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Commission de Surveillance
du Secteur Financier

CSSF FAQ - Luxembourg Law of 12 July 2013 on alternative investment fund managers

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Commission de Surveillance du Secteur Financier

CSSF FAQ - Luxembourg Law of 12 July 2013 on alternative investment fund managers

CONTEXT

The following Frequently Asked Questions (FAQs) aim at highlighting some of the key aspects of the AIFMD regulation from a Luxembourg perspective. The FAQs are therefore primarily addressed to managers of alternative investment funds (AIFMs) and alternative investment funds (AIFs) that are established in Luxembourg.

The present FAQs are to be read in conjunction with the questions and answers ESMA has published with respect to the application of the AIFMD Regulation. These questions and answers, which will also be updated from time to time, are available on the following website:

ESMA updates AIFMD Q&As (europa.eu)

In addition to the ESMA questions and answers, the European Commission has published answers to questions received in relation to the transposition of Directive 2011/61/EU on Alternative Investment Fund Managers. These questions and answers may be accessed on the dedicated webpage for Questions on Single Market Legislation of the European Commission:

http://ec.europa.eu/yqol/index.cfm?fuseaction=legislation.show&lid=9

This document will be updated from time to time and the CSSF reserves the right to alter its approach to any matter covered by the FAQs at any time. You should regularly check the website of the CSSF in relation to any matter of importance to you to see if questions have been added and/or positions have been altered.

Commission de Surveillance du Secteur Financier

Update information

16/12/2022	Modification of question 23.A, deletion of questions 23.B., C., H., O., P., Q. – Version 20
30/06/2021	Deletion of question 14. L.2 – Version 19
10/06/2021	Publication of question 26 – Version 18
20/01/2021	Publication of question 14. L.2 – Version 17
30/10/2020	Modification of question 25 – Version 16
27/09/2019	Modification of questions 23. B., C., E. - Version 15
02/09/2019	Publication of question 25 – Version 14
11/04/2019	Modification of questions 23. L., N., Q. - Version 13
14/08/2018	Modification of question 23. B. – Version 12
06/07/2017	Modification of question 22. B. - Version 11
09/06/2016	Publication of new question 22 – Version 10
10/08/2015	Modification of questions 5, 14. 0. and 17, publication of questions 10.I, 14.R. and 21 – Version 9
29/12/2014	Modification of question 14. D.I.2°, publication of new questions 19 and 20 – Version 8
18/06/2014	Deletion of question 14.S, publication of new questions 17 and 18, modification of question 17 – Version 7
17/03/2014	Modification of question 14.D – Version 6
20/02/2014	Publication of new questions 15 and 16 – Version 5
10/01/2014	Modification of I- Definitions, questions 1, 8, publication of new questions 11, 12, 13, 14 and 15 – Version 4
19/07/2013	Publication of new question 10, modification of question 11 – Version 3
11/07/2013	Publication of questions 4.E. and F. – Version 2
18/06/2013	First date of publication – Version 1

Definitions

Above-threshold AIFM: AIFM that manages portfolios of AIFs whose assets under management in total exceed the thresholds under Article 3(2) of the Law of 2013

AIF(s): Alternative Investment Fund(s)

AIFM(s): Alternative Investment Fund Manager(s)

External AIFM External AIFM refers to the legal person appointed by the AIF or on behalf of the AIF and which through this appointment is responsible for managing the AIF

Internal AIFM

	Internal AIFM refers to a structure where the legal form of the AIF permits an internal management and where the AIF's governing body has chosen not to appoint an external AIFM
AIFMD or AIFM Directive:	Directive 2011/61/EU of the European Parliament and of Council of 8 June 2011 on Alternative Investment Fund Managers
AIFMD-CDR:	Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision
AIFMD Depositary Agreement:	Agreement covering the appointment of the depositary of a given AIF as required by Article 19(2) of the Law of 2013 and complying with the requirements of Article 83 of AIFMD-CDR
Authorised AIFM:	(i) AIFM that manages portfolios of AIFs whose assets under management in total exceed the thresholds under Article 3(2) of the Law of 2013 or (ii) AIFM that manages portfolios of AIFs whose assets under management in total do not exceed the thresholds under Article 3(2) of the Law of 2013, but has chosen to opt in under the Law of 2013 on the basis of Article 3(4) of that law, and that are in both cases authorised under the Law of 2013
Below-threshold AIFM:	AIFM that manages portfolios of AIFs whose assets under management in total do not exceed the thresholds under Article 3(2) of the Law of 2013
Chapter 15 ManCo(s):	Management companies authorised under Chapter 15 of the Law of 2010
Chapter 16 ManCo(s):	Management companies authorised under Chapter 16 of the Law of 2010
Circular CSSF 19/716:	Circular CSSF 19/716 as amended by the Circular CSSF 20/743 on the provision in Luxembourg of investment services or performance of investment activities and ancillary services in accordance with Article 32-1 Law of 1993
ESMA:	European Securities and Markets Authority
ESMA Opinion on Reporting under Article 24(5):	ESMA *Opinion on the Collection of information for the effective monitoring of systemic risk under Article 24(5), first sub-paragraph, of the AIFMD* (ESMA/2013/1340)

ESMA Reporting Guidelines	The ESMA *Guidelines on reporting obligations under Articles 3(3)(d) and 24(1), (2) and (4) of the AIFMD* (ESMA/2014/869)
IFM(s):	Investment fund managers
Investment Firm(s):	Entity(ies) having been authorised under Part I, Chapter 2, Section 2, Subsection I of the Law of 1993
Law of 1915	Law of 10 August 1915 on commercial companies
Law of 1993:	Law of 5 April 1993 on the financial sector
Law of 2004:	Law of 15 June 2004 relating to the investment company in risk capital (« SICARs »)
Law of 2007:	Law of 13 February 2007 relating to specialised investment funds (« SIFs »)
Law of 2010:	Law of 17 December 2010 relating to undertakings for collective investment (« UCIs »)
Law of 2013:	Law of 12 July 2013 regarding alternative investment fund managers, transposing Directive 2011/61/EU of the European Parliament and of Council of 8 June 2011 on Alternative Investment Fund Managers
Loan Origination:	Loan origination by an AIF is the process, initiated by its AIFM or, where applicable, by the AIF itself, of actively creating/granting/extending a loan as part of its investment policy. For the purpose of section 22 of part II of these FAQs, this concept refers to, and may comprise all relevant steps in the origination process, that is, among others, receiving and processing loan applications, performing the credit assessment and borrower selection, setting the characteristics of a specific loan (e.g., pricing (interest rates and fees), type of documentation, collateral requirements), monitoring, servicing and provisioning. Thus, the AIF becomes the original lender and the lending process is part of its investment policy.

Loan Participation / Acquisition:	Loan participation/acquisition by an AIF is the process, initiated by its AIFM or, where applicable, by the AIF itself, of purchasing/acquiring all or parts of an existing loan or package of loans (whether fully drawn or not) on the secondary market from a third party after its origination. It also refers to any other way for the AIF to acquire loans as an investment apart from loan origination (such as e.g. participation (or sub-participation) in syndicated loans, consortiums, club deals). Loan participation/acquisition is thus only relating to parts of the overall loan process, while loan origination encompasses in particular the process of the initial granting and pricing of the loan. There are instances though, where these delimitations/distinctions become difficult and a close and careful case-by-case analysis is warranted.
Marketing:	A direct or indirect offering or placement at the initiative of the AIFM or on behalf of the AIFM of units or shares of an AIF it manages to or with investors domiciled or with a registered office in the EU
MiFID:	Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU
MiFID rules:	• Law of 30 May 2018 on markets in financial instruments and transposing Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU; • Regulation (EU) No 600/2014 on markets in financial instruments (MiFIR) • Grand-ducal Regulation of 30 May 2018 on the protection of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits; • Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive; and • relevant delegated acts, implementing acts as well as guidelines and FAQs

Other Assets:	Other assets as per Article 19(8)(b) of the Law of 2013
PRIIPs KID:	Key investor document for packaged retail and insurance-based investment products
PRIIPs Regulation:	Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products
Product Law(s):	The Luxembourg investment fund laws under which regulated AIFs can be established in Luxembourg, i.e. part II of the Law of 2010, the Law of 2004 and the Law of 2007
Professional investor:	An investor which is considered to be a professional client or may, on request, be treated as a professional client within the meaning of Annex II to Directive 2004/39/EC
Registered AIFM:	AIFM that manages portfolios of AIFs whose assets under management in total do not exceed the thresholds under Article 3(2) of the Law of 2013 and who has not chosen to opt in as Authorised AIFM under the Law of 2013 on the basis of Article 3(4) of that law
Retail investor:	An investor who is not a professional investor
UCI(s):	Undertakings for collective investment
UCITS Directive:	Directive 2009/65/EU 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)
UCITS KIID:	Key investor information document within the meaning of Article 159 of the Law of 2010

Commission de Surveillance du Secteur Financier

CSSF FAQ - Luxembourg Law of 12 July 2013 on alternative investment fund managers

1. Scope: To whom does the regime resulting from the Law of 2013 apply?

10 January 2014

The main objective of the Law of 2013 is to regulate AIFMs and not directly AIFs. However, it is first necessary to identify the entities that should be qualified as AIFs before identifying AIFMs.

A. What is the definition of an AIF?

An AIF is any collective investment vehicle, including investment compartments thereof, which in accordance with the definition under Article 1(39) of the Law of 2013 in case of Luxembourg AIFs respectively under Article 4 (1)a) of the AIFMD in case of AIFs established in another EU Member State or in a third country (i) raises capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and (ii) does not require authorisation pursuant to Article 2(1) of the Law of 2010, respectively Article 5 of the UCITS Directive).

It is recommended that each collective investment vehicle performs a self-assessment to determine whether or not it falls within the definition of an AIF within the meaning of the Law of 2013.

It is the responsibility of the management body of any collective investment vehicle to self-assess if it has to be considered as an AIFM under the Law of 2013 or not.

B. Does the concept of AIF cover only regulated entities?

No.

The concept of AIF covers AIFs established in Luxembourg, in another EU Member State or in a third country irrespective of whether such AIF is a regulated or a non-regulated entity.

As far as Luxembourg entities are concerned, the following entities do qualify as AIF:

- all undertakings for collective investment established under part II of the Law of 2010;
- specialised investment funds established under the Law of 2007 if they fulfil the criteria under Article 1(39) of the Law of 2013;
- SICARs established under the Law of 2004 if they fulfil the criteria under Article 1(39) of the Law of 2013;

- any entity not regulated under the Law of 2010, the Law of 2007 or the Law of 2004 that also meets the criteria of Article 1(39) of the Law of 2013.

C. What is the definition of an AIFM?

An AIFM means any legal person whose regular business is managing one or more AIF(s) in accordance with the definition under Article 1(46) of the Law of 2013. It should be noted that it is the responsibility of any legal person whose regular business is the management of one or more AIFs to self-assess if it is to be considered as an AIFM under the Law of 2013.

The Law of 2013 applies to both External AIFMs and Internal AIFMs.

D. Which entities established in Luxembourg may potentially be considered as AIFMs?

The following entities may potentially be considered as AIFMs:

(a) Chapter 15 ManCos under the Law of 2010;

(b) Chapter 16 ManCos (Article 125-1 and Article 125-2) under the Law of 2010;

(c) internally managed UCIs under part II of the Law of 2010;

(d) internally managed SIFs under the Law of 2007;

(e) internally managed SICARs under the Law of 2004;

(f) any Luxembourg entity going to adopt the status of a « *gestionnaire de fonds d'investissement alternatifs* » regulated under the Law of 2013. This status has to be adopted by

1° any Luxembourg entity providing management services to AIFs which are not regulated under any of the Product Laws and

2° any internally managed Luxembourg entity qualifying as AIF which is not regulated under any of the Product Laws.

E. Internal versus External AIFM: how to determine the AIFM with respect to AIFs structured as FCP or as limited partnership?

AIFMs may either be an External AIFM or, where the legal form of the AIF permits an internal management, an Internal AIFM.

I. With respect to AIFs structured as a FCP, the legal form of the AIF-FCP does not permit an internal management. AIFs structured as a FCP therefore in all instances have to appoint an External AIFM.

(A) FCP with a Chapter 16 Manco:

- A Chapter 16 Manco falling under the provisions of Article 125-1 of the Law of 2010 can act as External AIFM of an AIF structured as an FCP provided that the assets of the AIFs under management of the management company in total do not exceed the thresholds under Article 3(2) of the Law of 2013. The Chapter 16 Manco is in this event required to register as a Registered AIFM. The Chapter 16 Manco can also appoint an External AIFM (authorised or registered as the case may be) for the AIFs structured as FCP for which it is the management company.
- A Chapter 16 Manco subject to Article 125-2 of the Law of 2010 is required to obtain an authorisation as Authorised AIFM. Such Chapter 16 Manco can, individually for each AIF structured as an FCP for which it is the designated management company, decide to act as the External AIFM or decide to designate another External AIFM (authorised or registered as the case may be). It is understood that such Chapter 16 Manco has to act as Authorised AIFM for at least one AIF.

(B) FCP with a Chapter 15 Manco:

A Chapter 15 ManCo can, in addition to the services it provides in such capacity, also act as AIF management company for AIFs structured as FCP. Such Chapter 15 Manco can in this event, individually for each AIF structured as an FCP for which it is the management company, decide to act as the External AIFM or decide to designate another External AIFM (authorised or registered as the case may be).

In the event the Chapter 15 ManCo decides to act as External AIFM for an FCP it manages and depending on the thresholds provided for under the Law of 2013, such Chapter 15 ManCo:

- can apply for a registration under the provisions of Article 3(3) of the Law of 2013, provided that the assets of the AIFs it manages in its capacity of External AIFM do not exceed one of the thresholds provided for under Article 3(2) of the Law of 2013; or
- must apply for authorisation as Authorised AIFM under the provisions of chapter II of the Law of 2013 when the assets of the AIFs it manages in its capacity as External AIFM do exceed one of the thresholds provided for under Article 3(2) of the Law of 2013 or when it decides to opt for the status as Authorised AIFM in accordance with Article 3(4) of the Law of 2013. IF the Chapter 15 Manco has received the authorisation referred to in this paragraph, it has to act as Authorised AIFM for at least one AIF.

A Chapter 15 ManCo appointing an External AIFM for all the AIFs it manages is not subject to the provisions of the Law of 2013.

II. With respect to AIFs structured as a limited partnership, a distinction has to be operated with respect to the different types of limited partnership under the provisions of the Law of 1915.

(A) With respect to AIFs structured as limited partnership established as either a *société en commandite par action* or as a *société en commandite simple*.

The AIFM of such AIF is in principle an External AIFM, who can be the managing general partner or the *gérant* or any other External AIFM designated by the *gérant* of the limited partnership. A limited partnership can also opt to qualify as an Internal AIFM in case the purpose of the *gérant* is limited to the *gérance* of the given limited partnership.

(B) With respect to AIFs structured as limited partnership established as a *société en commandité spéciale*

Such AIF cannot qualify as Internal AIFM but necessarily has to appoint an External AIFM. The External AIFM can be the general partner or the *gérant* or an external AIFM appointed by the *gérant*.

F. In whose name will the registration as Registered AIFM or the authorisation as Authorised AIFM be done with respect to AIFs structured as FCP or as limited partnership?

With respect to a *fonds commun de placement* and a *société en commandite spéciale*, registration as Registered AIFM or the authorisation as Authorised AIFM will be done in the name of the legal entity appointed as the External AIFM.

Regarding a *société en commandite par action* or a *société en commandite simple*, the registration as Registered AIFM or the authorisation as Authorised AIFM will be done in the name of the *société en commandite par action* or in the name of the *société en commandite simple*, when it qualifies as Internal AIFM, or in the name of the legal entity appointed as the External AIFM, when such External AIFM has been appointed.

G. Which steps Luxembourg entities qualifying as AIFM have to undertake to be compliant with the Law of 2013?

Luxembourg entities qualifying as AIFMs are subject to either an authorisation or a registration regime. Please refer to 2. and 3. below for further clarification.

2. Authorisation regime applicable to AIFMs:

18 June 2013

A. Which entities fall under the AIFM authorisation regime?

Any Luxembourg entities qualifying as AIFM fall under the authorisation regime and have to be authorised under Chapter 2 of the Law of 2013, unless they can benefit from the registration regime referred to under point 3 below.

With respect to Chapter 16 ManCos, only Chapter 16 ManCos subject to Article 125-2 of the Law of 2010 are eligible to be authorised under Chapter 2 of the Law of 2013.

B. Where do Luxembourg AIFMs introduce their authorisation application?

The authorisation application as AIFM has to be filed with the CSSF, the CSSF being the competent authority for the authorisation and for the supervision of Luxembourg AIFMs.

C. Which documents and information need to be included in the authorisation file to be submitted to the CSSF?

Details regarding the application file for authorisation as AIFM are available for download on the website of the CSSF.

3. Registration regime applicable to AIFMs:

18 June 2013

A. Which entities fall under the AIFM authorisation regime?

As a derogation from the authorisation regime, Luxembourg entities qualifying as Below-threshold AIFMs are subject to the registration regime under Article 3(3) of the Law of 2013, i.e. AIFMs whose AIFs' assets under management do not in total exceed the following thresholds:

i. EUR 100 million, including assets acquired through use of leverage;
ii. EUR 500 million, when the portfolio of assets managed consists of AIFs that are not leveraged and have no redemption rights exercisable during a period of 5 years following the date of the initial investment in each AIF.

