Translation of Liechtenstein Law

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Investment Undertakings Act (IUG)

of 2 December 2015

I hereby grant My consent to the following Resolution adopted by Parliament:[1]

I. General provisions

Article 1

Object and purpose

1) This Act governs the taking up, pursuit, and supervision of the business of investment undertakings and their management companies.

2) Its purpose is to ensure trust in the Liechtenstein financial centre, the stability of the financial system, and the protection of investors.

Article 2

Scope

This Act shall apply to investment undertakings and their management companies, provided their registered office is in Liechtenstein.

1 Report and Application of the Government No. 89/2015 and Opinion of the Government No. 121/2015

Article 3

Definitions and designations

1) For the purposes of this Act, the following definitions apply:

a) "investment undertaking" means any collective investment undertaking, including its segments, which:
   1. is neither a UCITS under the UCITS Act (UCITSG) nor an AIF under the AIFM Act (AIFMG);
   2. is intended exclusively for qualified investors; and
   3. does not raise capital;

b) "segments" means economically mutually independent partial assets of an investment undertaking; unit classes are permitted;

c) "unit classes" means unit categories of an investment undertaking with different rights and duties, but referring to the same assets or segment;

d) "closed-ended investment undertakings" means investment undertakings that are not required to redeem units;

e) "management company" means a legal person as referred to in Articles 26 et seq. that manages one or more investment undertakings for the account of the investors in accordance with this Act;

f) "investment management" means portfolio management and risk management;

g) "depositary" means a qualified domestic institution as referred to in Articles 50 et seq.;

h) "qualifying holding": a direct or indirect holding in another management company which represents 10% or more of the voting rights or capital or which makes it possible to exercise a significant influence over the management of the management company in which the holding subsists. Articles 25, 26, 27, and 31 of the Disclosure Act shall be applied in the determination of voting rights;

i) "raising capital" means taking direct or indirect steps by a collective investment undertaking or a person or entity acting on its behalf to procure capital commercially from one or more investors for the purpose of investing it in accordance with a defined investment strategy;

k) "close links" means links between two or more natural or legal persons by:
   1. participation, namely ownership, directly or by way of control, of 20% or more of the voting rights or capital of an undertaking; or

2. control, namely the link between a parent undertaking and a subsidiary or an equivalent relationship between a natural or legal person and an undertaking; every subsidiary of a subsidiary shall also be considered a subsidiary of the parent undertaking which is at the head of those undertakings.

A situation in which two or more natural or legal persons are linked to the same person by a control relationship shall also be regarded as constituting a close link between such persons;

l) "financial instrument" means one of the instruments referred to in Annex I Section C of Directive 2004/39/EC.

2) Unless expressly provided otherwise, the designations of persons and functions contained in this Act shall apply to persons of female and of male gender.

Article 4

Qualified investors

1) Qualified investors are:

a) investors referred to in Annex II of Directive 2004/39/EC (professional investors);

b) investors who meet at least one of the following conditions:

1. contribution of a minimum investment of 100,000 Swiss francs, or the equivalent in another currency, if at the time of subscription the investor has financial assets in the amount of 1 million Swiss francs, or the equivalent in another currency, directly or indirectly at their disposal; or

2. contribution of a minimum investment of 100,000 Swiss francs, or the equivalent in another currency, if:

aa) the investor states in writing in a document separate from the contract concerning the investment commitment that the investor is aware of the risks involved in connection with the anticipated commitment or investment;

bb) the management company or depositary assesses the expertise, experience, and knowledge of the investor, without assuming that the investor has the market knowledge and experience of a professional investor;

cc) considering the nature of the anticipated commitment or investment, the management company or depositary is sufficiently convinced that the investor is capable of making

their own investment decisions and of understanding the risks involved and that a commitment of this nature is reasonable for the investor in question; and

dd) the management company or depositary confirms in writing that it has undertaken the assessment referred to in point (bb) and the requirements referred to in point (cc) have been met; or

c) investors in an investment undertaking for a family and an investment undertaking for a corporate group, with the proviso that the investor who makes the initial subscription to an investment undertaking for a family must also meet the requirements set out in subparagraph (a) or (b).

2) The qualified investor shall confirm fulfilment of the requirements set out in paragraph 1 by signing a subscription certificate. The Government shall provide further details on the content of the subscription certificate by ordinance.

II. Investment undertakings

A. Categories

Article 5

Principle

1) Investment undertakings for the purposes of this Act shall encompass the following four categories:

a) investment undertakings for single investors;

b) investment undertakings for families;

c) investment undertakings for a community of interests;

d) investment undertakings for a corporate group.

2) The Government shall provide further details on the categories of investment undertakings referred to in paragraph 1 by ordinance, in particular regarding their purpose and investor base.

B. Legal forms

1. General provisions

Article 6

Principle

1) An investment undertaking may be structured as an open-ended or a closed-ended investment undertaking.

2) An investment undertaking may be constituted under contract law (contractual investment undertaking), under trust law (collective trusteeship), under company statutes (investment company), or in the form of a partnership (investment limited partnership, investment partnership of limited partners). Under each of these legal forms, the number of investors may also be a single investor.

3) The Government may set out by ordinance that an investment undertaking may have a different domestic legal form than the legal forms referred to in paragraphs 7 to 14, provided that doing so is not precluded by the purpose of this Act, especially the protection of investors and the public interest; the ordinance shall at the same time set out whether the provisions of this Act apply *mutatis mutandis* to contractual investment undertakings, collective trusteeships, investment companies, investment limited partnerships, or investment partnerships of limited partners.

2. Contractual investment undertakings

Article 7

Principle

1) A contractual investment undertaking is a legal relationship established by a contract identical in substance between investors and a management company and a depositary for the purposes of asset investment, management, and safe custody for the account of the investors, in the form of a legally separate asset holding, in which the investors have an interest.

2) Unless specified otherwise by this Act, the legal relationships between the investors and the management company are governed by the

contract and, to the extent rules are not specified in the contract, by the provisions of the General Civil Code (ABGB). To the extent that no provision has been made therein, the provisions of the PGR applying to trusts shall apply accordingly.

3) The contract shall contain provisions on:

a) the investments, investment policy, and investment restrictions;

b) the valuation, issue, and redemption of units and their securitisation, with the value of the unit being determined by dividing the value of the assets of the investment undertaking or segment by the number of units in circulation;

c) the conditions of unit redemption or suspension;

d) the costs and expenses to be borne directly or indirectly by the investors and how these are calculated;

e) information for investors;

f) termination and forfeiture of the right to manage the investment undertaking;

g) the conditions for changing the contract and also for winding up, merger, and division of the investment undertaking; and

h) the unit classes and, if the investment undertaking is incorporated in an umbrella structure, the conditions for changing from one segment that is separate in terms of assets and liabilities to another.

4) The Government may place further requirements on the contract by ordinance, insofar as this is necessary for the protection of investors and the public interest.

5) The management company has the right to dispose of the items belonging to the investment undertaking in accordance with this Act and the contract in its own name and to exercise all rights arising therefrom; action on behalf of the investment undertaking must be transparent. The investment undertaking shall not be liable for the liabilities of the management company or the investors. The investment undertaking shall also include everything that the management company acquires on the basis of a right pertaining to the investment undertaking or through a legal transaction with reference to the investment undertaking or as a substitute for a right pertaining to the investment undertaking.

6) The management company does not have the right to enter into liabilities in the name of the investors or liabilities arising from suretyships or guarantees or to grant monetary loans. It may satisfy its claims to remuneration and reimbursement for expenses only from the

assets of the investment undertaking. The investors are personally liable only up to the investment amount.

7) Once it has been certified (Article 17), the investment undertaking shall be entered in the Commercial Register. Registration is not however a condition for the formation of the investment undertaking. The Government shall provide further details concerning the registration procedure by ordinance.

3. Collective trusteeship

Article 8

Principle

1) A collective trusteeship is the formation of an identically structured trust in terms of content with investors for the purpose of asset investment and management for the account of the investors, whereby the individual investors participate on the basis of their proportionate interest in the trust and are only personally liable up to the amount invested.

