

Law of 13 February 2007 on specialised investment funds

consolidated version as of 28 July 2023



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The expression "consolidated version as of 28 July 2023" includes amendments introduced by the law of 21 July 2023, published in *Mémorial* A No. 442 of 24 July 2023.

Law of 13 February 2007 on Specialised Investment Funds

PART I - GENERAL PROVISIONS APPLICABLE TO SPECIALISED INVESTMENT FUNDS

Chapter 1. - General provisions and scope

Art. 1 (1) For the purpose of this Law, specialised investment funds shall be any undertakings for collective investment situated in Luxembourg:

- the sole object of which is the collective investment of their funds in assets with the aim of spreading the investment risks and giving investors the benefit of the results of the management of their assets, and
- the securities or partnership interests of which are reserved to one or several well-informed investors, and
- the constitutive documents or offering documents or the partnership agreement of which provide that they are subject to the provisions of this Law.

"Management" within the meaning of the 1st indent, shall mean an activity comprising at least the service of portfolio management.

(2) Specialised investment funds may be constituted under the legal forms provided for in Chapters 2, 3 and 4 of this Law.

Art. 2 (1) Within the meaning of this Law, a well-informed investor shall be an institutional investor, a professional investor within the meaning of Annex II of 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 (hereinafter "Directive 2014/65/EU"), or any other investor who meets the following conditions:

- a) he has stated in writing that he adheres to the status of well-informed investor and
- b)
 - (i) he invests a minimum of 100,000 euros in the specialised investment fund, or
 - (ii) he has been the subject of an assessment made by a credit institution within the meaning of Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No. 648/2012, by an investment firm within the meaning of Directive 2014/65/EU, by a management company within the meaning of Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) or by an authorised alternative investment fund manager within the meaning of Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No. 1060/2009 and (EU) No. 1095/2010 (hereinafter "Directive 2011/61/EU"), certifying his expertise, his experience and his knowledge to adequately appraise an investment in the specialised investment fund.

(2) The conditions set forth in this Article are not applicable to the directors¹ and other persons involved in the management of specialised investment funds.

(3) Specialised investment funds must have the necessary means to ensure compliance with the conditions laid down in paragraph (1) of this Article.

Art. 2bis The provisions of this Part shall apply to all specialised investment funds, unless the specific provisions contained in Part II of this Law applicable to specialised investment funds managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers or under Chapter II of Directive 2011/61/EU derogate therefrom.

Art. 3 Specialised investment funds subject to this Law shall be deemed to be situated in Luxembourg if the registered office of the management company of the common fund or the registered office of the investment company is situated in Luxembourg. The head office must be located in Luxembourg.

Chapter 2. - Common funds

Art. 4 For the purpose of this Law, any undivided collection of assets shall be regarded as a common fund, if it is made up and managed according to the principle of risk-spreading on behalf of joint owners who are liable only up to the amount contributed by them and whose rights are represented by units reserved to one or several well-informed investors.

Art. 5 The common fund shall not be liable for the obligations of the management company or of the unitholders; it shall be answerable only for the obligations and expenses expressly imposed upon it by its management regulations.

Art. 6 The management of a common fund shall be carried out by a Luxembourg management company which complies with the conditions set out in Chapter 15, 16 or 18 of the Law of 17 December 2010 relating to undertakings for collective investment.

Art. 7 (1) The management company shall issue registered, bearer or dematerialised securities representing one or more portions of the common fund which it manages. The management company may issue, in accordance with the conditions laid down in the management regulations, written certificates of entry in the register of units or fractions of units without limitation as to the fractioning of units.

Rights attaching to fractions of units are exercised in proportion to the fraction of a unit held except for possible voting rights which can only be exercised for whole units. The bearer securities shall be signed by the management company and by the depositary referred to in Article 16².

These signatures may be reproduced mechanically.

(2) Ownership of units, in the form of registered or bearer securities, shall be determined and transfer thereof shall be effected in accordance with the rules laid down in Articles 430-4³ and 430-6⁴ of the amended Law of 10 August 1915 concerning commercial companies. The rights of units inscribed in a securities account shall be determined and transfer thereof shall be effected in accordance with the

¹ *dirigeants*

² The original version of the Law of 6 April 2013 refers to "Article 17". This shall be understood as a reference to "Article 16".

³ Formerly Article 40 (new numbering via Grand-Ducal Regulation of 5 December 2017).

⁴ Formerly Article 42 (new numbering via Grand-Ducal Regulation of 5 December 2017).

rules laid down in the law on dematerialised securities and the Law of 1 August 2001 concerning the circulation of securities.

(3) The owners of bearer securities may, at any moment, demand the conversion of bearer securities, at their own expense, into registered securities or, if the management regulations⁵ provide for this, into dematerialised securities. In the latter case, the costs are borne by the person provided for in the law on dematerialised securities.

Unless a formal prohibition is stated in the management regulations⁶, the owners of registered securities may, at any moment, demand the conversion of registered securities into bearer securities.

If the management regulations⁷ provide for this, the owners of registered securities may demand the conversion of registered securities into dematerialised securities. The costs are borne by the person provided for in the law on dematerialised securities.

The holders of dematerialised securities may, at any moment, demand the conversion, at their own expense, of dematerialised securities into registered securities, unless the management regulations provide for the compulsory dematerialisation of securities.

Art. 8 Units shall be issued and, as the case may be, redeemed in accordance with the conditions and procedures set forth in the management regulations.

Art. 9 Unless otherwise provided for in the management regulations of the fund, the valuation of the assets of the common fund shall be based on the fair value. This value must be determined in accordance with the rules set forth in the management regulations.

Art. 10 Neither the holders of units nor their creditors may require the distribution or the dissolution of the common fund.

Art. 11 (1) The *Commission de Surveillance du Secteur Financier* ("CSSF") may, in the interests of the unitholders or of the public, require the suspension of the redemption of units, in particular where the provisions of laws, regulations or agreements concerning the activity and operation of the common fund are not observed.

(2) The issue and redemption of units shall be prohibited:

- a) during any period where there is no management company or depositary;
- b) where the management company or the depositary is put into liquidation or declared bankrupt or seeks an arrangement with creditors, a suspension of payment or a controlled management or is the subject of similar proceedings.

Art. 12 (1) The management company shall draw up the management regulations for the common fund. These regulations must be lodged with the register of commerce and companies and their publication

⁵ The original version of the Law of 6 April 2013 refers to "articles of incorporation". This shall be understood as "management regulations" for a common fund.

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⁷ The original version of the Law of 6 April 2013 refers to "articles of incorporation". This shall be understood as "management regulations" for a common fund.

in the *Recueil électronique des sociétés et associations*⁸ will be made by way of a notice advising of the deposit of the document, in accordance with the provisions of Chapter Vbis of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings. The provisions of these regulations shall be deemed accepted by the unitholders by the mere fact of the acquisition of these units.

(2) The management regulations of the common fund shall contain at least the following provisions:

- a) the name and duration of the common fund, the name of the management company and of the depositary,
- b) the investment policy according to its specific objectives and the criteria therefor,
- c) the distribution policy within the scope of Article 15,
- d) the remuneration and expenditure which the management company is entitled to charge to the fund and the method of calculation of that remuneration,
- e) the provisions as to publications,
- f) the date of the closing of the accounts of the common fund,
- g) the cases where, without prejudice to legal grounds, the common fund shall be dissolved,
- h) the procedures for amendment of the management regulations,
- i) the procedures for the issue of units and, as the case may be, for the redemption of units.

Art. 13 (1) The management company shall manage the common fund in accordance with the management regulations and in the exclusive interest of the unitholders.

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

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

Art. 14 The management company must fulfil its obligations with the diligence of a salaried agent⁹; it shall be liable to the unitholders for any loss resulting from the non-fulfilment or improper fulfilment of its obligations.

Art. 15 Unless otherwise provided for in the management regulations, the net assets of the common fund may be distributed subject to the limits set out in Article 21 of this Law.

Art. 16 (1) The assets of the common fund must be entrusted to a depositary for safe-keeping.

(2) The depositary must either have its registered office in Luxembourg or be established there if its registered office is located abroad.

⁸ The *Recueil électronique des sociétés et associations* is the central electronic platform of official publication.

⁹ *mandataire salarié*

(3) Without prejudice to the provision laid down in the second sub-paragraph of this paragraph, the depositary must be a credit institution or an investment firm within the meaning of the amended Law of 5 April 1993 on the financial sector. An investment firm shall only be eligible as depositary to the extent that this investment firm also fulfils the conditions referred to in Article 19 paragraph (3) of the Law of 12 July 2013 relating to alternative investment fund managers.