B. Where do Luxembourg AIFMs introduce their registration application?

The registration application has to be filed with the CSSF.

C. Which documents and information need to be included in the registration file to be submitted to the CSSF?

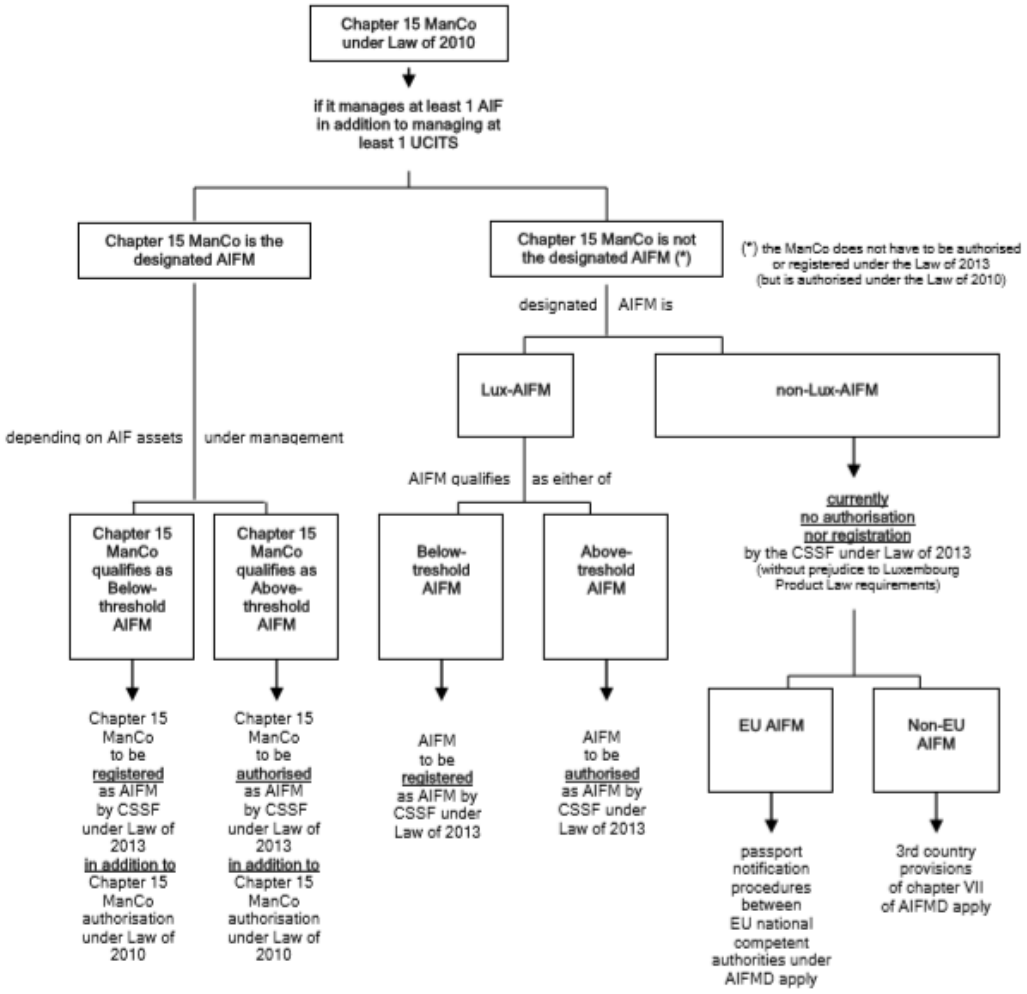
Details regarding the application file for registration as AIFM are available for download on the website of the CSSF.

4. Which steps have to be considered by a Luxembourg entity in order to determine its status under the Law of 2013?

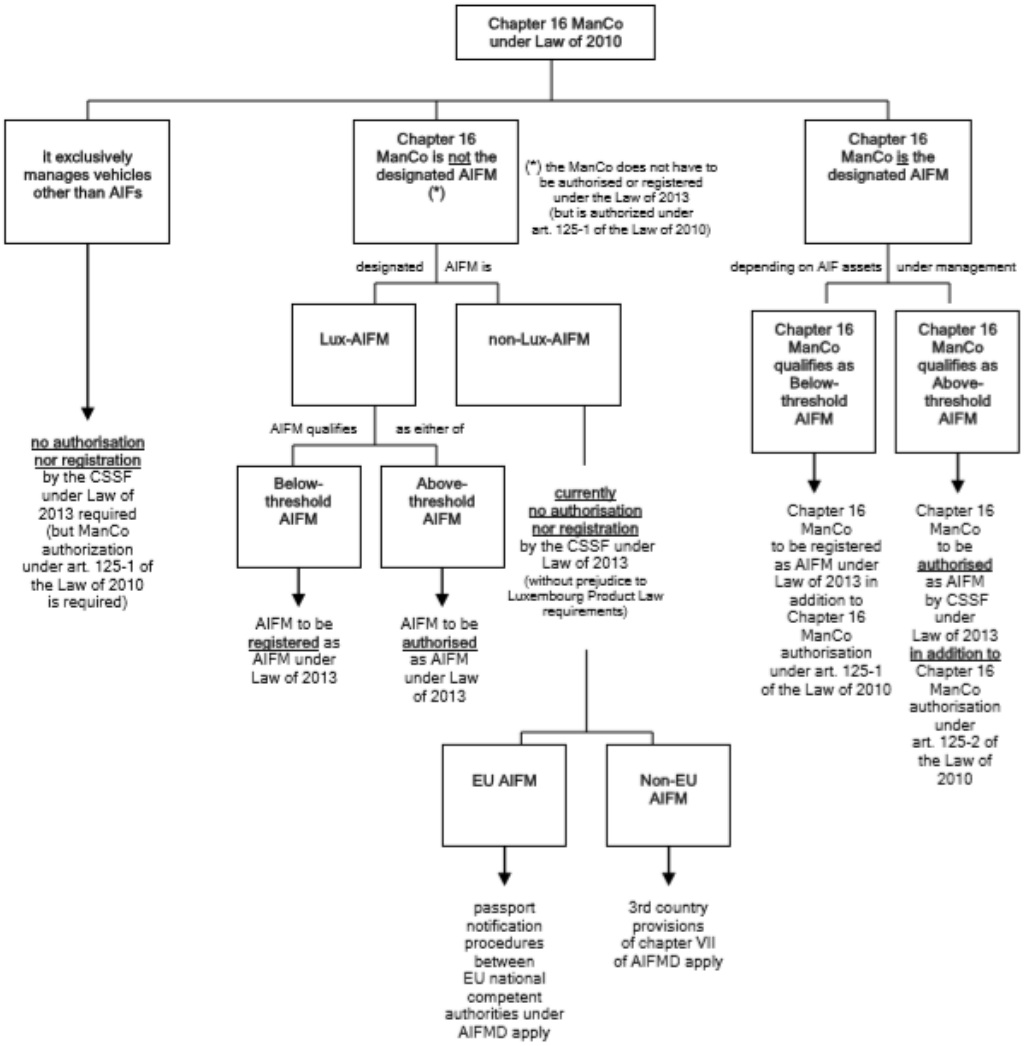
18 June 2013

Remark: The charts under sections 4.a to 4.f below reflect the steps Luxembourg entities have to undertake from a Luxembourg perspective with respect to AIFMD related authorisations or registrations, i.e. those to be undertaken under the Law of 2013 with respect to the CSSF. They consequently disregard requirements that can potentially apply under the national laws, transposing the AIFMD, of other EU Member States or of any third-countries.

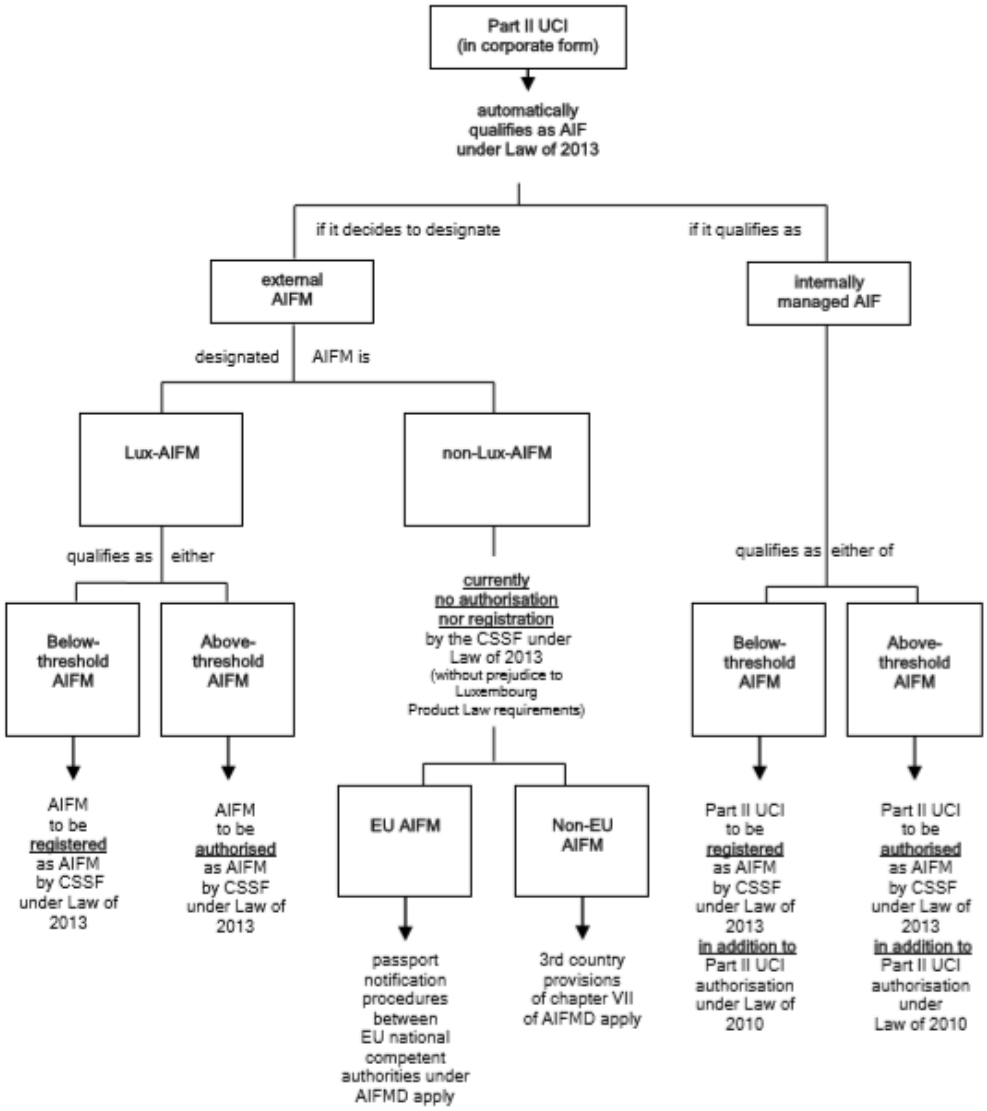
A. Chapter 15 ManCo



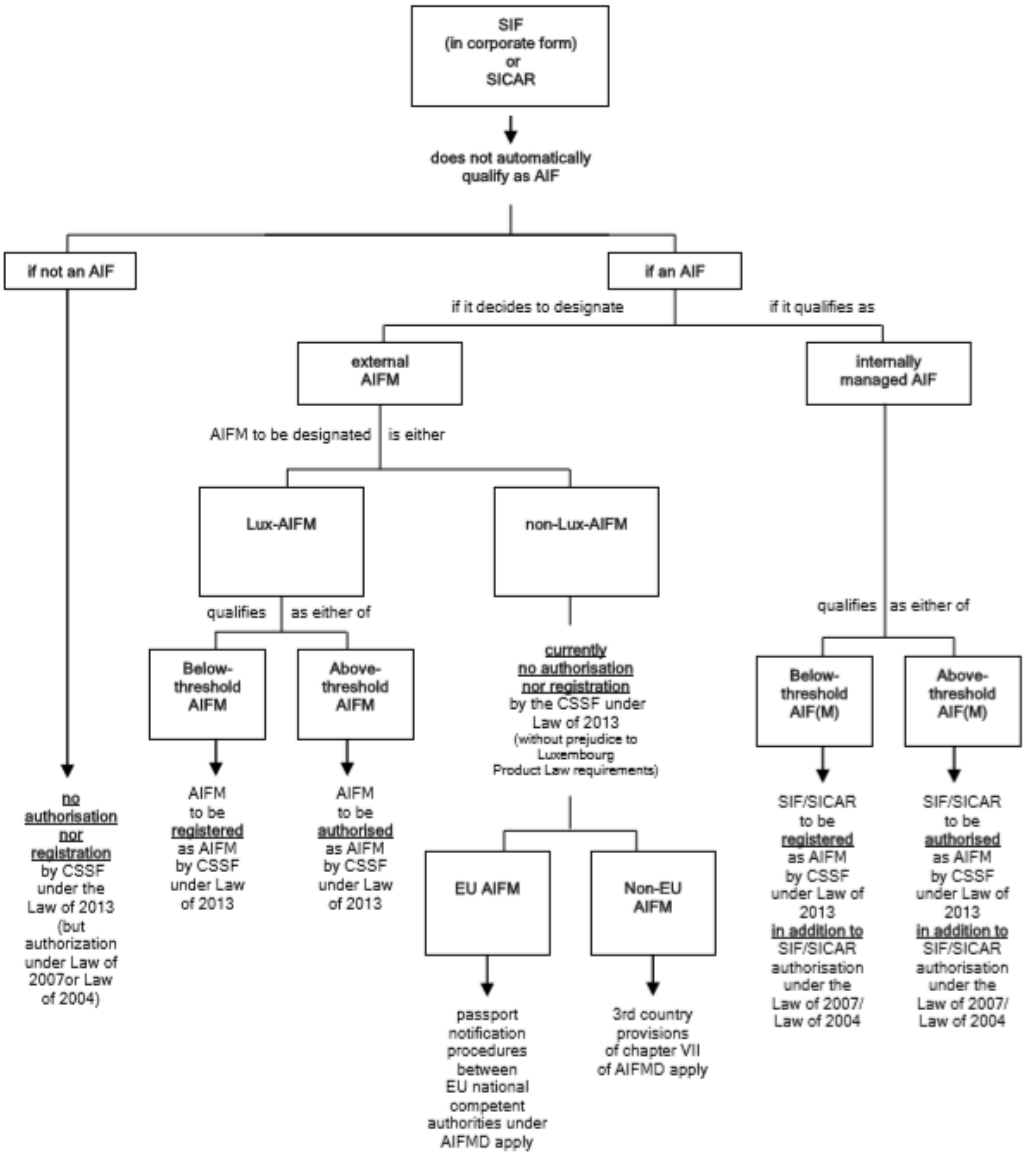
B. Chapter 16 ManCo



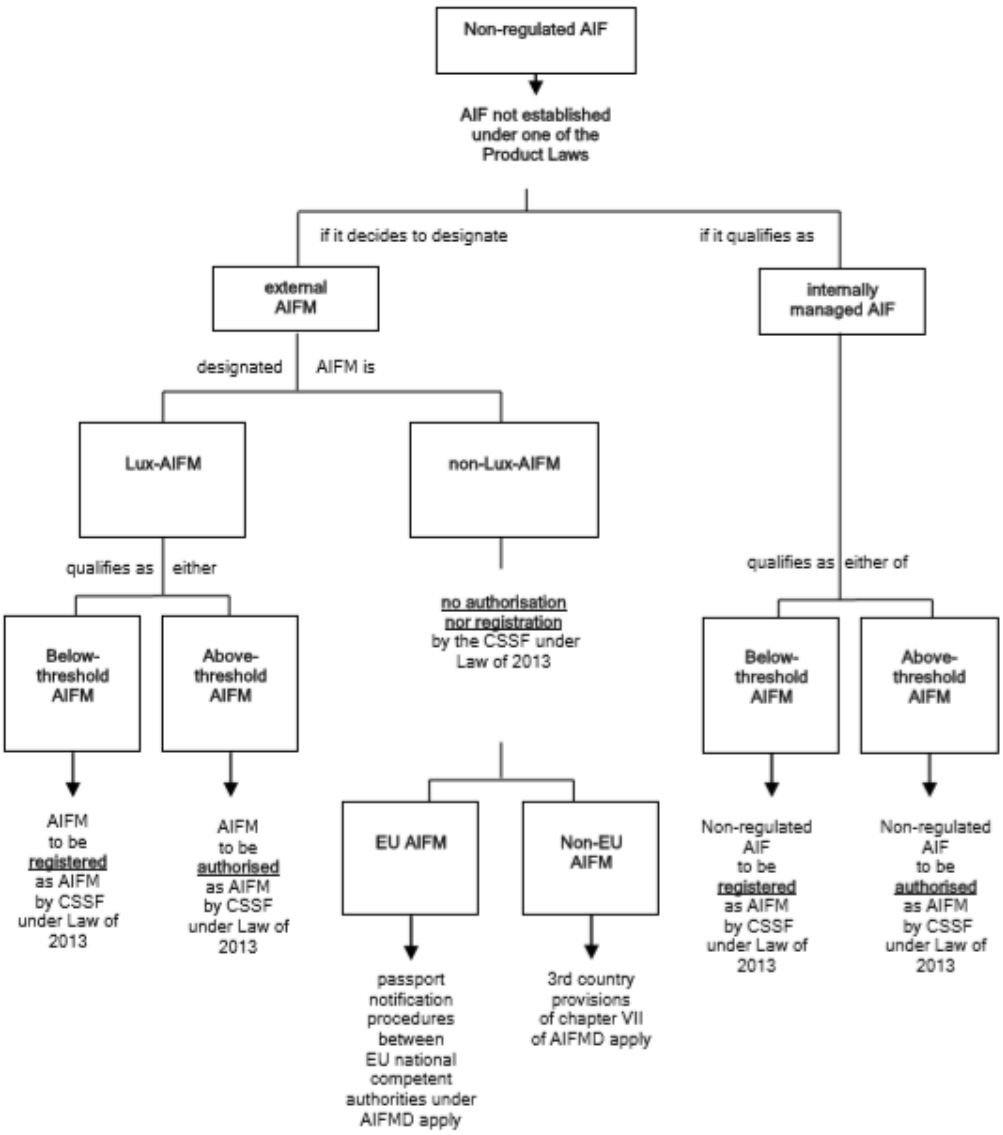
C. UCIs established in corporate form under part II of Law of 2010 (Part II UCI)



