competent authorities may adjust that requirement in the event of a material change in a firm’s business since the preceding year.
Where a firm has not completed a year’s business, starting from the day it starts up, the requirement shall be a quarter of the fixed overheads projected in its business plan, unless an adjustment to that plan is required by the competent authorities.”

[45] See footnote 32.

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

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

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

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

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

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

a) does not make use of the authorisation within twelve months, expressly renounces the authorisation or has ceased to exercise the activity covered by this Chapter for more than six months;

b) has obtained the authorisation by making false statements or by any other irregular means;

c) no longer fulfils the conditions under which authorisation was granted;

d) no longer complies with the Law of 5 April 1993 on the financial sector, as amended, resulting from the transposition of Directive 2006/49/EC if its authorisation also covers the discretionary portfolio management service referred to in Article 101, paragraph (3), point a) above;

e) has seriously and/or systematically infringed the provisions of this Law or of regulations adopted pursuant to it;

f) falls within any of the other cases where this Law provides for withdrawal.

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

Art. 103

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

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

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

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

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

c) controlled by the same natural or legal persons as another management company, an investment firm, a credit institution or an insurance undertaking authorised in another Member State.

Art. 104

(1) The authorisation of a management company is subject to the condition that the audit of its annual accounting documents is entrusted to one or more approved statutory auditors[46] who can prove that they have adequate professional experience.

(2) Any change regarding the approved statutory auditors must be previously approved by the CSSF.

(3) The institution of supervisory auditors[47] provided for by the Law of 10 August 1915 on commercial companies, as amended, and by Article 140 of that law, shall not apply to management companies subject to this Chapter.

(4) The CSSF may define the scope of the approved statutory auditor's mandate and in relation to the content of the audit report of the annual accounting documents of a management company.

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

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

[46] Article 1 paragraph (29) of the law of 18 December 2009 relating to the audit profession : "*Réviseur d'entreprises agréé*" means a *réviseur d'entreprises*, member of the IRE (*Institut des Réviseurs d'Entreprises*) who is approved in accordance with the Law of 18 December 2009 to carry out:
a) statutory audits and
b) any other duties which are exclusively entrusted to him by law".

[47] The French version of the law uses the term "*commissaires aux comptes*".

The approved statutory auditor is also required to promptly report to the CSSF, in the performance of its duties referred to in the preceding sub-paragraph in respect of a management company, any fact or decision concerning the management company and meeting the criteria listed in the preceding sub-paragraph, which it has become aware while carrying out the audit of the accounting information contained in its annual report or while carrying out any other legal task as regards another undertaking having close links resulting from a control relationship with this management company or an undertaking contributing towards its business activity.

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

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

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

The CSSF may define the scope of the approved statutory auditor's mandate and the content of the audit report in relation to the annual accounts of a management company.

The CSSF may request an approved statutory auditor to perform a control of one or several particular aspects of the activities and operations of a management company. This control is performed at the expense of the management company concerned.

Art. 105

In the event of the non-judicial liquidation of a management company, the liquidator(s) must be approved by the CSSF. The liquidator(s) must provide all guarantees of honourability and professional skill.

B. – Relations with third countries

Art. 106

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

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

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

Art. 107

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

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

Art. 108

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

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

Art. 109

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

  a) to have sound administrative and accounting procedures, control and safeguard arrangements for electronic data processing and adequate internal control mechanisms including, in particular, rules for personal transactions by its employees or for the holding or management of investments in financial instruments in order to invest on its own account and ensuring, at least, that each transaction involving the UCITS may be reconstructed according to its origin, the parties to it, its nature, and the time and place at which it was effected and that the assets of the UCITS managed by the management company are invested according to the management regulations or to the instruments of incorporation and the legal provisions in force;

  b) to be structured and organised in such a way as to minimise the risk of UCITS’ or clients’ interests being prejudiced by conflicts of interest between the company and its clients, between two of its clients, between one of its clients and a UCITS or between two UCITS.

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

- shall not be permitted to invest all or a part of the investor’s portfolio in units of UCITS it manages, unless it has received the prior general approval from the client;

- shall be subject with regard to the services referred to in Article 101, paragraph (3) to the provisions laid down in the Law of 27 July 2000 implementing Directive 97/9/EC on investor-compensation schemes in the Law of 5 April 1993 on the financial sector, as amended.[48]

Art. 110

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

a) the management company must inform the CSSF in an appropriate manner; the CSSF must, without delay, transmit the information to the competent authorities of the UCITS home Member State;

b) the mandate may not prevent the effectiveness of supervision over the management company; in particular, it must not prevent the management company from acting, or the UCITS from being managed, in the best interests of the investors;

c) when the delegation concerns the investment management, the mandate must be given only to undertakings which are authorised or registered for the purpose of asset management and are subject to prudential supervision; the delegation must be in accordance with investment allocation criteria periodically laid down by the management company;

d) when the mandate concerns the investment management and is given to a third-country undertaking, cooperation between the CSSF and the supervisory authority of that country must be ensured;

e) a mandate with regard to the core function of investment management must not be given to the depositary or to any other undertaking whose interests may conflict with those of the management company or the unit-holders;

f) measures must exist which enable the persons who conduct the business of the management company to monitor effectively at any time the activity of the undertaking to which the mandate is given;

g) the mandate must not prevent the persons who conduct the business of the management company from giving at any time further instructions to the undertaking to which functions are delegated or from withdrawing the mandate with immediate effect when this is in the interests of investors;

h) having regard to the nature of the functions to be delegated, the undertaking to which functions will be delegated must be qualified and capable of undertaking the functions in question; and

i) the UCITS' prospectuses must list the functions delegated by the management company.

[48] This requires the management company concerned to be a member of a Luxembourg-based investor compensation scheme.

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

Art. 111

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

a) act honestly and fairly in conducting its business activities in the best interests of the UCITS it manages and the integrity of the market;

b) act with due skill, care and diligence, in the best interests of the UCITS it manages and the integrity of the market;

c) have and employ efficiently the resources and procedures that are necessary for the proper performance of its business activities;

d) endeavour to avoid conflicts of interest and, when they cannot be avoided, ensure that the UCITS it manages are fairly treated; and

e) comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of its investors and the integrity of the market.

Art. 112

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

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

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

Art. 113

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

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

Art. 114

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

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

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

b) a programme of operations setting out the envisaged activities and services referred to Article 101, paragraphs (2) and (3) and the organisational structure of the branch, which shall include a description of the risk management process put in place by the management company. It shall also include a description of the procedures and arrangements taken in accordance with Article 112;

c) the address, in the management company's host Member State from which documents may be obtained; and

d) the name of those responsible for the management of the branch.

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

Where the CSSF refuses to communicate the information referred to in paragraph (2) to the competent authorities of the management company's host Member State, it shall give reasons for such refusal to the management company concerned within two months of receiving all the information. The refusal or any failure to reply shall be subject to the right to apply to the courts of Luxembourg.

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

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

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

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

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

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

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

Art. 115

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

a) the Member State within the territory of which the management company intends to operate; and

b) a programme of operations stating the envisaged activities and services referred to in Article 101, 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 taken in accordance with Article 112.

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

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

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

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

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

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

Art. 116

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

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

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

a) the setting up and authorisation of the UCITS;

b) the issuance and redemption of units;

c) investment policies and limits, including the calculation of total exposure and leverage;

d) restrictions on borrowing, lending and uncovered sales;

e) the valuation of assets and the accounting of the UCITS;

f) the calculation of the issue or redemption price, and errors in the calculation of the net asset value and related investor compensation;

g) the distribution or reinvestment of income;

h) the disclosure and reporting requirements of the UCITS, including the prospectus, key investor information and periodic reports;

i) the arrangements made for marketing;

j) the relationship with unit-holders;

k) the merging and restructuring of the UCITS;

l) the dissolution and liquidation of the UCITS;

m) where applicable, the content of the unit-holder register;

n) the licensing and supervision fees regarding the UCITS; and

o) the exercise of unit-holders' voting rights and other unit-holders' rights in relation to points a) to m).

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

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

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

Art. 117

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

a) the written agreement with the depositary referred to in Articles 23 and 33 of Directive 2009/65/EC; and

b) information on delegation arrangements regarding functions of investment management and administration referred to in Annex II.

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

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

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

Art. 118

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

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

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

(3) If the management company concerned refuses to provide the management company's host Member State with information falling under its responsibility, or fails to take the necessary

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

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

(5) Any measure adopted pursuant to paragraphs (3) or (4) involving measures or penalties shall be properly justified and communicated to the management company concerned. Every such measure shall be subject to the right to apply to the courts in the Member State which adopted it.

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

Art. 119

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

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

(3) Within the limits thus provided, a UCITS established in Luxembourg may either designate a management company authorised in another Member State under Directive 2009/65/EC, or be managed by it provided that the management company complies with the provisions of Article 16, paragraph (3) of Directive 2009/65/EC.

Art. 120

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

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

This notification shall include, where a management company wishes to pursue the activity of collective portfolio management, an attestation that the management company has been authorised pursuant to the provisions of Directive 2009/65/EC, a description of the scope of the management company's authorisation and details of any possible restriction on the types of UCITS that the management company is authorised to manage.

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

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

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

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

Art. 121

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

(2) The competent authorities of the management company's home Member State shall communicate to the CSSF the information referred to in the above-mentioned Article, within one month of receiving such information. This shall include, where a management company wishes to pursue the activity of collective portfolio management, an attestation that the management company has been authorised pursuant to the provisions of Directive 2009/65/EC, a description of the scope of the management company's authorisation and details of any possible restrictions on the types of UCITS that the management company is authorised to manage.

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

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

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

Art. 122

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

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

a) the setting up and authorisation of the UCITS;

b) the issuance and redemption of units;

c) investment policies and limits, including the calculation of total exposure and leverage;

d) restrictions on borrowing, lending and uncovered sales;

e) the valuation of assets and the accounting of the UCITS;

f) the calculation of the issue or redemption price, and errors in the calculation of the net asset value and related investor compensation;

g) the distribution or reinvestment of the income;

h) the disclosure and reporting requirements of the UCITS, including the prospectus, key investor information and periodic reports;

i) the arrangements made for marketing;

j) the relationship with unit-holders;

k) the merging and restructuring of the UCITS;

l) the dissolution and liquidation of the UCITS;

m) where applicable, the content of the unit-holder register;

n) the licensing and supervision fees regarding the UCITS; and

o) the exercise of unit-holders' voting rights and other unit-holders' rights in relation to points a) to m).

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

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

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

Art. 123

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

a) the written agreement with the depositary referred to in Articles 17 and 33 of this Law; and

b) any information on delegation arrangements, regarding functions of investment management and administration referred to in Annex II of this Law.