For common funds that have no redemption rights exercisable during a period of five years from the date of the initial investments and that, in accordance with their core investment policy, generally do not invest in assets that must be held in custody in accordance with point a) of Article 19 paragraph (8) of the Law of 12 July 2013 relating to alternative investment fund managers or generally invest in issuers or non-listed companies in order to potentially acquire control over such companies in accordance with Article 24 of the aforementioned law, the depositary may also be an entity governed by Luxembourg law that has the status of a professional depositary of assets other than financial instruments within the meaning of Article 26-1 of the amended Law of 5 April 1993 on the financial sector.

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

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

Art. 17 (1) The depositary shall be liable, in accordance with Luxembourg law, to the management company and the unitholders for any loss suffered by them as a result of its failure to perform its obligations or its improper performance thereof.

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

Art. 18 In the context of their respective roles, the management company and the depositary must act independently and solely in the interests of the unitholders.

Art. 19 The duties of the management company or of the depositary in respect of the common fund shall cease:

- a) in the case of withdrawal of the management company, provided that it is replaced by another management company authorised in accordance with Article 6 of this Law;
- b) in the case of voluntary withdrawal of the depositary or of its removal by the management company under the conditions provided for in the contract appointing the depositary. The contract must provide for a notice period allowing for the replacement of the depositary. The institution which most recently acted as depositary shall take all necessary steps for the good preservation of the interests of the unitholders, including an obligation to keep open or to open any accounts necessary for the safekeeping of the various assets of the common fund until completion of the liquidation operations of the common fund;
- c) where the management company or the depositary has been declared bankrupt, has entered into an arrangement with creditors, has obtained a suspension of payment, has been put under

court-controlled management, or has been the subject of similar proceedings or has been put into liquidation;

- d) where the CSSF withdraws its authorisation of the management company or the depositary;
- e) in all other cases provided for in the management regulations.

Art. 20 (1) Liquidation of the common fund shall take place:

- a) upon the expiry of any period as may be fixed by the management regulations;
- b) in the event of cessation of their duties of the management company or of the depositary in accordance with Article 19, point b), if the depositary has not been replaced by the end of the notice period, or in accordance with Article 19, points c), d) and e), if they have not been replaced within two months without prejudice to the specific case addressed in point c) below;
- c) in the event of bankruptcy of the management company;
- d) if the net assets of the common fund have fallen for more than 6 months below one quarter of the legal minimum provided for in Article 21 hereafter;
- e) in all other cases provided for in the management regulations.

(2) Notice of the event giving rise to liquidation shall be lodged with the register of commerce and companies and published without delay by the management company or the depositary in the *Recueil électronique des sociétés et associations*, in accordance with the provisions of Chapter Vbis of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings and in at least two newspapers with adequate circulation, at least one of which must be a Luxembourg newspaper. Failing this, the deposit and publication will be arranged by the CSSF at the expense of the common fund.

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

Art. 21 The net assets of a common fund may not be less than one million two hundred and fifty thousand euros (EUR 1,250,000).

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

A Grand-Ducal Regulation may increase this minimum amount up to a maximum of two million five hundred thousand euros (EUR 2,500,000).

Art. 22 The management company must inform the CSSF without delay if the net assets of the common fund have fallen below two thirds of the legal minimum. In a case where the net assets of the common fund have fallen below two thirds of the legal minimum, the CSSF may, having regard to the circumstances, require the management company to liquidate the common fund.

The order addressed to the management company by the CSSF to put the common fund into liquidation shall be lodged without delay by the management company or the depositary with the register of commerce and companies in the file of the common fund and published in the *Recueil électronique des sociétés et associations*, in accordance with the provisions of Chapter Vbis of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings and in at least two newspapers with adequate circulation, at least one of which must be a Luxembourg newspaper. Failing this, the deposit and the publication will be arranged by the CSSF at the expense of the common fund.

Art. 23 Neither the management company, nor the depositary, acting on behalf of the common fund may grant loans to unitholders of the common fund.

Art. 24 For funds to which this Law applies, the words "common fund" or "FCP" shall be completed by the words "specialised investment fund" or "SIF".

Chapter 3. - Investment companies with variable capital

Art. 25 For the purposes of this Law, investment companies with variable capital ("SICAV") shall be taken to mean those companies:

- which have adopted the form of a public limited company, a partnership limited by shares, a common limited partnership, a special limited partnership, a limited company or a cooperative in the form of a public limited company,
- the sole object of which is to invest their funds in assets with the aim of spreading investment risks and giving the investors the benefit of the results of the management of their assets, and
- the securities or partnership interests of which are reserved to one or several well-informed investors, and
- the articles of incorporation or the partnership agreement of which provide that the amount of the capital shall at all times be equal to the net asset value of the company.

Art. 26 (1) SICAVs shall be subject to the general provisions applicable to commercial companies, insofar as this Law does not derogate therefrom.

(2) When the articles of incorporation or the partnership agreement of a SICAV and any amendment thereto are recorded in a notarial deed, the latter is drawn up in French, German or English as the appearing parties may decide. By derogation from the provisions of the Decree of 24 Prairial, year XI, where this deed is in English, the requirement to attach a translation in an official language to this deed when it is filed with the registration authorities, does not apply. This requirement does not apply either to all other deeds which must be recorded in notarial form, such as notarial deeds recording the minutes of meetings of shareholders of a SICAV or of a merger proposal concerning a SICAV.

(3) By way of derogation from Article 461-6¹⁰, sub-paragraph 2, of the amended Law of 10 August 1915 on commercial companies, SICAVs under this Chapter and which have adopted the form of a public limited company¹¹, a partnership limited by shares¹² or a cooperative in the form of a public limited

¹⁰ Formerly Article 73 (new numbering via Grand-Ducal Regulation of 5 December 2017).

¹¹ *société anonyme*

¹² *société en commandite par actions*

company.¹³ are not required to send the annual accounts as well as the report of the approved statutory auditor,¹⁴ the management report and, where applicable, the comments made by the supervisory board to the registered shareholders, at the same time as the convening notice to the annual general meeting. The convening notice shall indicate the place and the practical arrangements for providing these documents to the shareholders and shall specify that each shareholder may request that the annual accounts as well as the report of the approved statutory auditor, the management report and, where applicable, the comments made by the supervisory board, are sent to him.

(4) For SICAVs which have adopted the form of a public limited company, a partnership limited by shares or a cooperative in the form of a public limited company, the convening notices to general meetings of shareholders may provide that the quorum at the general meeting shall be determined according to the shares issued and outstanding at midnight (Luxembourg time) on the fifth day prior to the general meeting (referred to as "Record Date"). The rights of shareholders to attend a general meeting and to exercise a voting right attaching to their shares are determined in accordance with the shares held by each shareholder at the Record Date.

Art. 27 The subscribed capital of the SICAV, increased by the share premiums or the value of the amount constituting partnership interests, may not be less than one million two hundred and fifty thousand euros (EUR 1,250,000). This minimum must be reached within a period of twenty-four months following the authorisation of the SICAV. A Grand-Ducal Regulation may increase this minimum amount up to a maximum of two million five hundred thousand euros (EUR 2,500,000).

Art. 28 (1) Subject to any contrary provisions of its articles of incorporation or partnership agreement, a SICAV may issue its securities or partnership interests at any time.

(2) Securities or partnership interests shall be issued and, as the case may be, redeemed in accordance with the conditions and procedures set forth in the articles of incorporation or partnership agreement.

(3) The capital of a SICAV must be entirely subscribed, and at least 5% of the subscription amount per share or unit must be paid up in cash or by means of a contribution other than cash.

(4) Unless otherwise provided for in the articles of incorporation or partnership agreement, the valuation of the assets of the SICAV shall be based on the fair value. This value must be determined in accordance with the rules set forth in the articles of incorporation or partnership agreement.

(5) The articles of incorporation or partnership agreement shall specify the conditions in which issues and redemptions may be suspended, without prejudice to legal causes. In the event of suspension of issues or redemptions, the SICAV must inform the CSSF without delay.

Where the interests of the investors so require, redemptions may be suspended by the CSSF if the provisions of laws, regulations or the articles of incorporation concerning the activity and operation of the SICAV are not observed.

The issue and redemption of securities or partnership interests shall be prohibited:

a) during any period in which the SICAV does not have a depositary;

¹³ *société coopérative sous forme de société anonyme*

¹⁴ *réviseur d'entreprises agréé*

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

(6) The articles of incorporation or partnership agreement shall describe the nature of the expenses to be borne by the SICAV.

(7) The securities or partnership interests of a SICAV shall have no par value.

(8) The security or partnership interest shall specify the minimum amount of capital and shall give no indication regarding its par value or the portion of the capital which it represents.

Art. 29 (1) Variations in the capital shall be effected *ipso jure* and without compliance with measures regarding publication and entry in the register of commerce and companies.

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

(3) In the case of issue of new securities or partnership interests, pre-emptive rights may not be claimed by existing shareholders or unitholders, unless those rights are expressly provided for in the articles of incorporation.

Art. 30 (1) If the capital of the SICAV falls below two thirds of the minimum capital, as defined in Article 27, the directors or managers must submit the question of the dissolution of the SICAV to a general meeting for which no quorum shall be prescribed and which shall decide by a simple majority of the securities or partnership interests represented at the meeting.