2) Unless specified otherwise by this Act, the legal relationships between the investors and the management company are governed by the trust agreement and, unless rules are laid down therein, by provisions of the PGR concerning trusts. To the extent that the prospectuses do not expressly specify otherwise, only the management company shall be considered as trustee and only the management company may conclude the relevant legal transactions for the account of the investment undertaking.

3) The trust agreement shall contain provisions on:

a) the investments, investment policy, and investment restrictions;
b) the valuation, issue, and redemption of units and their securitisation, with the value of the unit being determined by dividing the value of the assets of the collective trusteeship or segment by the number of units in circulation;
c) the conditions of unit redemption or suspension;
d) the costs and expenses to be borne directly or indirectly by the investors and how these are calculated;
e) information for investors;

f) termination and forfeiture of the right to manage the collective trusteeship;

g) the conditions for changing the trust agreement and also for winding up, merger, and division of the collective trusteeship; and

h) the unit classes and, if the collective trusteeship is incorporated in an umbrella structure, the conditions for changing from one segment that is separate in terms of assets and liabilities to another.

4) The Government may place further requirements on the trust agreement by ordinance, insofar as this is necessary for the protection of investors and the public interest.

5) Once it has been certified (Article 17), the collective trusteeship shall be entered in the Commercial Register. Registration is not however a condition for the formation of the collective trusteeship. The Government shall provide further details concerning the registration procedure by ordinance.

4. Investment company

Article 9

Principle

1) The investment company is an investment undertaking in the form of a public limited company, a European company (SE), an establishment, or a foundation:

a) in which the liability of the investors as shareholders or participants after full payment of the amount invested is restricted to that amount;

b) the sole purpose of which is the investment of assets and management for the account of the investors; and

c) the units of which are placed with investors.

2) Unless specified otherwise by this Act, the legal relationships between the investors, the investment company, and the management company are governed by the statutes of the investment company and, to the extent rules are not specified in the contract, by the provisions of the PGR concerning the public limited company, the establishment, or foundation or those of the SE Act (SEG) concerning the European Company.

3) The statutes shall contain provisions on:

a) investments, investment policy, and investment restrictions;

b) valuation, issue, and redemption of investor shares and their securitisation with the value of the investor share being determined by dividing the value of the assets of the investment company or segment held for investment purposes by the number of investor shares in circulation;

c) the conditions for redemption or suspension of the investor shares;

d) the costs and expenses to be borne directly or indirectly by the investors and how these are calculated;

e) information for investors;

f) termination and forfeiture of the right to manage the investment company;

g) the conditions for amendment of the statutes and also for winding up, merger, and division of the investment company;

h) the unit classes and if the investment company is incorporated in an umbrella structure, the conditions for changing from one segment that is separate in terms of assets and liabilities to another; and

i) the duties and functions of the governing bodies of the company in an externally managed investment company.

4) The Government may place further requirements on the statutes by ordinance, insofar as this is necessary for the protection of investors and the public interest.

5) The investment company may be managed by its own bodies (self-managed investment company) or by a management company (externally managed investment company). The investment company must be managed in the interests of the investors.

6) The governing bodies of the investment company may have a single-tier or two-tier structure. In the first case the board of directors manages and supervises the business, in the second case the management board manages the business and the supervisory board supervises its management. Unless the statutes and the Government by ordinance specify otherwise, the provisions of this Act, of the PGR, and of the SEG shall apply to the appointment of and collaboration between the governing bodies; where there is a two-tier organisational structure the provisions of the SEG shall apply exclusively *mutatis mutandis*.

7) The statutes must state whether, and the extent to which, the investment company issues founders' and investor units, with and without voting rights, and with or without a right to participate in the general meeting, and also whether own assets and managed assets are

separated. If own assets and managed assets are separated, the holders of the investor shares in establishments are to be qualified as entitled beneficiaries.

8) Unless the Government sets a higher minimum share capital by ordinance, a minimum share capital of 50,000 Swiss francs or the equivalent in another currency must be held through the founders' shares in the event of separation of assets. The capital requirement set out in Article 24 is not affected. In the single-tier structure the decision to issue new units is made by the board of directors and in the two-tier structure by the management board, but by the general meeting in regard to founders' shares, unless specified otherwise by this Act, the statutes, or the ordinance.

9) An investment company under the terms of this Article shall include the designation "*Investmentgesellschaft*" in its business name.

10) An investment company may be externally managed by a management company or by its own governing bodies. Unless specified otherwise by this Act, the provisions for investment undertakings and management companies shall apply *mutatis mutandis* to self-managed investment companies with the proviso that the duties of investment undertakings and management companies are to be performed by the governing bodies of the investment company.

11) The investment company is formed upon entry in the Commercial Register. Prior to registration, the provisions of the PGR in respect of the simple partnership shall apply, with the proviso that the liability of the investors is excluded. The Government shall provide further details by ordinance.

5. Investment limited partnership

Article 10

Principle

1) The investment limited partnership is an investment undertaking in the form of a partnership or legal person, in which after full payment of the amount invested, the liability of the investors as limited partners is restricted to that amount and of which the sole purpose is the investment of assets and management for the account of the investors.

2) Unless specified otherwise in this Act and the associated ordinance, the legal relationships of the investment limited partnership are governed by the partnership agreement of the investment limited partnership and, to the extent rules are not specified in the contract, by the provisions of the PGR in respect of limited partnerships.

3) The investment limited partnership may be managed as a self-managed limited partnership by its general partner (member with unlimited liability) or a limited partner appointed for that purpose or as a limited partnership managed externally by a management company. The investment limited partnership must be managed in the interests of the investors.

4) In an externally managed investment limited partnership, a management company shall be liable in the same way as in an externally managed investment company. A licensed management company may act at the same time for several investment limited partnerships, certain undertakings for collective investment in transferable securities, or AIFs.

5) The investors as limited partners shall be excluded from general management, unless specified otherwise in the partnership agreement. If the investors are not responsible for management, they are by derogation from Article 740 PGR conclusively excluded from representing the limited partnership and are under no fiduciary duty.

6) The investment limited partnership holds a register of investors as limited partners. This register and the identity of the investors do not have to be entered in the Commercial Register.

7) The total amount of the limited liability apportioned to the investors as limited partners must be entered in the Commercial Register. For open-ended investment limited partnerships, it shall be sufficient to state a minimum and maximum amount.

8) The Government shall set out the procedure in respect of exclusion of investors from the partnership by ordinance.

9) The investment limited partnership shall not be liable for the liabilities of the management company or of the investors.

Article 11

Partnership agreement

1) The partnership agreement shall contain rules in particular on:

a) the name and registered office of the investment limited partnership and the general partners;

b) the amount of the limited liability capital or, if it is an open-ended investment limited partnership, the minimum and maximum amount of the limited liability capital, as well as the requirements for the admittance and withdrawal of limited partners;

c) the duration of the partnership;

d) the keeping of a register of limited partners;

e) delegation of general management;

f) transferability of the limited partners' interest;

g) the rights and obligations, in particular the limited partners' contribution obligations;

h) whether it is a partnership or legal person;

i) the investments, investment policy, and investment restrictions;

k) the valuation, issue, and redemption of units and their securitisation, with the value of the unit being determined by dividing the value of the assets of the limited partnership held for investment purposes or of the relevant unit class by the number of units in circulation;

l) the conditions for redemption or suspension of units;

m) the costs and expenses to be borne directly or indirectly by investors and how these are calculated;

n) the remuneration of the management company and/or the general partner or limited partner appointed to manage;

o) information for investors;

p) termination and forfeiture of the right to manage the limited partnership and/or the requirements for the appointment and dismissal of the persons designated to perform the management;

q) the requirements for contractual amendments as well as winding up, merger, and division of the limited partnership;

r) the unit classes and, if the limited partnership is incorporated in an umbrella structure, the conditions for changing from one segment that is separate in terms of assets and liabilities to another;

s) if the investment limited partnership is self-managed, the persons (general partner or limited partner) who perform the duties of the management company.