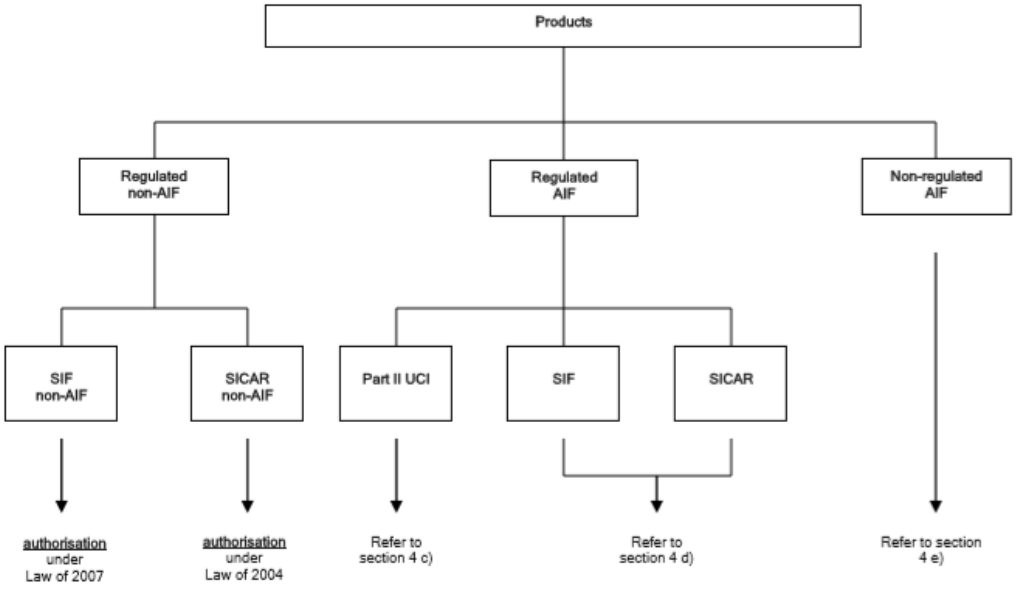
D. Specialised Investment Funds (SIF) established in corporate form under the Law of 2007 or investment companies in risk capital (SICAR) under the Law of 2004



E. Law of 2013 impact on non-regulated AIF



F. Product overview



5. Is the status of a credit institution or an investment firm under the Law of 1993 compatible with an AIFM status under the Law of 2013?

10 August 2015

A. Can credit institutions or investment firms established under the Law of 1993 obtain an AIFM authorisation under Chapter II of the Law of 2013?

Credit institutions:

No. Credit institutions cannot combine the status of credit institution under the Law of 1993 and the one of authorised AIFM under the Law of 2013.

However, credit institutions may manage AIF assets on the basis of a delegation arrangement between the AIFM of such AIF and the credit institution in accordance with the provisions of Article 5(8) of the Law of 2013.

Investment firms:

No. Investment firms cannot combine the status of investment firm under the Law of 1993 and the one of authorised AIFM under the Law of 2013.

However, investment firms may manage AIF assets on the basis of a delegation arrangement between the AIFM of such AIF and the investment firm in accordance with the provisions of Article 5(8) of the Law of 2013.

B. Can credit institutions or investment firms established under the Law of 1993 obtain an AIFM registration under Article 3 (3) of the Law of 2013?

Credit institutions:

Yes. Credit institutions can combine the status of credit institution under the Law of 1993 and the one of registered AIFM under the Law of 2013.

Investment firms:

Yes. Investment firms can combine the status of investment firm under the Law of 1993 and the one of registered AIFM under the Law of 2013, as long as their authorisation under the Law of 1993 covers the possibility to manage third-party assets.

6. Must AIFs adopt a specific legal form?

18 June 2013

The Law of 2013 does not provide for any specific mandatory legal forms that an AIF to be established needs to adopt. AIFs can be regulated products, under which scenario such AIFs have to be established under, and in accordance with, the provisions of one of the Luxembourg Product Laws, or can take the form of unregulated AIFs.

Regulated AIFs must hence adopt one of the legal forms prescribed by the relevant Product Law, i.e. the Law of 2010 for part II funds, the Law of 2007 for SIFs and the Law of 2004 for SICARs.

7. Delegation requirements

18 June 2013

A. Which regulatory texts are to be taken into consideration for the purpose of ensuring that an AIFM is not to be considered as a letter-box entity under the Law of 2013?

The following regulatory texts shall be used by Luxembourg authorised AIFMs for the purpose of ensuring that they are not considered as a letter-box entity under the Law of 2013:

- the provisions of Article 82 of the AIFMD-CDR which specify the conditions under which an AIFM shall be deemed to have delegated its functions to the extent that it becomes a letter-box entity, with the consequence that it can no longer be considered to be the manager of the AIF;
- the principles laid down in section 7 of Circular CSSF 12/546 which specify the delegation rules with respect to Chapter 15 ManCos and self-managed UCITS under the Law of 2010; these principles apply by analogy to Luxembourg AIFMs delegating investment management functions.

B. Can the two functions portfolio management and/or risk management be delegated?

An AIFM may delegate the two functions (i.e. portfolio management and/or risk management), in the understanding that an AIFM may not delegate both functions in whole at the same time, subject, however, always to complying with the requirements of Article 82 of the AIFMD-CDR. Portfolio management and risk management are multi-faceted functions consisting of various core activities and may in that respect be partially delegated.

8. Entry into force of the provisions of the Law of 2013 and transitional provisions applicable to Luxembourg AIFMs and Luxembourg AIFs

10 January 2014

A. Can applications for the authorisation or registration as AIFM be submitted to the CSSF before the entry into force of the Law of 2013?

Yes.

AIFM applications can be submitted to the CSSF since 1 March 2013 (See question 2c).

B. What transitional provisions are applicable to AIFMs created on or after 22 July 2013?

There are no transitional provisions applicable to entities which intend to perform activities of managing AIFs and which did not exist and performed such activities prior to 22 July 2013. These entities have to apply for authorisation or registration as AIFM and have to obtain such authorisation or registration prior to starting their activities. An AIFM application template is available on the website of the CSSF.

C. What transitional provisions are applicable to existing AIFMs and AIFs?

Article 58(1) of the Law of 2013 provides that any person performing activities under this Law before 22 July 2013 shall take all necessary measures to comply with the provisions of this law and shall have until 22 July 2014 to submit an application for authorisation with the CSSF.

It is considered that in relation to this transitional provision, a distinction is to be operated between the regime applicable to the AIFMs and the impact of this provision on AIFs established under one of the Luxembourg Product Laws.

(i) Transitional provisions for AIFMs:

Article 58 of the Law of 2013 introduces different transitional provisions which apply to entities that existed prior to 22 July 2013 and which perform activities captured by the Law of 2013 prior to that date (i.e. entities that in principle qualify as AIFMs under the Law of 2013 but which existed and performed AIFM activities prior to 22 July 2013).

According to those transitional provisions all entities, which technically qualify as AIFMs as of the date the Law of 2013 enters into force but which existed and exercised management activities within the meaning of the Law of 2013 prior to 22 July 2013 and which exceed the thresholds of Article 3 (2) of the Law of 2013, are required to submit a duly completed application for authorisation as AIFM by 22 July 2014 at the latest. Such entities shall during that transitional period take all necessary measures (i.e. expend their best efforts) to comply (as from the earlier of (i) the moment of their authorisation as AIFM by the CSSF or (ii) 22 July 2014) with the obligations under the Law of 2013 regarding general principles, operating conditions, organisational requirements, conflicts of interest, remuneration, risk management, liquidity management rules, securitisation rules, valuation and delegation rules). From the moment an AIFM is authorised by the CSSF under the Law of 2013, it has to ensure, in accordance with Article 4 of the Law of 2013, that the AIFs it manages take all necessary measures to comply with the product aspects introduced by the relevant Product Law (i.e. annual report, valuation rules, disclosure to investors, depositary rules).

Notwithstanding the provisions of the preceding paragraph, entities which need an authorisation as AIFM under the Law of 2013 are invited to submit to the CSSF, as soon as possible and by 1st April 2014 at the latest, an application file. (ii) Transitional provisions for AIFs:

The Law of 2013 also introduces modifications to the different Product Laws which reflect the product aspects of the AIFMD at the level of the different Luxembourg Product Laws. In this context the Law of 2004, the Law of 2007 and the Law of 2010 include specific transitional provisions for collective investment undertakings/ investment vehicles established under those laws prior to 22 July 2013. On the basis of those transitional provisions all collective investment undertakings / investment vehicles established under one of the Product Laws prior to 22 July 2013 and which qualify as AIF under the Law of 2013, as well as any collective investment undertaking / investment vehicles established under one of those Product Laws between 22 July 2013 and 22 July 2014 that qualifies as AIF, can appoint an AIFM which benefits from the transitional provisions applicable to AIFMs under Article 58(1) of the Law of 2013 (Article 61(1) of the AIFMD) explained above when they qualify as externally managed AIF. Once an AIF has appointed an AIFM auhorised by the CSSF, that AIF has to take all necessary measures to comply with the product aspects introduced by the relevant Product Law (i.e. annual report, valuation rules, disclosure to investors, depositary rules).

Notwithstanding the provisions of the preceding paragraph, any collective investment undertaking/investment vehicle qualifying as AIF established under one of the Product Laws, which benefits from the transitional provisions, are invited to submit to the CSSF, as soon as possible and by 1st April 2014 at the latest, a file containing information as regards its compliance with the AIFMD product rules (i.e. annual report, valuation rules, disclosure to investors, depositary rules) by 22 July 2014.

D. Do the transitional provisions apply to multiple compartments AIFs?

Yes.

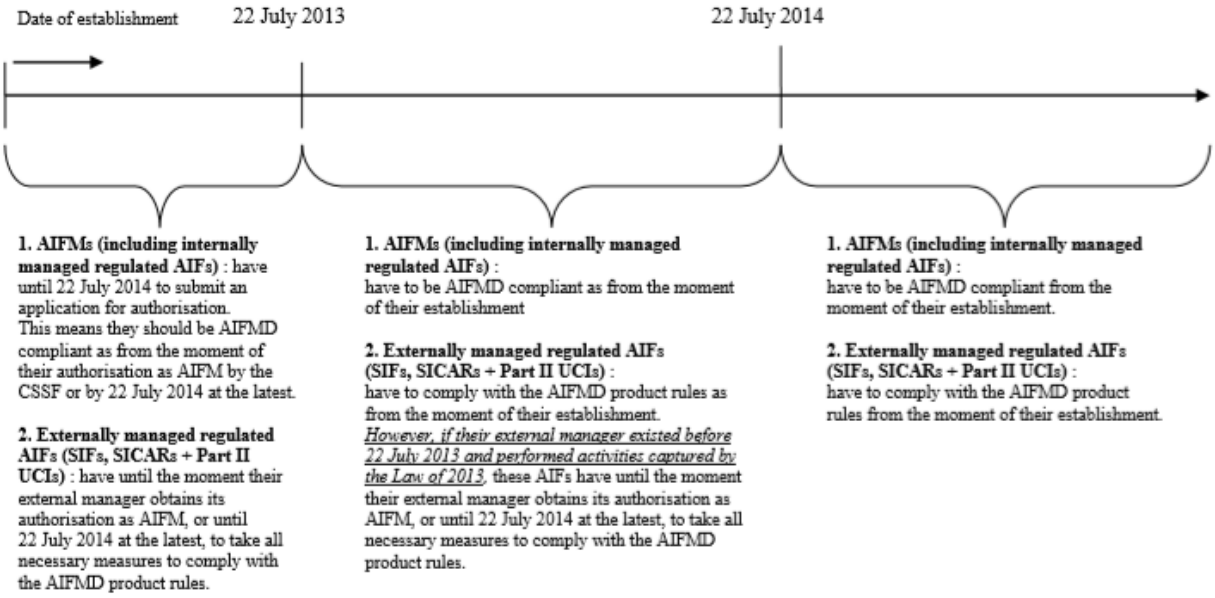
The availability of the transitional provisions under the Law of 2013 also applies to any new sub-fund created under a multiple compartment AIF that was established under one of the Product Laws prior to 22 July 2013.

E. Can EU AIFMs and non-EU AIFMs continue to market non-Luxembourg AIFs under the existing Luxembourg placement rules until 22 July 2014?

Yes, marketing under the existing Luxembourg placement rules will continue to be permitted until 22 July 2014 and will not be affected by the Law of 2013.

F. Time-line concerning transitional provisions

18 June 2013



Commission de Surveillance du Secteur Financier

9. Scope of authorised activities of AIFMs – what functions AIFMs are allowed to perform?

18 June 2013

A. Does an AIFM necessarily have to perform all functions listed under Annex I of the Law of 2013 and the non-core services listed under Article 5(4)(a) and (b) of the Law of 2013?

Mandatory functions:

An AIFM must be capable of providing, and take responsibility for, the investment management functions under section (1) of Annex I (i.e. portfolio management and risk management) in order to obtain AIFM authorisation under the Law of 2013, with the possibility to delegate to third parties the task of carrying out certain functions on its behalf in accordance with Article 18 of the Law of 2013.

An AIFM has the option to perform part or all of the functions listed under section (2) of Annex I of the Law of 2013. Each fund structure is to be assessed on a case-by-case basis when considering which functions have been attributed to the AIFM and therefore can also be subject to delegation by the AIFM.

Furthermore, in accordance with the provisions under Article 5(5)(a) of the Law of 2013, an AIFM may not exclusively provide the ancillary services under Article 5(4), including the function of management of portfolios in accordance with mandates given by investors on a discretionary basis, of the same law.

With respect to the performance of non-core service in accordance with Article 5(4)(a) and (b) of the Law of 2013 (e.g. provision of investment advice, safe-keeping and administration in relation to shares or units of collective investment schemes and/or reception and transmission of orders in relation to financial instruments), an AIFM may perform part or all of those services provided it is authorised to do so on the basis of the AIFMD authorisation granted to that AIFM by the CSSF in accordance with Chapter II of the Law of 2013.

Ancillary services:

AIFMs can provide ancillary services listed under Article 5(4)(b) of the Law of 2013 to the extent that it has been specifically authorised to provide such services under the AIFM authorisation obtained in accordance with the procedure under Chapter II of the Law of 2013.

B. Can AIFMs provide domiciliary services to SOPARFIs on an ancillary basis?

AIFMs are permitted to provide SOPARFI domiciliary services to the extent that such SOPARFI either (i) qualifies as an AIF and that the AIFM is the designed manager of that SOPARFI/AIF or (ii) such SOPARFI is a subsidiary controlled by an AIF.

C. Can AIFMs perform investment management functions for non-AIFs?

AIFMs can provide ancillary services listed under Article 5(4)(b) of the Law of 2013 to the extent that it has been specifically authorised to provide such services under the AIFM authorisation obtained in accordance with the procedure under Chapter II of the Law of 2013.

10. Depositary aspects

19 June 2013

A. As of when does a depositary of an AIF has to comply with the depositary requirements as per the Law of 2013?

1) In relation to AIFs with an External AIFM:

A depositary must, in relation to a given AIF managed by an External AIFM, comply with the depositary requirements provided for under the Law of 2013 and AIFMD-CDR at the latest as of the following date:

- in relation to an AIF established after 22 July 2013 the External AIFM of which does not provide services covered by the Law of 2013 on 22 July 2013 (e.g. an AIFM established after the 22 July 2013) as of the date of inception of the AIF;
- in relation to an AIF established before 22 July 2013 the External AIFM of which does provide services covered by the Law of 2013 on 22 July 2013 (i.e. an AIFM benefiting from the transitional provisions under Article 58(1) of the Law of 2013 and/or the relevant transitional provisions under the Product Law under which the AIF has been established), by 22 July 2014 at the latest;
- in relation to an AIF established after 22 July 2013 the External AIFM of which does provide services covered by the Law of 2013 on 22 July 2013 (i.e. an AIFM benefiting from the transitional provisions under Article 58(1) of the Law of 2013 and/or the relevant transitional provisions under the Product Law under which the AIF has been established), by 22 July 2014 at the latest.

2) In relation to AIFs with an Internal AIFM:

In relation to any internally managed AIF, a depositary must comply with the depositary requirements provided for under the Law of 2013 and AIFMD-CDR as from the date the AIF obtains the required authorisation as AIFM.