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

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

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

a) the management company does not comply with the rules falling under its responsibility pursuant to Article 122 of this Law;

b) the management company is not authorised by the competent authorities of its home Member State to manage the type of UCITS for which authorisation is requested; or

c) the management company has not provided the documentation referred to in paragraph (1).

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

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

Art. 124

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

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

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

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

(4) If the management company concerned refuses to provide the CSSF with information falling under its responsibility, or fails to take the necessary steps to put an end to the breach referred to in paragraph (3), the CSSF shall inform the competent authorities of the management company's home

Member State accordingly. The competent authorities of the management company's home Member State shall, at the earliest opportunity, take all appropriate measures to ensure that the management company concerned provides the information requested by the CSSF pursuant to paragraph (2) or puts an end to the breach. The nature of those measures shall be communicated to the CSSF.

(5) If, despite the measures taken by the competent authorities of the management company's home Member State or because such measures prove to be inadequate or are not available in the Member State in question, the management company continues to refuse to provide the information requested by the CSSF pursuant to paragraph (2), or persists in breaching the legal or regulatory provisions, referred to in the same paragraph, in force in Luxembourg, the CSSF may, after informing the competent authorities of the management company's home Member State, take appropriate measures, including under Articles 147 and 148 of this Law, to prevent or penalise further irregularities and, insofar as necessary, to prevent that management company from initiating any further transactions in Luxembourg.

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

(6) Any measure adopted pursuant to paragraph (4) or (5) involving measures or penalties shall be properly justified and communicated to the management company concerned. Every such measure shall be subject to the right to apply to the courts in Luxembourg.

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

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

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

Chapter 16 – Other management companies of Luxembourg UCIs

Art. 125

(1) Access to the business of a management company within the meaning of this Chapter is subject to prior authorisation granted by the CSSF.

The management company shall be incorporated as a public limited company[49], a private limited company[50], a cooperative company[51], a cooperative company set up as a public limited company[52] or a corporate limited partnership[53]. The capital of the company must be represented by registered shares.

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

It may not engage in activities other than the management of UCIs, the administration of its own assets being only of an ancillary nature, it being understood that it must manage at least one UCI subject to Luxembourg law.

Both its head office[54] and its registered office must be situated in Luxembourg.

Management companies which fall under the scope of this Chapter are authorised to delegate to third parties for the purposes of a more efficient conduct of their business, the power to carry out on their behalf one or more of their functions. In that case, the following preconditions must be complied with:

a) the management company must inform the CSSF in an appropriate manner;

b) the mandate may not prevent the effectiveness of the supervision over the management company; in particular, it must not prevent the management company from acting, or the UCI from being managed, in the best interests of the investors;

c) when the delegation concerns investment management, the mandate may be given only to undertakings which are authorised or registered for the purposes of asset management and subject to prudential supervision;

d) when the mandate concerns investment management and is given to a third-country undertaking, cooperation between the CSSF and the supervisory authority of that country must be ensured; and

e) no mandate with regard to the core function of investment management shall be given to the depositary.

[49] The French version of the law uses the term "*société anonyme*".
[50] The French version of the law uses the term "*société à responsabilité limitée*".
[51] The French version of the law uses the term "*société cooperative*".
[52] The French version of the law uses the term "*société coopérative organisée comme une société anonyme*".
[53] The French version of the law uses the term "*société en commandite par actions*".
[54] See footnote 32.

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

a) it must have sufficient financial resources at its disposal to enable it to conduct its business effectively and meet its liabilities; in particular it must have a minimum paid-up capital of one hundred and twenty-five thousand euro (EUR 125,000); a CSSF regulation may raise that minimum amount to a maximum of six hundred and twenty-five thousand euro (EUR 625,000)[55];

b) the funds referred to in paragraph (2) a) are to be maintained at the management company's permanent disposal and invested in its own interests;

c) the directors of the management company, within the meaning of Article 129 (5), must be of sufficiently good repute and have the professional experience required for the performance of their duties;

d) the names of reference shareholders or members of the management company must be provided to the CSSF;

e) the application for authorisation must describe the organisational structure of the management company.

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

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

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

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

a) does not make use of the authorisation within twelve months, expressly renounces the authorisation or has ceased the activity covered by this Chapter for more than six months;

b) has obtained the authorisation by making false statements or by any other irregular means;

c) no longer fulfils the conditions under which authorisation was granted;

d) has seriously and/or systematically infringed the provisions adopted pursuant to this Law; or

e) falls within any of the other cases that provide for withdrawal in this Law.

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

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

[55] No such regulation on exists at this time.

Art. 126

Article 104 is applicable to management companies falling within the scope of this Chapter.

In the event of the non-judicial liquidation of a management company, the liquidator(s) must be approved by the CSSF. The liquidator(s) must provide all guarantees of honourability and professional skill.

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

Art. 127

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

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

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

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

Chapter 18 – Exercise of the activity of a management company by Multilateral Development Banks

Art. 128

Multilateral development banks listed in Annex VI, point 20, of Directive 2006/48/EC, as amended and which are permitted by their statute to provide the services of collective portfolio management, are authorised to manage UCIs for the purposes of Chapter 16.

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

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

Art. 129

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

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

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

(3) In addition to the conditions laid down in paragraph (2), a UCITS within the scope of Article 2 of this Law shall be authorised by the CSSF only on the following conditions:

a) A common fund shall be authorised only if the CSSF has approved the application of the management company to manage that common fund. An investment company having designated a management company shall be authorised only if the CSSF has approved the application of the management company designated to manage that investment company.

b) Without prejudice to point a), if the UCITS which is established in Luxembourg is managed by a management company subject to Directive 2009/65/EC and which has been authorised by the competent authorities of another Member State pursuant to Directive 2009/65/EC, the CSSF shall decide on the application of the management company to manage the UCITS in accordance with Article 123.

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

a) it establishes that the investment company does not comply with the preconditions laid down in Chapter 3; or

b) the management company is not authorised to manage a UCITS pursuant to Chapter 15; or

c) the management company is not authorised to manage a UCITS in its home Member State.

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

(5) The directors[56] of the UCI and of the depositary must be of sufficiently good repute and have sufficient experience, also in relation to the type of UCI concerned. To that end, the names of the directors and of every person succeeding them in office, must be communicated forthwith to the CSSF.

"Directors" shall mean those persons who under law or the instruments of incorporation represent the UCI or the depositary or who effectively determine the conduct of the activity of the UCI.

(6) Any replacement of the management company or of the depositary and any amendment of the management regulations or the instruments of incorporation of the investment company are subject to approval by the CSSF.

[56] See footnote 15.

(7) The granting of authorisation implies, for the members of the administrative body, management board and supervisory board of the management company or, where applicable, of the investment company, an obligation to notify the CSSF spontaneously in writing and in a complete, coherent and comprehensible manner of any change regarding the substantial information on which the CSSF based itself to examine the application for authorisation as well as any change in respect of the directors referred to in paragraph (5) above.

Art. 130

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

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

Art. 131

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

Art. 132

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

Chapter 20 – Organisation of supervision

A. – Competent authority for supervision

Art. 133

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

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

(3) The CSSF has jurisdiction to settle any consumer disputes concerning the activity of UCIs governed by this Law through out-of-court procedures.

Art. 134

(1) Any person who works or who has worked for the CSSF, as well as the approved statutory auditors[57] or experts mandated by the CSSF, shall be bound by the obligation of professional secrecy provided for by Article 16 of the Law of 23 December 1998 creating the *Commission de Surveillance du Secteur Financier*, as amended. Such secrecy implies that no confidential information which they may receive in the course of their duties may be divulged to any person or authority whatsoever, save in summary or abridged form such that no UCIs, management company or depositary can be individually identified, without prejudice to cases covered by criminal law.

(2) Paragraph (1) shall not prevent the CSSF from exchanging information with the supervisory authorities of other Member States of the European Union within the limits provided by this Law.

The supervisory authorities of countries other than Member States of the European Union which are party to the Agreement on the European Economic Area[58] are assimilated to the supervisory authorities of Member States of the European Union within the limits provided by that Agreement and the instruments relating thereto.

(3) Paragraph (1) shall not prevent the CSSF from exchanging information with:

- authorities of third countries with public responsibilities for the prudential supervision of UCIs;
- other authorities, bodies and persons referred to in paragraph (5), with the exception of central credit registers established in third countries;
- the authorities of third countries referred to in paragraph (6).

The communication of information by the CSSF authorised by this paragraph is subject to the following conditions:

- the transmitted information must be required for the purpose of performing the duty of the recipient authorities, bodies and persons;
- the information received shall be subject to the professional secrecy of the recipient authorities, bodies and persons, and the professional secrecy of such authorities, bodies and persons must offer guarantees at least equivalent to the professional secrecy to which the CSSF is bound;
- the authorities, bodies and persons which receive information from the CSSF may only use that information for the purposes for which it has been communicated to them and must be able to ensure that no other use can be made thereof;

[57] The French version of the law uses the term "*réviseur d'entreprises agréé*".
[58] Currently: Iceland, Liechtenstein and Norway.

- the authorities, bodies and persons who receive information from the CSSF grant the same right of information to the CSSF;
- the CSSF may only disclose information received from Community authorities responsible for the prudential supervision of UCIs with the express consent of those authorities and, where appropriate, solely for the purposes for which those authorities gave their agreement.

For the purposes of this paragraph, third countries are countries other than those referred to in paragraph (2).

(4) Where the CSSF receives confidential information under paragraphs (2) and (3), it may use it only in the course of its duties for the purposes of:

- checking that the conditions governing the taking-up of the business of UCITS, of management companies, depositaries and of any other undertaking contributing towards their business activity are met and facilitating the monitoring of the conduct of that business, of administrative and accounting procedures as well as of internal control mechanisms; or
- imposing penalties; or
- conducting administrative appeals against decisions by the CSSF; or
- pursuing court proceedings initiated against decisions taken by the CSSF under this Law.

(5) Paragraphs (1) and (4) shall not preclude:

a) the exchange of information within the European Union or in Luxembourg between the CSSF and:

- authorities with public responsibility for the supervision of credit institutions, investment firms, insurance undertakings and other financial institutions and the authorities responsible for the supervision of financial markets;
- bodies involved in the liquidation, bankruptcy or other similar proceedings concerning UCIs, management companies and depositaries or other undertakings contributing towards their business activity;
- persons responsible for carrying out statutory audits of the accounts of credit institutions, investment firms, other financial institutions or insurance undertakings in the performance of their supervisory functions;

b) the disclosure by the CSSF within the European Union or in Luxembourg to bodies which administer compensation schemes of investors or to central credit registers of information necessary for the performance of their functions.