2) The Government may place further requirements on the partnership agreement by ordinance, insofar as this is required for the protection of investors and the public interest.

Article 12

General partner and limited partner

1) General partners may be one or more Liechtenstein or foreign natural or legal persons.

2) Self-managed investment limited partnerships must, at the time of the application and at any time subsequently, have at their disposal paid up capital that at the time of the application corresponds to a sum of at least 300,000 Swiss francs or the equivalent in another currency. The general partner or limited partner appointed to manage shall make a contribution corresponding to the sum of at least 50,000 Swiss francs or the equivalent in another currency. If an investment limited partnership is a legal person, the general partner may also hold limited partners' interests.

Article 13

Formation of the investment limited partnership

1) The investment limited partnership must have its registered office in Liechtenstein.

2) The limited partners, with the exception of a limited partner appointed to manage, if applicable, do not have to be entered in the Commercial Register.

3) The investment limited partnership is formed upon entry in the Commercial Register. Prior to registration, the provisions of the PGR on the simple partnership shall apply, with the proviso that any liability for the investors is excluded.

4) The Government shall provide further details by ordinance.

6. Investment partnership of limited partners

Article 14

Principle

1) The investment partnership of limited partners is an investment undertaking in the form of a partnership or legal person, in which after full payment of the amount invested, the liability of the investors as

limited partners is restricted to that amount and of which the sole purpose is the investment of assets and management for the account of the investors. Unlike the investment limited partnership, the investment partnership of limited partners has no general partner with unlimited liability.

2) Unless specified otherwise below, Articles 10(2) to (9) and Articles 11 to 13 on the investment limited partnership shall apply *mutatis mutandis* to the investment partnership of limited partners.

3) For self-managed investment partnerships of limited partners, a limited partner must be appointed in the partnership agreement to manage investments. This investment manager shall be entered in the Commercial Register and pay a limited partnership contribution corresponding to at least 50,000 Swiss francs or the equivalent in another currency. The limited partners who are not appointed to manage are excluded from representing the investment partnership of limited partners and are not subject to any fiduciary duty. With the exception of limitation of liability to the limited liability amount, the limited partner appointed as manager of the investment partnership of limited partners is subject to the same rules as the general partner of the investment limited partnership.

C. Segments

Article 15

Principle

1) An investment undertaking may be divided into several economically independent segments. The Government shall provide further details by ordinance.

2) Claims of investors and creditors against a segment or that arise during the formation, existence, or liquidation of a segment shall be limited to the assets of that segment.

3) On application of the management company, segments may be entered in the Commercial Register by the Office of Justice.

D. Status as securities

Article 16

Principle

Units of an investment firm are transferable securities, provided that the units are structured in a standardised format, tradable, and transferable under the terms of the prospectus of the investment undertaking.

E. Business activities

Article 17

Taking up of business

1) The taking up of business by an investment undertaking requires that:

a) a prospectus is made available with the minimum content set out in Article 19(1), signed by a management company and depositary;

b) the management company presents an attestation by the auditor of to the Financial Market Authority (FMA) that:

   1. the auditor carries out the audit for the investment undertaking concerned in accordance with Article 51;

   2. the prospectus fulfils the requirements of this Act and the associated ordinance.

2) An investment undertaking may take up business only once the FMA has certified to the management company that it has received the attestation of the auditor referred to in paragraph 1(b).

3) Payment under subscription of the investment undertaking shall be notified to the FMA without delay, including an attestation by the depositary. The depositary attests that it has a subscription certificate for every investor, according to which:

a) in the case of investment undertakings for single investors, all units are subscribed to only by a single investor defined by ordinance for this category;

b) in the case of investment undertakings for families, all units are subscribed to only by investors defined by ordinance for this category;

c) in the case of investment undertakings for a community of interests, all units are subscribed to by investors defined by ordinance for this category;

d) in the case of investment undertakings for a corporate group, all units are subscribed to by investors defined by ordinance for this category.

4) At the latest six months after payment under subscription in accordance with paragraph 3, the following shall be submitted to the FMA:

a) by the management company, the prospectus of the investment undertaking;

b) by the auditor, the attestation that:

1. accounts are being kept properly;
2. the equivalent value of the newly issued units has accrued to the assets of the investment undertaking;
3. the valuation of the assets, the calculation of the issue and redemption price, and the issue and redemption of units comply with the provisions of this Act and the associated ordinance as well as with the prospectus;
4. the asset components forming the assets are fully intact;
5. the investment rules are complied with; and
6. the information flow with the depositary and any mandated persons functions smoothly.

5) Changes to the prospectus shall enter into effect as soon as:

a) the auditor attests that the change made complies with the provisions of this Act and the associated ordinance; and

b) the FMA certifies to the management company that it has received the auditor's attestation.

6) Until the prospectus for the investment undertaking is submitted for the first time and until receipt of the auditor's attestation in accordance with paragraph 4, the FMA's supervision shall extend solely to the responsibilities set out in this Article, without prejudice to the ordering of measures in accordance with Article 61(4).

7) The FMA shall not carry out a verification of the substantive correctness of information in the prospectuses.

8) Article 38 shall apply *mutatis mutandis* to revocation of the certification.

Article 18

Organisation

1) An investment undertaking requires a management company and a depositary.

2) The management company and the depositary must be legally separate, and the persons in charge of each must be independent of instructions from the other.

3) If an investment undertaking is divided into segments in accordance with Article 15, the same management company, but not the same auditor or the same depositary, must be responsible for all segments.

4) For the investment undertaking in question, the management company shall use generally recognised control mechanisms that correspond to the intended investment policy.

5) The Government may provide further details by ordinance.

Article 19

Prospectus

1) For each investment undertaking, a prospectus shall be prepared that describes the investment undertaking and the circle of qualified investors; the prospectus must also contain a clearly visible indication that it refers to an investment undertaking under Article 2.

2) Changes to the prospectus shall enter into effect as soon as:

a) the auditor attests that the change made complies with the provisions of this Act and the associated ordinance; and

b) the FMA certifies to the management company that it has received the auditor's attestation and the prospectus signed by the management company and the depositary.

3) All formal and material changes shall be considered changes to the prospectus, in particular also:

a) restructuring measures such as mergers or divisions;

b) changes to the legal form of the investment undertaking; or

c) transfers of assets from investment undertakings to other investment undertakings.

4) The Government shall provide further details by ordinance, in particular on the minimum content of the prospectus and the changes referred to in paragraph 3.

Article 20

Periodic reports

1) At the latest six months after the end of the business year, the investment undertaking shall submit an annual report to the FMA. On the substantiated request of the investment undertaking, the FMA may grant an appropriate extension of the deadline, provided that the request is submitted at the latest one month before expiry of the deadline.

2) The annual report must contain all the information so that the investors can adequately assess the development and results of the investment undertaking.

3) The annual report shall be accompanied by a summary report of the auditor on the most important information contained in the annual report.

4) By ordinance, the Government shall set out the content and structure of the annual report referred to in paragraph 2 and of the summary report referred to in paragraph 3.

Article 21

Designation of the investment undertaking

1) A designation suggesting activities as an investment undertaking may be used by undertakings only if their business activities are authorised under this Act.

2) The designation of an investment undertaking may not give rise to confusion or misrepresentation.

III. Management company

A. Licence

Article 22

Licensing requirement

1) A management company requires a licence issued by the FMA to pursue its business.

2) Unless specified otherwise, the provisions of this Chapter shall apply *mutatis mutandis* to self-managed investment undertakings.

3) Business may be taken up as soon as the licence referred to in paragraph 1 has been granted. The licence may be granted subject to stipulations.

Article 23

Licensing conditions and procedures

1) The licence shall be granted to the management company if:

a) the organisation of the management company complies with the provisions of this Act;

b) the management company is constituted in the legal form of a public limited company, an establishment under Liechtenstein law, or a European company (SE);

c) capital resources are adequate; and

d) sound and proper business operation is guaranteed.