3) Requirement to have an AIFMD Depositary Agreement in place:

At the date as of which a depositary must, in relation to a given AIF, comply with the depositary requirements provided for under the Law of 2013 and AIFMD-CDR as per points 1) and 2) above, an AIFMD Depositary Agreement must be in place between the AIF or the management company of the AIF (i.e. in relation to any AIF established under one of the Product Laws and constituted in accordance with contract law, i.e. a common fund managed by a management company) and the depositary.

This will require the AIFM/AIF to replace the depositary agreement not compliant with the requirements of Article 83 of AIFMD-CDR by an AIFMD Depositary Agreement as per the deadlines outlined under point 1) and 2) above.

B. What are 'objective reasons' and conditions for a depositary to be in a position to discharge itself of liability towards a third-party holding in custody a financial instrument, in relation to a loss of a financial instrument held in custody by such third party within the meaning of Article 19(13) of the Law of 2013?

Article 19 of the Law of 2013 distinguishes between objective reasons for the delegation of safekeeping functions (Article 19(11)) and objective reasons to contract a discharge of liability (Article 19(13)).

With respect to the discharge of liability under Article 19(13) of the Law of 2013, which permits a depositary to discharge itself of the liability for the loss of a financial instrument held in custody by a third party, a written contract between the AIF (or the AIFM acting on behalf of the AIF) and the depositary must provide for the discharge of liability and establish the objective reason(s) for the contracting of such discharge.

The definition of objective reason for discharge of liability is a matter of professional judgment, based on the criteria set forth in Article 102(1) AIFMD-CDR. It will depend on the facts of the case in question by taking into account particular aspects able to constitute an objective reason, and which can e.g. be related to:

- the investment policy and strategy of the AIF;
- the types of counterparties used by the AIFM on behalf of the AIF;
- the sub-custody network used for safekeeping of the financial instruments as per Article 88 of AIFMD-CDR.

In the particular circumstances, defined in Article 102(3) AIFMD-CDR, the depositary shall be deemed to have objective reasons for the contracting of discharge of its liability.

C. Monitoring of the AIFs cash flows – Is a look-through approach to be applied to cash accounts which are not opened in the name of the AIF/M but in the name of companies (e.g. real estate holding companies) in which the AIF/M holds investments?

Article 89(3) and Article 90(5) of the AIFMD-CDR explicitly state that safe-keeping duties related to financial instruments and other assets are subject to a look-through obligation with regard to ownership verification and other duties for assets held by underlying legal structures which are directly or indirectly controlled by the AIFM/AIF.

With respect to the monitoring of the AIFs cash flow, Article 86 of the AIFMD-CDR solely requires effective and proper monitoring of cash accounts opened in the name of the AIF.

D. Cash flow reconciliation - Article 86 (b), (c) and (f) AIFMD-CDR – In case an authorised third party (administrator, transfer agent or other third party) performs cash flow reconciliations, can the depositary leverage this reconciliation for monitoring purposes under Article 86 AIFMD-CDR?

Pursuant to Article 19(11) of the Law of 2013, only safe-keeping functions of Article 19(8) of the Law of 2013 can be delegated: cash flow monitoring, however, can thus not be delegated.

The depositary therefore has to implement a procedure for reconciliation of cash flows. In this context, the depositary may rely on material tasks executed by a third party with respect to cash flow monitoring for the execution of its own obligations or may use information received with respect to cash flow reconciliations performed by a third party, provided that the depositary obtains all information it needs to comply with its own cash monitoring obligation and has performed an adequate due diligence of the reconciliation processes performed by the third party.

The concept of third party in this context also includes other divisions or services of the entity appointed as depositary of an AIF in the sense of Article 19(1) of the Law of 2013, provided that a functional and hierarchical separation of the performance of the depositary functions is ensured.

E. How should the depositary maintain records and segregated accounts of financial instruments that can be held in custody for AIFs managed by an AIFMD having appointed a third party (e.g. prime broker, collateral safekeeping agent)?

In accordance with the provisions of Article 89(1) AIFMD-CDR, the depositary has to maintain records and segregated accounts in relation to the safekeeping of financial instruments that can be held in custody (as defined under Article 19(8) of the Law of 2013 and Article 88 AIFMD-CDR).

With respect to those of the financial instruments sub-custodied by the depositary with a third-party (e.g. prime broker or collateral safekeeping agent), the depositary can rely on the books of the third-party so to meet its obligations in terms of records and segregated accounts, provided that the depositary has a daily access to the records and segregated accounts maintained by the third-party and that the depositary has performed a due diligence on the third-party ensuring that the records and segregated accounts of the third-party are maintained in accordance with the provisions of the Law of 2013 and the AIFMD-CDR.

F. How should the depositary perform record keeping of "other assets"?

The depositary can maintain a record in systems operated by the depositary or use records of third parties provided that the depositary performs an ongoing due diligence on the third party and has access to all information satisfactory to the depositary in order to comply with its obligations.

The concept of third party in this context also includes other divisions or services of the entity appointed as depositary of an AIF in the sense of Article 19(1) of the Law of 2013, provided that a functional and hierarchical separation of the performance of the depositary functions is ensured.

G. How should the look-through be performed?

According to Article 89(3) and Article 90(5) of AIFMD-CDR, a look-through shall apply to underlying assets held by the AIF or the AIFM on behalf of the AIF, which are controlled directly or indirectly by the AIF or the AIFM acting on behalf of the AIF.

The definition of a controlled entity is a matter of professional judgment and will depend on the specific structure in question. The AIF or the AIFM should provide the depositary with all the required information to confirm whether the underlying entity is directly or indirectly controlled or not.

H. Article 88 (2) AIFMD-CDR provides that financial instruments which, in accordance with applicable law, are only directly registered in the name of the AIF with the issuer itself or its agent, such as a registrar or a transfer agent, shall not be held in custody. Under what circumstances can financial instruments be directly registered in the name of the AIF, or the AIFM on behalf of the AIF, with the issuer or an agent of the issuer and therefore qualify as other assets in the sense of Article 19(8)(b) of the Law of 2013?

Financial instruments can be directly registered in the name of the AIF, or the AIFM on behalf of the AIF, with the issuer or an agent of the issuer in the following circumstances:

- when the law applicable to the issuer explicitly requires those financial instruments to be registered directly in the name of the AIF, or the AIFM on behalf of the AIF, with the issuer or an agent of the issuer; or
- when the law applicable to the issuer does not prohibit an AIF to register its investment directly in the name of the AIF, or the AIFM on behalf of the AIF, with the issuer or an agent of the issuer, provided that the AIF or the AIFM and the depositary agree to register the financial instruments in the name of the AIF or the AIFM on behalf of the AIF.

As for any other assets in the sense of Article 19(8)(b) of the Law of 2013, Article 90(2)(c) AIFMD-CDR requires that the depositary ensures that there are procedures in place so that the assets directly registered in the name of the AIF, or the AIFM on behalf of the AIF, with the issuer or an agent of the issuer, cannot be assigned, transferred, exchanged or delivered without the depositary having been informed of such transaction and that the depositary has access without undue delay to documentary evidence of each transaction and position with the issuer or the agent of the issuer.

I. For which AIF can professional depositaries of assets other than financial instruments ("PDAOFI") act as depositary?

10 August 2015

A PDAOFI may, in accordance with the provisions of Article 26-1(1) of the Law of 1993, be appointed as depositary for AIFs:

- which have no redemption right that can be exercised during five years as from the date of the initial investments, and
- which pursuant to their main investment policy, generally do not invest in assets which shall be held in custody pursuant to Article 19(8)(a) of the Law of 2013 or which generally invest in issuers or non-listed companies in order to eventually acquire control thereof in accordance with Article 24 of the Law of 2013.

J. When acting as appointed depositary for eligible AIFs (as specified under 10.i)), is the PDAOFI also responsible for the safekeeping of the assets which are financial instruments in the sense of Article 19(8)(a) of the Law of 2013?

Yes. When being appointed as depositary for a given AIF, a PDAOFI is subject to the provisions of Article 19 of the Law of 2013. As such, and in accordance with the single-depositary rule as specified under Article 19(1) of the said law, the PDAOFI is also in charge of the safekeeping of assets as defined under Article 19(8)(a) of the Law of 2013 (i.e. for financial instruments that can be held in custody).

In relation to the safekeeping of financial instruments that can be held in custody, the PDAOFI will have to delegate the custody of those assets to an eligible delegate in accordance with the provisions of Article 19(11) of the Law of 2013. It follows from these provisions (i.e. Article 19(11)d)iii)) that the account(s) with the delegate can be opened in the name of the PDAOFI, acting on behalf of its clients/AIFs (with the specification that the assets belong to the clients/AIFs of the PDAOFI), or in the name of the PDAOFI, acting on behalf of a particular client/AIF (with the indication of the name of the client/AIF of the PDAOFI) or directly in the name of the client/AIF of the PDAOFI. In the latter case, it must be ensured that the positions opened in the name of the investing AIF cannot be assigned, transferred, exchanged or delivered unless the PDAOFI has received prior notification and that the PDAOFI has access without undue delay to the information which evidences each transaction and each position. The duty of restitution of those assets in case of a loss of such financial instruments that can be held in custody lies with the PDAOFI, subject to the provisions of Article 19(13) of the Law of 2013 (i.e. discharge of liability by the PDAOFI with transfer of the duty of restitution to the delegate) and subject also to the provisions of Article 19(12) second paragraph of the Law of 2013 (i.e. discharge of liability when "*the loss has arisen as a result of an external event beyond its reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary*").

It is to be noted that when an AIF has appointed a PDAOFI as its single-depositary, any cash of such AIF has to be held with an entity as specified under Article 19(7) of the Law of 2013 and that the cash of the AIF has to be booked in cash accounts opened in the name of the AIF or in the name of the AIFM acting on behalf of the AIF with such entity. No cash of the AIF can be held directly with the PDAOFI itself.

K. Can a PDAOFI act as a delegate for the safekeeping of assets other than financial instruments for any type of AIF

Yes. When safekeeping assets other than financial instruments in the capacity as a delegate of the appointed depositary of a given AIF, no restrictions in terms of the types of AIF for which the PDAOFI may provide safekeeping services (see section 10.i) above) apply. The PDAOFI can, in such scenario, consequently provide safekeeping of assets other than financial instruments for any type of AIF.

11. AIFMD marketing passport: Marketing in the EU of EU AIFs (included AIFs set up in Luxembourg) by AIFMs established in Luxembourg

10 January 2014

A. Which are the regulatory provisions applicable to Luxembourg Authorised AIFMs which intend to market EU AIFs in the EU to professional investors?

The following regulatory provisions are applicable to Luxembourg Authorised AIFMs which intend to market EU AIFs in the EU to professional investors:

- the provisions of Article 29 of the Law of 2013 which specify the conditions applicable to Luxembourg Authorised AIFMs marketing in Luxembourg units or shares of EU AIFs they manage to professional investors. It is to be noted that in relation to the marketing in Luxembourg of Luxembourg AIFs managed by the Luxembourg Authorised AIFM, the provisions of Article 29 only apply to non-regulated AIFs (i.e. not established under one of the Product Law(s));
- the provisions of Article 30 of the Law of 2013 which specify the conditions applicable to Luxembourg Authorised AIFMs marketing to professional investors in another EU Member State units or shares of EU AIFs they manage.

B. Are Luxembourg Authorised AIFMs allowed to market non-regulated EU AIFs in the EU?

Yes.

Luxembourg Authorised AIFMs are allowed to market in the EU (including in Luxembourg) units or shares of EU AIFs, irrespective of whether such AIFs are regulated or non-regulated entities. It should nevertheless be noted that the marketing in other EU Member States might in some cases be subject to specific restrictions applicable in that EU Member State.

C. To what type of investors is the marketing of EU AIFs by a Luxembourg Authorised AIFM permitted?

Luxembourg Authorised AIFMs are permitted to market units or shares of EU AIFs only to professional investors, except where an EU Member State allows the marketing of EU AIFs to retail investors in its territory.

D. Does the Luxembourg legislation allow Luxembourg Authorised AIFMs to market EU AIFs to retail investors in its territory?

With respect to the marketing of Luxembourg regulated AIFs, only AIFs established under part II of the Law of 2010 can be marketed to any type of retail investors in the territory of Luxembourg, while the scope of eligible investors of AIFs established under the Law of 2004 (SICAR-AIFs) and the Law of 2007 (SIF-AIFs) only covers well-informed investors as defined in these laws. With respect to non-regulated Luxembourg AIFs the marketing is limited to professional investors.

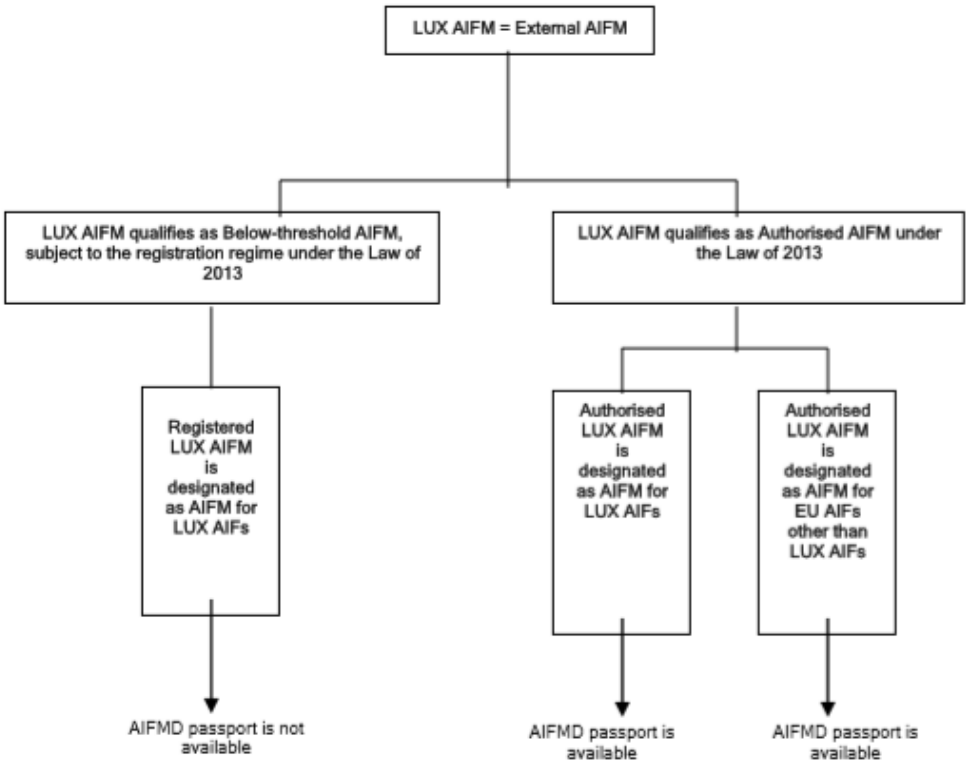
With respect to the marketing of non-Luxembourg EU AIFs pursuant to Article 46 of the Law of 2013, Luxembourg Authorised AIFMs are allowed to market to retail investors in the territory of Luxembourg units or shares of EU AIFs they manage, when the following conditions are fulfilled:

- the concerned EU AIFs must be subject in their home Member State to a permanent supervision performed by a supervisory authority set up by law in order to ensure the protection of investors;
- EU AIFs established in a Member State other than Luxembourg must furthermore be subject in their home Member State to regulations offering a level of protection for investors as well as to a prudential supervision considered by the CSSF as equivalent to that provided for in Luxembourg legislation.

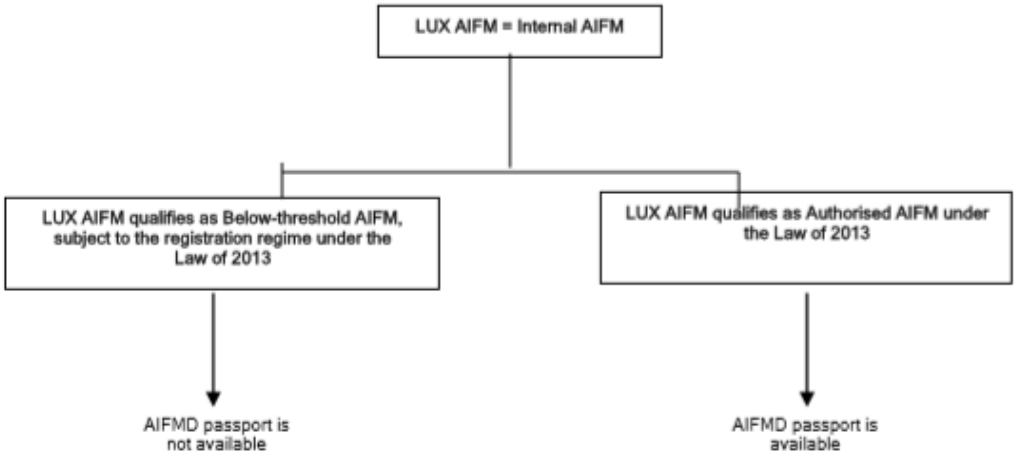
Please note that Article 100 (concerning foreign UCIs) in conjunction with Article 59 (appointment of a Luxembourg paying agent) and Article 129 (prior authorisation by the CSSF) of the Law of 2010 also apply to such non-Luxembourg EU AIFs.

E. What are the different scenarios available for AIFMs established in Luxembourg with respect to the marketing of EU AIFs in the EU under the AIFMD marketing passport?

1° Luxembourg AIFM is an External AIFM



2° Luxembourg AIFM is an Internal AIFM



12. AIFMD marketing passport: Marketing in Luxembourg of EU AIFs (including Luxembourg AIFs) by AIFMs established in another EU Member State

10 January 2014

Preliminary remarks

Luxembourg AIFs which are regulated AIFs established under one of the Product Laws are automatically authorised for marketing in the territory of Luxembourg. With respect to Luxembourg non-regulated AIFs the marketing is limited to professional investors.