(2) If the capital of the SICAV falls below one quarter of the minimum capital, as defined in Article 27, the directors or managers must submit the question of the dissolution of the SICAV to a general meeting for which no quorum shall be prescribed; dissolution may be resolved by shareholders or unitholders holding one quarter of the securities or partnership interests represented at the meeting.

(3) The meeting must be convened so that it is held within a period of forty days as from the ascertainment that the capital has fallen below two thirds or one quarter of the minimum capital, as defined in Article 27, as the case may be.

(4) If the constitutive documents of the SICAV do not provide for general meetings, the directors or managers must inform the CSSF without delay if the capital of the SICAV has fallen below two thirds of the minimum capital, as defined in Article 27. In the latter case, the CSSF may, having regard to the circumstances, require the managers to liquidate the SICAV.

Art. 31 (1) Unless otherwise provided for in the articles of incorporation, the net assets of the SICAV may be distributed subject to the limits set out in Article 27 of this Law.

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

(3) SICAVs are not subject to any rules in respect of payment of interim dividends other than those set forth in their articles of incorporation.

Art. 32 For companies to which this Law applies, the words "partnership limited by shares", "common limited partnership, special limited partnership", "limited company", "public limited company", or "cooperative in the form of a public limited company" shall be completed by the words "investment company with variable capital-specialised investment fund" or "SICAV-SIF".

Art. 33 The safe-keeping of the assets of a SICAV must be entrusted to a depositary.

Art. 34 (1) The depositary must either have its registered office in Luxembourg or be established there if its registered office is located abroad.

(2) Without prejudice to the provision laid down in the second sub-paragraph of this paragraph, the depositary must be a credit institution or an investment firm within the meaning of the amended Law of 5 April 1993 on the financial sector. An investment firm shall only be eligible as depositary to the extent that this investment firm also fulfils the conditions referred to in Article 19, paragraph (3) of the Law of 12 July 2013 relating to alternative investment fund managers.

For SICAVs which have no redemption rights exercisable during a period of five years from the date of the initial investments and which, in accordance with their core investment policy, generally do not invest in assets that must be held in custody in accordance with point a) of Article 19, paragraph (8) of the Law of 12 July 2013 relating to alternative investment fund managers or generally invest in issuers or non-listed companies in order to potentially acquire control over such companies in accordance with Article 24 of the aforementioned law, the depositary may also be an entity governed by Luxembourg law which has the status of a professional depositary of assets other than financial instruments within the meaning of Article 26*bis* of the amended Law of 5 April 1993 on the financial sector.

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

Art. 35 The depositary shall be liable in accordance with Luxembourg law to the investors for any loss suffered by them as a result of its failure to perform its obligations or its improper performance thereof.

Art. 36 The duties of the depositary regarding the SICAV shall cease respectively:

- a) in the case of voluntary withdrawal of the depositary or of its removal by the SICAV under the conditions provided for in the contract appointing the depositary. The contract must provide for a notice period allowing for the replacement of the depositary. If a new depositary has not been appointed by the end of the notice period, the CSSF shall remove the SICAV from the list provided for in Article 43, paragraph (1). The institution which most recently acted as depositary shall take all necessary steps for the good preservation of the interests of the investors, including an obligation to keep open or to open any accounts necessary for the safekeeping of the various assets of the SICAV until completion of the liquidation operations of the SICAV;
- b) where the SICAV or the depositary has been declared bankrupt, has entered into an arrangement with creditors, has obtained a suspension of payment, has been put under court-controlled management or has been the subject of similar proceedings or has been put into liquidation;
- c) where the CSSF withdraws its authorisation of the SICAV or the depositary;

d) in all other cases provided for in the articles of incorporation or the partnership agreement.

Art. 37 In carrying out its role as depositary, the depositary must act solely in the interests of the investors.

Chapter 4. - Specialised investment funds which have not been constituted as common funds or SICAVS

Art. 38 This Chapter is applicable to all specialised investment funds subject to this Law which have not been constituted as common funds or SICAVs.

Art. 39 (1) The subscribed capital, increased by share premiums, or the value of the amount constituting partnership interests of specialised investment funds falling within this Chapter, may not be less than one million two hundred and fifty thousand euros (EUR 1,250,000).

This minimum must be reached within a period of twenty-four months following their authorisation. A Grand-Ducal Regulation may increase such minimum amount up to a maximum of two million five hundred thousand euros (EUR 2,500,000).¹⁵

(2) If the capital or the value of the amount constituting partnership interests has fallen below two thirds of the legal minimum, as defined in paragraph (1), the directors or managers must submit the question of the dissolution of the specialised investment fund to a general meeting for which no quorum shall be prescribed and which shall decide by simple majority of the securities or partnership interests represented at the meeting.

(3) If the capital or the value of the amount constituting partnership interests has fallen below one quarter of the legal minimum, as defined in paragraph (1), the directors or managers must submit the question of the dissolution to a general meeting for which no quorum shall be prescribed; the dissolution may be resolved by investors holding one quarter of the securities represented at the meeting.

(4) The meeting must be convened so that it is held within a period of forty days as from the ascertainment that the capital or the value of the amount constituting partnership interests has fallen below two thirds or one quarter of the legal minimum, as defined in paragraph (1), as the case may be.

(5) If the constitutive documents of the specialised investment fund do not provide for general meetings, the directors or managers must, if the capital or the value of the amount constituting partnership interests of the specialised investment fund has fallen below two thirds of the legal minimum as defined in paragraph (1), inform the CSSF without delay. In the latter case, the CSSF may, having regard to the circumstances, require the directors or managers to liquidate the specialised investment fund.

(6) If the specialised investment fund is constituted under the form of a public limited company, a partnership limited by shares or a limited company its capital must be entirely subscribed and at least 5% of each share or unit must be paid up in cash or by means of a contribution other than cash.

Art. 40 (1) Unless otherwise provided for in the constitutive documents, the valuation of the assets of the specialised investment fund shall be based on the fair value. This value must be determined in accordance with the rules set forth in the constitutive documents.

¹⁵ No such Regulation exists at this time.

(2) Articles 26 (2) to (4), 28 (5), 33, 34, 35, 36 and 37 of this Law are applicable to specialised investment funds subject to this Chapter.

(3) The denomination of the specialised investment funds to which this Chapter 4 applies shall be completed by the words "specialised investment fund" or "SIF".

Chapter 5. - Authorisation and supervision

Art. 41 (1) The authority which is to carry out the duties provided for in this Law is the CSSF.

(2) The CSSF carries out its duties exclusively in the public interest.

(3) The CSSF ensures that the specialised investment funds subject to this Law and their directors, comply with the applicable legal and contractual rules.

Art. 42 (1) Specialised investment funds subject to this Law must, in order to carry out their activities, be previously authorised by the CSSF.

(2) An investment fund shall only be authorised if the CSSF has approved the constitutive documents and the choice of the depositary.

(3) The directors of the specialised investment fund and of the depositary must be of sufficiently good repute and be sufficiently experienced, also in relation to the type of specialised investment fund concerned. The identity of the directors of the specialised investment fund as well as of any person succeeding them in office, must be communicated forthwith to the CSSF. The appointment of directors, and of any person succeeding them in office, is subject to the approval of the CSSF.

"Directors" shall mean, in the case of public limited companies and in the case of cooperatives in the form of a public limited company, the members of the board of directors or the management board, in the case of partnerships limited by shares, common limited partnerships and special limited partnerships, the managers whether or not they are general partners, in the case of limited companies, the managers and in the case of common funds, the members of the board of directors or the managers of the management company.

(4) In addition to the conditions of paragraphs (2) and (3), the authorisation pursuant to paragraph (1) is subject to the communication to the CSSF of the identity of the persons responsible for managing the investment portfolio. These persons must be of sufficiently good repute and have sufficient experience also in relation to the type of specialised investment fund concerned.

The appointment of the persons referred to in sub-paragraph (1) and of any person succeeding them in office is subject to the approval of the CSSF.

(5) The replacement of the management company or of the depositary and any amendment of the constitutive documents of the specialised investment fund are subject to the approval of the CSSF.

(6) The granting of the authorisation pursuant to paragraph (1) implies that specialised investment funds are obliged to notify the CSSF spontaneously in writing and in a complete, coherent and comprehensible manner of any change regarding the substantial information on which the CSSF based itself to examine the application for authorisation as well as of any change in respect of the directors referred to in

paragraph (3) and the persons in charge of the management of the investment portfolio referred to in paragraph (4) of this Article.

Art. 42bis (1) The specialised investment funds subject to this Law shall implement appropriate risk-management systems in order to detect, measure, manage and monitor in an appropriate manner the risk associated with the positions and their contribution to the overall risk profile of the portfolio.