2) The licensing conditions under paragraph 1 must be met on a permanent basis.

3) If the management company is part of a foreign group operating in the financial sector, the licence shall, in addition to the conditions set out above, be granted only if:

a) the group is subject to consolidated supervision comparable to Liechtenstein supervision; and

b) the supervisory authority of the home State has been consulted.

4) The FMA shall inform the applicant within ten working days of receipt of the application whether the application materials are formally complete; if this is the case, the FMA shall issue a confirmation.

5) The decision on the application for a licence shall be made at the latest three months after the confirmation under paragraph 4 has been issued.

6) If the deadline referred to in paragraph 5 cannot be met due to special circumstances, especially in the case of complex fundamental issues and questions relating to organisational structure or the ownership situation as well as in other cases especially worthy of consideration, the FMA shall inform the applicant without delay after it has gained knowledge of that fact, but at the latest before the deadline referred to in paragraph 5. In that case, the FMA shall decide on the grant of the licence at the latest six months after receiving the application materials.

7) If additional information or documents are necessary to evaluate the application, the FMA may at any time before the deadlines set out in paragraphs 5 and 6 request the applicant to submit them. The time periods shall be suspended from the time the request is made until the time the documents are received at the FMA.

8) The Government shall provide further details by ordinance regarding the application materials.

B. Obligations

Article 24

Capital requirement

1) The capital must be at least:

a) for self-managed investment undertakings: 300,000 Swiss francs or the equivalent in another currency;

b) for management companies: 125,000 Swiss francs or the equivalent in another currency.

2) If the value of the portfolios managed by the management company exceeds 250 million Swiss francs or the equivalent in another currency, the capital must additionally constitute 0.02% of the amount by which the value of the portfolios managed exceeds 250 million Swiss francs or the equivalent in another currency; the capital shall be a maximum of 10 million Swiss francs or the equivalent in another

currency. Portfolios managed by the management company are understood as any investment undertakings it manages, including portfolios whose management it has outsourced to third parties, but not portfolios that it is managing itself on behalf of third parties.

3) Notwithstanding paragraph 2, the capital must be equivalent to at least a quarter of the fixed general costs of the previous year; for start-ups the fixed general costs of the management company specified in the business plan are used as a basis. The FMA may adjust the capital requirement in the event of a material change in the business activity compared with the previous year.

4) The additional capital required under paragraph 3 may be evidenced up to 50% by a guarantee for the same amount issued by a credit institution or an insurance undertaking. The guarantor must have its registered office in an EEA Member State, in Switzerland, or in a third country with equivalent supervisory provisions and be authorised to operate a business in Liechtenstein accordingly.

Article 25

Qualifying holdings

1) Any intended direct or indirect acquisition, any intended direct or indirect increase, or any intended sale of a qualifying holding in a management company is to be reported to the FMA in writing by the interested purchaser, if through the acquisition, the increase, or the sale, the share in the voting rights or the capital reaches, exceeds, or falls below 20%, 30% or 50% or the management company would become the subsidiary of a purchaser or would no longer be a subsidiary of the seller. Articles 25, 26, 27, and 31 of the Disclosure Act shall apply to the determination of the voting rights.

2) After a notification in accordance with paragraph 1, the FMA shall consult the authorities who are responsible for the authorisation of the purchaser or the undertaking whose parent undertaking or controlling person intends to make the acquisition or increase, if the interested purchaser is one of the following natural or legal persons:

a) a UCITS management company, an asset management company, an investment firm, a bank, an insurance undertaking, or an AIFM authorised in another State;

b) a parent undertaking of an undertaking referred to in subparagraph (a); or

c) a natural or legal person that controls an undertaking referred to in subparagraph (a).

3) If the management company becomes aware of an acquisition or a sale of holdings in its capital such as referred to in paragraph 1, it shall inform the FMA. The management company shall also inform the FMA at least once a year of the names of the unit-holders and shareholders who hold qualifying holdings, as well as the relevant holding amounts.

4) If a holding is acquired in spite of objection from the FMA, the voting rights of the purchaser may not be exercised until amendment or revocation of the objection by recourse to appeal or withdrawal of the objection by the FMA; any voting that takes place notwithstanding shall be invalid.

5) In the assessment of the acquisition or the increase of a holding referred to in paragraph 2, the FMA shall work together with the competent foreign authorities. The collaboration shall consist in particular in the exchange of all information relevant to the assessment of the acquisition or the increase of a holding.

6) The Government shall provide further details regarding the procedure and the criteria for assessment of the acquisition, increase, or sale of qualifying holdings by ordinance. It may set rules for self-managed investment undertakings that deviate from paragraphs 1 and 3.

Article 26

Incompatibility, close links

1) The persons entrusted with administration and management of an investment undertaking may neither belong to the Government nor, subject to Article 7(5) of the Financial Market Authority Act, the FMA.

2) If close links exist between the management company and other natural or legal persons, such links may not interfere with proper supervision of the investment undertaking.

3) Furthermore, proper supervision of the investment undertaking may not be interfered with by:

a) legal and administrative provisions of a third State to which natural or legal persons are subject who have close links with the management company;

b) difficulties arising in application of the provisions within the scope of subparagraph (a).

4) The management company shall submit the necessary information and documents to the FMA in order to ensure permanent monitoring of compliance with the provisions of this article.

5) The Government may provide further details by ordinance concerning the information and documents and their use.

Article 27

Obligation of external audit

1) Each year, the management company must submit its conduct of business and the investment undertakings it manages to an audit by an independent auditor recognised by the FMA.

2) The management company must provide the auditor with all information necessary for a proper audit.

3) The management company shall in particular have the following obligations toward the auditor:

a) to make available the documents necessary to ascertain and evaluate assets and liabilities;

b) to grant access to the books, booking vouchers, business correspondence, and minutes of the meetings of the board of directors and the general management.

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Article 28

Reporting obligations

1) The management company shall without delay inform the FMA of the following, prior to publication in the publication medium, including the necessary documents:

a) any change to the composition of the board of directors and general management;

b) any change to the auditor;

c) any change to the ownership of voting capital, especially qualifying holdings.

2) The Government shall provide further details by ordinance, in particular regarding changes to ownership as referred to in paragraph 1(c).

Article 29

Fiduciary duty and code of conduct

1) The management company and any mandated persons shall safeguard the interests of the investors exclusively.

2) In connection with the purchase and sale of property and rights for the investment undertaking, the management company and any mandated persons shall ensure that retrocessions in particular directly or indirectly benefit the investment undertaking. They shall also ensure that they do not accept unwarranted pecuniary advantages of any kind for themselves or third parties, with the exception of any payments provided for in the prospectus.

3) The management company, any mandated persons, and the persons acting on their behalf or close to them may purchase investments from the investment undertaking for their own account only at market price and may sell investments from their own portfolio to the investment undertaking only at market price.

4) The management company and any mandated persons shall perform their activities in accordance with the code of conduct issued by the FMA. This code of conduct shall serve as an interpretation aid and may be consulted to interpret rights and duties.

Article 30

Organisation

1) The governing bodies of a management company shall be the general meeting, the board of directors, and the general management.

2) The board of directors must be composed of at least three members.

3) The general management must in principle be composed of at least two members. At least one member of the general management must in fact be working at the company in a leading capacity and have the necessary qualifications.

4) The organisation, especially the distribution of powers between the board of directors and the general management, shall be clearly described in organisational and business regulations. The personal composition of the board of directors and general management may not interfere with proper fulfilment of the overall direction and supervisory role of the board of directors. In any case, at least two persons who each

have the qualifications set out in Article 31(1) shall determine the business policy of the management company.

Article 31

Guarantee of sound and proper business operation

1) The persons proposed for the board of directors and the business management must collectively, on the basis of their education or career so far, have sufficient professional qualifications for the intended responsibilities. In the performance of their activities, they shall act in a right and proper manner in the best interest of the investment undertaking, market integrity, and investors.