In order to market EU AIFs in Luxembourg the AIFMs established in another EU Member State have to be authorised AIFMs.

As pointed out in point 8.e), the marketing of EU AIFs in Luxembourg by EU AIFMs under the existing Luxembourg placement rules will continue to be permitted until 22 July 2014 and will not be affected by the Law of 2013.

A. Which are the regulatory provisions applicable to AIFMs authorised in another EU Member State which intend to market EU AIFs to professional investors in Luxembourg?

The provisions of Article 31 of the Law of 2013 specify the conditions applicable to AIFMs authorised in another EU Member State which intend to market in Luxembourg to professional investors units or shares of EU AIFs they manage.

B. Are AIFMs authorised in another EU Member State allowed to market non- regulated EU AIFs to professional investors in Luxembourg?

Yes.

AIFMs authorised in another EU Member State are allowed to market in Luxembourg units or shares of EU AIFs, irrespective of whether such AIFs are regulated or non-regulated entities.

C. To what type of investors is the marketing in Luxembourg of EU AIFs by an AIFM authorised in another EU Member State permitted?

AIFMs authorised in another EU Member State are permitted to market units or shares of EU AIFs only to professional investors in Luxembourg. Moreover,it is also possible to market to retail investors as mentioned under point 12.d) hereafter.

D. Does the Luxembourg legislation allow authorised EU AIFMs to market EU AIFs to retail investors in its territory?

With respect to the marketing of Luxembourg regulated AIFs, only AIFs established under part II of the Law of 2010 can be marketed to any type of retail investors in the territory of Luxembourg, while the scope of eligible investors of AIFs established under the Law of 2004 (SICAR-AIFs) and the Law of 2007 (SIF-AIFs) only covers well-informed investors as defined in these laws. With respect to non-regulated EU AIFs the marketing is limited to professional investors.

Pursuant to Article 46 of the Law of 2013, EU AIFMs authorised in another EU Member State are allowed to market to retail investors in the territory of Luxembourg units or shares of EU AIFs they manage, when the following conditions are fulfilled:

- the concerned EU AIFs must be subject in their home Member State to a permanent supervision performed by a supervisory authority set up by law in order to ensure the protection of investors;
- EU AIFs established in a Member State other than Luxembourg, must furthermore be subject in their home Member State to regulations offering a level of protection for investors as well as to a prudential supervision considered by the CSSF as equivalent to that provided for in Luxembourg legislation.

Please note that Article 100 (concerning foreign UCIs) in conjunction with Article 59 (appointment of a Luxembourg paying agent) and Article 129 (prior authorisation by the CSSF) of the Law of 2010 also apply to such non-Luxembourg EU AIFs

13. AIFMD marketing passport: General conditions applicable to Luxembourg Authorised AIFMs marketing EU AIFs in the EU

10 January 2014

Preliminary remark

Only Authorised AIFMs can benefit from the marketing passport under the Law of 2013 and/or the AIFMD.

A. Where do Luxembourg Authorised AIFMs have to introduce the notification file in relation to the marketing of EU AIFs (including Luxembourg AIFs) to professional investors in another EU Member State?

The CSSF is the competent authority for the notification process. Luxembourg Authorised AIFMs which intend to market to professional investors in another EU Member State Luxembourg and/or non-Luxembourg EU AIFs they manage have to introduce a notification file with the CSSF.

B. Where do Luxembourg Authorised AIFMs have to introduce the notification file in relation to the marketing of non-Luxembourg EU AIFs to professional investors in Luxembourg?

The CSSF is the competent authority for the notification process. Luxembourg Authorised AIFMs which intend to market in Luxembourg to professional investors non-Luxembourg EU AIFs they manage have to introduce the notification file with the CSSF.

C. Which documents and information need to be included in the notification file to be submitted to the CSSF?

1) In relation to marketing of non-Luxembourg EU AIFs to professional investors in Luxembourg:

The notification file shall include the following documents and information as set out in Annex III of the Law of 2013:

a) A notification letter, including a programme of operations identifying the AIFs the AIFM intends to market and information on where the AIFs are established;
b) the AIF rules or instruments of incorporation;
c) identification of the depositary of the AIF;
d) a description of, or any information on, the AIF available to investors;
e) information on where the master AIF is established if the AIF is a feeder AIF;
f) any additional information referred to in Article 21(1) of the Law of 2013 for each AIF the AIFM intends to market;
g) where relevant, information on the arrangements established to prevent units or shares of the AIF from being marketed to retail investors, including in the case where the AIFM relies on activities of independent entities to provide investment services in respect of the AIF.

2) In relation to marketing of EU AIFs (including Luxembourg AIFs) to professional investors in another EU Member State:

In addition to the documents and information referred to under 1), the notification file, as set out in Annex IV of the Law of 2013, must also include the indication of the EU Member State in which the AIFM intends to market the units or shares of the AIF to professional investors.

D. Marketing approval process: When may a Luxembourg Authorised AIFM start marketing the AIFs identified in the notification file?

1) In relation to marketing in Luxembourg:

Within 20 working days following receipt of a complete notification file, the CSSF shall inform the Luxembourg Authorised AIFM whether it may start marketing the AIFs identified in the notification file. The CSSF shall prevent the marketing of the AIFs only if the AIFMs management of the AIFs does not or will not comply with the Law of 2013 or the AIFM otherwise does not or will not comply with the Law 2013. In the case of a positive decision, the Luxembourg Authorised AIFM may start marketing the AIFs in Luxembourg from the date of the CSSF's notification to that effect.

Where the concerned AIF is an AIF established in an EU Member State other than Luxembourg, the CSSF shall also inform the competent authorities of the AIF, that the Luxembourg Authorised AIFM may start marketing units or shares of the AIF in Luxembourg.

2) In relation to marketing in another EU Member State:

The CSSF shall, no later than 20 working days after the date of receipt of the complete notification file, transmit the complete notification file to the competent authorities of the EU Member State where it is intended that the AIFs be marketed. Such transmission shall occur only if the AIFMs management of the AIFs complies with and will continue to comply with the Law of 2013 and if the AIFM otherwise complies with the Law of 2013. The CSSF shall enclose a statement to the effect that the AIFM concerned is authorised to manage AIFs with a particular investment strategy. Upon transmission of the notification file, the CSSF shall directly notify the Luxembourg Authorised AIFM about the transmission. The Luxembourg Authorised AIFM may start marketing the AIFs in the host EU Member State as of the date of that notification.

Where the concerned AIF is an AIF established in an EU Member State other than Luxembourg, the CSSF shall also inform the competent authorities of the AIF about the Member State(s) in which the Luxembourg Authorised AIFM may start marketing the units or shares of the AIF.

E. Must a Luxembourg Authorised AIFM inform the CSSF about changes in the information included in the initial notification file?

Yes.

All material changes to the information included in the initial notification file must be notified to the CSSF at least 1 month before implementing the change as regards any changes planned by the Luxembourg Authorised AIFM, or immediately after an unplanned change has occurred.

Where the Luxembourg Authorised AIFM has been authorised to market AIFs in an EU Member State other than Luxembourg, the CSSF shall, without delay, inform the competent authorities of the host Member State of the AIFM about any changes to the initial notification file.

F. Under what conditions does the notification procedure also cover the marketing in the EU of feeder AIFs?

Luxembourg Authorised AIFMs may market in the EU units or shares of EU AIFs qualifying as feeder AIFs, subject to the condition that the master AIF is also an EU AIF which is managed by an authorised EU AIFM.

G. When does the EU marketing passport under the AIFMD become available for Luxembourg Authorised AIFMs?

The EU marketing passport under the AIFMD is available from the 22 July 2013 on. From this date Luxembourg Authorised AIFMs may benefit from the possibility to market EU AIFs to professional investors in the EU upon the fulfilment of the notification procedure.

14. Reporting aspects

18 July 2014

Preliminary remark

The reporting aspects covered by the FAQs on reporting aspects hereafter are to be read in conjunction with the ESMA Reporting Guidelines and the ESMA Opinion on Reporting under Article 24(5).

A. Reporting periods – general requirements

The ESMA Reporting Guidelines recommend that reporting periods of AIFMs be aligned with calendar years. Depending on the frequency of the reporting as prescribed by Article 110(3) of the AIFMD-CDR AIFMs shall transmit their reporting in accordance with the following table (yyyy stands for the respective year).

Frequency	Reporting period start date(s)	Reporting period end date(s)	Deadline for transmission for AIF that are not fund of funds	Deadline for transmission for AIF that are fund of funds
quarterly	01/01/yyyy 01/04/yyyy 01/07/ yyyy 01/10/ yyyy	31/03/ yyyy 30/06/ yyyy 30/09/ yyyy 31/12/ yyyy	30/04/ yyyy 31/07/ yyyy 31/10/ yyyy 31/01/(yyyy +1)	15/05/ yyyy 15/08/ yyyy 15/11/ yyyy 15/02/(yyyy +1)
half-yearly	01/01/ yyyy 01/07/ yyyy	30/06/ yyyy 31/12/ yyyy	31/07/ yyyy 31/01/(yyyy +1)	15/08/ yyyy 15/02/(yyyy +1)
annually	01/01/ yyyy	31/12/ yyyy	31/01/(yyyy +1)	15/02/(yyyy +1)

B. Reporting periods – first reporting

As per paragraph 12 of chapter VII. of the ESMA Reporting Guidelines "*AIFMs should start reporting as from the first day of the following quarter after they have information to report until the end of the first reporting period. For example, an AIFM subject to half-yearly reporting obligations that has information to report as from 15 February would start reporting information as from 1 April to 30 June.*"

Depending on the frequency of the reporting as prescribed by Article 110(3) of the AIFMD-CDR, AIFMs shall transmit their first reporting in accordance with the following table (yyyy stands for the respective year). The information in the table hereafter illustrates the timing for a first reporting for an AIFM authorised on 15 February of a given year and is applicable as long as there is no shift in the obligation for the frequency of the reporting of that AIFMD[1].

[1] *In the case of changes in the frequency of the reporting obligations AIFMs are invited to consult paragraph IX ("Procedures when AIFMs are subject to new reporting obligations") of the ESMA Reporting Guidelines.*

Authorisation date	#	Quarterly reporting	Half-yearly reporting	Annual reporting
15/02/yyyy	1	01/04/yyyy - 30/06/yyyy	01/04/yyyy - 30/06/yyyy	01/04/yyyy-31/12/yyyy
	2	01/07/yyyy - 30/09/yyyy	01/07/yyyy - 31/12/yyyy	01/01/(yyyy+1) – 31/12/(yyyy+1)
	3	01/10/yyyy - 31/12/yyyy	01/01/(yyyy+1) – 30/06/(yyyy+1)	01/01/(yyyy+2) – 31/12/(yyyy+2)
	4	01/01/(yyyy+1) – 31/03/(yyyy+1)	01/07/(yyyy+1) – 31/12/(yyyy+1)	01/01/(yyyy+3) – 31/12/(yyyy+3)

On the basis of the above table, an Authorised AIFMs subject to half-yearly reporting obligations and having received its authorisation on 15 February of a given year has to submit its first reporting covering the period of 1st April to 30 June on 31 July of the same year at latest (15 August of the same year at latest where the AIF is a fund of funds). The next reporting following the initial one then has to be done on 31 January of the following year at latest (15 February of the following year at latest where the AIF is a fund of funds) for the period of the 1 July to 31 December of the current year.

Registered AIFMs have to report according to the last column since they are subject to annual reporting obligations.

As per paragraph 11 of the ESMA Reporting Guidelines, any AIFM that has been authorised or registered and has received confirmation from the CSSF concerning their autorisation or registration, but has no information to report for the respective reporting period has to submit a reporting file using a special field. If an AIFM has not yet any AIF to report, an AIFM file has to be sent to the CSSF, indicating that the AIFM has not information to report yet. If a specific AIF has not yet been launched although the AIF has been authorised by the CSSF, the AIFM has to send an AIF file for this specific AIF indicating that the AIF has not information to report yet.

C. As of which date is an AIFM considered to be an Authorised AIFM or a Registered AIFM?

AIFMs are informed of the effective date of their status as Authorised AIFM or as Registered AIFM by the CSSF. This date is to be taken into consideration for the determination of applicable reporting obligations.

D. As of when do Authorised AIFMs and Registered AIFMs which have been authorised or registered before 23 July 2014 have to file their first reports with the CSSF? Depending on their respective reporting frequency, what will be the start date of the initial reporting period?

17 March 2014

Preliminary remark: The answer under point 14.d) is in principle also applicable to AIFMs that benefit from the transitional provisions under Article 58 (1) of the Law of 2013, unless they opt to report under Article 22(1), (2) and (4) of the Law of 2013 in advance of their authorisation (see point 14.e) hereafter).

I. Authorised AIFMs

1° AIFMs authorised between 22 July 2013 and 30 June 2014

Requirement: AIFMs which have been authorised between 22 July 2013 and 30 June 2014 are required to submit the first reporting according to the following table which is applicable as long as there is no shift in a reporting frequency of the AIFMD reporting:

Reporting Frequency	Reporting period start date(s)	Reporting period end date(s)	Deadline for transmission for AIF that are not fund of funds	Deadline for transmission for AIF that are fund of funds
quarterly	01/07/2014	30/09/2014	31/10/2014	15/11/2014
half-Yearly	01/07/2014	31/12/2014	31/01/2015	15/02/2015
annually	01/07/2014	31/12/2014	31/01/2015	15/02/2015

Option: AIFMs which have been authorised between 22 July 2013 and 30 June 2014 have the option to submit the reporting for earlier periods as those mentioned in the table above. In this case the ESMA Reporting Guidelines rules as set out under answer 14.b) above apply.

2° AIFMs authorised between 1st and 22 July 2014

AIFMs which have been authorised between 1st and 22 July 2014 are required to submit the first reporting - covering the period from 1st October 2014 to 31 December 2014 - for 31 January 2015 at latest (15 February 2015 at latest where the AIF is a fund of funds) whatever its reporting frequency is.

29 December 2014

The requirements under point 2° above are also applicable to AIFMs established before the 22 July 2014 and having been granted their authorisation between the 1st October 2014 and th 31 December 2014.

II. Registered AIFMs

1° Registered AIFMs that have received confirmation regarding their registration in 2013

Requirement: AIFMs that have received confirmation regarding their registration in 2013 are required to report for 31 January 2015 at latest (15 February 2015 at latest where the AIF is a fund of funds) covering the period of 1st January 2014 up to 31 December 2014.

Option: An AIFM that has submitted a request for registration and has received confirmation from the CSSF regarding its status as Registered AIFM with an effective date before 1st October 2013, has the option to submit the reporting for earlier periods as those mentioned above. In this case the ESMA Reporting Guidelines rules as set out under answer 14.b) apply.

2° Registered AIFMs that have received confirmation regarding their registration in 2014

Registered AIFMs that have received confirmation regarding their registration in 2014 are required to submit their first reporting according to the following table:

Confirmation regarding their registration received in	Reporting period start date(s)	Reporting period end date(s)	Deadline for transmission for AIF that are not fund of funds	Deadline for transmission for AIF that are fund of funds
Q1 2014	01/04/2014	31/12/2014	31/01/2015	15/02/2015
Q2 2014	01/07/2014	31/12/2014	31/01/2015	15/02/2015
Q3 2014	01/10/2014	31/12/2014	31/01/2015	15/02/2015
Q4 2014	01/01/2015	31/12/2015	31/01/2016	15/02/2016

Any of the above mentioned AIFMs has to contact the CSSF in order to get identifiers for reporting purposes.

E. Reporting requirements applicable to AIFMs benefiting from the transitional provisions under Article 58(1) of the Law of 2013?

AIFMs that benefit from the transitional provisions under Article 58(1) of the Law of 2013 have the option to submit or not to submit the reporting requested under Article 22(1), (2) and (4) of the Law of 2013 in advance of their authorisation. If the AIFM opts to report, it has to submit its reporting with the frequency and for the reporting periods described under the answer to question 14.b) above.

AIFMs that opt to report in advance of their authorisation have to contact the CSSF in order to get identifiers for reporting purposes.

F. Does the CSSF require reporting on more frequent basis than foreseen in the AIFMD-CDR?

No.

For the time being the CSSF does not request information to be reported on a more frequent basis than foreseen in the AIFMD-CDR.

G. In both AIFM and AIF reports, some fields are formatted to be filled-in with free text elements. In which language(s) these free text fields may be provided to CSSF?

The only acceptable language for the entire AIFMD reporting is English.

H. Acceptable means of communication regarding the reporting required under the Law of 2013?

AIFMD reporting is possible only by using the channels that have been accepted by the CSSF, i.e. for the moment "*e-file*" and "*SOFIE*".

I. Do the requirements under Article 20(2) of the Law of 2013 apply to Registered AIFMs and Authorised AIFMs?

Article 20 (2) only applies to Authorised AIFMs, not¬withstanding any specific rules under a Product Law applicable to a given AIF.

J. Do annual reports as required under Article 20(1) of the Law of 2013 have to be made available for all AIFs by authorised AIFMs when their authorisation date is prior to the end of their fiscal year?

Yes.

Authorised AIFMs have to ensure that an annual report based on the elements described in Article 20(2) of the Law of 2013 is made available in respect of all those AIFs where the AIFMs' authorisation date is prior to the end of the relevant AIFs fiscal year.