The communication of information by the CSSF authorised by this paragraph is subject to the condition that such information is covered by the professional secrecy of the authorities, bodies and persons receiving the information and is only authorised to the extent that the professional secrecy of those authorities, bodies and persons offers guarantees at least equivalent to the professional secrecy of the CSSF. In particular, authorities which receive information from the CSSF may only use such information for the purposes for which it has been communicated to them and must be able to ensure that no other use can be made thereof.

Countries other than Member States of the European Union which are party to the Agreement on the European Economic Area[59] are assimilated to the Member States of the European Union within the limits provided by that Agreement and the instruments relating thereto.

(6) Paragraphs (1) and (4) do not prevent exchanges of information within the European Union or in Luxembourg between the CSSF and:

- the authorities responsible for supervising the bodies involved in the liquidation, bankruptcy and other similar proceedings concerning credit institutions, investment firms, insurance undertakings, UCIs, management companies and depositaries;
- the authorities responsible for supervising persons entrusted with the carrying out of statutory audits of the accounts of credit institutions, investment firms, insurance undertakings and other financial institutions.

The communication of information by the CSSF authorised by this paragraph is subject to the following conditions:

- the transmitted information is intended to be used for the purpose of performing the supervisory duty of the recipient authorities;
- information received shall be subject to the professional secrecy of the recipient authorities and the professional secrecy of such authorities must offer guarantees at least equivalent to the professional secrecy of the CSSF;
- the authorities which receive information from the CSSF may only use such information for the purposes for which it has been communicated to them and must be able to ensure that no other use can be made thereof;
- the CSSF may only disclose information received from supervisory authorities referred to in paragraphs (2) and (3) with the express agreement of such authorities and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Countries other than Member States of the European Union which are party to the Agreement on the European Economic Area[60] are assimilated to Member States of the European Union within the limits provided by that Agreement and the instruments relating thereto.

(7) This Article shall not prevent the CSSF from transmitting to central banks and other bodies with a similar function in their capacity as monetary authorities information intended for the performance of their duties.

The communication of information by the CSSF authorised by this paragraph is subject to the condition that such information is covered by the professional secrecy of the recipient authorities and is only authorised to the extent that the professional secrecy of those authorities offers guarantees at least equivalent to the professional secrecy of the CSSF. In particular, authorities which receive information from the CSSF may only use such information for the purposes for which it has been communicated to them and must be able to ensure that no other use can be made thereof.

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[59] Currently: Iceland, Liechtenstein and Norway.
[60] Currently: Iceland, Liechtenstein and Norway.

This Article shall furthermore not prevent the authorities or bodies referred to in this paragraph from communicating to the CSSF any such information as it may require for the purposes of paragraph (4). Information received in this context by the CSSF shall be subject to its professional secrecy.

(8) This Article shall not prevent the CSSF from communicating the information referred to in paragraphs (1) to (4) to a clearing house or other similar body recognised under law for the provision of clearing or settlement services for a market in Luxembourg if the CSSF considers it is necessary to communicate such information in order to ensure the proper functioning of those bodies in relation to defaults or potential defaults by market participants.

The communication of information by the CSSF authorised by this paragraph is subject to the condition that any such information is covered by the professional secrecy of the recipient bodies and is only authorised to the extent that the professional secrecy of those undertakings offers guarantees at least equivalent to the professional secrecy of the CSSF. In particular, undertakings which receive information from the CSSF may only use that information for the purposes for which it has been communicated to them and must be able to ensure that no other use can be made thereof.

The information received by the CSSF pursuant to paragraphs (2) and (3) may not be disclosed in the circumstances referred to in this paragraph without the express consent of the supervisory authorities which have disclosed that information to the CSSF.

B. – Cooperation with competent authorities of the other Member States

Art. 135

(1) The CSSF shall cooperate with the competent authorities of other Member States for the purpose of carrying out their duties under Directive 2009/65/EC or of exercising their powers under the aforementioned Directive or under national law.

The CSSF shall cooperate with the competent authorities of other Member States even in cases where the conduct under investigation does not constitute an infringement of any regulation in force in Luxembourg.

(2) The CSSF shall without delay provide the competent authorities of other Member States with the information required for the purposes of carrying out their duties under Directive 2009/65/EC.

(3) Where the CSSF has good reason to suspect that acts contrary to the provisions of Directive 2009/65/EC are being or have been carried out by entities not subject to its supervision on the territory of another Member State, it shall notify the competent authorities of the other Member State thereof in as specific a manner as possible.

(4) The competent authorities of a Member State may request the cooperation of the CSSF in a supervisory activity or for an on-the-spot verification or in an investigation in Luxembourg of the latter within the framework of their powers pursuant to Directive 2009/65/EC. Where the CSSF receives a request with respect to an on-the-spot verification or investigation, it shall:

a) carry out the verification or investigation itself;

b) allow the requesting competent authorities of the Member State to carry out the verification or investigation;

c) allow auditors or experts to carry out the verification or investigation.

(5) If the verification or investigation is carried out by the CSSF, the competent authorities of the Member State which has requested cooperation may request that its own officials accompany the officials of the CSSF carrying out the verification or investigation. The verification or investigation shall, however, be subject to the overall control of the CSSF.

If the verification or investigation is carried out by a competent authority of a Member State in Luxembourg, the CSSF may request that its own officials accompany the officials carrying out the verification or investigation.

(6) The CSSF may refuse to exchange information as provided for in paragraph (2) or to act on a request for cooperation in carrying out an investigation or on-the-spot verification as provided for in paragraph (4), only where:

a) such an investigation, on-the-spot verification or exchange of information might adversely affect the sovereignty, security or public policy of Luxembourg;

b) judicial proceedings have already been initiated in respect of the same persons and the same actions in Luxembourg;

c) final judgement in respect of the same persons and the same actions has already been delivered in Luxembourg.

(7) The CSSF shall notify the requesting competent authorities of any decision taken under paragraph (6). Any such notification shall contain information about the motives of the decision.

Art. 136

(1) The CSSF, insofar as a UCITS is established in Luxembourg, shall have the exclusive rights to take action against the UCITS if it infringes the laws, regulations or administrative provisions as well as the rules provided for by the management regulations or the instruments of incorporation of the investment company.

(2) Any decision to withdraw authorisation, or any other serious measure taken against a UCITS, or any suspension of the issue, repurchase or redemption of its units imposed upon it, shall be communicated without delay by the CSSF to the authorities of the UCITS' host Member State and, if the management company of a UCITS is established in another Member State, to the competent authorities of the management company's home Member State.

(3) The CSSF, as the competent authority of the UCITS' home Member State, and the competent authorities of the management company's home Member State may take action against the management company if it infringes rules under their respective responsibility.

(4) The CSSF shall take the appropriate measures in the event that the competent authorities of the UCITS host Member State inform the CSSF that they have clear and demonstrable grounds for believing that a UCITS, the units of which are marketed within the territory of that Member State is in breach of the obligations arising from the provisions adopted pursuant to Directive 2009/65/EC which do not grant them powers.

Art. 137

(1) The CSSF may take action against a UCITS, the units of which are marketed in Luxembourg if it infringes the laws, regulations or administrative provisions in force that fall outside the scope of this Law or the requirements set out in Articles 59 and 61.

(2) Any decision to withdraw authorisation, or any other serious measure taken against a UCITS, or any suspension of the issue, repurchase or redemption of its units imposed upon it, shall be communicated without delay to the CSSF by the competent authorities of the UCITS home Member States. This information shall also be communicated to the CSSF if the management company of a UCITS is established in Luxembourg.

(3) The CSSF shall inform the competent authorities of the UCITS home Member State in the event that the CSSF has clear and demonstrable grounds for believing that such a UCITS is in breach of the obligations arising from the provisions adopted pursuant to Directive 2009/65/EC which do not confer powers on it.

(4) If, despite the measures taken by the competent authorities of the UCITS home Member State, the UCITS persists in acting in a manner that is clearly prejudicial to the interests of investors in Luxembourg, the CSSF may:

a) after informing the competent authorities of the UCITS home Member State, take all the appropriate measures needed in order to protect investors, including the possibility of preventing the UCITS concerned from carrying out any further marketing of its units in Luxembourg; or

b) if necessary, bring the matter to the attention of the Committee of European Securities Regulators[61].

The CSSF must inform the European Commission without delay of any measure taken pursuant to point a).

Art. 138

Where, through the provision of services or by the establishment of branches, a management company operates in one or more management company's host Member States, the CSSF shall collaborate closely with the competent authorities concerned.

It shall supply on request all the information concerning the management and ownership of that management companies that is likely to facilitate their supervision and all information likely to facilitate the monitoring of such companies.

Art. 139

(1) Where the CSSF is the competent authority of the management company it cooperates in order to ensure the collection by the authorities of the management company's host Member State of the information referred to in Article 21, paragraph (2) of Directive 2009/65/EC.

(2) Insofar as it is necessary for the purpose of exercising its powers of supervision, as the management company's home Member State competent authority, the competent

[61] As of 1 January 2011, the Committee of European Securities Regulators (CESR) was replaced by the European Securities and Market Authority (ESMA) by Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Market Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC.

authorities of the management company's host Member State shall inform the CSSF of any measures taken by them pursuant to Article 21, paragraph (5) of Directive 2009/65/EC which involve measures or penalties imposed on a management company or restrictions on a management company's activities.

(3) The CSSF, as the home authority of the management company, shall, without delay, notify the competent authorities of the UCITS' home Member State of any problem identified at the level of the management company which may materially affect the ability of the management company to perform its duties properly with respect to the UCITS or of any breach of the requirements under Chapter 15 of this Law.

(4) The CSSF shall be informed by the competent authorities of the UCITS' host Member State of any problem identified at the level of the UCITS' which may materially affect the ability of the management company to perform its duties properly or to comply with the requirements under Directive 2009/65/EC which fall under the responsibility of the UCITS' home Member State.

Art. 140

Where the UCITS is established in Luxembourg, the CSSF shall, without delay, notify the competent authorities of the management company's home Member State of any problem identified at the level of the UCITS which may materially affect the ability of the management company to perform its duties properly or to comply with the requirements under this Law, which fall under the responsibility of the CSSF.

Art. 141

(1) Where a management company authorised in another Member State pursues its business activities in Luxembourg through the provision of services or through a branch, insofar as this is necessary for the purpose of exercising the powers of supervision, the CSSF shall inform the competent authorities of the management company's home Member State, of any measures taken by the CSSF pursuant to Article 124, paragraph (5) of this Law which involve measures or penalties imposed on a management company or restrictions on a management company's activities.