(2) The specialised investment funds subject to this Law must, in addition, be structured and organised in such a way so as to minimise the risk of investors' interests being prejudiced by conflicts of interest between the specialised investment fund and, as the case may be, any person contributing to the activities of the specialised investment fund or any person linked directly or indirectly to the specialised investment fund. In case of potential conflicts of interest, the specialised investment fund shall ensure that the interests of investors are safeguarded.

(3) The implementing measures of paragraphs (1) and (2) are laid down by way of a regulation to be adopted by the CSSF.¹⁶

Art. 42ter The specialised investment funds subject to this Law are authorised to delegate to third parties, for the purpose of a more efficient conduct of their business, the exercise on their behalf of one or more of their functions. In this case, the following conditions shall be complied with:

- a) the CSSF must be informed in an appropriate manner;
- b) the mandate must not prevent the effectiveness of supervision over the specialised investment fund; and in particular, it must not prevent the specialised investment fund from acting, or the specialised investment fund from being managed, in the best interests of the investors;
- c) when the delegation concerns investment portfolio management, the mandate may be given only to natural or legal persons who are authorised or registered for the purpose of the investment portfolio management and subject to prudential supervision; when this mandate is given to a natural or legal person from a third country subject to prudential supervision, cooperation between the CSSF and the supervisory authority of this country must be ensured;
- d) when the conditions under point c) are not fulfilled, the delegation shall only become effective if the CSSF approves the choice of the natural or legal person to whom functions will be delegated; in the latter case, these persons must be of sufficiently good repute and have sufficient experience also in relation to the type of specialised investment fund concerned;
- e) the directors of a specialised investment fund must be able to demonstrate that the natural or legal person to whom functions will be delegated is qualified and capable of exercising the functions in question and that sufficient diligence has been carried out in view of his/its selection;
- f) measures exist which enable the directors of the specialised investment fund to monitor effectively at any time the delegated activity;
- g) the mandate must not prevent the directors of the specialised investment fund from giving at any time instructions to the natural or legal person to whom functions have been delegated or

¹⁶ See CSSF Regulation N° 15-07.

from withdrawing the mandate with immediate effect in order to protect the interest of investors;

- h) a mandate with regard to the core function of investment management shall not be given to the depositary;
- i) the offering document of a specialised investment fund must list the delegated functions.

Art. 43 (1) Authorised specialised investment funds are entered by the CSSF on a list. This entry is tantamount to authorisation and is notified by the CSSF to the specialised investment fund concerned. Applications for entry on the list must be filed with the CSSF within the month following their constitution or formation. This list and any amendments made thereto are published in the *Mémorial*.¹⁷ by the CSSF.

(2) The entering and the maintaining on the list referred to in paragraph (1) shall be subject to observance of all the provisions of laws, regulations or agreements relating to the organisation and operation of the specialised investment funds subject to this Law and the distribution, placing or sale of their securities or partnership interests.

Art. 44 The fact that a specialised investment fund has been entered on the list referred to in Article 43, paragraph (1) shall not, under any circumstances, be described in any way whatsoever as a positive assessment made by the CSSF of the expedience, or of the economic, financial or legal structure of an investment in the specialised investment fund, of the quality of the securities or partnership interests or of the solvency of the specialised investment fund.

Art. 45 (1) The decisions to be adopted by the CSSF in implementation of this Law shall state in writing the reasons on which they are based and, unless the delay entails risks, they shall be adopted after preparatory proceedings at which all parties are able to state their case¹⁸. They shall be notified by registered letter or delivered by bailiff¹⁹.

(2) The decisions by the CSSF concerning the granting, refusal or withdrawal of the authorisations provided for in this Law as well as the decisions of the CSSF concerning the administrative fines imposed in accordance with Article 51 of this Law may be referred to the administrative court²⁰ which will deal with the substance of the case. The appeal must be filed within one month from the notification of the contested decision, or else shall be time-barred.

(3) For the purposes of applying this Law, the CSSF is entrusted with all supervisory and investigative powers that are necessary for the exercise of its functions. The powers of the CSSF include the right to:

- a) access any document in any form and receive a copy thereof;
- b) require any person to provide information and, if necessary, to summon and question any person with a view to obtaining information;
- c) carry out on-site inspections or investigations, by itself or by its delegates, of persons subject to its supervision under this Law;

¹⁷ The *Mémorial B, Recueil Administratif et Economique* is the part of the Luxembourg official gazette in which certain administrative publications are made.

¹⁸ *instruction contradictoire*

¹⁹ *huissier* (court process server)

²⁰ *tribunal administratif*

- d) require communication of the telephone exchanges and existing data;
- e) require the cessation of any practice that is contrary to the provisions adopted in implementation of this Law;
- f) request the freezing or the sequestration of assets by the president of the District Court of and in Luxembourg acting on request;
- g) temporarily prohibit persons subject to its prudential supervision, as well as the members of administrative, governing and management bodies, employees and agents linked to these persons from exercising professional activities;
- h) require authorised investment companies, management companies or depositaries to provide information;
- i) adopt any type of measure to ensure that investment companies, management companies and depositaries continue to comply with the requirements of this Law;
- j) require the suspension of the issue, repurchase or redemption of securities or partnership interests in the interest of the investors or of the public;
- k) withdraw the authorisation granted to a specialised investment fund, a management company or a depositary;
- l) transmit information to the Public Prosecutor for criminal proceedings; and
- m) instruct approved statutory auditors or experts to carry out verifications or investigations.

Chapter 6. - Dissolution and liquidation

Art. 46 The decision of the CSSF to withdraw a specialised investment fund subject to this Law from the list provided for in Article 43, paragraph (1) shall, as from the notification thereof to the specialised investment fund concerned and at its expense, until the judgment ordering liquidation provided for in Article 47, paragraph (1), *ipso jure* entail the suspension of any payment by this specialised investment fund and prohibition, on penalty of nullity, to take any measures other than protective measures, except with the authorisation of the supervisory commissioner.²¹ The function of supervisory commissioner is carried out by one or more supervisory commissioners appointed by the judge presiding over the District Court²² dealing with commercial matters ruling on a request made by the CSSF. The request is made in accordance with the procedure applicable to summary proceedings before the Court in the district where the specialised investment fund has its registered office. The supervisory commissioners must have sufficient skills and professional experience with regard to the type and investment strategies of the specialist investment funds concerned. The CSSF shall *ipso jure* hold the office of supervisory commissioner pending the appointment of the supervisory commissioner(s) by the Court.

(...)²³

²¹ *commissaire de surveillance*

²² *tribunal d'arrondissement*

²³ Repealed by the Law of 21 July 2023.

(...)²⁴

The written authorisation of the supervisory commissioners is required for all actions and decisions of the specialised investment fund and, failing such authorisation, they shall be void.

The Court may, however, limit the scope of operations subject to authorisation.

The commissioners may submit for consideration to the relevant bodies of the specialised investment fund any proposals which they consider appropriate. They may attend proceedings of the administrative, management, executive or supervisory bodies of the specialised investment fund.

The Court shall decide as to the expenses and fees of the supervisory commissioners; it may grant them advances.

The judgment ordering liquidation provided for in Article 47, paragraph (1) shall terminate the functions of the supervisory commissioner. Before deciding on the appointment of one or more liquidators, the Court shall receive a report from the supervisory commissioners on the use made of the assets of the specialised investment fund. In the absence of a judgment pronouncing dissolution and ordering liquidation within one year of notification to the specialised investment fund concerned of the decision of withdrawal from the list, the supervisory commissioners shall report to the Court on an annual basis. Within one month after their replacement, the supervisory commissioners shall report to the liquidators appointed in such judgment on the use of the specialised investment fund's assets and submit the accounts and supporting documents to them.

If the withdrawal decision is amended on appeal in accordance with paragraph (2) of Article 45 above, the supervisory commissioner shall be deemed to have resigned.

Art. 47 (1) The District Court²⁵ dealing with commercial matters shall, at the request of the Public Prosecutor²⁶, acting on its own initiative or at the request of the CSSF, pronounce the dissolution and order the liquidation of the specialised investment funds subject to this Law, whose entry on the list provided for in Article 43, paragraph (1) has definitively been refused or withdrawn. The District Court dealing with commercial matters shall, at the request of the Public Prosecutor, acting on its own initiative or at the request of the CSSF, pronounce the dissolution and order the liquidation of one or more compartments of a specialised investment fund subject to this Law, in cases where the authorisation of this (these) compartment(s) has definitively been refused or withdrawn.

When ordering the liquidation, the Court shall appoint a reporting judge²⁷ and one or more liquidators. It shall determine the method of liquidation. It may render applicable as far as it may determine, the rules governing bankruptcy. The method of liquidation may be changed by subsequent decision, either at the Court's own motion or at the request of the liquidator(s).

The Court shall decide as to the expenses and fees of the liquidators; it may grant advances to them. The judgment pronouncing dissolution and ordering liquidation shall be enforceable on a provisional basis.

²⁴ Repealed by the Law of 21 July 2023.