This also applies to Authorised AIFMs having been authorised during 2013 for the fiscal year ending in 2013.

K. Do annual reports covered under Article 20(2) of the Law of 2013 have to be submitted to the CSSF in conformity with the naming conventions as laid down in Circular CSSF 11/509 and the procedure as described in Circular CSSF 08/371?

Yes.

Only annual reports respecting the naming conventions and the format as set out in Circular CSSF 11/509 and the Circular CSSF 08/371 are accepted.

L.

L.1 Which provisions does an annual report to be provided by an AIFM under Article 20 of the Law of 2013 have to comply with?

For the presentation of the annual report and especially for the Article 20 (1) (a) a balance-sheet or a statement of assets and liabilities; and (b) an income and expenditure account for the financial year, AIFMs have to comply with the requirements under scheme B of the Law of 2010 (for part II funds) and on the annex of the Law of 2007 (for SIFs, where applicable) and on Article 104 of the AIFMD Level II Regulation.

L.2 Which accounting standards are accepted under Article 20(3) of the Law of 2013 for preparing the accounting information in the annual report of an AIF managed by an Authorised AIFM established in Luxembourg?

30 June 2021

No longer applicable

M. *No longer applicable* Does the CSSF require the AIFMs to provide the additional information set out in ESMA's Opinion on Reporting under Article 24(5)?

Yes.

The CSSF will require from AIFMs all information indicated in the ESMA Opinion on Reporting under Article 24(5).

N. Do the reporting requirements under Article 24(1), (2) & (4) of the AIFMD also apply to non-EU AIFMs?

Yes.

The reporting requirements do also apply to non-EU AIFMs during the period before introduction of the passport for non-EU AIFMs expected to be available for 2015 (hereafter referred to as the transitional period). The reporting requirements by non-EU AIFMs during the transitional period are adressed in points 14.o) to 14.q) hereafter.

10 August 2015

O. When does a non-EU AIFM have to report to the CSSF under the requirements of Article 24(1), (2) & (4) of the AIFMD?

Based on the provisions of Article 45 of the Law of 2013, a non-EU AIFM will have to report to the CSSF under the requirements of Article 24(1), (2) & (4) of the AIFMD only in the case where this non-EU AIFM is marketing AIFs to professional investors in Luxembourg and as long as the passport regime is not available to non-EU AIFMs (see also section 18 hereafter).

Additionally, a non-EU AIFM that manages or markets a feeder AIF (whether EU or non-EU) in Luxembourg will also have to report to the CSSF under the requirements of Article 24(1), (2) and (4) of the AIFMD for the non-EU master AIF(s) of such feeder, even if the non-EU master AIF(s) is (are) not marketed in the EU.

This requirement only applies if the non-EU AIFM manages both the feeder AIF and the non-EU master AIF. The CSSF requires in such case that non-EU AIFMs submit a separate AIF reporting file for each concerned non-EU master AIF.

P. In a configuration where a non-EU AIFM is marketing AIFs to professional investors in Luxembourg and in other Member States of the EU, should the reporting to the CSSF under the requirements of Article 24(1), (2) & (4) of the AIFMD contain data for all AIFs marketed by the non-EU AIFM in all the EU Member States or only the data for those AIFs that are marketed in Luxembourg?

When a non-EU AIFM is marketing AIFs to professional investors in Luxembourg and in other Member States of the EU, the reporting to the CSSF under the requirements of Article 24(1), (2) & (4) of the AIFMD, should only cover the data for :

- those AIFs that are marketed in Luxembourg and
- those non-EU master AIFs that must be reported to the CSSF as per question 14.o) above.

18 July 2014

Q. From what date on does a non-EU AIFM that markets AIFs to professional investors in Luxembourg have to report to the CSSF under the requirements of Article 24(1), (2) & (4) of the AIFMD?

As mentioned under section 18. hereafter, non-EU AIFMs which intend to market AIFs to professional investors in Luxembourg in accordance with the provisions of Article 45 of the Law of 2013, must inform the CSSF prior to any marketing activity.

Non-EU AIFMs shall in principle take the date of the information form provided to the CSSF for the marketing in Luxembourg (see section 18. hereafter) as the start date for their reporting requirements under Article 24(1), (2) & (4) of the AIFMD.

The reporting frequency and the reporting periods for non-EU AIFMs are the same as those applicable to Luxembourg AIFMs (see ESMA Reporting Guidelines).

R. Do the reporting requirements under Article 24(1), (2) & (4) of the AIFMD also apply to non-EU AIFMs which existed and marketed non-Luxembourg AIFs under the Luxembourg private placement regime rules before 22 July 2013?

No.

As pointed out in point 8.e), the marketing of non-Luxembourg AIFs in Luxembourg by non-EU AIFMs under the existing Luxembourg placement rules will continue to be permitted until 22 July 2014 and will not be affected by the Law of 2013. Non-EU AIFMs which existed and marketed non-Luxembourg AIFs under the Luxembourg private placement regime rules before 22 July 2013 are therefore not concerned by the points 14.n) to 14.r) mentioned before.

10 August 2015

S. When reporting a non-EU master AIF under the requirements of Article 24(1), (2) and (4) of the AIFMD, should the non-EU AIFM include the AuM (and other positions) of such non-EU master AIF in the aggregate amount of AuM (and other positions) to be reported to the CSSF in the AIFM reporting file for the purposes of Article 24(2) of the AIFMD?

No. The amount of assets under management (AuM) and other positions of a non-EU master AIF, that must be reported to the CSSF as per question 14.o) above in a separate AIF reporting file, should not be included in the aggregate amount of AuM (and other positions) to be reported to the CSSF in the AIFM reporting file.

15. Valuation of the AIF's assets

20 February 2014

A. What types of valuation set-ups are foreseen by the Law of 2013?

The Law of 2013 stipulates that the AIFM may either perform itself the valuation function (Article 17(4)(b) of the Law of 2013) or appoint one or several external valuers (Article 17(4)(a) of the Law of 2013).

B. Who may be appointed as external valuer pursuant to the Law of 2013?

According to Article 17(4)(a) of the Law of 2013, an external valuer "must be a legal or natural person independent from the AIF, the AIFM and any other persons with close links to the AIF or the AIFM". This could be the AIF's depositary or its administrator (see below and question 15.d)) or any other third party that fulfils this condition.

Further to Article 17(4), paragraph 2 of the Law of 2013, the appointment of the depositary appointed for an AIF as external valuer of that AIF is subject to the condition that it has functionally and hierarchically separated the performance of its depositary functions from its tasks as external valuer and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the AIF.

Pursuant to recital 80 of the AIFMD-CDR, a third party that has been appointed to perform administration for an AIF (i.e. the AIF's administrator), including calculation of the net asset value, can be considered as an external valuer for the purposes of the AIFMD if it provides tailor-made valuations for individual assets, specifically for those requiring subjective judgement on the value of the assets.

C. How is the appointment of an external valuer to be formalised?

The appointment of a third party as the AIF's external valuer has to be formalised by a written contract, which clearly states that the third party is appointed as external valuer in the sense of Article 17(4)(a) of the Law of 2013 and sets out its tasks.

D. May the administrator be appointed as external valuer?

Yes, the administrator may be appointed to act as external valuer if it fulfils the requirements under Articles 17(4) and 17(5) of the Law of 2013.

However, it should be noted that the administrator should not be assumed to always be the external valuer. As pointed out under question 15.c), the administrator's appointment as the AIF's external valuer should clearly follow from the terms of the contract with the administrator.

16. Transaction costs

20 February 2014

A. Must AIFs established under Part II of the Law of 2010 disclose the transaction costs in their periodical financial reports?

Yes, Article 124 of the Law of 2013 has amended Schedule B (« Information to be included in the periodical reports ») of Annex I of the Law of 2010 by adding the disclosure of the transaction costs.

AIFs established under Part II of Law 2010 must disclose the transaction costs in their financial reports.

The transaction costs, which are all costs incurred by a UCI in connection with transactions on its portfolio, including those charged by the custodian bank for the execution of the UCI's transactions, can be disclosed either under a specific heading « transaction costs » of the profit and loss account or in the notes to the accounts.

17. Initial capital and own funds requirements applicable to AIFMs

10 August 2015

A. Which regulatory texts are to be taken into consideration for the purpose of assessing the initial capital and own funds requirements applicable to external AIFMs which do not hold a licence as Chapter 15 ManCos (i.e. Chapter 16 ManCos or other Luxembourg based AIFMs)?

Only the relevant provisions of the Law of 2013 & the AIFMD-CDR apply to these AIFMs, the situation summary of which is reflected in the table below.

Initial capital[1] Art. 8(2) Law of 2013	Own funds Art. 8(3)/(5) Law of 2013	Cover of potential professional liability risks Art. 8(7) Law of 2013 & Art. 12-15 AIFMD-CDR	
at least **125,000 EUR**	Rule: **0.02%** of the amount by which the value of the portfolios exceeds EUR 250,000,000 (threshold) Value: The value of the portfolio is to be understood as the sum of the **net asset values** of the managed portfolios (**AIFs only**, excluding investments by AIFs in other AIFs that are managed by the same AIFM[2]) Limits: **Maximum** (initial capital + own funds) 10,000,000 EUR **Minimum**[3] ¼ of the fixed overheads projected in the business plan / ¼ of the fixed overheads of the preceding year	**by additional own funds**	Rule: (at least) equal to **0.01%** of the value of the portfolios of **AIFs** managed Value: The value of the portfolios of AIFs managed shall be sum of the **absolute value** of all assets of all AIFs managed by the AIFM, including assets acquired through use of leverage, whereby derivative instruments shall be valued at their market value – and including investments by AIFs in other AIFs that are managed by the same AIFM[2]. Limits: No maximum/ No threshold applicable[4]
		or by a professional indemnity insurance	Rule: Requirements under article 15 of AIFMD-CDR Limits: No maximum/ No threshold applicable[4]

[1] For the provision of the services mentioned in Article 6(4) of the AIFMD, reference is made to article 12 of Directive 2004/39/EC (see article 6(6) of the AIFMD).
[2] Please see: http://www.esma.europa.eu/system/files/2015-1137_qa_on_the_application_of_the_aifmd.pdf, p. 25.
[3] The reference to article 21 of Directive 2006/49/EC shall be construed as a reference to article 97 of Regulation (EU) No 575/2013.
[4] It follows from article 8(7) Law of 2013 that additional own funds or a coverage by a professional indemnity insurance to cover potential professional liability risks are not included in (and are hence to be provided in addition to) the own funds mentioned in the second column of this table.

B. Which regulatory texts are to be taken into consideration for the purpose of assessing the initial capital and own funds requirements applicable to a Chapter 15 Manco which holds a licence as AIFM?

Both the relevant provisions of the Law of 2010 and of the Law of 2013 (& the AIFMD-CDR) apply to these AIFMs, the situation summary of which is reflected in the table below.

Initial capital[1] Art. 102(1)a) Law of 2010	**Own funds** Art. 102(1)a) Law of 2010	**Cover of potential professional liability risks** Art. 8(7) Law of 2013 & Art. 12-15 AIFMD-CDR	
at least **125,000 EUR**	Rule: **0.02%** of the amount by which the value of the portfolios (**AIFs, UCITS and other UCIs which do not qualify as AIF**) exceeds EUR 250,000,000 (threshold) AIFs qualify as "other UCIs" managed by the Chapter 15 ManCo Value: The value of the portfolio is to be understood as the sum of the **net asset values** of the managed portfolios (**AIFs**[2], **UCITS and other UCIs which do not qualify as AIF**) Limits:**Maximum** (initial capital + own funds) 10,000,000 EUR **Minimum**[3] ¼ of the fixed overheads projected in the business plan / ¼ of the fixed overheads of the preceding year	**by additional own funds**	Rule: (at least) equal to **0.01%** of the value of the portfolios of **AIFs** managed Value: The value of the portfolios of AIFs managed shall be sum of the **absolute value** of all assets of all AIFs managed by the AIFM, including assets acquired through use of leverage, whereby derivative instruments shall be valued at their market value – and including investments by AIFs in other AIFs that are managed by the AIFM[4]. Limits: No maximum/ No threshold applicable[5]
		or by a professional indemnity insurance	Rule: Requirements under article 15 of AIFMD-CDR Limits: No maximum/ No threshold applicable[5]

[1] For the provision of the services mentioned in Article 6(4) of the AIFMD, reference is made to article 12 of Directive 2004/39/EC (see article 6(6) of the AIFMD).
[2] Excluding investments by AIFs in other AIFs that are managed by the same AIFM, please see: http://www.esma.europa.eu/system/files/2015-1137_qa_on_the_application_of_the_aifmd.pdf, p. 25.
[3] The reference to article 21 of Directive 2006/49/EC shall be construed as a reference to article 97 of Regulation (EU) No 575/2013.
[4] Please see: http://www.esma.europa.eu/system/files/2015-1137_qa_on_the_application_of_the_aifmd.pdf, p. 25.
[5] It follows from article 8(7) Law of 2013 that additional own funds or a coverage by a professional indemnity insurance to cover potential professional liability risks are not included in (and are hence to be provided in addition to) the own funds mentioned in the second column of this table.

C. What are the risks that should be covered either by additional own funds or by a professional indemnity insurance?

The professional liability risks to be covered pursuant to AIFMD shall be risks of loss or damage caused by a relevant person (Article 1 of the AIFMD-CDR) through the negligent performance of activities for which the AIFM has legal responsibility.

The risks that should at least be covered are enumerated in Article 12 of the AIFMD CDR.

D. In a master-feeder AIF structure, where a Chapter 15 ManCo respectively a Chapter 16 ManCo authorised under the AIFMD is the appointed AIFM of one of these AIFs and carries out activities pursuant to the AIFMD (i.e. the activities referred to in Annex I of the AIFMD) for the other AIF, does it have to cover potential professional liability risks on the master and feeder level?

Yes.

However, the professional liability risks to be covered pursuant to Article 9(7) of AIFMD shall be risks of loss or damage caused by a relevant person through the negligent performance of activities for which the AIFM has legal responsibility.

18. Marketing of AIFs to professional investors in Luxembourg without passport by non-EU AIFMs on the basis of Article 45 of the Law of 2013

18 July 2014

A. Are non-EU AIFMs allowed to market AIFs to professional investors in Luxembourg without a passport?

Yes.

The minimum conditions applicable for the marketing without a passport are set under Article 45 of the Law of 2013.

B. Are non-EU AIFMs required to inform the CSSF, if they want to market AIFs to professional investors in Luxembourg on the basis of Article 45 of the Law of 2013?

Yes, non-EU AIFMs must inform the CSSF prior to any marketing activity.

C. Do non-EU AIFMs have to inform the CSSF if they stop marketing AIFs to professional investors in Luxembourg on the basis of Article 45 of the Law of 2013?

Yes.

When informing the CSSF, non-EU AIFMs must indicate the date from which they will stop marketing activities in Luxembourg.

D. What information should be provided to the CSSF by non-EU-AIFMs before they may start marketing AIFs to professional investors in Luxembourg on the basis of Article 45 of the Law of 2013?

An information form for the marketing in Luxembourg of AIFs managed by non-EU AIFMs on the basis of Article 45 of the Law of 2013 is available for download on the website of the CSSF.

E. What information should be provided periodically by non-EU AIFMs to the CSSF on the basis of Article 45 of the Law of 2013?

As long as the passport is not available:

The reporting requirements under Article 24 of the AIFMD apply to non-EU AIFMs marketing AIFs in Luxembourg on the basis of Article 45 of the Law of 2013. The reporting to the CSSF should however only cover the data for those AIFs that are marketed in Luxembourg.

Once the passport regime is available:

As soon as the passport is available to non-EU AIFMs, the reporting required under Article 24 of the AIFMD should, in accordance with Article 110 (7) of the AIFMD-CDR, be provided to the competent authority of the Member State of reference.

F. Can non-EU AIFMs market their regulated Luxembourg AIFs (UCIs under part II of the Law of 2010, SIFs under the Law of 2007, SICARs under the Law of 2004) to professional investors in Luxembourg on the basis of Article 45 of the Law of 2013 without previously informing the CSSF?

No.

The non-EU AIFMs should inform the CSSF as soon as they start to market the regulated Luxembourg AIFs to professional investors in Luxembourg on the basis of Article 45 of the Law of 2013.

It should be noted that the requested information may be introduced at the same time as the approval process for a regulated Luxembourg AIF, if the non-EU AIFM intends to market the AIF once the authorisation is received. The requested information should be provided to the CSSF via the information form referred to under point 18.d).

G. Can non-EU AIFMs market their non-regulated Luxembourg AIFs (Luxembourg AIFs other than UCIs under part II of the Law of 2010, SIFs under the Law of 2007, SICARs under the Law of 2004) to professional investors in Luxembourg on the basis of Article 45 of the Law of 2013 without previously informing the CSSF?

No.

The non-EU AIFMs should inform the CSSF as soon as they start to market the non-regulated Luxembourg AIFs to professional investors in Luxembourg on the basis of Article 45 of the Law of 2013.

The requested information should be provided to the CSSF via the information form referred to under point 18.d).

H. What general rules apply to non-EU AIFMs marketing AIFs to professional investors in Luxembourg on the basis of Article 45 of the Law of 2013?

As long as the passport regime is not available:

The non-EU AIFMs should comply with the rules set in Article 45 of the Law of 2013 and section XIII (Guidelines on disclosure) of ESMA's guidelines on sound remuneration policies under AIFMD.