(2) Where a management company authorised in another Member State pursues its business activities within the territory of Luxembourg through a branch, the CSSF shall ensure that the competent authorities of the management company's home Member State may, after having informed the CSSF, carry out, themselves or through the intermediary they instruct for the purpose, on-the-spot verification of the information referred to in Article 109 of Directive 2009/65/EC.

(3) Paragraph (2) shall not affect the right of the CSSF in discharging its duties under this Law, to carry out on-the-spot verifications of branches established in Luxembourg.

C. – Supervisory powers and powers of sanction

Art. 142

(1) The decisions to be adopted by the CSSF in implementation of this Law shall state in writing the reasons on which they are based and, unless the delay entails risks, they shall be adopted after preparatory proceedings at which all parties

are able to state their case[62]. They shall be notified by registered letter or delivered by bailiff[63].

(2) The decisions of the CSSF concerning the granting, refusal or withdrawal of the authorisations provided for in this Law may be referred to the administrative court[64] which will deal with the substance of the case. The case must be filed within one month from the date of notification of the contested decision, or else shall be time barred.

(3) The decision of the CSSF withdrawing the name of a UCI referred to in Articles 2 and 87 of this Law from the list provided for in Article 130, paragraph (1), shall, as from the notification thereof to such undertaking and until the decision has become final, *ipso jure* entail for such undertaking suspension of any payment by said undertaking and prohibition for such undertaking, on pain of nullity, to take any measures other than protective measures, except with the authorisation of the supervisory commissioner[65]. The CSSF shall *ipso jure* hold the office of supervisory commissioner, unless at its request, the District Court dealing with commercial matters appoints one or more supervisory commissioners. The application, stating the reasons on which it is based and accompanied by supporting documents, shall be lodged for that purpose at the Registry of the District Court in the district within which the undertaking has its registered office.

The Court shall give its ruling within a short period.

If it considers that it has sufficient information, it shall immediately deliver its decision in public session, without hearing the parties. If it deems it necessary, it shall convene the parties by notification from the Registrar[66] within three days from the lodging of the application. It shall hear the parties in chambers and deliver its decision in public session.

The written authorisation of the supervisory commissioners is required for all measures and decisions of the undertaking and, failing such authorisation, they shall be void.

The Court may, however, limit the scope of operations subject to authorisation.

The commissioners may submit for consideration to the relevant bodies of the undertaking any proposals which they consider appropriate. They may attend proceedings of the administrative body, management, executive or supervisory boards of the undertaking.

The Court shall decide as to the expenses and fees of the supervisory commissioners; it may grant them advances.

The judgement provided for in paragraph (1) of Article 143 of this Law shall terminate the functions of the supervisory commissioner who must, within one month after his/her replacement, submit to the liquidators appointed in such judgement a report on the use of the undertaking's assets together with the accounts and supporting documents.

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[62] The French version of the law uses the term "*instruction contradictoire*".
[63] The French version of the law uses the term "*huissier*" *(court process server)*.
[64] The French version of the law uses the term "*tribunal administratif*".
[65] The French version of the law uses the term "*commissaire de surveillance*".
[66] The French version of the law uses the term "*greffier*".

If the withdrawal decision is amended on appeal in accordance with paragraph (2) above, the supervisory commissioner shall be deemed to have resigned.

Art. 143

(1) The District Court[67] dealing with commercial matters shall, at the request of the Public Prosecutor[68], acting on its own initiative or at the request of the CSSF, declare the dissolution and order the liquidation of the UCIs referred to in Articles 2 and 87 of this Law, whose entry on the list provided for in Article 130, paragraph (1) has finally been refused or withdrawn.

The District Court dealing with commercial matters shall, at the request of the Public Prosecutor, acting on its own initiative or at the request of the CSSF, declare the dissolution and order the liquidation of one or more compartments of UCIs referred to in Article 2 and 87 of this Law, in cases where the authorisation of this compartment has been refused or withdrawn.

When ordering the liquidation, the Court shall appoint a reporting judge[69] and one or more liquidators. It shall determine the method of liquidation. It may render applicable, to such extent as it may determine, the rules governing liquidation in bankruptcy. The method of liquidation may be changed by subsequent decision, either at the Court's own motion or at the request of the liquidator(s).

The Court shall decide as to the expenses and fees of the liquidators; it may grant advances to them. The judgement declaring the dissolution and ordering liquidation shall be enforceable on a provisional basis.

(2) The liquidator(s) may bring and defend all actions on behalf of the undertaking, receive all payments, grant releases with or without discharge, realise all the transferable securities of the undertaking and reemploy the proceeds therefrom, issue or endorse any negotiable instruments, compound or compromise on all claims. They may alienate immovable property of the undertaking by public auction.

They may also, but only with the authorisation of the Court, mortgage and pledge its assets and alienate its immovable property by private treaty.

(3) As from the day of the judgement, no legal actions relating to movable or immovable property or any enforcement procedures relating to movable or immovable property may be pursued, commenced or exercised otherwise than against the liquidators.

The judgement ordering liquidation shall terminate all seizures effected at the request of unsecured creditors who are not secured by charges[70] on movable and immovable property.

(4) After payment or deposit of the sums necessary for the discharge of the debts, the liquidators shall distribute to unit-holders the sums or amounts due to them.

[67] The French version of the law uses the term "*tribunal d'arrondissement siégeant en matière commerciale*".
[68] The French version of the law uses the term "*Procureur d'État*".
[69] The French version of the law uses the term "*juge-commissaire*".
[70] The French version of the law uses the term "*créanciers chirographaires et non privilégiés*".

(5) The liquidators may convene, at their own initiative, and must convene at the request of holders of units representing at least one fourth of the assets of the undertaking, a general meeting of unit-holders for the purpose of deciding whether, instead of an outright liquidation, it is appropriate to contribute the assets of the undertaking in liquidation to another UCI. That decision shall be taken, provided that the general meeting is composed of a number of unit-holders representing at least one half of the outstanding units or share capital of the undertaking, by a majority of two thirds of the votes of the unit-holders present or represented.

(6) The Court's decisions declaring the dissolution and ordering the liquidation of a UCI shall be published in the *Mémorial* and in two newspapers with adequate circulation specified by the Court, one of which at least must be a Luxembourg newspaper. The liquidator(s) shall arrange for such publications.

(7) If there are no or insufficient assets, as ascertained by the reporting judge, the documents relating to the proceedings shall be exempt from any registry and registration duties and the expenses and fees of the liquidators shall be borne by the Treasury and paid as judicial costs.

(8) The liquidators shall be responsible both towards third parties and to the UCI for the discharge of their duties and for any faults committed in the conduct of their activities.

(9) When the liquidation is completed, the liquidators shall report to the Court on the use made of the assets of the undertaking and shall submit the accounts and supporting documents thereof. The Court shall appoint supervisory auditors[71] to examine the documents.

After receipt of the supervisory auditors' report, a ruling shall be given on the management of the liquidators and the closure of the liquidation.

The closure of the liquidation shall be published in accordance with paragraph (6) above.

Such publication shall also include:

- the indication of the place designated by the Court where the books and records must be kept for at least five years;
- the indication of the measures taken in accordance with Article 145 with a view to the deposit of the sums and assets due to creditors, unit-holders or members to whom it has not been possible to deliver the same.

(10) Any legal actions against the liquidators of UCIs, in their capacity as such, shall be prescribed five years after publication of the closure of the liquidation provided for in paragraph (9).

Legal actions against the liquidators in connection with the performance of their duties, shall be prescribed five years after the date of the facts or, in the event of concealment thereof by wilful misconduct, five years after the discovery thereof.

(11) The provisions of this Article shall also apply equally to the UCIs which have not applied to be entered on the list provided for in Article 130, paragraph (1) within the time limit laid down therein.

[71] The French version of the law uses the term "*commissaires*".

Art. 144

(1) UCIs shall, after dissolution, be deemed to exist for the purpose of their liquidation. In the case of a non-judicial liquidation, they shall remain subject to supervision by the CSSF.

(2) All documents issued by a UCI in liquidation shall indicate that it is in liquidation.

Art. 145

(1) In the event of a non-judicial liquidation of a UCI, the liquidator(s) must be approved by the CSSF. The liquidator(s) must provide all guarantees of honourability and professional skill.

(2) Where a liquidator does not accept its appointment or is not approved, the District Court dealing with commercial matters shall, at the request of any interested party or of the CSSF, appoint the liquidator(s). The judgement appointing the liquidator(s) shall be provisionally enforceable, on the production of the original thereof and before registration, notwithstanding any appeal or objection.

Art. 146

In the event of a voluntary or compulsory liquidation of a UCI within the meaning of this Law, the sums and assets payable in respect of units whose holders failed to present themselves at the time of the closure of the liquidation, shall be paid to the public trust office[72] to be held for the benefit of the persons entitled thereto.

Art. 147

(1) For the purposes of application of this Law, the CSSF is granted all supervisory and investigative powers that are necessary for the exercise of their functions.

(2) The powers of the CSSF shall include the right to:

a) access any document in any form and receive a copy thereof;

b) require any person to provide information and, if necessary, to summon and question any person with a view to obtaining information;

c) carry out on-site inspections or investigations, by itself or by its delegates, of persons subject to its supervision under this Law;

d) require communication of the telephone exchanges and existing data;

e) require the cessation of any practice that is contrary to the provisions adopted in the implementation of this Law;

f) request the freezing or the sequestration of assets by the president of the District Court of and in Luxembourg acting on request;

g) declare the temporary prohibition of exercising professional activities against the persons subject to its prudential supervision, as well as the members of administrative, governing and management bodies, employees and agents linked to these persons;

[72] The French version of the law uses the term “*Caisse de Consignation*”.

h) require authorised investment companies, management companies or depositaries to provide information;

i) adopt any type of measure to ensure that investment companies, management companies and depositaries continue to comply with the requirements of this Law;

j) require the suspension of the issue, repurchase or redemption of units in the interest of the unit-holders or of the public;

k) withdraw the authorisation granted to a UCI, a management company or a depositary;

l) transmit information to the Public Prosecutor for criminal proceedings; and

m) instruct approved statutory auditors or experts to carry out verifications or investigations.

Art. 148

(1) The directors or members of the management board[73], as the case may be, managers and officers of UCIs, of management companies, depositaries as well as of any other undertaking contributing towards the business activity of the UCI subject to supervision by the CSSF as well as the liquidators in the case of voluntary liquidation of a UCI may have a fine of EUR 125 to EUR 12,500 imposed upon them in the event of their refusing to provide the financial reports and the requested information or where such documents prove to be incomplete, inaccurate or false, and in the event of any violation of the provisions of Chapter 19 of this Law or in the event of any other serious irregularity being recorded.