²⁵ *Tribunal d'Arrondissement*

²⁶ *Procureur d'Etat*

²⁷ *Juge-commissaire*

(2) The liquidator(s) may bring and defend all actions on behalf of the specialised investment fund, receive all payments, grant releases with or without discharge, realise all the assets of the specialised investment fund and reemploy the proceeds therefrom, issue or endorse any negotiable instruments, compound or compromise all claims. They may alienate immovable property of the specialised investment fund by public auction.

They may also, but only with the authorisation of the Court, mortgage and pledge its assets and alienate its immovable property by private treaty.

(3) As from the day of the judgment, no legal actions relating to movable or immovable property nor any enforcement procedures relating to movable or immovable property may be pursued, commenced or exercised otherwise than against the liquidators.

The judgment ordering the liquidation shall terminate all seizures effected at the request of general creditors who are not secured by charges²⁸ on movable and immovable property.

(4) After payment or deposit of the sums necessary for the discharge of the debts, the liquidators shall distribute to the investors the sums or amounts due to them.

(5) The liquidators may convene at their own initiative and must convene at the request of investors representing at least one quarter of the assets of the specialised investment fund, a general meeting of investors for the purpose of deciding whether instead of an outright liquidation it would be appropriate to contribute the assets of the specialised investment fund in liquidation to another specialised investment fund. That decision shall be taken, provided that the general meeting is composed of a number of investors representing at least one half of the value of the amount constituting partnership interests or the capital, by a majority of two thirds of the votes of the investors present or represented.

(6) The Court's decisions pronouncing the dissolution and ordering the liquidation of a specialised investment fund shall be published in the *Recueil électronique des sociétés et associations*, in accordance with the provisions of Chapter Vbis of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings and in two newspapers with adequate circulation specified by the Court, at least one of which must be a Luxembourg newspaper. The liquidator(s) shall arrange for such publications.

(7) If there are no or insufficient assets, as ascertained by the reporting judge, the documents relating to the proceedings shall be exempt from any registry and registration duties and the expenses and fees of the liquidators shall be borne by the Treasury and paid as judicial costs.

(8) The liquidators shall be liable both to third parties and to the specialised investment fund for the discharge of their duties and for any faults committed in the conduct of their activities.

(9) When the liquidation is completed, the liquidators shall report to the Court on the use made of the assets of the specialised investment fund and shall submit the accounts and supporting documents thereof. The Court shall appoint *commissaires* (auditors) to examine the documents. After receipt of the auditors' report, a ruling shall be given on the management of the liquidators and the closure of the liquidation.

²⁸ *créanciers chirographaires et non-privilégiés*

The closure of the liquidation shall be published in accordance with paragraph (6) above. That publication shall also indicate:

- the place designated by the Court where the books and records must be kept for at least five years;
- the measures taken in accordance with Article 50 with a view to the deposit²⁹ of the sums and assets due to creditors, investors or members to whom it has not been possible to deliver the same.

(10) Any legal actions against the liquidators of specialised investment funds, in their capacity as such, shall be prescribed five years after publication of the closure of the liquidation provided for in paragraph (9).

Legal actions against the liquidators in connection with the performance of their duties shall be prescribed five years after the date of the facts or, in the event of concealment thereof by wilful deceit, five years after the discovery thereof.

(11) The provisions of this Article shall apply equally to the specialised investment funds which have not applied to be entered on the list provided for in Article 43 within the time limit laid down therein.

Art. 48 (1) Specialised investment funds shall, after the dissolution, be deemed to exist for the purpose of their liquidation. In the case of a non-judicial liquidation, they shall remain subject to supervision by the CSSF.

(2) All documents issued by a specialised investment fund in liquidation shall indicate that it is in liquidation.

(3) Until the close of the operations relating to the liquidation of a specialised investment fund, the institution which acted as depositary at the time the specialised investment fund was put into liquidation shall take all necessary steps for the good preservation of the interests of the investors, including an obligation to keep open or to open any accounts necessary for the safekeeping of the various assets of the specialised investment fund.

Art. 49 (1) In the event of a non-judicial liquidation of a specialised investment fund, the liquidator(s) must be approved by the CSSF. The liquidator(s) must provide all guarantees of good repute and professional skill.

(2) Where a liquidator does not accept its appointment or is not approved, the District Court dealing with commercial matters shall, at the request of any interested party or of the CSSF, appoint the liquidator(s). The judgment appointing the liquidator(s) shall be provisionally enforceable, on the production of the original thereof and before registration, notwithstanding any appeal or objection.

Art. 50 In the event of a voluntary or compulsory liquidation of a specialised investment fund within the meaning of this Law, the sums and assets payable in respect of securities or partnership interests whose holders failed to present themselves at the time of the closure of the liquidation, shall be paid to the public trust office³⁰ to be held for the benefit of the persons entitled thereto.

²⁹ *consignation*

³⁰ *Caisse de Consignation*

Art. 51 (1) The directors or members of the management board, as the case may be, managers and officers of specialised investment funds, of management companies, of depositaries as well as of any other undertaking contributing towards the business activity of the specialised investment fund subject to supervision by the CSSF as well as the liquidators in the case of voluntary liquidation of a specialised investment fund may have a fine of EUR 125 to 12,500 imposed upon them in the event of their refusing to provide the financial reports and the requested information or where such documents prove to be incomplete, inaccurate or false, and in the event of any violation of Article 52 of this Law.

(2) The same fine may be imposed upon any person who infringes the provisions of Article 44.

(3) The CSSF may make public any fine imposed in accordance with this Article, unless such a disclosure would seriously disturb the financial markets, be detrimental to the interests of investors or cause disproportionate damage to the parties concerned.

Chapter 7. - Establishment of an offering document and an annual report

Art. 52 (1) The investment company and the management company, for each of the common funds it manages, must establish:

- an offering document, and
- an annual report for each financial year.

(2) The annual report must be made available to investors within six months from the end of the period to which it relates.

(3) If a prospectus under the Law of 10 July 2005 concerning the prospectus for transferable securities has been published, there is no obligation to establish an offering document within the meaning of this Law.

(4) Notwithstanding paragraphs (1) and (2) of Articles 29 and 30 of the Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings, specialised investment funds subject to this Law prepare their annual report according to the annexed schedule. The annual report must include a balance sheet or a statement of assets and liabilities, a detailed income and expenditure account for the financial year, a report on the activities of the past financial year as well as any significant information enabling investors to make an informed judgment on the development of the activities and of the results of the specialised investment fund. However, Articles 56 and 57 of the Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings apply to specialised investment funds subject to Chapter 3 and Chapter 4 of this Law.

(5) Notwithstanding Article 1711-1.³¹ of the amended Law of 10 August 1915 concerning commercial companies, specialised investment funds subject to this Law and their subsidiaries are exempt from the obligation to consolidate the companies owned for investment purposes.

(6) For specialised investment funds governed by this Law, contributions other than cash shall be, at the time of the contribution, subject to a report to be established by a statutory auditor. The conditions and method provided for in Article 420-10.³² of the Law of 10 August 1915 concerning commercial

³¹ Formerly Article 309 (new numbering via Grand-Ducal Regulation of 5 December 2017).

³² Formerly Article 26-1 (new numbering via Grand-Ducal Regulation of 5 December 2017).

companies apply to the establishment of the report referred to in this Article, irrespective of the legal form adopted by the specialised investment fund concerned.

Art. 53 The offering document must include the information necessary for investors to be able to make an informed judgment of the investment proposed to them and, in particular, of the risks attached thereto.

Art. 54 The essential elements of the offering document must be kept up to date when additional securities or partnership interests are issued to new investors. Any amendment to the essential elements of the offering document is subject to the approval of the CSSF.

Art. 55 (1) Luxembourg specialised investment funds must have the accounting information given in their annual report audited by an approved statutory auditor.

The approved statutory auditor's report and, as the case may be, its qualifications, are set out in full in each annual report.

The approved statutory auditor must prove it has appropriate professional experience.

(2) The approved statutory auditor shall be appointed and remunerated by the specialised investment fund.

(3) The approved statutory auditor must report promptly to the CSSF any fact or decision of which he has become aware while carrying out the audit of the accounting information contained in the annual report of a specialised investment fund or any other legal task concerning a specialised investment fund, where this fact or decision is likely to

- constitute a serious breach of this Law or the regulations adopted for its execution, or
- affect the continuous functioning of the specialised investment fund, or
- lead to a refusal to certify the accounts or to the expression of qualifications thereon.

The approved statutory auditor likewise has a duty to promptly report to the CSSF, in the accomplishment of its duties referred to in the preceding sub-paragraph in respect of a specialised investment fund, any fact or decisions concerning the specialised investment fund and meeting the criteria referred to in the preceding sub-paragraph of which he has become aware while carrying out the audit of the accounting information contained in their annual report or of another legal task in relation to another undertaking having close links resulting from a control relationship with the specialised investment fund.