2) When assessing the requirements, the FMA shall *inter alia* consider the investment policy of the investment undertaking.

3) The proposed persons must also, in light of their other obligations, their place of residence, and the infrastructure and organisation of the undertaking, be able to perform their responsibilities for the investment undertaking without reproach.

4) When assessing the proposed persons, the FMA may consult their curriculum vitae, educational and work certificates and reports, as well as references.

5) For the purpose of ensuring proper business operation, the FMA may order joint signing rules requiring two signatures.

Article 32

Good reputation

1) The persons proposed for the board of directors and the general management must have a good reputation as business people. They must strive to avoid conflicts of interest and, to the extent they cannot be avoided, ensure that the investment undertakings they manage are treated in a right and proper manner.

2) The Government may provide further details by ordinance, in particular the criteria for assessing good reputation.

Article 33

Responsibilities

1) The management company shall perform its activities in accordance with the provisions set out in the prospectus.

2) The activities of the management company shall consist solely in managing investment undertakings and related responsibilities.

3) For the purposes of paragraph 2, related responsibilities shall in particular include:

a) investment management;

b) administrative activities:

1. accounting services that are required by law and within the framework of investment management;
2. client enquiries;
3. valuation and pricing (including tax returns);
4. monitoring of regulatory compliance;
5. distribution of earnings;
6. issue and redemption of units;
7. contract settlements (including dispatch of certificates);
8. keeping of records.

4) The Government may provide further details by ordinance regarding the responsibilities of the administration.

Article 34

Delegation

1) The management company may delegate one or more of its responsibilities to third parties for the purpose of efficient business management, to the extent the interests of investors do not appear threatened.

2) The management company shall not be released from liability through its delegation to third parties. It shall ensure the necessary instruction as well as adequate monitoring and control of the mandated third parties.

3) The management company shall ensure that:

a) the mandated person has the proper qualification, taking into account the type of delegated responsibilities, and is able to perform those responsibilities without reproach; and

b) there are no conflicts of interest that might arise from a delegation of several responsibilities.

4) The management company may at any time instruct the mandated person or revoke the delegation with immediate effect.

5) The Government may provide further details by ordinance.

Article 35

Internal control mechanisms

Management companies shall ensure that the investment undertakings permanently comply with the following principles:

a) sound administrative and accounting procedures;

b) sound control and safeguard arrangements for electronic data processing;

c) adequate internal control mechanisms including, in particular, rules for personal transactions by its employees;

d) adequate internal control mechanisms ensuring that each transaction involving the investment undertaking may be reconstructed according to its origin, its counterparty, its nature, and the time and place at which it was effected;

e) adequate internal control mechanisms ensuring that the assets are managed in accordance with the prospectus;

f) suitable arrangements for the units in investment undertakings belonging to investors in order to protect their ownership rights, in particular in the event of insolvency, and to prevent their units from being used for the account of the management company without express consent;

g) adequate measures to minimise the risk of conflicts of interest with investors or between different investors that harm the interests of other investors; and

h) written definition and compliance with necessary principles such as those governing the use of derivative financial instruments and risk management.

C. Confidentiality

Article 36

Principle

1) The members of the board of directors and of the general management of management companies and their employees, as well as other persons acting for such companies, have a duty of confidentiality in respect of facts entrusted, or made accessible to them, on the basis of the business relationships with customers. The duty of confidentiality has no restriction in time.

2) If, in the course of their official duties, representatives of public authorities become aware of facts which are subject to the confidentiality provided for in paragraph 1, they shall maintain this secret as an official secret.

3) This Article is subject to the statutory provisions in respect of the obligation to provide evidence or information to the criminal courts, the Financial Intelligence Unit (FIU), and the FMA, and to the provisions concerning cooperation with the FIU or the FMA.

D. Lapse and withdrawal

Article 37

Lapse of licence

1) A licence shall lapse if:

a) it is relinquished in writing;

b) bankruptcy proceedings are opened in respect of the management company with legal effect; or

c) the investment company, the investment limited partnership, or the investment partnership of limited partners is deleted from the Commercial Register.

2) Lapse of the licence is to be published in the publication media specified by the Government at the expense of the management company.

Article 38

Withdrawal of licence

1) The FMA may withdraw licences if:

a) business has not been taken up within a period of twelve months;

b) business has ceased for at least six months;

c) the conditions under which the licence was granted are no longer being met and a lawful state of affairs is not expected to be restored within a reasonable time limit;

d) the management company systematically breaches the legal obligations in a way that is serious and fails to comply with the FMA's requests to restore a lawful state of affairs;

e) the management company obtained the licence by making false statements or by any other unlawful means;

f) the management company's capital no longer satisfies the requirements under Article 24 and a lawful state of affairs is not expected to be restored within a reasonable period of time;

g) continuation of the management company's business would be likely to jeopardise confidence in the Liechtenstein financial centre, the stability of the financial system, or the protection of investors.

2) The management company shall be informed of the withdrawal of the licence by way of a decree, stating the reasons in writing, and after the decree becomes final, the withdrawal of the licence shall be published in the publication media specified by the Government at the expense of the management company.

3) The provisions concerning immediate measures as referred to in Article 62 are unaffected.

E. Liquidation, administrative agent, bankruptcy

Article 39

Dissolution and liquidation after loss of licence

1) Lapse or withdrawal of the licence of the management company shall result in the dissolution and liquidation of the management company, unless it holds another authorisation in accordance with the AIFMG or UCITSG.

2) The FMA shall inform the Office of Justice and the depositary of the final loss of licence in accordance with paragraph 1. The Office of Justice shall enter the liquidation in the Commercial Register and shall appoint a liquidator proposed by the FMA in accordance with Article 133 PGR. The provision of Article 133(6) PGR shall apply only if the Government consents to coverage of costs.

3) The costs of dissolution and liquidation shall be borne by the management company, for investment companies with separation of assets as referred to in Article 9(7) at the expense of their own assets.

4) The dissolution and liquidation of the management company or the individual assets of the investment company shall proceed in accordance with Articles 133 et seq. PGR or another liquidation procedure specified with the consent of the Office of Justice and the FMA, with the proviso that the FMA undertakes the supervision of the liquidation.

5) Article 41 shall apply to the managed assets of the investment undertaking.

6) The FMA may require the liquidator to draw up a liquidation report.

Article 40

Appointment of an administrative agent

1) The FMA shall appoint an administrative agent for a management company that is unable to carry on its business. The investors are to be informed of the appointment of an administrative agent by the administrative agent.

2) The administrative agent:

a) conducts the business of the management company, but does not undertake the management of new investment undertakings;

b) decides on the issue and redemption of units and if applicable arranges the suspension of unit trading arranged by the management company;

c) applies to the FMA within a year for permission to continue the business operation, the establishment of a new management company, or its dissolution.

3) The FMA shall determine the remuneration paid to the administrative agent. The administrative agent's remuneration and expenses are charged to the management company.

4) The Government may provide more specific details concerning the administrative agent by ordinance, in particular the criteria for remuneration and personal requirements placed on the administrative agent.

Article 41

Managed assets in the event of dissolution and bankruptcy of the management company and the depositary

1) In the event of dissolution or bankruptcy of the management company or, if a separation of assets has taken place under Article 13(7), of the investment company, the assets managed for the purposes of collective investment on behalf of the investors do not fall within their bankruptcy estate and are not liquidated with their own assets. Each investment undertaking or segment constitutes a separate estate for the benefit of its investors. Each separate estate is to be transferred to another management company with the consent of the FMA or, if no management company has declared itself willing to take over the separate estate within three months from the opening of bankruptcy proceedings, to be liquidated by means of a separate settlement in favour of the investors of the investment undertaking or segment in question. The FMA may extend the time limit up to a period of twelve months, if this appears necessary for the protection of investors. Unless the FMA specifies otherwise for the protection of investors or the public interest, the liquidation shall be effected by the depositary as liquidator.