(2) The same fine may be imposed upon any person who infringes the provisions of Article 132 of this Law.

Art. 149

The CSSF may make public any fine imposed in accordance with Article 148, unless such a disclosure would seriously jeopardise the financial markets, be detrimental to the interests of investors or cause disproportionate damage to the parties concerned.

[73] The French version of the law uses the term “*directoire*”.

Chapter 21 – Obligations concerning information to be supplied to investors

A. – Publication of a prospectus and periodical reports

Art. 150

(1) The investment company and the management company, for each of the common funds it manages, must publish:

- a prospectus;
- an annual report for each financial year; and
- a half-yearly report covering the first six months of the financial year.

(2) The annual and half-yearly reports must be published within the following time limits, with effect from the end of the periods to which they relate:

- four months in the case of the annual report;
- two months in the case of the half-yearly report.

(3) The obligation to publish a prospectus within the meaning of this Law shall not apply to undertakings for collective investment of the closed-end type.

Art. 151

(1) The prospectus must include the information necessary for investors to be able to make an informed judgement of the investment proposed to them, and, in particular, of the risks attached thereto. The prospectus shall include, independent of the instruments invested in, a clear and easily understandable description of the fund's risk profile.

(2) The prospectus shall contain at least the information provided for in Schedule A of Annex I of this Law insofar as such information does not already appear in the management regulations or instruments of incorporation annexed to the prospectus in accordance with Article 152, paragraph (1).

(3) The annual report must include a balance sheet or a statement of assets and liabilities, a detailed income and expenditure account for the financial year, a report on the activities of the past financial year and the other information provided for in Schedule B of Annex I of this Law, as well as any significant information which will enable investors to make an informed judgement on the development of the activities and the results of the UCI.

(4) The half-yearly report must include at least the information provided for in Chapters I to IV of Schedule B of Annex I of this Law. Where a UCI has paid or proposes to pay an interim dividend, the figures must indicate the results after tax for the half-year concerned and the interim dividend paid or proposed.

(5) The Schedules as provided for by paragraphs (2), (3) and (4) may be differentiated by the CSSF for UCIs subject to Articles 87 and 100 of this Law, depending on whether or not these UCIs display certain characteristics or fulfil certain conditions.

Art. 152

(1) The management regulations or the instruments of incorporation of the investment company shall form an integral part of the prospectus and must be annexed thereto.

(2) The documents referred to in paragraph (1) need not, however, be annexed to the prospectus, provided that the unit-holder is informed that, on request, he/she will either be sent those documents or be apprised of the place where, in each Member State in which the units are marketed, he/she may consult them.

Art. 153

The essential elements of the prospectus must be kept up to date.

Art. 154

(1) Luxembourg UCIs must have the accounting information given in their annual report audited by an approved statutory auditor[74].

The approved statutory auditor's report and, as the case may be, its qualifications are set out in full in each annual report.

The approved statutory auditor must prove it has appropriate professional experience.

(2) The approved statutory auditor shall be appointed and remunerated by the UCI.

(3) The approved statutory auditor must report promptly to the CSSF any fact or decision of which he/she has become aware while carrying out the audit of the accounting information contained in the annual report of a UCI or any other legal task concerning a UCI, where such a fact or decision is likely to:

- constitute a substantial breach of this Law or the regulations adopted for its execution; or
- affect the continuous functioning of the UCI or of an undertaking contributing towards its business activity; or
- lead to a refusal to certify the accounts or to the expression of qualifications thereon.

The approved statutory auditor likewise has a duty to promptly report to the CSSF, in the accomplishment of its duties referred to in the preceding sub-paragraph in respect of a UCI, any fact or decisions concerning the UCI and meeting the criteria referred to in the preceding sub-paragraph of which he/she has become aware while carrying out the audit of the accounting information contained in their annual report or of another legal task in relation to another undertaking having close links resulting from a control relationship with the UCI or having close links with an undertaking involved in its business activity.

If, in the discharge of his/her duties, the approved statutory auditor ascertains that the information provided to investors or to the CSSF in the reports or other documents of the UCI does not truly describe the financial situation and the assets and liabilities of the UCI, he/she shall be obliged to inform the CSSF forthwith.

The approved statutory auditor shall moreover be obliged to provide the CSSF with all information or certificates required by the latter on any matters of which the approved statutory auditor has or ought to have knowledge in connection with the discharge of his/her duties. The same applies if the approved statutory auditor ascertains that the assets of the UCI are not or have not been invested in accordance with the provisions of this Law or of the prospectus.

The disclosure in good faith to the CSSF by the approved statutory auditor of any fact or decision referred to in this paragraph shall not constitute a breach of professional

[74] The French version of the law uses the term "*réviseur d'entreprises agréé*".

secrecy or of any restriction on disclosure of information imposed contractually and shall not result in liability of any kind of the approved statutory auditor.

The CSSF may regulate the scope of the approved statutory auditor's mandate and the contents of the audit report on the annual accounts.

The CSSF may request an approved statutory auditor to perform an audit on one or several specific aspects of the activities and operations of a UCI. This audit is performed at the expense of the UCI concerned.

(4) The CSSF shall refuse or withdraw the entry on the list of UCIs, the UCI whose approved statutory auditor does not satisfy the conditions or does not discharge the obligations prescribed in this Article.

(5) The institution of the supervisory auditors[75] provided for by Articles 61, 109, 114 and 200 of the Law of 10 August 1915 on commercial companies[76], as amended, is not applicable to Luxembourg investment companies. The directors or the management board, as the case may be, are solely competent in all cases where the Law of 10 August 1915 on commercial companies, as amended, provides for the joint action of the supervisory auditors and the directors or the management board, as the case may be, or managers together.

The institution of supervisory auditors provided for by Article 151 of the Law of 10 August 1915 on commercial companies, as amended, is not applicable to Luxembourg investment companies. Upon completion of the liquidation, a report on the liquidation shall be drawn up by the approved statutory auditor. This report shall be tabled at the general meeting at which the liquidators report on the application of the corporate assets and submit the accounts and supporting documents. The same meeting shall resolve on the approval of the accounts of the liquidation, the discharge and the closure of the liquidation.

(6) The accounting information included in the annual reports of foreign UCIs referred to in Article 100 must be audited by an independent expert providing all guarantees of honourability and professional skill.

Paragraphs (2), (3) and (4) are applicable to the case referred to in this paragraph.

Art. 155

(1) UCIs must send their prospectuses and any amendments thereto, as well as their annual and half-yearly reports, to the CSSF. UCIs must, on request, provide these documents to the competent authorities of the management company's home Member State.

(2) The CSSF may publish or cause the publication of the aforesaid documents by any such means as it shall consider adequate.

Art. 156

(1) The prospectus and the latest published annual and half-yearly reports must be offered to investors free of charge upon their request.

[75] The French version of the law uses the term "*commissaire aux comptes*" – A statutory auditor under company law is an organ of the Company with a certain control and surveillance function.

[76] The French version of the law uses the term "*loi du 10 août 1915 concernant les sociétés commerciales, telle que modifiée*".

(2) The prospectus may be delivered in durable medium or by means of a website. A paper copy shall, in any case, be delivered to investors on request and free of charge.

(3) The annual and half-yearly reports are available to the investors in the manner specified in the prospectus as well as in the key investor information referred to in Article 159 in respect of UCITS. A paper copy of the annual and half-yearly reports shall, in any case, be supplied to investors free of charge upon their request.

B. – Publication of other information

Art. 157

(1) The UCITS referred to in Article 2 of this Law must make public the issue, sale and redemption price of their units each time they issue, sell and redeem their units, and at least twice a month. The CSSF may, however, permit a UCITS to reduce this frequency to once a month, on condition that such derogation does not prejudice the interests of unit-holders.

(2) The UCIs referred to in Article 87 of this Law must make public the issue, sale and redemption price of their units each time they issue, sell and redeem their units, and at least once a month. The CSSF may, however, grant derogations therefrom upon a duly justified application.

Art. 158

All marketing communications to investors shall be clearly identifiable as such. They shall be fair, clear and not misleading. In particular, any marketing communication comprising an invitation to purchase units of UCIs that contains specific information about a UCI shall make no statement that contradicts or diminishes the significance of the information contained in the prospectus and, for UCITS, the key investor information referred to in Article 159. It shall indicate that a prospectus exists and, for UCITS, that the key investor information referred to in Article 159 is available. It shall specify where and in which language such information and documents may be obtained by investors and potential investors or how they may obtain access to them.

C. – Key investor information to be established by UCITS

Art. 159

(1) Investment companies and management companies, for each of the common funds they manage, must draw up a short document containing key information for investors. That document shall be referred to as “key investor information” in this Law.

Where the UCITS is established in Luxembourg or markets its units in Luxembourg pursuant to Chapter 7 of this Law, the words “key investor information” shall be clearly stated in that document, in either Luxembourgish, French, German or English.

(2) Key investor information shall include appropriate information about the essential characteristics of the UCITS concerned, which is to be provided to investors so that they are reasonably able to understand the nature and the risks of the investment product that is being offered to them and, consequently, to make investment decisions on an informed basis.

(3) Key investor information shall provide information on the following essential elements in respect of the UCITS concerned:

a) identification of the UCITS;

b) a short description of its investment objectives and investment policy;

c) past performance presentation or, where relevant, performance scenarios;

d) costs and associated charges; and

e) risk/reward profile of the investment, including appropriate guidance and warnings in relation to the risks associated with investments in the relevant UCITS.

Those essential elements shall be comprehensible to the investor without any reference to other documents.

(4) Key investor information shall clearly specify where and how to obtain additional information relating to the proposed investment, including but not limited to where and how the prospectus and the annual and half-yearly reports can be obtained on request and free of charge, at any time, and the language in which such information is available to investors.

(5) Key investor information shall be written in a concise manner and in non-technical language. It shall be drawn up in a common format, allowing for comparison, and shall be presented in a way that is likely to be understood by retail investors.

(6) Key investor information shall be used without alterations or supplements, except translation, in all Member States where the UCITS is notified to market its units in accordance with Article 54.

Art. 160

(1) Key investor information shall constitute pre-contractual information. It shall be fair, clear and not misleading. It shall be consistent with the relevant parts of the prospectus.

(2) No person shall incur civil liability solely on the basis of the key investor information, including any translation thereof, unless it is misleading, inaccurate or inconsistent with the relevant parts of the prospectus. Key investor information shall contain a clear warning to the affect that no civil liability is incurred on the sole basis of the information for investors including translations thereof unless these do not fulfil the conditions of paragraph (1).