For the purpose of this Article, a close link resulting from a control relationship shall mean the link which exists between a parent undertaking and a subsidiary in the cases referred to in Article 77 of the amended Law of 17 June 1992 concerning the annual accounts and consolidated accounts of credit institutions, or as a result of a relationship of the same type between any individual or legal entity and an undertaking; any subsidiary undertaking of a subsidiary undertaking is also considered as a subsidiary of the parent undertaking which is at the head of those undertakings. A situation in which two or more individuals or legal persons are permanently linked to one and the same person by a control relationship shall also be regarded as constituting a close link between such persons.

If, in the discharge of his duties, the approved statutory auditor ascertains that the information provided to investors or to the CSSF in the reports or other documents of the specialised investment fund does not truly describe the financial situation and the assets and liabilities of the specialised investment fund, he shall be obliged to inform the CSSF forthwith.

The approved statutory auditor shall moreover be obliged to provide the CSSF with all information or certificates required by the latter on any matters of which the approved statutory auditor has or ought to have knowledge in connection with the discharge of his duties. The same applies if the approved statutory auditor ascertains that the assets of the specialised investment fund are not or have not been invested according to the regulations set out by the Law or the offering document.

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

Each Luxembourg specialised investment fund subject to the supervision of the CSSF whose accounts have to be audited by an approved statutory auditor, must communicate to the CSSF spontaneously the reports and written comments of the approved statutory auditor in the context of its audit of the annual accounting documents.

The CSSF may regulate the scope of the mandate for the audit of annual accounting documents and the content of the reports and written comments of the approved statutory auditor referred to in the preceding sub-paragraph, without prejudice to the legal provisions governing the content of the independent auditor's³³ report.

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

(4) The CSSF shall refuse or withdraw the entry on the list of specialised investment funds whose approved statutory auditor does not satisfy the conditions or does not discharge the obligations prescribed in this Article.

(5) The institution of supervisory auditors³⁴ provided for by Articles 443-1³⁵, 600-7³⁶, 811-2³⁷ and 710-27³⁸ of the amended Law of 10 August 1915 concerning commercial companies, is repealed with respect to Luxembourg investment companies. The directors or managers are solely competent in all cases where the amended Law of 10 August 1915 concerning commercial companies provides for the joint action of the supervisory auditors and the directors or managers.

The institution of supervisory auditors provided for by Article 1100-15³⁹ of the amended Law of 10 August 1915 concerning commercial companies, is not applicable to Luxembourg investment companies. Upon completion of the liquidation, a report on the liquidation shall be drawn up by the approved statutory auditor. This report shall be tabled at the general meeting at which the liquidators report on the application of the corporate assets and submit the accounts and supporting documents.

³³ *contrôleur légal des comptes*

³⁴ *commissaires aux comptes*

³⁵ Formerly Article 61 (new numbering via Grand-Ducal Regulation of 5 December 2017).

³⁶ Formerly Article 109 (new numbering via Grand-Ducal Regulation of 5 December 2017).

³⁷ Formerly Article 114 (new numbering via Grand-Ducal Regulation of 5 December 2017).

³⁸ Formerly Article 200 (new numbering via Grand-Ducal Regulation of 5 December 2017).

³⁹ Formerly Article 151 (new numbering via Grand-Ducal Regulation of 5 December 2017).

The same meeting shall resolve on the approval of the accounts of the liquidation, the discharge and the closure of the liquidation.

Art. 56 Specialised investment funds must send their offering document and any amendments thereto, as well as their annual report, to the CSSF, and the latter must be sent within the same time period as that provided for in Article 52, paragraph (2).

Art. 57 (1) The offering document and the last published annual report shall be supplied, on request, to subscribers free of charge.

(2) The annual report shall be supplied, on request, to investors free of charge.

Chapter 8. - Transmission of other information to the CSSF

Art. 58 The CSSF may request specialised investment funds to provide any information relevant to the fulfilment of its duties and may, for that purpose, itself or through appointees, examine the books, accounts, registers or other records and documents of specialised investment funds.

Chapter 9. - Protection of name

Art. 59 (1) No undertaking shall make use of designations or of a description giving the impression that its activities are subject to the legislation on specialised investment funds if it has not obtained the authorisation provided for in Article 43 of this Law.

(2) The District Court dealing with commercial matters of the place where the specialised investment fund is situated or of the place where the designation has been used, may, at the request of the Public Prosecutor issue an injunction, prohibiting anyone from using the designation as defined in paragraph (1), if the conditions provided for by this Law are not or no longer met.

(3) The final judgement or court decision which delivers this injunction, is published by the Public Prosecutor at the expense of the person convicted in two Luxembourg or foreign newspapers with adequate circulation.

Chapter 10. - Criminal law provisions

Art. 60 A penalty of imprisonment from one month to one year and a fine of five hundred to twenty-five thousand euros or either one of these penalties shall be imposed upon:

- a) any person who has issued or redeemed or caused to be issued or redeemed units of a common fund in the cases referred to in Articles 11(2) and 20(3) of this Law;
- b) any person who has issued or redeemed units of a common fund at a price other than that obtained by application of the criteria provided for in Article 8 of this Law;
- c) any person who, as director, manager or auditor⁴⁰ of the management company or the depositary has made loans or advances on units of the common fund using assets of the said fund, or who has by any means at the expense of the common fund, made payments in order

⁴⁰ *commissaire*

to pay up units or acknowledged payments to have been made which have not actually been so made.

Art. 61 (1) A penalty of imprisonment from one to six months and a fine of five hundred to twenty-five thousand euros or either of one of these penalties shall be imposed upon:

- a) any director or manager of the management company who has failed to inform the CSSF without delay that the net assets of the common fund have fallen below two thirds and a quarter, respectively, of the legal minimum for the net assets of the common fund;
- b) any director or manager of the management company who has infringed Article 9 of this Law.

(2) A fine of five hundred to twenty-five thousand euros shall be imposed upon any persons who, in violation of Article 59, use a designation or description giving the impression that they relate to the activities subject to the legislation on specialised investment funds if they have not obtained the authorisation provided for in Article 43 of this Law.

Art. 62 A penalty of imprisonment from one month to one year and a fine of five hundred to twenty-five thousand euros or either one of these penalties shall be imposed upon the founders, directors or managers of an investment company who have infringed the provisions of Articles 28 (2) and 28 (4).

Art. 63 A penalty of imprisonment of one month to one year and a fine of five hundred to twenty-five thousand euros or either one of these penalties shall be imposed upon the directors or managers of an investment company who have not convened the extraordinary general meeting in accordance with Article 30 of this Law and with Article 39 (2) to (4) of this Law or who have infringed the provisions of Article 39 (5) of this Law.

Art. 64 A penalty of imprisonment of three months to two years and a fine of five hundred to fifty thousand euros or either one of these penalties shall be imposed on anyone who has carried out or caused to be carried out operations involving the receipt of funds from investors if, for the specialised investment fund for which they acted, no application for entry on the list has been filed with the CSSF within the month following the constitution or formation of the specialised investment fund.

Art. 65 (1) A penalty of imprisonment from one month to one year and a fine of five hundred to twenty-five thousand euros or either one of these penalties shall be imposed on the directors of the specialised investment funds referred to in Article 38 who failed to observe the conditions imposed upon them by this Law.

(2) The same penalties or either one of them shall be imposed upon the directors of specialised investment funds who, notwithstanding the provisions of Article 46, have taken measures other than protective measures without being authorised for that purpose by the supervisory commissioner.

Chapter 11. - Tax provisions

Art. 66 (1) Apart from the capital duty⁴¹ levied on the contribution of capital to civil and commercial companies and the subscription tax⁴² mentioned in Article 68 below, no other tax shall be payable by the specialised investment funds referred to in this Law.

⁴¹ *droit d'apport*

⁴² *taxe d'abonnement*

(2) Without prejudice to the provisions of the Law of 21 June 2005 implementing into Luxembourg law Directive 2003/48/EC on taxation of saving incomes in the form of interest payments, the amounts distributed by such specialised investment funds shall not be subject to a withholding tax. They are not taxable if received by non residents.

Art. 67 (...)⁴³

Art. 68 (1) The rate of the annual subscription tax payable by the specialised investment funds referred to in this Law shall be of 0.01%.

(2) Exempt from the subscription tax are:

- a) the value of the assets represented by units held in other undertakings for collective investment, provided that such units have already been subject to the subscription tax provided for by this Article or by Article 174 of the Law of 17 December 2010 relating to undertakings for collective investment or by Article 46 of the Law of 23 July 2016 relating to reserved alternative investment funds.