2) In the event of the bankruptcy of the depositary, the managed assets of each investment undertaking or segment shall be transferred with the consent of the FMA to another depositary or liquidated by

means of separate settlement for the benefit of the investors of the investment undertaking or segment in question.

3) The cost of liquidation of the investment undertaking or segment in the cases referred to in paragraphs 1 and 2 shall be charged to the investors of the respective separate estate.

4) The Government may provide further details by ordinance.

IV. Depositary

Article 42

Appointment of the depositary

1) The appointment of the depositary shall be arranged by the management company by way of a written depositary contract. The Government may provide further details about the content of the written depositary contract by ordinance.

2) Only the following may be appointed as depositary:

a) a bank or investment firm authorised to provide safe custody services under the Banking Act;

b) a Liechtenstein branch of a bank or investment firm having its registered office in the EEA or Switzerland, established in accordance with the Banking Act and authorised for safe custody;

c) a professional trustee or trust company authorised under the Professional Trustees Act, insofar as the investment undertakings do not invest in financial instruments in principle.

3) On request, the depositary shall provide the FMA with all information that the depositary has received in the performance of its responsibilities and that the FMA requires for the supervision of investment undertakings and their management companies.

4) The Government may provide further details about the depositary referred to in paragraph 2(c) by ordinance.

Article 43

Responsibilities of the depositary

1) The depositary shall hold the assets capable of being registered and other financial instruments of the investment undertaking transferred to it in safe custody as part of a normal banking custody transaction. In the case of other assets, it shall examine and record the ownership of the investment undertaking or, where applicable, of the management company acting on behalf of the investment undertaking on the basis of documents or information provided by the investment undertaking or the management company. The depositary shall keep the register of assets up to date.

2) The depositary shall ensure that:

a) the calculation of the net asset value and the issue and redemption price of units shall be in accordance with the prospectuses;

b) the investment decisions comply with this Act and the prospectuses;

c) the profit of the investment undertaking is used in accordance with the prospectuses.

3) The depositary shall also, in particular, arrange for the issue and redemption of units as well as payment transactions and keep a unit register.

4) The depositary must comply with instructions from the management company. If an instruction is in violation of statutory provisions or the prospectus, the depositary must notify the management company in writing and, unless the instruction is revoked, inform the auditor within a useful period of time.

5) The depositary shall act honestly, fairly, professionally, independently, and in the interest of the investment undertaking and its investors. In the performance of its duties, it shall ensure that no conflicts of interest are created between the investment undertaking, its investors, the management company, and the depositary. The fiduciary duties and code of conduct referred to in Article 29(2) to (4) shall apply *mutatis mutandis* to the depositary.

6) The depositary may delegate one or more of its responsibilities to specialised third parties (e.g. the safekeeping of assets in Liechtenstein or abroad). The depositary is not released from its liability by delegation to third parties. It shall fulfil its obligations in selecting and instructing the mandated third party and shall ensure appropriate monitoring and control. The provisions of banking legislation on the outsourcing of business areas shall apply *mutatis mutandis*.

7) By ordinance, the Government may provide further details regarding the requirements for maintaining the unit register referred to in paragraph 3.

V. Investment policy

Article 44

Principle

1) The investment policy of the prospectus referred to in Article 19 must define the investment objective and investment strategy and set out the permitted investments.

2) If the investment undertaking replicates an index, the index shall be named and the degree of replication quantified.

3) If the investment undertaking takes out loans, this must be stated in the prospectus and the maximum amount must be quantified.

4) The prospectus must contain a risk warning describing the risks in accordance with the risk potential of the investment undertaking.

5) If the right of investors to return units is excluded in closed-ended investment undertakings, this must be indicated in the risk warning.

6) The Government may provide further details by ordinance.

Article 45

Issue and redemption of units

Investment undertakings may impose reasonable restrictions on the issue and/or redemption of units, depending on the type of investments. These restrictions must be clearly stated in the prospectus.

VI. Investor rights

Article 46

Acquisition and return of units

1) With the investor's payment, the investor acquires receivables from the investment undertaking for participation in the assets and income of the investment undertaking. In the case of segmented investment undertakings, receivables relate to the respective segment.

2) An investor may request that the investor's units be paid out, unless the prospectus provides for an exception.

3) In the case of segmented investment undertakings, income and costs must be calculated for the investor separately for each segment.

Article 47

Right to information

1) The management company shall, on request, provide the investor with information on the bases for calculating the net asset value per unit. If the investor has a legitimate interest in more detailed information on individual business transactions, the investor shall have the right to obtain such information at all times.

2) Investors may request information on risk management from the management company. This includes, in particular, information on investment limits and internal control mechanisms.

Article 48

Right to performance

1) If the management company or the depositary fails to perform its duties or obligations or fails to do so in a proper manner, the investor may sue for performance, even if the judgement may affect all investors.

2) If the management company or the depositary and any natural or legal persons acting on their behalf or closely linked to them have unlawfully withdrawn assets from the investment undertaking or withheld assets or have otherwise caused damage to the investment undertaking, the legal action against the management company and/or the depositary shall be for performance for the benefit of the investment undertaking.

Article 49

Remuneration for management company and depositary

1) The management company and the depositary shall be entitled to the remuneration provided for in the prospectus, to release from the liabilities they have entered into in performance of the prospectus, and to reimbursement of the expenses incurred in meeting such liabilities.

2) These claims shall be met from the resources of the investment undertaking. Personal liability of the investors is excluded.

VII. Auditor

Article 50

Appointment of the auditor

1) Investment undertakings, management companies, and depositaries must appoint an auditor.

2) The auditor must hold an authorisation under the Auditors and Auditing Companies Act. Article 61(5) and (6) shall apply *mutatis mutandis*.

3) Auditors shall devote themselves exclusively to their auditing function and business directly relating thereto. They may not engage in any asset management. The auditor must be independent of the investment undertaking subject to audit, the management company, and the depositary.

4) The auditors of the investment undertaking, the management company, and the depositary have the right mutually to exchange all information necessary for the audit with reference to the management company and all investment undertakings under its management.

Article 51

Duties of the auditor

1) Unless specified otherwise in this Act, the auditor shall audit in particular:

a) that the licensing conditions continue to be met;

b) that the provisions of this Act and the prospectuses are complied with in the performance of the business activity;

c) the annual reports of the investment undertaking, the management company, and the depositary.

2) Article 36 shall apply *mutatis mutandis* to the auditor's duty of confidentiality. In derogation of this, the auditors of the investment undertaking, the management company, and the depositary are entitled and obligated to cooperate.

3) The audit report with comments on supervisory law shall be transmitted no later than six months from the end of the business year simultaneously to:

a) the management company and/or the depositary;

b) the auditor of the management company and/or of the depositary; and

c) the FMA.

4) The duty referred to in paragraph 3 shall cease only with the legally binding loss of licence or upon completion of liquidation, if that time is later.

5) In the audit of the investment undertaking, the management company, and the depositary, the auditor shall apply the audit standards set out in Article 10a(1) of the Auditors and Auditing Companies Act.

6) The auditor shall be liable for all breaches of duty in accordance with the provisions of the PGR concerning the audit of accounts.

7) The Government may provide further details by ordinance, in particular:

a) the details of the audit report;

b) the time limit for the preparation and submission of the audit report to the FMA.

Article 52

Notification duties

1) Auditors shall without delay inform the FMA of all facts or decisions of which they have become aware in the performance of their duties and which may have the following effects:

a) a serious violation of the legal and administrative provisions and of the prospectuses that apply to the authorisation or performance of the business activities of an investment undertaking, a management company, a depositary, and other undertakings involved in their business activities;

b) the impairment of the activities of the investment undertaking or an undertaking involved in its business activity; or

c) withholding or failure to issue the audit opinion as part of the audit process of the annual report.

2) The reporting obligation referred to in paragraph 1 also applies to undertakings that maintain close links with the investment undertaking or the undertakings involved in its business activity, arising from a control relationship.