Art. 161

(1) Investment companies and management companies, for each of the common funds they manage, which sell UCITS directly or through another natural or legal person who acts on their behalf and under their full and unconditional responsibility shall provide investors with key investor information on such UCITS in good time before their proposed subscription of units in such UCITS.

(2) Investment companies and, for each of the common funds they manage, management companies which do not sell UCITS directly or through another natural or legal person who acts on their behalf and under their full and unconditional responsibility, to investor, shall provide key investor information to product manufacturers and intermediaries selling such UCITS or advising investors on potential investments in such UCITS or in products offering exposure to such UCITS upon their request. The intermediaries selling UCITS or advising investors on potential investments in UCITS must provide key investor information to their clients or potential clients.

(3) Key investor information shall be provided to investors free of charge.

Art. 162

Key investor information may be delivered in a durable medium or by means of a website. A paper copy shall be supplied to investors on request and free of charge.

In addition an up-to-date version of the key investor information shall moreover be published on the website of the investment company or of the management company.

Art. 163

(1) UCITS must provide the CSSF with key investor information and any amendment thereto.

(2) The essential elements of the key investor information must be kept up to date.

D. – Protection of name

Art. 164

(1) No entity shall make use of designations or of a description giving the impression that its activities are subject to this Law if it has not obtained the authorisation provided for in Article 130. The UCIs referred to in Chapter 7 and in Article 100 may use the designation they bear according to their national law. However, should this be misleading, these undertakings shall accompany the designation they use with adequate particulars.

(2) The District Court dealing with commercial matters of the place where the UCI is situated or of the place where the designation has been used, may, at the request of the public prosecutor's office, issue an injunction prohibiting anyone from using the designation as defined in paragraph (1), if the conditions provided for by this Law are not or no longer met.

(3) The final judgement or court decision which delivers this injunction, is published by the public prosecutor's office and at the expense of the person convicted in two Luxembourg or foreign newspapers with adequate circulation.

Chapter 22 – Criminal law provisions

Art. 165

A penalty of imprisonment of one month to one year and a fine of five hundred to twenty-five thousand euro or either of these penalties shall be imposed upon:

(1) any person who has issued or redeemed or caused to be issued or redeemed units of a common fund in the cases referred to in Articles 12 (3), 22 (3) of this Law and in Article 90 of this Law to the extent that this Article provides that Chapter 11 is subject to Articles 12 (3) and 22 (3) of this Law;

(2) any person who has issued or redeemed units of a common fund at a price other than that which would result from the application of the criteria provided for in Articles 9 (1), 9 (3), 11 (3) and in Article 90 of this Law to the extent that this Article provides that Chapter 11 is subject to Articles 9 (1) and 9 (3) of this Law;

(3) any person who, as director or member of the management board, as the case may be, or as manager or supervisory auditor of the management company or the depositary has made loans or advances on units of the common fund using assets of the common fund, or who has by any means at the expense of the common fund, made payments in order to pay up units or acknowledged payments to have been made which have not actually been so made.

Art. 166

(1) A penalty of imprisonment of one to six months and a fine of five hundred to twenty-five thousand euro or either of these penalties shall be imposed upon:

a) the directors or members of the management board, as the case may be, or managers of the management company who has failed to inform the CSSF without delay that the net assets of the common fund have fallen below two thirds and one fourth, respectively, of the legal minimum for the net assets of the common fund;

b) the directors or members of the management board, as the case may be, or managers of the management company who has infringed Article 10 and Articles 41 to 52 of this Law or Article 90 of this Law to the extent that this Article provides that Chapter 11 is subject to Article 10 of this Law and the regulations made pursuant to Article 91 of this Law.

(2) A fine of five hundred to twenty-five thousand euro shall be imposed upon any persons who, in violation of Article 164, purport to use a designation or description giving the impression that they relate to the activities subject to this Law if they have not obtained the authorisation provided for in Article 130.

Art. 167

A fine of five hundred to ten thousand euro shall be imposed on the directors or members of the management board, as the case may be, or managers of the management company or the investment company who have not caused the issue and redemption price of the units of the UCI to be determined at the specified intervals or who have not made such prices public according to Article 157 of this Law.

Art. 168

A penalty of imprisonment of one month to one year and a fine of five hundred to twenty-five thousand euro or either of these penalties shall be imposed upon the founders, directors[77] or members of the management board, as the case may be, or managers of an investment company who have infringed the provisions of Articles 28 (2), 28 (4) and 28 (10) of this Law; of Article 39 to the extent that it provides that Chapter 4 is subject to Articles 28 (2), 28 (4) and 28 (10) of this Law; of Articles 41 to 52 of this Law; of Article 95 of this Law to the extent that it provides that Chapter 12 is subject to Articles 28 (2) a), 28 (4) and 28 (10) of this Law; of the regulations implementing Article 96 of this Law and of the regulations implementing Article 99 of this Law.

Art. 169

A penalty of imprisonment of one month to one year and a fine of five hundred to twenty-five thousand euro or either of these penalties shall be imposed upon the directors[78] or members of the management board, as the case may be, or managers of an investment company who have not convened the extraordinary general meeting in accordance with Article 30 of this Law; Article 39 to the extent that it provides that Chapter 4 is subject to Article 30 of this Law; Article 95 to the extent that it provides that Chapter 12 is subject to Article 30 of this Law and Article 98 (2) to (4) of this Law.

Art. 170

A penalty of imprisonment of three months to two years and a fine of five hundred to fifty thousand euro or either of these penalties shall be imposed on anyone who has carried out or caused to be carried out operations involving the receipt of savings from the public with a view to investment if the UCI for which they acted was not entered on the list.

Art. 171

A penalty of imprisonment of one month to one year and a fine of five hundred to twenty-five thousand euro or either of these penalties shall be imposed on the directors of UCIs referred to in Articles 97 and 100 who have failed to observe the conditions imposed upon them by this Law.

The same penalties, or either one of them only, shall be imposed upon the directors of UCIs referred to in Articles 2 and 87 of this Law, who, notwithstanding the provisions of Article 142, paragraph (3), have taken measures other than protective measures without being authorised for that purpose by the supervisory commissioner.

[77] See footnote 15.
[78] See footnote 15.

Chapter 23 – Tax provisions

Art. 172

The tax provisions of this Law apply to UCIs which are subject to this Law as well as UCIs which are subject to the Law of 20 December 2002 on undertakings for collective investment, as amended.

Art. 173

(1) Without prejudice to the collection of registration fees and transcription and implementation of national legislation on value added tax, there is no other tax payable by UCIs located or established in Luxembourg within the meaning of this Law, apart from the subscription tax[79] mentioned below in Articles 174 to 176.

(2) The amounts distributed by such undertakings shall not be subject to withholdings and are not taxable if received by non-residents.

Art. 174

(1) The rate of the annual subscription tax payable by the undertakings referred to in this Law shall be 0.05%.

(2) This rate is 0.01% for:

a) undertakings whose sole object is the collective investment in money market instruments and the placing of deposits with credit institutions;

b) undertakings whose sole object is the collective investment in deposits with credit institutions;

c) individual compartments of UCIs with multiple compartments referred to in this Law as well as for individual classes of securities issued within a UCI or within a compartment of a UCI with multiple compartments, provided that the securities of such compartments or classes are reserved to one or more institutional investors.

Art. 175

(1) Are exempt from the subscription tax:

a) the value of the assets represented by units held in other UCIs, provided such units have already been subject to the subscription tax provided for in Article 174 or in Article 68 of the Law of 13 February 2007 on specialised investment funds;

b) UCIs as well as individual compartments of UCIs with multiple compartments:

(i) whose securities are reserved for institutional investors; and

(ii) whose sole object is the collective investment in money market instruments and the placing of deposits with credit institutions; and

(iii) whose weighted residual portfolio maturity does not exceed 90 days; and

(iv) that have obtained the highest possible rating from a recognised rating agency.

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[79] The French version of the law uses the term "*taxe d'abonnement*".

Where several classes of securities exist within the UCI or the compartment, the exemption only applies to classes whose securities are reserved for institutional investors;

c) UCIs whose securities are reserved for (i) institutions for occupational retirement pension or similar investment vehicles, set up on one or more employers' initiative for the benefit of their employees and (ii) companies of one or more employers investing funds they hold, to provide retirement benefits to their employees.

d) UCIs as well as individual compartments of UCIs with multiple compartments whose main objective is the investment in microfinance institutions.

e) UCIs as well as individual compartments of UCIs with multiple compartments:

   (i) whose securities are listed or traded on at least one stock exchange or another regulated market operating regularly, recognised and open to the public; and

   (ii) whose exclusive object is to replicate the performance of one or more indices.

   If several classes of securities exist within the UCI or the compartment, the exemption only applies to classes fulfilling the condition of sub-point (i).

Art. 176

(1) The taxable basis of the subscription tax shall be the aggregate net assets of the UCI as valued on the last day of each quarter.

(2) A Grand-Ducal regulation shall determine the conditions necessary for the application of the rate of 0.01% and the exemption, and shall determine the criteria with which the money market instruments referred to in Articles 174 and 175 must comply.

(3) A Grand-Ducal regulation shall determine the criteria which must be met by UCIs as well as by individual compartments of UCIs with multiple compartments referred to in Article 175, point (d).

(4) Without prejudice to alternative or additional criteria that may be determined by a Grand-Ducal regulation, the index referred to in Article 175, point (e), sub-point (ii) must represent an adequate benchmark for the market to which it refers and must be published in an appropriate manner.

(5) Any condition of pursuing a sole objective as laid down in Article 174 (2) and Article 175 does not preclude the management of liquid assets, if any, on an ancillary basis by means of placement of securities issued by undertakings referred to in Article 174 (2) a) and (2) b), or the use of techniques and instruments used for hedging or for purposes of efficient portfolio management.

(6) The provisions of Articles 174 to 176 apply *mutatis mutandis* to the individual compartments of a UCI with multiple compartments.

Art. 177

The duties of the registration administration[80] include the fiscal control of UCIs.

[80] The French version of the law uses the term "*Administration d'Enregistrement*".

If, at any date after the constitution of the UCIs referred to in this Law, the said administration ascertains that such UCIs are engaging in operations which exceed the framework of the activities authorised by this Law, the tax provisions provided for in Articles 172 to 175 shall cease to be applicable.

Moreover, the registration administration may levy a fiscal fine of a maximum of 0.2% on the aggregate amount of the assets of the UCIs.