Although the non-EU AIFMs market AIFs to professional investors under Article 45 of the Law of 2013, they should not contravene namely the Consumer Code.

Once the passport regime will be available:

Further rules apply to the non-EU AIFMs as the parallel application of the national regime should be without prejudices of the Articles 37, 39 and 40 of the AIFMD.

I. Do non-EU AIFMs have to apply for an authorisation under Article 32(5) of the Law of 1993 if they want to market AIFs to professional investors in Luxembourg on the basis of Article 45 of the Law of 2013?

No.

Non-EU AIFMs have not to apply for an authorisation under Article 32(5) of the Law of 1993.

As mentionned under point 18.b), non-EU AIFMs must however inform the CSSF prior to any marketing activity in Luxembourg.

J. What are the rules applicable to non-EU AIFMs which marketed AIFs to professional investors in Luxembourg under the existing Luxembourg placement regime before 22 July 2013?

As mentioned under point 8.e), the marketing of AIFs in Luxembourg by non-EU AIFMs under the existing Luxembourg placement rules will continue to be permitted until 22 July 2014.

These non-EU AIFMs, which marketed AIFs to professional investors in Luxembourg under the existing Luxembourg placement regime before 22 July 2013, will have to send to the CSSF the information form referred to under point 18.d) if they intend to continue to market their AIFs in Luxembourg on the basis of Article 45 of the Law of 2013. It should be noted that this obligation applies also to non-EU AIFMs marketing their regulated and non-regulated Luxembourg AIFs in Luxembourg (see points 18.f) and 18.g) above).

19. Marketing of non-EU AIFs to professional investors in Luxembourg without passport by EU AIFMs on the basis of Article 37 of the Law of 2013

29 December 2014

Preliminary remark

The term "EU AIFM" referred to in section 19 of the FAQs covers EU AIFMs irrespective of whether they are AIFMs established in Luxembourg or in another EU Member State.

A. Are EU AIFMs allowed to market non-EU AIFs to professional investors in Luxembourg without a passport?

Yes.

The minimum conditions applicable are set out under Article 37 of the Law of 2013.

B. Who is concerned by Article 37 of the Law of 2013?

Every authorised EU AIFM which intends to market to professional investors in Luxembourg without passport shares or units of

I. one or more non-EU AIF(s) it manages, or
II. one or more EU feeder AIF(s) whose master AIF is not an EU AIF or whose master AIF is not managed by an authorised EU AIFM.

C. Are EU AIFMs required to inform the CSSF if they want to market non-EU AIFs to professional investors in Luxembourg on the basis of Article 37 of the Law of 2013?

Yes, EU AIFMs must inform the CSSF prior to any marketing activity on the basis of Article 37 of the Law of 2013-

D. Do EU AIFMs have to inform the CSSF if they stop marketing non-EU AIFs to professionnal investors in Luxembourg on the basis of Article 37 of the Law of 2013?

Yes.

When informing the CSSF, EU AIFMs must indicate the date from which they will stop marketing activities in Luxembourg under Article 37 of the Law of 2013.

E. What information should be provided to the CSSF by EU AIFMs before they may start marketing non-EU AIFs to professionnal investors in Luxembourg on the basis of Article 37 of the Law of 2013?

An information form for the marketing in Luxembourg of non-EU AIFs by EU AIFMs on the basis of Article 37 of the Law of 2013 is available for download on the website of the CSSF.

F. To what extent are the depositary requirements under the AIFMD applicable to EU AIFMs marketing non-EU AIFs to professional investors in Luxembourg on the basis of Article 37 of the Law of 2013?

Pursuant to Article 37 a) of the Law of 2013, EU AIFMs must ensure that one or more entities are appointed to carry out the duties referred to under Article 21 (7) [cash monitoring], (8) [safekeeping of assets] and (9) [oversight of certain operational functions] of the AIFMD.

These duties are commonly designated as “Depo Lite Services”.

Further questions relating to the “Depo Lite Services” under Article 21 (7), (8) and (9) of the AIFMD are adressed in points 19.g) to 19.i) hereafter.

G. Do EU AIFMs, if they want to market non-EU AIFs to professional investors in Luxembourg on the basis of Article 37 of the Law of 2013, have to inform the CSSF on the identity of the entity(ies) appointed to carry out the "Depo Lite Services" under Article 21 (7), (8) and (9) of the AIFMD?

Yes.

Every EU AIFM (irrespective of whether the EU AIFM is an AIFM established in Luxembourg or in another EU Member State), which intends to start marketing activities in Luxembourg under Article 37 of the Law of 2013, must inform the CSSF on the identity of the entity(ies) appointed to carry out the "Depo Lite Services" referred to in Article 21 (7), (8) and (9) of the AIFMD.

H. In case of an EU AIFM marketing non-EU AIFs to professional investors in Luxembourg on the basis of Article 37 of the Law of 2013, what is the number of entities that can be appointed in order to perform the "Depo Lite Services" under Article 21 (7), (8) and (9) of the AIFMD?

In the case described, one or several entities can be appointed per non-EU AIF to perform the duty referred to under Article 21 (8) [safekeeping of assets] of the AIFMD, i.e. either a single depositary shall carry out this duty with regard to the AIF's assets entrusted to it for safe-keeping, or, in case several entities (different prime brokers, for example) have been appointed to perform this duty, each such entity shall carry out this duty with regard to the portion of the AIF's assets that has been entrusted to it for safe-keeping.

However, as to the duties referred to under Article 21 (7) [cash monitoring] and (9) [oversight of certain operational functions] of the AIFMD, the number of entities per non-EU AIF that can be appointed is limited to a maximum of one entity per duty.

I. In case of an EU AIFM marketing non-EU AIFs to professional investors in Luxembourg on the basis of Article 37 of the Law of 2013, what are the requirements regarding the location of the entitie(s) appointed for the carrying out of the "Depo Lite Services" under Article 21 (7), (8) and (9) of the AIFMD?

There are no specific requirements provided for under Article 37 of the Law of 2013 with respect to the location of the entitie(s) appointed for the carrying out of the "Depo Lite Services" referred to under Article 21 (7), (8) and (9) of the AIFMD.

J. What general rules apply to EU AIFMs marketing non-EU AIFs to professional investors in Luxembourg on the basis of Article 37 of the Law of 2013?

Although EU AIFMs may market non-EU AIFs to professional investors under Article 37 of the Law of 2013, they should not contravene namely to the Luxembourg Consumer Code.

K. What are the rules applicable to EU AIFMs which marketed non-EU AIFs to professionnal investors in Luxembourg under the existing Luxembourg placement regime before 22 July 2013?

These EU AIFMs, which marketed non-EU AIFs to professionnal investors in Luxembourg under the existing Luxembourg placement regime before 22 July 2013, will have to send to the CSSF the information form referred to under point 19.e) if they intend to continue to market their non-EU AIFs in Luxembourg on the basis of Article 37 of the Law of 2013.

20. Notification to the CSSF of the acquisition of major holdings and control of non listed companies on the basis of Article 25 of the Law of 2013[1]

29 December 2014

A. Which entities are concerned by the provisions of Article 25 of the Law of 2013 relating to the notification to the CSSF of the acquisition of major holdings and control of non-listed companies?

The following entities are concerned by the provisions of Article 25 of the Law of 2013 relating to the notification to the CSSF of the acquisition of major holdings and control of non-listed companies:

i. every Luxembourg AIFM authorised under chapter 2 of the Law of 2013.

1 The term "AIFM" in the points 20.a) to 20.g) hereafter refers to (i) authorised Luxembourg AIFMs and (ii) non-EU AIFMs performing marketing activities in Luxembourg under article 45 of the Law of 2013.

ii. every non-EU AIFM marketing AIFs to professional investors in Luxembourg without passport on the basis of Article 45 of the Law of 2013. Regarding the marketing regime under Article 45 of the Law of 2013, please refer to section 18 above.

B. What are the different scenarios under which AIFMs have to make the notifications to the CSSF required under Article 25 of the Law of 2013?

The scenarios under which AIFMs have to make the notifications to the CSSF required under Article 25 of the Law of 2013 are the following:

(A) Notification of acquisition of major holdings (Article 25 (1) of the Law of 2013)

Notification to the CSSF under Article 25 (1) of the Law of 2013 is required when an AIFM manages an AIF that acquires, disposes of or holds shares of a non-listed company, any time when the proportion of voting rights of the non listed company held by the AIF reaches, exceeds or falls below the thresholds of 10%, 20%, 30%, 50% and 75%.

(B) Notification of the acquisition of control[1] of non-listed companies (Article 25 (2) of the Law of 2013)

Notification to the CSSF under Article 25 (2) of the Law of 2013 is required in the following situations:

i. when an AIFM manages one or more AIFs, which either individually or jointly, on the basis of an agreement aimed at acquiring control, acquire control of a non-listed company;
ii. when an AIFM cooperating with one or more other AIFMs on the basis of an agreement pursuant to which the AIFs managed by those AIFMs jointly, acquires control of a non-listed company

1 Pursuant to article 24 (5) of the Law of 2013, "control" shall mean more than 50% of the voting rights of the non-listed company.

C. What is the definition of a "non-listed company"?

Pursuant to Article Article 1 (63) of the Law of 2013, "non listed company" means any company which has its registered office in the European Union and the shares of which are not admitted to trading on a "regulated market" within the meaning of point (14) of Article 4 (1) of Directive 2004/39/EC on markets in financial instruments, i.e. a multilateral system operated and/or managed by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments in the system and in accordance with its nondiscretionary rules – in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules and/or systems, and which is authorised and functions regularly and in accordance with the provisions of Title III of the said Directive.

D. Are there situations where AIFMs are not required to notify to the CSSF the acquisition of major holdings and control of non-listed companies in accordance with the provisions of Article 25 of the Law of 2013?

Yes.

Notification to the CSSF of the acquisition of major holdings and control under Article 25 of the Law of 2013 is not required where the non-listed companies are:

i. small and medium-sized enterprises within the meaning of Article 2(1) of the Annex to Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises[1] ; or
ii. special purpose vehicles with the purpose of purchasing, holding or managing real estate.

With respect to point (i), the AIFM may rely on the information which is made available by the investee companies at time of acquisition.

1 Pursuant to article 2(1) of the Annex to Commission Recommendation 2003/361/EC of 6 May 2003, the category of micro, small and medium-sized enterprises is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million.

E. What information should AIFMs notify to the CSSF in case of the acquisition of major holdings and control of non-listed companies under Article 25 of the Law of 2013?

A specific form for the notification of major holdings and control of non-listed companies on the basis of Article 25 of the Law of 2013 is available for download on the website of the CSSF.

(A) Notification of acquisition of major holdings (Article 25 (1) of the Law of 2013)

The relevant information has to be filled out in point IV. – section 1 of the notification form.

(B) Notification of the acquisition of control of non-listed companies (Article 25 (2) of the Law of 2013)

The relevant information has to be filled out in point IV – section 2 of the notification form.

Please note further that in case of acquisition of control of non-listed companies, the CSSF may at any time request the AIFM to make available the information referred to in Article 26 (2) of the Law of 2013.

F. What is the timeframe within which AIFMs have to make the notifications to the CSSF required under Article 25 of the Law of 2013 in case of the acquisition of major holdings and control of non-listed companies?

Pursuant to Article 25 (5) of the Law of 2013, the notifications under Article 25 of that law shall be made as soon as possible, but not later than 10 working days after the date on which the AIF has reached, exceeded or fallen below the relevant threshold or has acquired control over the non-listed company.

G. As of when must AIFMs comply with the rules under Article 25 of the Law of 2013 regarding the acquisition of major holdings and control of non listed companies?

AIFMs must comply with the rules under Article 25 of the Law of 2013 as of the following date:

i. for Luxembourg authorised AIFMs, as of the date the AIFM is authorised by the CSSF under chapter 2 of the Law of 2013;

ii. for non-EU AIFM marketing AIFs to professional investors in Luxembourg without passport on the basis of Article 45 of the Law of 2013, as of the date from which the non-EU AIFM will start marketing activities in Luxembourg under that Article

21. Definition of marketing and reverse solicitation

10 August 2015

Preliminary remarks

Given that there is no guidance on a European level regarding what marketing exactly consists in, the guidance and position of the different national competent authorities may vary.

The same applies in relation to the concept of "reverse solicitation" (also referred to as "passive marketing", i.e. activities that are generally not considered as (active) marketing under the AIFMD and to which, consequently, the AIFMD marketing requirements do not apply).

Important: It has to be noted that reverse solicitation shall in no case be invoked to circumvent the requirements contained in the AIFMD.

A. When does marketing take place?

Under Article 1(9) of the Law of 2013 "marketing" is defined as "a direct or indirect offering or placement at the initiative of the AIFM or on behalf of the AIFM of units or shares of an AIF it manages to or with investors domiciled or with a registered office in the Union".

Marketing within the meaning of the Law of 2013 takes place when the AIF, the AIFM or an intermediary on their behalf seeks to raise capital by actively making units or shares of an AIF available for firm purchase by a potential investor.

B. Does the presentation of draft documents in relation to an AIF by the AIFM to prospective investors constitute a marketing activity?

No, provided that such draft documents cannot be used by the prospective investors to formally subscribe or commit to subscribe shares or units of the AIF.

C. Is the AIFM allowed to present to prospective investors documents in relation to the AIF it manages prior to informing the CSSF in accordance with Articles 29, 31, 37 or 45 of the Law of 2013[1]?

Yes, provided that no subscription in the relevant AIF may become effective until and unless the CSSF is informed in accordance with Articles 29, 31, 37 or 45 of the Law of 2013. For the avoidance of doubt the presentation of such documents at the initiative of the AIF or the AIFM shall no longer allow the benefit of reverse solicitation by the investors to whom they have been presented.

D. By which means can an AIFM perform a marketing activity?

By an offer or placement which may be materialised in various forms (e.g. advertising, distribution of AIF documents to prospective investors, road shows, distance marketing), provided the relevant material delivered to investors can be used to formally subscribe or commit to subscribe for shares or units of the AIF.

E. Does marketing in Luxembourg require a physical presence of the AIFM on the Luxembourg territory?

No. Without prejudice to Article 32(5) of the Law of 1993, marketing in Luxembourg does not require a physical presence of the AIFM on Luxembourg territory.

F. Can marketing in Luxembourg be performed through Luxembourg based intermediaries?

Yes. Marketing in Luxembourg can be performed by Luxembourg based intermediaries (e.g. management companies, credit institutions or professionals of the financial sector authorised under the Law of 1993), as long as the authorisation of these professionals covers the possibility to perform such activity.

[1] Pursuant to article 58 (5) of the Law of 2013, the articles 35, 36, 39, 40, 41 and 42 of this Law will only be applicable once the European Commission has adopted the delegated act referred to under article 67 (6) of the AIFMD and from the date disclosed therein.

G. Does the marketing activity have to take place on the Luxembourg territory in order to qualify as marketing in Luxembourg?

Yes. The marketing activity has to take place on the Luxembourg territory in order to qualify as marketing in Luxembourg. For distance marketing of services please refer to question 21.h) below.

H. When does distance marketing qualify as marketing in Luxembourg?

Distance marketing refers to any marketing acitivity which is carried out by any means of communication (e.g. telephone, website) which does not imply the simultaneous physical presence in Luxembourg of (i) the AIF, the AIFM, or, as the case may be, their intermediary, and (ii) the investor. Distance marketing qualifies as marketing in Luxembourg when the investors are domiciled or have their registered office in Luxembourg – and the relevant materials can be used by the investor to formally subscribe or commit to subscribe for shares or units of the AIF.

I. What does reverse solicitation consist in?

Reverse solicitation consists in providing information regarding an AIF and making units or shares of that AIF available for purchase to a potential investor following an initiative of that investor (or an agent of that investor) without any solicitation made by the AIF or its AIFM (or an intermediary acting on their behalf) in relation to the relevant AIF.

J. Is reverse solicitation to be considered as marketing within the meaning of the AIFMD?

No, to the extent that the different elements defined under item 21.k) below are met.

K. What are the different cumulative components of reverse solicitation?

The cumulative components are twofold:

- the investor (or an agent of the investor) has approached the AIFM or the AIF on its own initiative with the intention of investing in (or, initially, receiving information regarding) AIF(s) managed by such AIFM;
- neither the AIFM, nor the AIF (nor any intermediary acting on their behalf) has solicited the investor to invest in the relevant AIF.

L. Who has the burden of proof with respect to the two criteria under item 21.k)?

The AIFM has the burden of proof as regards the investor's initiative to invest in an AIF managed by the AIFM. Evidence could be produced by means of written confirmation by the investor that he/she has decided on his/her own initiative to invest in (or, initially, request for information regarding) the relevant AIF(s).

M. Do investments made in AIFs in the context of a discretionary mandate for the management of individual investment portfolios (at the initiative of the investment manager) have to be considered as marketing of such AIF vis-à-vis the investment manager and its client?

No.

N. Does a proposal to invest in an AIF in the context of an investment advisory agreement (at the initiative of the adviser) have to be considered as marketing of such AIF vis-à-vis the adviser and its client?

No.

O. Do investments in targeted AIFs made in the context of collective portfolio management of a UCI or an AIF (at the initiative of such UCI / AIF or of its management company, AIFM, portfolio manager or other agent) have to be considered as marketing of such target AIF vis-à-vis the UCI / AIF and the portfolio manager?

No.

P. Does marketing include secondary trading of units or shares of an AIF?

No, except where there is an indirect offering or placement through one or more intermediaries acting at the initiative or on behalf of the AIFM or the AIF.