3) If the auditor informs the FMA of the facts or decisions referred to in paragraph 1 in good faith, it shall not be considered a violation of any contractual or statutory duty of confidentiality. The auditor shall be excluded from any liability for the disclosure.

4) The Government shall provide further details by ordinance.

VIII. Liability

Article 53

Principle

1) Persons who breach duties as a management company, depositary, valuation expert, liquidator, or administrative agent of an investment undertaking shall be liable to the investors for the damage resulting from

the breach of duty, unless they demonstrate that they are not culpable in any way.

2) The persons referred to in paragraph 1 shall also be liable for their auxiliary persons and for the persons they have mandated, unless they demonstrate that they have taken the appropriate care under the circumstances in selecting, instructing, and monitoring them.

3) Limitations of this liability shall be excluded.

4) Any personal liability of the investor shall be excluded.

Article 54

Joint and several liability, recourse

1) If multiple persons are liable for damages, each person shall be subject to joint and several liability to the extent that the damage is personally attributable to that person due to individual culpability and the circumstances.

2) Taking into account all the circumstances, the judge shall determine recourse to each of the persons involved.

Article 55

Statute of limitations

Compensation claims shall expire five years after the damage has occurred and at the latest one year after a unit has been repaid.

Article 56

Jurisdiction

The Court of Justice shall have jurisdiction for claims of investors arising from a legal relationship with an investment undertaking or a management company.

IX. Supervision

A. General provisions

Article 57

Principle

Responsibility for the implementation of this Act is conferred on:

a) the Financial Market Authority (FMA);

b) the Court of Justice;

c) the mediation body.

Article 58

Data processing and disclosure

1) The competent domestic authorities and bodies are allowed to process all necessary personal data, including personality profiles and particularly sensitive personal data concerning administrative or criminal prosecutions and penalties, that are necessary for the performance of their supervisory functions in accordance with this Act.

2) The competent domestic authorities and bodies may disclose all necessary personal data, including personality profiles and particularly sensitive personal data concerning administrative or criminal prosecutions and penalties, to one another, as well as to the competent foreign authorities in other EEA Member States or – subject to the requirements of Article 8 of the Data Protection Act – third countries, provided that this is necessary for the performance of their supervisory functions.

Article 59

Official secrecy

1) All persons acting for the FMA and the authorities it consults or that have acted for them, as well as the auditors and experts acting on their behalf, are subject to official secrecy.

2) Confidential information acquired by such persons in their professional capacity may not be disclosed to any person or authority, unless it is in a summarised or general form in such a way that the

investment undertaking, the management company, and the depositary cannot be identified. This provision is subject to provisions of criminal law and other special legislative provisions.

3) If bankruptcy proceedings have been opened in respect of an investment undertaking or an undertaking involved in its business activity or if it is being wound up by order of the courts, confidential information that does not concern third parties involved in rescue attempts may be divulged in the course of civil or commercial proceedings.

4) Official secrecy shall not prevent the exchange of information between the FMA and the competent foreign authorities in accordance with this Act. The information exchanged shall be subject to official secrecy. When communicating information to the competent foreign authorities, the FMA shall point out that the information communicated may be published and disclosed only with the express permission of the FMA. Such permission may be granted only if the exchange of information can be reconciled with the public interest and the protection of investors.

5) The Government or the FMA, acting on its authority, may conclude cooperation agreements providing for exchange of information with the competent foreign authorities as referred to in paragraph 4 and Article 66(1) only for the purpose of performance of the supervisory functions of these authorities, and then only if the confidentiality of the information disclosed is subject to guarantees equivalent to those referred to in this Article. If the information originates in another State, it may be published and disclosed only with the express consent of the disclosing authorities and, if applicable, only for purposes for which these authorities have given their consent.

6) If the FMA receives confidential information as referred to in paragraphs 1 to 4, it may use such information only for the following purposes:

a) for verifying whether the certification conditions for the investment undertaking or the licensing conditions of the management company have been met and to facilitate the monitoring of the conditions of the conduct of business, administrative and accounting procedures, and internal control mechanisms;

b) for imposing penalties;

c) for conducting an appeal against a decision of the competent authorities in administrative proceedings ;

d) in the course of proceedings referred to in Article 66.

7) The Government may provide exemptions for the information received pursuant to paragraph 5 by ordinance.

Article 60

Supervisory charges and fees

The supervisory charges and fees are governed by the Financial Market Authority Act.

B. FMA

Article 61

Responsibilities and powers

1) The FMA shall monitor implementation of this Act and of the associated ordinance. It shall take the necessary measures directly, in collaboration with other supervisory bodies, or report matters to the Office of the Public Prosecutor.

2) The FMA shall perform the following duties in particular:

a) the granting and revocation of certifications;

b) the granting and withdrawal of licences;

c) review of the auditors' audit reports;

d) the appointment of administrative agents and determination of their remuneration;

e) the prosecution of contraventions under Article 70.

3) If the FMA becomes aware of violations of this Act, the associated ordinance, or prospectus, or of other shortcomings, it shall take the necessary measures to restore a lawful state of affairs and to remedy the shortcomings.

4) The FMA is empowered in particular:

a) to demand all information and documents required for the implementation of this Act from all parties subject to this Act and its supervision, any person connected with the activities of the management company or the investment undertaking, and such persons who are under suspicion of conducting activities in violation of the licensing requirement of this Act;

b) to issue decisions and decrees; it may publish these after prior warning, if the management company continues to defy such decisions and decrees and/or refuses to restore a lawful state of affairs;

c) to impose a temporary ban on practicing the professional activity ;

d) to request the Office of the Public Prosecutor to apply for measures to secure the forfeiture of assets in accordance with the Code of Criminal Procedure;

e) to conduct announced or unannounced inspections or on-the-spot investigations or arrange to have them conducted by qualified auditors or experts;

f) to request the suspension of the issue, repurchase, or redemption of units in the interest of the unit holders or the public;

g) to demand records of telephone conversations and data traffic already in existence;

h) to prohibit practices that are in violation of this Act or the associated ordinance.

5) By ordinance, the Government may stipulate that only qualified auditors are authorised to conduct the inspections and reports required under this Act and may determine the procedure to establish the qualifications of the auditors.

6) The FMA may require an attestation by an auditor qualified in accordance with paragraph 5 for all or individual statements, data, or information in respect of facts enclosed with a licensing application or collected for supervisory purposes. The Government may restrict the FMA's powers to specific facts by ordinance.

7) If the FMA publishes forms for the completion of applications, notices, reports, and notifications required under this Act, the applicants and those obliged to submit notices, reports, and notifications must use them. Otherwise the FMA shall have the right to deem that the application has not been submitted and the reporting and notification obligations have not been met.

8) In the supervision of auditors, the FMA may in particular conduct quality controls and provide support for the auditors in their auditing duties in respect of the investment undertakings and their management companies. The right to conduct on-the-spot inspections pursuant to Article 26(4) of the Financial Market Authority Act is not affected.

Article 62

Emergency measures

1) If circumstances exist that appear to jeopardise the protection of investors, the reputation of the Liechtenstein financial centre, or the stability of the financial system, the FMA may, in particular, without warning or notice:

a) collect information from the management company, the auditor, the depositary, from all delegates as defined in Article 34 and 43(6), and from all other parties involved; in this connection the FMA may also operate on site;

b) appoint an observer to collect information for the FMA and to whom all business transactions are to be reported;

c) appoint a commissioner without whose consent the management company or its general managers are not allowed to make any statements of intent for the management company or the investment undertaking;

d) with reference to some or all investment undertakings:

   1. require the suspension of unit issue and redemption;

   2. revoke certification;

e) appoint a commissioner without whose involvement the management company or the management company's general managers may not make any statements of intent for the management company or the investment undertaking;

f) order a ban on disposal of the assets of the management company;

g) appoint an administrative agent with the responsibilities set out in Article 40 instead of the existing general managers;

h) decree the withdrawal of the management company's licence;

i) decree the dissolution of the management company.