Art. 178

Article 156, number 8), lit. c) of the amended Law of 4 December 1967 on income tax, is amended and supplemented as follows: "c), However, revenues from the sale of a holding in an undertaking for collective investment in corporate form, in an investment company in risk capital or in a family estate management company[81] are not concerned by number 8a and 8b."

Art. 179

UCIs which are established outside the territory of Luxembourg are exempt from corporate income tax, local business tax and wealth tax when they have their effective centre of management or head office within the territory of Luxembourg.

[81] The French version of the law uses the term "*société de gestion de patrimoine familiale*".

Chapter 24 – Special provisions in relation to the legal form

Art. 180

(1) Investment companies entered in the list provided for by Article 130 (1) may be converted into SICAVs and their articles of incorporation may be brought into harmony with the provisions of Chapter 3 or, as the case may be, Chapter 12 of this Law by resolution of a general meeting passed with a majority of two thirds of the votes of the unit-holders present or represented regardless of the portion of the capital represented.

(2) The common funds referred to in Chapter 2 or, as the case may be, in Chapter 11 of this Law may, under the same conditions as those laid down in paragraph (1) above, convert themselves into a SICAV governed by Chapter 3 or, as the case may be, Chapter 12 of this Law.

Art. 181

(1) UCIs may be comprised of multiple compartments, each compartment corresponding to a distinct part of the assets and liabilities of the UCI.

(2) The management regulations or the instruments of incorporation of the UCI must expressly provide for that possibility and the applicable operational rules. The prospectus must describe the specific investment policy of each compartment.

(3) The units of UCIs with multiple compartments may be of different value with or without indication of a par value depending on the legal form which has been chosen.

(4) Common funds with multiple compartments may, by separate management regulations, determine the characteristics of and the rules applicable to each compartment.

(5) The rights of unit-holders and of creditors concerning a compartment or which have arisen in connection with the creation, operation or liquidation of a compartment are limited to the assets of that compartment, unless otherwise provided in the management regulations or instruments of incorporation.

The assets of a compartment are exclusively available to satisfy the rights of investors in relation to that compartment and the rights of those creditors whose claims have arisen in connection with the creation, the operation or the liquidation of that compartment, unless otherwise provided in the management regulations or instruments of incorporation.

For the purpose of the relations between unit-holders, each compartment will be deemed to be a separate entity, unless otherwise provided in the management regulations or instruments of incorporation.

(6) Each compartment of a UCI may be liquidated separately without that separate liquidation resulting in the liquidation of another compartment. Only the liquidation of the last remaining compartment of the UCI will result in the liquidation of the UCI as referred to in Article 145 (1) of this Law. In this case, where the UCI is in corporate form as from the event giving rise to the liquidation of the UCI, and under penalty of nullity, the issue of shares shall be prohibited except for the purposes of liquidation.

(7) The authorisation of a compartment of a UCI referred to in Articles 2 and 87 of this Law, is subject to the condition that all provisions of the laws, regulations or agreements relating to its organisation and operation are complied with. The withdrawal of authorisation of a compartment does not give rise to the withdrawal of the UCI from the list provided for in Article 130, paragraph (1).

(8) A compartment of a UCI may, subject to the conditions provided for in the management regulations or the instruments of incorporation as well as in the prospectus, subscribe, acquire and/or hold securities to be issued or issued by one or more compartments of the same UCI without that UCI, when it is constituted in corporate form, being subject to the requirements of the Law of 10 August 1915 on commercial companies, as amended, with respect to the subscription, the acquisition and/or the holding by a company of its own shares, under the condition however that:

- the target compartment does not, in turn, invest in the compartment invested in this target compartment; and
- no more than 10% of the assets that the target compartments whose acquisition is contemplated may be invested pursuant to their management regulations or their instruments of incorporation in units of other UCIs; and
- voting rights, if any, attaching to the relevant securities are suspended for as long as they are held by the compartment concerned and without prejudice to the appropriate processing in the accounts and the periodic reports; and
- in any event, for as long as these securities are held by the UCI, their value will not be taken into consideration for the calculation of the net assets of the UCI for the purposes of verifying the minimum threshold of the net assets imposed by this Law; and
- there is no duplication of management/subscription or redemption fees between those at the level of the compartment of the UCI having invested in the target compartment, and this target compartment.

Art. 182

All the provisions of this Law referring to “public limited company” shall be understood as referring also to “European company (SE)”.

Chapter 25 – Transitional provisions

Art. 183

(1) UCITS subject to Part I of the amended Law of 20 December 2002 on undertakings for collective investment, established before the entry into force of this Law have the option, until 1 July 2011, of remaining subject to the aforementioned amended Law of 20 December 2002 or to be governed by this Law. As from 1 July 2011, they shall *ipso jure* be governed by this Law.

The establishment of a new compartment does not affect the option that may be exercised pursuant to the preceding sub-paragraph. Any such option must be exercised in respect of the UCITS in its entirety, and any such exercise will cover all compartments.

(2) UCITS within the meaning of Article 2 of the amended Law of 20 December 2002 on undertakings for collective investment, but excluding those referred to in Article 3 of such Law, established between the date of entry into force of this Law and 1 July 2011, have the option of being governed by the aforementioned amended Law of 20 December 2002 or by this Law. As from 1 July 2011 they shall *ipso jure* be governed by this Law.

(3) All UCITS established as from 1 July 2011 shall *ipso jure* be governed by this Law.

(4) UCIs other than UCITS referred to in paragraphs (1) and (2) established before the entry into force of this Law shall *ipso jure* be governed by this Law.

These UCIs will have until 1 July 2012 to comply with Articles 95 (2), and 99 (6), sub-paragraph 2, insofar as these Articles apply to them.

(5) UCIs established after the entry into force of this Law shall *ipso jure* be governed by this Law, unless they are governed by a specific law.

(6) For those UCIs subject to Luxembourg law which exist on 1 July 2011 and which have been, up to that date, subject to the amended Law of 20 December 2002 on undertakings for collective investment, all references in the management regulations or the instruments of incorporation to the amended Law of 20 December 2002 on undertakings for collective investment will be deemed to be replaced by references to this Law.

Art. 184

(1) Management companies subject to Chapter 13 of the amended Law of 20 December 2002 on undertakings for collective investment, which were incorporated before the entry into force of this Law, have the option, until 1 July 2011, of remaining subject to the aforementioned amended Law of 20 December 2002, or being subject to this Law. As from 1 July 2011, they shall *ipso jure* be governed by this Law.

(2) Management companies subject to Chapter 13 of the amended Law of 20 December 2002 on undertakings for collective investment, incorporated between the date of entry into force of this Law and 1 July 2011, have the option, until 1 July 2011, of remaining subject to the aforementioned amended Law of 20 December 2002, or being subject to Chapter 15 of this Law. As from 1 July 2011, they shall *ipso jure* be governed by this Law.

(3) Management companies subject to Chapter 14 of the amended Law of 20 December 2002 on undertakings for collective investment, incorporated before the entry into force

of this Law, are *ipso jure* governed by this Law and thus subject to Chapter 16 of this Law. They have until 1 July 2012 to comply with Article 125 (1), sub-paragraph 6.

(4) After the date of entry into force of this Law, it will no longer be possible to establish management companies pursuant to Chapter 14 of the amended Law of 20 December 2002 on undertakings for collective investment.

(5) Management companies which, before the entry into force of this Law, have received an authorisation to manage UCITS pursuant to the amended Law of 20 December 2002 on undertakings for collective investment are deemed authorised for the purposes of this Law.

(6) Investment firms within the meaning of sub-section 1 of section 2 of chapter 2 of Part I of the amended Law of 5 April 1993 on the financial sector, which are only authorised to provide the services described in section A points 4 and 5 of Annex II of such Law, may be authorised, pursuant to this Law, to manage common funds and investment companies and to name themselves "management companies". In that case, these investment firms must renounce the authorisation obtained under the amended Law of 5 April 1993 on the financial sector. They then become subject to paragraph 1 above.

.(7) For those management companies incorporated under Luxembourg law existing on 1 July 2011, and which have been subject until that date to the amended Law of 20 December 2002 on undertakings for collective investment, all references in their instruments of incorporation to the amended Law of 20 December 2002 on undertakings for collective investment, will be deemed to be replaced by references to this Law.

Art. 185

Between the date of entry into force of this Law and 1 July 2011, the UCITS and management companies authorised in other Member States may rely on the provisions of this Law in a cross-border situation only if the provisions of Directive 2009/65/EC have been implemented in their home State.

Art. 186

UCITS established before the date of entry into force of this Law, as well as UCITS established between the date of entry into force of this Law and 1 July 2011, which have chosen to be subject to the amended Law of 20 December 2002 on undertakings for collective investment, have until 1 July 2012 to replace their simplified prospectus drawn up pursuant to Article 109 *et seq.* of the amended Law of 20 December 2002 on undertakings for collective investment, by the key investor information referred to in Article 159 of this Law.

Chapter 26 – Amending, repealing and final provisions

Art. 187

References in Article 6 of the Law of 13 February 2007 relating to specialised investment funds to "Part IV, Chapter 13 or 14 of the amended Law of 20 December 2002 on undertakings for collective investment", shall be replaced by "Part IV, Chapter 13 of the amended Law of 20 December 2002 on undertakings for collective investment, respectively, Chapter 15, 16 or 18 of the Law of 17 December 2010 on undertakings for collective investment.

Art. 188

References in Article 68 (2) of the Law of 13 February 2007 relating to specialised investment funds to "Article 129 of the amended Law of 20 December 2002 on undertakings for collective investment" shall be replaced by "Article 174 of the Law of 17 December 2010 on undertakings for collective investment".

Art. 189

A new paragraph (2), (3) and (4) is added to Article 26 of the amended Law of 20 December 2002 which reads as follows:

"(2) The articles of incorporation of a SICAV and any amendment thereto are recorded in a special notarial deed drawn-up in French, German or English, as the appearing parties may decide. By derogation from the provisions of the Decree of 24 Prairial, year XI, where this deed is drawn up in English, the requirement to attach a translation in an official language to such deed when it is filed with the registration authorities, does not apply.

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

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

Art. 190

A new paragraph (7), (8) and (9) is added to Article 75 of the amended Law of 20 December 2002 which reads as follows:

"(7) The articles of incorporation of UCIs having adopted the form of one of the companies referred to in Article 2 of the Law of 10 August 1915 on commercial companies, as amended, and any amendment to these articles of incorporation shall be recorded in a special notarial deed, drawn up in French, German or English, as the appearing parties may decide. By derogation from the provisions of the Decree of 24 Prairial, year XI, where this deed is drawn up in English, the requirement to attach a translation in an official language to such deed when it is filed with the registration authorities, does not apply.