22. Loan origination

9 June 2016

A. Is Loan Origination an allowed activity for AIFs in Luxembourg?

Yes.

In principle, Loan Origination by AIFs is permissible as the Law of 2013 and the AIFMD, as well as the respective Product Laws or regulations applicable to AIFs (if any) do not prohibit this activity.

In the particular case of AIFs qualifying as ELTIF(s), EuSEF(s) or EuVECA(s), the granting of loans is also explicitly mentioned and permitted under certain conditions in the respective EU regulations.

The CSSF would like to emphasise that certain aspects (as further specified below) should be considered by an AIFM or an AIF, where applicable, before and when performing Loan Origination. In the context of the approval and on-going supervisory process, if applicable, of the AIFM or, where applicable, of the AIF itself active in this area, the CSSF will analyse these aspects on a case-by-case basis.

A.1 Is Loan Participation / Acquisition an allowed activity for AIFs in Luxembourg?

Yes.

For the same reasons, Loan Participation/Acquisition by AIFs is also a permitted activity.

Again, the aspects as further specified below should be considered by the AIFM or, where applicable, by the AIF itself before and when performing Loan Participation/Acquisition.

B. What are the aspects to be addressed by an AIFM / AIF engaging in Loan Origination?

All general requirements applicable to AIFMs in regards to their managed AIFs according to the Law of 2013 apply.

Additionally, the particular requirements of the respective Product Laws or regulations applicable to the AIF (if any) will have to be adhered to dependent on the legal and regulatory status of the AIF.

More specifically, the following key principles should be adhered to by the AIFM or, where applicable, by the AIF itself if and when engaging in Loan Origination:

- they should ensure to address all aspects and risks of this activity;

- they should particularly avail of proper organisational and governance-structures (processes and procedures), necessary expertise/experience in origination activity combined with appropriate technical and human resources, with a focus on credit and liquidity risk management (within an overall adequate risk management process), concentration and risk limitation, clear policies regarding assets and investors (e.g. loan and investor categories, avoidance of conflicts of interest), proper disclosure and transparency, amongst other.

Generally, it is the responsibility of the AIFM or, where applicable, of the AIF itself, to ensure the implementation of a robust and appropriate approach for this activity.

The CSSF will evaluate in the context of its approval and on-going supervisory process, if applicable, on a case-by-case basis the approaches implemented by the AIFMs or, where applicable, by the AIFs.

B.1 What are the aspects to be addressed by an AIFM / AIF engaging in Loan Participation / Acquisition?

All general requirements applicable to AIFMs in regards to their managed AIFs according to the Law of 2013 apply.

Additionally, the particular requirements of the respective Product Laws or regulations applicable to the AIF (if any) will have to be adhered to dependent on the legal and regulatory status of the AIF.

More specifically, the following key principles should be adhered to by the AIFM or, where applicable, by the AIF itself if and when engaging in Loan Participation/Acquisition:

- they should ensure to address all aspects and risks of this activity.
- they should particularly avail of proper organisational and governance-structures (processes and procedures), necessary expertise/experience in participation activity combined with appropriate technical and human resources, with a focus on credit and liquidity risk management (within an overall adequate risk management process), concentration and risk limitation, clear policies regarding assets and investors (e.g. loan and investor categories, avoidance of conflicts of interest), proper disclosure and transparency, amongst other

Generally, it is the responsibility of the AIFM or, where applicable, of the AIF itself, to ensure the implementation of a robust and appropriate approach for this activity.

The CSSF will evaluate in the context of its approval and on-going supervisory process, if applicable, on a case-by-case basis the approaches installed by the AIFMs or, where applicable, by the AIFs.

23. Impact of the PRIIPs Regulation

16 December 2022

A. Do manufacturers of Luxembourg AIFs the units of which are being advised on, offered or sold to retail investors need to draw up a PRIIPs KID?

Yes, manufacturers of Luxembourg AIFs the units of which are being advised on, offered or sold to retail investors need to have in place a PRIIPs KID.

B. Can Luxembourg AIFs, the units of which are being advised on, offered or sold to retail investors, benefit from the exemption provided under Article 32(2) of the PRIIPs Regulation if they have issued a UCITS KIID (hereafter referred to as "UCITS-like KIID")?

16 December 2022

The exemption provided under Article 32(2) of the PRIIPs Regulation will expire on 31 December 2022 and may thus no longer be relied upon after that date.

A Luxembourg AIF having relied on the aforesaid exemption before 31 December 2022, will have to replace the UCITS-like KIID by a PRIIPs KID as of 1 January 2023, unless the said AIF is no longer available to retail investors within the territory of the EU/EEA.

C. What is the timescale for drawing up a PRIIPs KID?

[Repealed as of 1 January 2023]

D. Does the PRIIPs Regulation apply to manufacturers of and persons advising on or selling Luxembourg AIFs the units of which are solely being advised on, offered or sold to professional investors?

No.

E. Do Luxembourg AIFs, the units of which are solely being advised on, offered or sold to professional investors, need to amend their offering documents so for the regime under question 23.d) to apply?

27 September 2019

Yes, it is strongly recommended that Luxembourg AIFs that are exclusively advised on, offered or sold to professional investors amend their offering documents before in order to include a reference to the fact that their units are solely advised on, offered or sold to professional investors and that, as a consequence, no PRIIPs KID shall be issued.

In addition, all SIFs, Part II UCIs and SICARs (that are advised on, offered or sold to retail and/or professional investors) are required to complete an on-line assessment available on the eDesk portal as specified in Circular CSSF 19/721- Dematerialisation of requests to the CSSF. The eDesk portal can be accessed via eDesk (cssf.lu)

F. Does a PRIIPs KID need to be provided to retail investors outside the EU/EEA?

No, a PRIIPs KID does not need to be provided to retail investors outside the EU/EEA unless the applicable rules and regulations of the third country in which the marketing takes place provide otherwise.

G. Does a PRIIPs KID need to be drawn up and provided to existing retail investors of a Luxembourg AIF the units of which are not being advised on, offered or sold to any new retail investors?

[Repealed as of 1 January 2023]

H. Does a PRIIPs KID need to be drawn up and provided to existing retail investors of a Luxembourg AIF who wish to make an additional investment after 1 January 2018?

[Repealed as of 1 January 2023]

I. When and how should the PRIIPs KID be provided to retail investors?

The person(s) advising on, or selling Luxembourg AIFs the units of which are being advised on, offered or sold to retail investors shall provide such investors with the PRIIPs KID in good time before those investors are bound by any contract or offer relating to the subscription of units in that AIF, in accordance with Article 13(1) of the PRIIPs Regulation, unless the conditions of Article 13(3) or 13(4) of the PRIIPs Regulation apply.

The PRIIPs KID shall be made available to retail investors free of charge:

- in paper form; or
- by using a durable medium other than paper, subject to the conditions of Article 14(4) of the PRIIPs Regulation; or
- by means of a website subject to the conditions of Article 14(5) of the PRIIPs Regulation.

In accordance with Article 5(1) of the PRIIPs Regulation, a PRIIP manufacturer shall always publish the PRIIPs KID on its website.

J. In which language should a PRIIPs KID be drawn up?

Where a Luxembourg AIF advises on, offers or sells its units/shares to retail investors, the PRIIPs KID should be written in the official languages, or in one of the official languages, used in the part of the Member State where the AIF is advised on, offered or sold or in a language accepted by the competent authorities of that Member State.

K. Does the CSSF require the notification of a draft PRIIPs KID by (the manufacturer of) a Luxembourg AIF the units of which are advised on, offered or sold to retail investors?

No.

L. Does the CSSF require the notification of a final PRIIPs KID by (the manufacturer of) a Luxembourg AIF the units of which are advised on, offered or sold to retail investors?

11 April 2019

No. However, the CSSF reserves the right to request the notification of a final PRIIPs KID on a case-by-case basis. Such notification does not render the CSSF responsible for the content of a final PRIIPs KID. Manufacturers of Luxembourg AIFs remain at all times responsible for the drawing up and the content of a final PRIIPs KID.

M. Will the final version of a PRIIPs KID be visa-stamped by the CSSF?

No.

N. Which procedure must be followed in order to file the final version of a PRIIPs KID with the CSSF, if requested?

11 April 2019

If requested, the final version of a PRIIPs KID must be filed by adhering to the instructions provided in Circular CSSF 19/708.

O. Can additional sub-funds and/or share classes that are being launched after 1 January 2018 of Luxembourg AIFs that have issued a UCITS-like KIID also benefit from the exemption provided by Article 32(2) of the PRIIPs Regulation?

[Repealed as of 1 January 2023]

P. Do Luxembourg AIFs that have issued a UCITS-like KIID need to file a draft version of such document with the CSSF?

[Repealed as of 1 January 2023]

Q. Do Luxembourg AIFs that have issued a UCITS-like KIID need to file a final version of such document with the CSSF?

[Repealed as of 1 January 2023]

24. List of the cooperation arrangements required under the AIFMD signed by the CSSF

18 July 2014

ESMA has published a list of the AIFMD MoUs signed between EU securities regulators (including the CSSF) and non-EU authorities (ref. 2013/1491). This list, which is updated from time to time, is available on the following website:

https://www.esma.europa.eu/convergence/international-cooperation

25. What are the conditions to comply with in case of data transfer by a central administration or a depositary to another service provider?

30 October 2020

Pursuant to Article 41 (2a) of the amended Law of 1993 on the financial sector, in case a central administration agent or a depositary (a credit institution, an investment firm or a professional of the financial sector) is outsourcing services implying a transfer of relevant information to a third party, the central administration agent or the depositary must ensure that its client, the Board of Directors ("BoD") of the SICAV or of the IFM for common funds, has accepted the outsourcing of the relevant outsourced services, the type of information transmitted in the context of the outsourcing and the country of establishment of the entities that provide the outsourced services.

Any transfer of information related to investors should be disclosed prior to the transfer, by the UCI, respectively the IFM for common funds, to investors through appropriate means, namely the prospectus and the application form combined, if appropriate, with a reference to a website. Existing investors should be informed by the UCI, respectively the IFM for common funds, prior to the transfer of their information, about any update of the fund documents aiming at the aforesaid disclosure by means of a letter, email or any other means of communication provided for by the prospectus.

Due to transparency and confidentiality requirements, the same conditions apply to UCI/IFM acting as central administration.

The aforesaid requirements apply independently from the General Data Protection Regulation (EU) 2016/679, if applicable.

Commission de Surveillance du Secteur Financier

26. Application of MiFID to IFMs

10 June 2021

A. Do IFMs and UCIs qualify as clients under MiFID?

Yes. UCIs and their investment fund manager qualify as clients under Article 1 (3) of the Law of 1993 / Article 4 (1) (9) of MiFID.

B. How should the exemption from MiFID for UCIs and their IFM foreseen under Article 2(1) (i) MiFID be understood?

The management of collective funds by IFMs is not a service under MiFID. IFMs and their UCIs are therefore exempted from the scope of MiFID under Article 1-1 (2) (i) of the Law of 1993 / Article 2 (1) (i) of MiFID when performing the functions included in the collective portfolio management themselves. However, the exemption does not cover the functions of collective portfolio management:

- undertaken by an authorised IFM under a delegation arrangement (the "delegate IFM") from another authorised IFM or,
- delegated by an authorised IFM to a third party (the "third-party delegate").

C. When does the service rendered by third parties to IFMs fall within the scope of MiFID?

When an IFM does not perform all the functions of the collective portfolio management itself or uses the service of a third-party delegate, the exemption foreseen under Article 1-1 (2) (i) of the Law of 1993 / Article 2 (1) (i) of MiFID does not apply to such third-party delegate.

In such a circumstance, the IFM gives a mandate to a third-party delegate to execute on its behalf the relevant activity. Thus, the IFM becomes a client of this third-party delegate and the third-party delegate may be subject to the MiFID rules if:

a) the service rendered qualifies as an investment service or an activity under Annex II of the Law of 1993 / Annex I of MiFID; and,
b) the service relates to transactions on financial instruments as defined under section B of Annex II of the Law of 1993 / section C Annex I of MiFID; and,
c) the service is rendered by a third party established in the EU or is considered to be rendered in Luxembourg by a third party established outside of the EU as further clarified by the CSSF in Part III of Circular CSSF 19/716.

D. Do MiFID rules apply to the performance of functions included in the collective portfolio management by another delegate IFM?

Where an IFM delegates the performance of one or several functions included in the collective portfolio management to another IFM, the exemption foreseen under Article 1-1 (2) (i) of the Law of 1993 / Article 2 (1) (i) of MiFID does not apply to the delegate IFM.

In such case, the delegate IFM, must in principle, depending on the tasks performed, be authorised to provide discretionary portfolio management and non-core services foreseen under Article 101 (3) of the Law of 2010 or under Article 5 (4) of the Law of 2013 such as investment advice, administration of units of UCIs or, for authorised AIFM, reception and transmission of orders ("RTO").

Those delegate IFMs are not subject to the full scope of MiFID rules, only Articles 1-1, 37-1 and 37-3 of the Law of 1993 / Articles 15, 16, 24 and 25 of MiFID, apply. The delegate IFMs are not authorised to provide other MiFID services or activities than those covered under Article 101 (3) of the Law of 2010 or under Article 5 (4) of the Law of 2013.

E. Do MiFID rules apply to the marketing of funds?

Marketing of funds is part of the functions included in the collective portfolio management. Consequently, if the authorisation of an IFM includes the marketing function, the IFM can perform the marketing for the funds under its management ("direct marketing").

If the IFM does not perform the marketing function itself, the exemption foreseen under Article 1-1 (2) (i) of the Law of 1993 / Article 2 (1) (i) of MiFID does not apply and MiFID rules may apply to the entity undertaking the marketing function depending on where and to whom the funds are distributed.

F. Do MiFID rules apply when an IFM delegates the marketing to another IFM?

As explained under question E, if an IFM does not operate the activity of marketing by itself, the exemption foreseen under Article 1-1 (2) (i) of the Law of 1993 / Article 2 (1) (i) of MiFID does not apply.

Any Luxembourg IFM that markets funds that it does not directly manage on behalf of another IFM, acts as an intermediary as any investment firm covered by MIFID and must therefore be authorised under Article 101 (3) of the Law of 2010 or under Article 5 (4) of the Law of 2013, depending on the type of fund and services offered, namely:

- discretionary portfolio management and,
- investment advice relating to UCIs or/and,
- safekeeping and administration of UCIs or,

- for authorised AIFMs, RTO relating to UCIs.

In such case, Articles 1-1, 37-1 and 37-3 of the Law of 1993 / Articles 15, 16, 24 and 25 of MiFID, will be applicable to the Luxembourg IFM.

EU IFMs marketing on behalf of another IFM, in Luxembourg, funds that they do not manage directly, must be authorised under Article 6 (3) of the UCITS Directive or under Article 6 (4) of the AIFM Directive.

G. Which MiFID investment services may be considered as marketing of funds?

The marketing of funds is not an investment service "per se" under MiFID as it is not part of the list of services and activities included in sections A and C Annex II of the Law of 1993 / sections A and B of Annex I of MiFID. However, the following MiFID services may be used for the distribution of funds:

- Reception and transmission of orders relating to UCIs;
- Execution of orders on behalf of clients;
- Dealing on own account;
- Portfolio management;
- Investment advice;
- Underwriting and/or placing of UCIs on a firm commitment basis;
- Placing of UCIs without a firm commitment basis.

H. Is investment advice included in the activity of collective portfolio management?

No. Investment advice is not listed in the functions included in the activity of collective portfolio management under Annex II of the Law of 2010 or Annex I of the Law of 2013.

I. Do MiFID rules apply to investment advisors when they provide investment advice to an IFM?

Yes. As per Article 9 of MiFID Delegated Regulation 2017/565, investment advice given to an IFM that enable to take an investment decision, qualify as personal recommendations issued to a client under MiFID as the recommendations are not issued exclusively to the public.

Consequently, third parties that provide investment advice relating to financial instruments as defined under section B of Annex II of the Law of 1993 / section C Annex I of MiFID, to UCI/IFM, to an IFM, are in principle subject to MiFID rules.

J. Are IFMs authorised to provide investment advice to another IFM?

No, except if the IFM is also authorised under Article 101 (3) b) of the Law of 2010 or under Article 5 (4) (b) (i) of the Law of 2013, to provide investment advice.

K. Which MiFID exemptions may apply to third parties providing investment services to IFM?

The third parties providing investment services to IFMs may benefit from the following exemptions:

a) Specific exemptions under the Law of 1993/MiFID:
   - Intragroup service exemption under Article 1-1 (2) (b) and (c) of the Law of 1993 / Article 2 (1) (b) of MiFID.
   - Service complementary to their professional activities as foreseen under Article 1-1 (2) (d) of the Law of 1993 / Article 2 (1) (c) of MiFID.
   - Investment advice not specifically remunerated rendered in the course of providing another professional activity not covered by MiFID under Article 1-1 (2) (l) of the Law of 1993 / Article 2 (1) (k) of MiFID.

b) Partial exemption from MiFID rules:
   - Authorised EU IFM rendering discretionary portfolio management and non-core services under Article 101 (3) of the Law of 2010 / Article 5 (4) of the Law of 2013 are subject to Articles 1-1, 37-1 and 37-3 of the Law of 1993 / Articles 15, 16, 24 and 25 of MiFID.

In any case, the third parties must be able to demonstrate that they fall within the scope of an exemption, should they provide services without an authorisation under the MIFID applicable framework.

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