In order to obtain the exemption from the subscription tax on the value of assets represented by units in other undertakings for collective investment which are already subject to the subscription tax, specialised investment funds holding such units must declare their value separately in the periodic declarations they file with the registration administration⁴⁴;

- b) specialised investment funds as well as individual compartments of specialised investment funds with multiple compartments:
- (i) which are authorised as short-term money market funds in accordance with Regulation No. (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds, and
 - (ii) (...)⁴⁵
 - (iii) that have obtained the highest possible rating from a recognised rating agency;
- c) specialised investment funds whose securities or partnership interests are reserved for (i) institutions for occupational retirement provision, or similar investment vehicles, set up on one or more employers' initiative for the benefit of their employees and (ii) companies of one or more employers investing funds they hold, in order to provide retirement benefits to their employees.
- d) specialised investment funds as well as individual compartments of specialised investment funds with multiple compartments whose main objective is the investment in micro finance institutions.
- e) specialised investment funds as well as individual compartments of specialised investment funds with multiple compartments that are authorised as European long-term investment funds

⁴³ Repealed by the Law of 19 December 2008 on the review of the regime applicable to certain corporate deeds in the field of registration fees.

⁴⁴ *l'Administration de l'enregistrement, des domaines et de la TVA*

⁴⁵ Repealed by the Law of 21 July 2023.

within the meaning of Regulation No. (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds.

In order to obtain such exemptions, specialised investment funds must declare the value of the eligible net assets separately in the periodic declarations they file with the registration administration.

(3) (...).⁴⁶

(4) The taxable basis of the subscription tax shall be the aggregate net assets of the specialised investment funds valued on the last day of each quarter.

(5) The provisions of paragraph (2) (c) apply mutatis mutandis to:

- individual compartments of a specialised investment fund with multiple compartments whose securities or partnership interests are reserved for (i) institutions for occupational retirement provision, or similar investment vehicles, set up on one or several employers' initiative for the benefit of their employees and (ii) companies of one or several employers investing the funds they hold, in order to provide retirement benefits to their employees, and
- individual classes created within a specialised investment fund or within a compartment of a specialised investment fund with multiple compartments whose securities or partnership interests are reserved for (i) institutions for occupational retirement provision, or similar investment vehicles, set up on one or several employers' initiative(s) for the benefit of their employees and (ii) companies of one or several employers investing the funds they own, in order to provide retirement benefits to their employees.

(6) A Grand-Ducal Regulation shall lay down the criteria which must be fulfilled by specialised investment funds as well as individual compartments of specialised investment funds with multiple compartments referred to in paragraph 2, (d).

(7) (...).⁴⁷

Art. 69 The duties of the registration administration include the fiscal control of specialised investment funds.

If, at any date after the constitution of the specialised investment funds referred to in this Law, the said administration ascertains that such specialised investment funds are engaging in operations which exceed the framework of the activities authorised by this Law, the tax provisions provided for in Articles 66 to 68 shall cease to be applicable.

Moreover, the registration administration may levy a fiscal fine of 0.2% on the aggregate amount of the assets of the specialised investment funds.

Chapter 12. - Special provisions in relation to the legal form

Art. 70 (1) Investment companies entered in the list provided for by Article 43, paragraph (1) may be converted into SICAVs and their constitutive documents may be harmonised with the provisions of Chapter 3 of this Law by resolution of a general meeting passed with a majority of two thirds of the votes

⁴⁶ Repealed by the Law of 21 July 2023.

⁴⁷ Repealed by the Law of 21 July 2023.

of the shareholders or unitholders present or represented regardless of the portion of the capital represented.

(2) The common funds referred to in this Law may, under the same conditions as those laid down in paragraph (1) above, convert themselves into a SICAV governed by this Law.

Art. 71 (1) Specialised investment funds may be constituted with multiple compartments, each compartment corresponding to a distinct part of the assets and liabilities of the specialised investment fund.

(2) The constitutive documents of the specialised investment fund must expressly provide for that possibility and the applicable operational rules. The offering document must describe the specific investment policy of each compartment.

(3) The securities and partnership interests of the specialised investment fund with multiple compartments may be of different value with or without indication of a par value depending on the legal form which has been chosen.

(4) Common funds with multiple compartments may, by separate management regulations, determine the characteristics of and rules applicable to each compartment.

(5) The rights of investors and of creditors concerning a compartment or which have arisen in connection with the creation, operation or liquidation of a compartment are limited to the assets of that compartment, unless a clause included in the constitutive documents provides otherwise.

The assets of a compartment are exclusively available to satisfy the rights of investors in relation to that compartment and the rights of those creditors whose claims have arisen in connection with the creation, the operation or the liquidation of that compartment, unless a clause included in the constitutive documents provides otherwise.

For the purpose of the relations as between investors, each compartment will be deemed to be a separate entity, unless a clause included in the constitutive documents provides otherwise.

(6) Each compartment of a specialised investment fund may be liquidated separately without that separate liquidation resulting in the liquidation of another compartment. Only the liquidation of the last remaining compartment of the specialised investment fund will result in the liquidation of the specialised investment fund, as referred to in Article 49, paragraph (1) of this Law. In this case, where the specialised investment fund is in corporate form, as from the event giving rise to the liquidation of the specialised investment fund, and under penalty of nullity, the issue of units shall be prohibited except for the purposes of liquidation.

(7) The authorisation of a compartment of a specialised investment fund subject to this Law and the maintenance of this authorisation are subject to the condition that all legal, regulatory and contractual provisions relating to its organisation and operation are complied with. The withdrawal of authorisation of a compartment does not give rise to the withdrawal of the specialised investment fund from the list provided for in Article 43, paragraph (1).

(8) A compartment of a specialised investment fund may, subject to the conditions provided for in the offering document, subscribe, acquire and/or hold securities or partnership interests to be issued or issued by one or more other compartments of the same specialised investment fund without that

specialised investment fund, when it is constituted by statute, being subject to the requirements of the Law of 10 August 1915 on commercial companies, with respect to the subscription, the acquisition and/or the holding by a company of its own shares, under the condition, however, that:

- the target compartment does not, in turn, invest in the compartment invested in this target compartment; and
- voting rights, if any, attaching to the relevant securities or partnership interests are suspended for as long as they are held by the compartment concerned and without prejudice to the appropriate processing in the accounts and the periodic reports; and
- in any event, for as long as these securities or partnership interests are held by the specialised investment fund, their value will not be taken into consideration for the calculation of the net assets of the specialised investment fund for the purposes of verifying the minimum threshold of the net assets imposed by this Law.

Chapter 13. - Amending provisions

Art. 72 Paragraph (3) of Article 129 of the amended Law of 20 December 2002 relating to undertakings for collective investment⁴⁸ is amended by the insertion, at the end of item a), of the words: "or by Article 68 of the Law of 13 February 2007 relating to specialised investment funds".

Art. 73 Article 44 paragraph 1, item d) of the amended Law of 12 February 1979 concerning value added tax, is amended by adding the words "and specialised investment funds" after the words ", including the SICAR".

Chapter 14. - Transitional and repealing provisions

Art. 74 The Law of 19 July 1991 concerning undertakings for collective investment whose securities are not intended to be placed with the public is repealed.

Art. 75 All references in legal and regulatory texts to "undertakings governed by the Law of 19 July 1991 concerning undertakings for collective investment whose securities are not intended to be placed with the public" shall be replaced by "undertakings governed by the Law of 13 February 2007 relating to specialised investment funds".

Art. 76 Undertakings governed by the Law of 19 July 1991 concerning undertakings for collective investment whose securities are not intended to be placed with the public are governed *ipso jure* by this Law.

For these undertakings, all references in the articles of incorporation and the sales documents to the Law of 19 July 1991 concerning undertakings for collective investment whose securities are not intended to be placed with the public shall be read as references to this Law.

Art. 76bis Specialised investment funds created before the entry into force of the Law of 26 March 2012 amending the Law of 13 February 2007 on specialised investment funds will have until 30 June 2012 to comply with the provisions of Article 2, paragraph (3), and of Article 42bis of this Law. These specialised

⁴⁸ The amended Law of 20 December 2002 relating to undertakings for collective investment has been repealed and replaced by the Law of 17 December 2010 relating to undertakings for collective investment.

investment funds will have until 30 June 2013 to comply with the provisions of Article 42ter of this Law, insofar as these provisions are applicable to them.

Art. 76ter Where the investment rules of a specialised investment fund are no longer observed as a result of the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union, a maximum period of twelve months shall be granted to the specialised investment fund to regularise the non-compliance resulting from such withdrawal. This regularisation must occur taking into account the stability of the financial markets and the interests of shareholders. This regularisation period is only granted in respect of overruns resulting from positions taken before the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union.”

Art. 76quater Article 68, paragraph (2), point b), in the version applicable on 28 July 2023, remains applicable to specialised investment funds which as at 28 July 2023 benefited from the exemption provided for in the said point b).

Chapter 15. - Final provisions

Art. 77 This Law may, in abbreviation, be referred to as the "Law of 13 February 2007 relating to specialised investment funds".

Art. 78 This Law enters into force on 13 February 2007.