(8) By derogation to the provisions of Article 73, sub-paragraph 2 of the Law of 10 August 1915 on commercial companies, as amended, UCIs subject to this Chapter and which have adopted the legal form of a public limited company (*société anonyme*) or of a corporate partnership limited by shares (*société en commandite par actions*), are not required to send the annual accounts, as well as the report of the approved statutory auditor, the management report and, where applicable, the comments made by the supervisory board to the registered unit-holders, at the same time as the convening notice to the annual general meeting. The convening notice indicates the place and the practical arrangements for providing these documents to the unit-holders and specifies that each unit-holder may request that the annual accounts, as well as the report of the approved statutory auditor, the management report and, where applicable, the comments made by the supervisory board are sent to him/her.

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

Art. 191

Article 133 of the amended Law of 20 December 2002, is supplemented by a new paragraph (7) which reads as follows: "A compartment of a UCI may, subject to the conditions provided for in the management regulations or the instruments of incorporation as well as in the prospectus, subscribe, acquire and/or hold securities to be issued or issued by one or more compartments of the same UCI without that UCI, when it is constituted in corporate form, being subject to the requirements of the Law of 10 August 1915 on commercial companies, as amended, with respect to the subscription, acquisition and/or the holding by a company of its own shares, under the condition however that:

- the target compartment does not, in turn, invest in the compartment invested in this target compartment; and
- no more than 10% of the assets that the target compartments whose acquisition is contemplated may be invested pursuant to their management regulations or their instruments of incorporation in units of other UCIs; and
- voting rights, if any, attaching to the relevant securities are suspended for as long as they are held by the compartment concerned and without prejudice to the appropriate processing in the accounts and the periodic reports; and
- in any event, for as long as these securities are held by the UCI, their value will not be taken into consideration for the calculation of the net assets of the UCI for the purposes of verifying the minimum threshold of the net assets imposed by this Law; and
- there is no duplication of management/subscription or redemption fees between those at the level of the compartment of the UCI having invested in the target compartment, and this target compartment."

Art. 192

The amended Law of 20 December 2002 on undertakings for collective investment is repealed with effect as from 1 July 2012, except Articles 127 and 129 which are repealed with effect as from 1 January 2011.

Art. 193

References to this Law may be made by using the following abridged title: “Law of 17 December 2010 on undertakings for collective investment”.

Art. 194

This Law shall enter into force on the first day of the month following its publication in the *Mémorial*.

Annex I
Schema A

1. **Information concerning the common fund**	1. **Information concerning the management company, including an indication whether the management company is established in a Member State other than the home Member State of the UCITS**	1. **Information concerning the investment company**
1.1. Name	1.1. Name or style, legal form, registered office and head office, if different from the registered office.	1.1. Name or style, legal form, registered office and head office, if different from the registered office.
1.2. Date of establishment of the common fund. Indication of duration, if limited.	1.2. Date of incorporation of the company. Indication of duration, if limited.	1.2. Date of incorporation of the company. Indication of duration, if limited.
1.3. In the case of common funds having different investment compartments, indication of the compartments.	1.3. If the company manages other common funds, indication of those other funds.	1.3. In the case of investment companies having different investment compartments, indication of the compartments.
1.4. Statement of the place where the management regulations, if they are not annexed, and periodical reports may be obtained.		1.4. Statement of the place where the instruments of incorporation, if they are not annexed, and the periodical reports may be obtained.
1.5. Brief indications relevant to unit-holders of the tax system applicable to the common fund. Details of whether deductions are made at source from the income and capital gains paid by the common fund to unit-holders.		1.5. Brief indications relevant to unit-holders of the tax system applicable to the company. Details of whether deductions are made at source from the income and capital gains paid by the company to unit-holders.

1.6. Accounting and distribution dates.		1.6. Accounting and distribution dates.
1.7. Names of the persons responsible for auditing the accounting information referred to in Article 148.		1.7. Names of the persons responsible for auditing the accounting information referred to in Article 148.
	1.8. Names and positions in the company of the members of the administrative, management and supervisory bodies. Details of their main activities outside the company where these are of significance with respect to the company.	1.8. Names and positions in the company of the members of the administrative, management and supervisory bodies. Details of their main activities outside the company where these are of significance with respect to the company.
	1.9. Amount of the subscribed capital with an indication of the paid-up capital.	1.9. Capital.
1.10. Details of the types and main characteristics of the units and in particular: ■ the nature of the right (real, personal or other) represented by the unit; ■ original securities or certificates providing evidence of title; entry in a register or in an account; ■ characteristics of the units: registered or bearer. Indication of any denominations which may be provided for; ■ indication of unit-holders’ voting rights if these exist; ■ circumstances in which liquidation of the common fund can be decided on and liquidation procedure, in particular as regards the rights of unit-holders.		1.10. Details of the types and main characteristics of the units and in particular: ■ original securities or certificates providing evidence of title; entry in a register or in an account; ■ characteristics of the units: registered or bearer. Indication of any denominations which may be provided for; ■ indication of unit-holders’ voting rights if these exist; ■ circumstances in which liquidation of the investment company can be decided on and liquidation procedure, in particular as regards the rights of unit-holders.

1.11. Where applicable, indication of stock exchanges or markets where the units are listed or dealt in.		1.11. Where applicable, indication of stock exchanges or markets where the units are listed or dealt in.
1.12. Procedures and conditions of issue and sale of units.		1.12. Procedures and conditions of issue and sale of units.
1.13. Procedures and conditions for repurchase or redemption of units, and circumstances in which repurchase or redemption may be suspended. In the case of common funds having different investment compartments, information on how a unit-holder may pass from one compartment into another and the charges applicable in such cases.		1.13. Procedures and conditions for repurchase or redemption of units, and circumstances in which repurchase or redemption may be suspended. In the case of investment companies having different investment compartments, information on how a unit-holder may pass from one compartment into another and the charges applicable in such cases.
1.14. Description of rules for determining and applying income.		1.14. Description of rules for determining and applying income.
1.15. Description of the common fund's investment objectives, including its financial objectives (e.g. capital growth or income), investment policy (e.g. specialisation in geographical or industrial sectors), any limitations on that investment policy and an indication of any techniques and instruments or borrowing powers which may be used in the management of the common fund.		1.15. Description of the company's investment objectives, including its financial objectives (e.g. capital growth or income), investment policy (e.g. specialisation in geographical or industrial sectors), any limitations on that investment policy and an indication of any techniques and instruments or borrowing powers which may be used in the management of the company.
1.16. Rules for the valuation of assets.		1.16. Rules for the valuation of assets.

1.17. Determination of the sale or issue price and the repurchase or redemption price of units, in particular: ■ the method and frequency of the calculation of those prices; ■ information concerning the charges relating to the sale or issue and the repurchase or redemption of units; ■ the means, places and frequency of the publication of those prices.		1.17. Determination of the sale or issue price and the repurchase or redemption price of units, in particular: ■ the method and frequency of the calculation of those prices; ■ information concerning the charges relating to the sale or issue and the repurchase or redemption of units; ■ information concerning the means, places and frequency where those prices are published.
1.18. Information concerning the manner, amount and calculation of remuneration payable by the common fund to the management company, the depositary or third parties, and reimbursement of costs by the common fund to the management company, to the depositary or to third parties.		1.18. Information concerning the manner, amount and calculation of remuneration payable by the company to its directors, and members of the administrative, management and supervisory bodies, to the depositary or third parties, and reimbursement of any costs by the company to the depositary or to third parties.

2. Information concerning the depositary:

2.1. Name or style, legal form, registered office and head office if different from the registered office;

2.2. Main activity.

3. Information concerning the advisory firms or external investment advisers who give advice under contract which is paid for out of the assets of the UCITS:

3.1. Name or style of the firm or name of the adviser;

3.2. Material provisions of the contract with the management company or the investment company which may be relevant to the unit-holders, excluding those relating to remuneration;

3.3. Other significant activities.

4. Information concerning the arrangements for making payments to unit-holders, repurchasing or redeeming units and making available information concerning the UCITS. Such information must in any case be given in Luxembourg. In addition, where units are marketed in another Member State, such information shall be given in respect of that Member State in the prospectus circulated there.

5. Other investment information:

5.1. Historical performance of the UCITS (where applicable) – such information may be either included in or attached to the prospectus;

5.2. Profile of the typical investor for whom the UCITS is designed;

5.3. In case an investment company or a common fund has different investment compartments, the information referred to in items 5.1. and 5.2. must be given for each compartment.

6. Economic information:

6.1. Possible expenses or fees, other than the charges mentioned in item 1.17, distinguishing between those to be paid by the unit-holder or those to be paid out of the assets of the UCITS.

Schema B

Information to be included in the periodic reports

I. Statement of assets and liabilities:

- transferable securities;
- bank balances;
- other assets;
- total assets;
- liabilities;
- net asset value.

II. Numbers of units in circulation

III. Net asset value per unit

IV. Portfolio, distinguishing between:

a) transferable securities and money market instruments admitted to official stock exchange listing;

b) transferable securities and money market instruments dealt in on another regulated market;

c) recently issued transferable securities and money market instruments of the type referred to in Article 41, paragraph (1), point d);

d) other transferable securities and money market instruments of the type referred to in Article 41, paragraph (2), point a);

and analysed in accordance with the most appropriate criteria in the light of the investment policy of the UCITS (e.g. in accordance with economic, geographical or currency criteria etc) as a percentage of net assets; for each of the above investments the proportion it represents of the total assets of the UCITS should be stated.

Statement of changes in the composition of the portfolio during the reference period.

V. Statement of the developments concerning the assets of the UCITS during the reference period including the following:

- income from investments;
- other income;
- management charges;
- depositary's charges;
- other charges and taxes;
- net income;
- distributions and income reinvested;
- increase or decrease of the capital account;
- appreciation or depreciation of investments;
- any other changes affecting the assets and liabilities of the UCITS.

VI. A comparative table covering the last three financial years and including, for each financial year, at the end of the financial year:

- the total net asset value;
- the net asset value per unit.

VII. Details, by category of transactions within the meaning of Article 42 carried out by the UCITS during the reference period, of the resulting amount of commitments.

ANNEX II

Functions included in the activity of collective portfolio management:

- Portfolio management
- Administration:
  - a) legal and fund management accounting services;
  - b) customer inquiries;
  - c) valuation of the portfolio and pricing of the units (including tax returns);
  - d) regulatory compliance monitoring;
  - e) maintenance of unit-holder register;
  - f) distribution of income;
  - g) unit issues and redemptions;
  - h) contract settlements (including certificate dispatch);
  - i) record keeping.
- Marketing.

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