PART II - Specific provisions applicable to specialised investment funds managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers or under Chapter II of Directive 2011/61/EU

Chapter 1. - General provisions

Art. 79 This Part shall apply, by way of derogation from the general rules of Part I of this Law, to specialised investment funds managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers or under Chapter II of Directive 2011/61/EU.

Art. 80 (1) Any specialised investment fund subject to this Part must be managed by an AIFM, which may either be an AIFM established in Luxembourg authorised under Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers, or an AIFM established in another Member State or in a third country authorised under Chapter II of Directive 2011/61/EU, subject to the application of Article 66, paragraph (3) of the aforementioned directive where the specialised investment fund is managed by an AIFM established in a third country.

(2) The AIFM must be determined in accordance with the provisions of Article 4 of the Law of 12 July 2013 relating to alternative investment fund managers or in accordance with the provisions of Article 5 of Directive 2011/61/EU.

The AIFM is:

- a) either an external AIFM, which is the legal person appointed by the specialised investment fund or on behalf of the specialised investment fund and which through this appointment, is responsible for managing this specialised investment fund; in case of appointment of an external AIFM, the latter must be authorised in accordance with the provisions of Chapter 2 of

the Law of 12 July 2013 relating to alternative investment fund managers or in accordance with the provisions of Chapter II of Directive 2011/61/EU;

- b) or where the legal form of the specialised investment fund permits an internal management and where its governing body chooses not to appoint an external AIFM, the specialised investment fund itself.

An internally managed specialised investment fund within the meaning of this Article must, in addition to the authorisation required under Article 42, paragraph (1) of this Law, be authorised as an AIFM under Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers. The relevant specialised investment fund must ensure at all times compliance with all provisions of the aforementioned law, provided that those provisions are applicable to it.

Art. 81 (1) The assets of a specialised investment fund subject to this Part must be entrusted to a depositary for safe-keeping, appointed in accordance with the provisions of Article 19 of the Law of 12 July 2013 relating to alternative investment fund managers.

(2) The depositary must either have its registered office in Luxembourg or have a branch there if its registered office is in another Member State of the European Union.

(3) Without prejudice to the second sub-paragraph of this paragraph, the depositary must be a credit institution or an investment firm within the meaning of the amended Law of 5 April 1993 on the financial sector. An investment firm shall only be eligible as depositary to the extent that this investment firm also fulfils the conditions referred to in Article 19, paragraph (3) of the Law of 12 July 2013 relating to alternative investment fund managers.

For specialised investment funds subject to this Part which have no redemption rights exercisable during a period of five years from the date of the initial investments and which, in accordance with their core investment policy, generally do not invest in assets that must be held in custody in accordance with point a) of Article 19, paragraph (8) of the Law of 12 July 2013 relating to alternative investment fund managers or generally invest in issuers or non-listed companies in order to potentially acquire control over such companies in accordance with Article 24 of the aforementioned law, the depositary may also be an entity governed by Luxembourg law which has the status of a professional depositary of assets other than financial instruments within the meaning of Article 26-1 of the amended Law of 5 April 1993 on the financial sector.

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

(5) The duties and responsibilities of the depositary are defined in accordance with the rules laid down in Article 19 of the Law of 12 July 2013 relating to alternative investment fund managers.

Art. 82 Without prejudice to the application of the provisions of Articles 9, 28 (4) and 40 (1) of this Law, the valuation of the assets of a specialised investment fund subject to this Part is performed in accordance with the rules laid down in Article 17 of the Law of 12 July 2013 relating to alternative investment fund managers and in the delegated acts provided for in Directive 2011/61/EU.

Art. 83 By way of derogation from Article 52, paragraph (4) of this Law, the content of the annual report of specialised investment funds subject to this Part is governed by the rules laid down in Article 20 of

the Law of 12 July 2013 relating to alternative investment fund managers and in the delegated acts provided for in Directive 2011/61/EU.

Art. 84 In relation to the information to be provided to investors, specialised investment funds subject to this Part must comply with the rules laid down in Article 21 of the Law of 12 July 2013 relating to alternative investment fund managers and in the delegated acts provided for in Directive 2011/61/EU.

Art. 85 The AIFM of a specialised investment fund falling within the scope of this Part is authorised to delegate to third parties the power to carry out on its behalf, one or more of its functions. In this case, the delegation of functions by the AIFM must comply with all the conditions provided for in Article 18 of the Law of 12 July 2013 relating to alternative investment fund managers in case of specialised investment funds managed by an AIFM for whom Luxembourg is the home Member State within the meaning of the Law of 12 July 2013 relating to alternative investment fund managers, subject to the application of Article 66, paragraph (3) of the aforementioned directive where the specialised investment fund is managed by a AIFM established in a third country.

Art. 86 The marketing by the AIFM in the European Union of securities or partnership interests of specialised investment funds subject to this Part as well as the management of these specialised investment funds in the European Union on a cross-border basis are governed by the provisions of Chapter 6 of the Law of 12 July 2013 relating to alternative investment fund managers in the case of specialised investment funds managed by an AIFM established in Luxembourg, or by the provisions of Chapters VI and VII of Directive 2011/61/EU, in the case of specialised investment funds managed by an AIFM established in another Member State or in a third country, subject to the application of Article 66, paragraph (3) of the aforementioned directive where the specialised investment fund is managed by an AIFM established in a third country.

Chapter 2. - Transitional provisions

Art. 87 (1) Without prejudice to the transitional provisions provided for in Article 58 of the Law of 12 July 2013 relating to alternative investment fund managers or, if it concerns an AIFM established in a third country, provided for in Article 45 of the Law of 12 July 2013 relating to alternative investment fund managers, specialised investment funds established before 22 July 2013, which are managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers or under Chapter II of Directive 2011/61/EU will have until 22 July 2014 to comply with the provisions of this Part.

(2) Without prejudice to the transitional provisions provided for in Article 58 of the Law of 12 July 2013 relating to alternative investment fund managers or, if it concerns an AIFM established in a third country, provided for in Article 45 of the Law of 12 July 2013 relating to alternative investment fund managers, specialised investment funds established between 22 July 2013 and 22 July 2014, which are managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers or under Chapter II of Directive 2011/61/EU shall qualify as AIFs within the meaning of the Law of 12 July 2013 relating to alternative investment fund managers from the date they are established. These specialised investment funds must comply with the provisions of Part II of this Law from the date they are established. By way of derogation from this principle, specialised investment funds established between 22 July 2013 and 22 July 2014, with an external AIFM which exercises the activities of AIFM before 22 July 2013, will have until 22 July 2014 at the latest to comply with the provisions of Part II of this Law.

(3) All specialised investment funds established after 22 July 2014, which are managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers

or under Chapter II of Directive 2011/61/EU shall be, subject to the transitional provisions provided for in Article 45 of the Law of 12 July 2013 applicable to AIFMs established in a third country, *ipso jure* governed by Part II of this Law. These specialised investment funds which are managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers or under Chapter II of Directive 2011/61/EU or, where applicable, their AIFM, shall be *ipso jure* subject to the provisions of the Law of 12 July 2013 relating to alternative investment fund managers.

(4) Specialised investment funds established before 22 July 2013, managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers or under Chapter II of Directive 2011/61/EU, which qualify as AIFs of the closed-ended type within the meaning of the Law of 12 July 2013 relating to alternative investment fund managers and which do not make any additional investments after such date, do not need to comply with the provisions of this Part.

(5) Specialised investment funds managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013 relating to alternative investment fund managers or under Chapter II of Directive 2011/61/EU, which qualify as AIFs of the closed-ended type within the meaning of the Law of 12 July 2013 relating to alternative investment fund managers whose subscription period for investors has closed prior to 22 July 2011 and which are established for a period of time expiring at the latest three years after 22 July 2013, do not need to comply with the provisions of the Law of 12 July 2013 relating to alternative investment fund managers, except for Article 20 and, where applicable, Articles 24 to 28 of the Law of 12 July 2013 relating to alternative investment fund managers, nor do they need to submit an application for authorisation under the Law of 12 July 2013 relating to alternative investment fund managers.

ANNEX

Information to be included in the annual report

- I. Statement of assets and liabilities
 - investments,
 - bank balances,
 - other assets,
 - total assets,
 - liabilities,
 - net asset value
- II. Number of units in circulation
- III. Net asset value per unit
- IV. Qualitative and/or quantitative information on the investment portfolio enabling investors to make an informed judgment on the development of the activities and the results of the specialised investment fund
- V. Statement of the developments concerning the assets of the specialised investment fund during the reference period including the following:
 - income from investments,
 - other income,
 - management charges,
 - depositary's charges,
 - other charges and taxes,
 - net income,
 - distributions and income reinvested,
 - increase or decrease of capital accounts,
 - appreciation or depreciation of investments,
 - any other changes affecting the assets and liabilities of the specialised investment fund

- VI. A comparative table covering the three financial years and including, for each financial year, at the end of the financial year:
- the total net asset value,
 - the net asset value per unit.