2) The measures referred to in paragraph 1(d) to (i) shall, in derogation of Article 963(5) PGR, be noted in the Commercial Register with respect to the management company and the investment undertakings concerned, with a reference to the pending finality of the decree, and may, insofar as this is required for the protection of the investors and the public interest, be communicated to the investors and published on the FMA website.

3) The FMA may request an advance on costs from the management company for the measures referred to in paragraphs 1 and 2. The obligation to pay an advance on costs may be linked to the measure. The

advance shall be refunded if no violations of the law can be established. It may be retained if costs of at least the same amount can be expected due to further measures in accordance with paragraphs 1 and 2.

4) The FMA shall take account of the proportionality of means when selecting the measures referred to in paragraph 1.

5) The Government shall provide further details by ordinance, in particular regarding:

a) the responsibilities of the observer referred to in paragraph 1(b);

b) the cooperation of the existing general managers with the commissioner referred to in paragraph 1(c) and (e);

c) the type of publication and communication to investors referred to in paragraph 2;

d) more specific requirements concerning the selection of the observers, commissioners, and administrative agents.

Article 63

Binding opinion

1) Provided that the material facts are correctly and fully disclosed in the request, the FMA may respond on request to questions of law and fact in advance by issuing a binding opinion. Provided that it is not counter to the public interest, the FMA shall, in the event of a subsequent interpretation of the facts and exercise of discretion, be bound by binding opinions to the extent they are in writing. Verbal statements do not establish any protection of legitimate expectations.

2) The FMA may charge separate fees for the measures and statements referred to in this Article.

3) The Government may provide further details by ordinance.

Article 64

Liability

The liability of the FMA under civil law is governed by Article 21 of the Financial Market Authority Act.

C. Administrative assistance

Article 65

Principle

1) In the exercise of its supervisory function, the FMA shall work together with other domestic authorities and the competent foreign authorities.

2) In the context of its cooperation, the FMA is entitled and obligated to communicate without delay to the authorities referred to in paragraph 1 the information required for the exercise of responsibilities and powers.

Article 66

Exchange of information

1) The FMA shall exchange information necessary to fulfil the statutory responsibilities with other domestic authorities and the competent foreign authorities if these authorities:

a) are charged with the supervision of banks, credit institutions, investment firms, insurance undertakings, or other financial institutions or the supervision of financial markets;

b) are involved in the liquidation, bankruptcy, or similar proceedings in respect of an investment undertaking and undertakings involved in its business activity;

c) are charged with the supervision of persons responsible for inspection of the accounting of insurance undertakings, banks, credit institutions, investment firms, or other financial institutions.

2) The FMA may, subject to the conditions of Article 8 of the Data Protection Act and for the purpose of protecting the stability and integrity of the financial system, also exchange information with competent authorities other than those referred to in paragraph 1.

3) The disclosure of information communicated in the course of an exchange of information referred to in paragraphs 1 and 2 is permissible if:

a) the information is used only to perform the specific supervisory function;

b) official secrecy in accordance with Article 59 is maintained;

c) for information that has been communicated by the competent foreign authority, its consent to disclosure has been given. The FMA shall on the instruction of the competent domestic authorities referred to in paragraphs 1 and 2 inform the communicating authorities of the name and exact responsibility of the persons to whom the information in question is to be sent.

Article 67

Disclosure of information to clearing houses or similar institutions

1) The FMA shall exchange information that is covered by official secrecy as set out in Article 59 with a clearing house or a similar body recognised for the provision of clearing or settlement services in Liechtenstein, provided that this information is required in order to guarantee the proper functioning of these bodies, in the event of infringements – or also possible infringements – by market participants. The FMA may disclose information communicated in the course of exchange of information by competent foreign authorities only with the express consent of the communicating authorities.

2) The information communicated under paragraph 1 is subject to official secrecy (Article 59).

3) The Government may provide further details by ordinance.

X. Legal remedies, procedures, and extrajudicial dispute resolution

Article 68

Legal remedies and procedures

1) Decisions and decrees of the FMA may be appealed by way of a complaint to the FMA Complaints Commission within 14 days of service.

2) If no decision is taken in respect of a complete licence application for a management company or a self-managed investment undertaking within three months of receipt, or within six months after an extension of the time period, a complaint may be lodged with the FMA Complaints Commission.

3) Decisions and decrees of the FMA Complaints Commission may be appealed by way of a complaint to the Administrative Court within 14 days of service.

4) Unless specified otherwise in this Act, the provisions of the National Administration Act shall apply to the proceedings.

Article 69

Extrajudicial mediation body

1) The Government shall appoint a mediation body by ordinance for the resolution of disputes between investors, management companies, self-managed management companies, and depositaries.

2) The function of the mediation body is to mediate in disputes between the parties in an appropriate manner and thus bring about agreement between the parties.

3) If agreement cannot be reached between the parties they shall be referred to the ordinary courts for due process of law.

4) The Government shall provide further details by ordinance, in particular regarding the organisational structure, composition, and the procedure.

XI. Penal provisions

Articles 70

Misdemeanours and contraventions

1) The Court of Justice shall punish with a custodial sentence of up to one year or a monetary penalty of up to 360 daily penalty units for committing a misdemeanour anyone who:

a) pursues business as an investment undertaking without a certification;

b) pursues business as a management company without a licence;

c) as a member of a governing body or employee, as a person otherwise working for a management company or a depositary, or as an auditor, knowingly violates the duty of confidentiality or induces or seeks to induce such violation.

2) The Court of Justice shall punish with a custodial sentence of up to six months or a monetary penalty of up to 180 daily penalty units for committing a misdemeanour anyone who:

a) violates the provisions governing the capital requirement (Article 24);

b) violates the stipulations imposed by the FMA in connection with a licence;

c) contrary to the prohibition, uses designations suggesting activities as an investment undertaking or management company (Article 21(1));

d) fails to provide the FMA or the auditor with information, or provides false or misleading information;

e) fails to maintain the account books properly, or fails to retain the account books, documents, and receipts;

f) as an auditor, seriously breaches duties, especially by knowingly making incorrect statements in the audit report or withholding significant facts or failing to make a required request of the management company or failing to submit required reports and notifications (Articles 51 and 52);

g) makes false statements or withholds significant facts in the periodic reports (Article 20), in the prospectus (Article 19), or with respect to other information (Article 47).

3) The FMA shall punish with a fine of up to 200,000 Swiss francs for committing a contravention anyone who:

a) fails to prepare the periodic reports (Article 20) as required or does not submit them in a timely manner;

b) fails to arrange for a regular audit or an audit required by the FMA;

c) fails to meet the obligations toward the auditor;

d) fails to make the required notifications to the FMA or does not make them in a timely manner;

e) fails to comply with a request to restore a lawful state of affairs, a request to cooperate in an investigation procedure of the FMA, or any other decree by the FMA;

f) fails to comply with the reporting obligations in regard to qualifying holdings (Article 25(1) and 3);

g) fails to respect the code of conduct (Article 29);

h) fails to make and maintain effective organisational (Article 30) and administrative arrangements to prevent conflicts of interest (Article 32);

i) as an auditor, breaches the duties under this Act, especially those set out in Articles 50 to 52;

k) as a depositary, breaches the duties under this Act, especially those set out in Article 43.

4) When the offence is committed negligently, the maximum penalties shall be reduced by half. In the event of a repeat offence, damage exceeding 75,000 Swiss francs, or malice, the maximum penalties shall be doubled.

5) In the event of infringements of Article 21(2) or Article 9(9), the FMA shall punish the management company with an administrative fine of 10,000 Swiss francs. This administrative fine may be imposed on an ongoing basis until a lawful state of affairs is restored.

6) The General Part of the Criminal Code shall apply *mutatis mutandis*.

Article 71

Disgorgement of benefits

1) If a contravention is committed under Article 70(3) and a financial benefit is achieved, the FMA shall order the disgorgement of the financial benefit and oblige the beneficiary to pay a corresponding sum of money.

2) Paragraph 1 shall not apply if the financial advantage is offset by compensation or other payments. To the extent the beneficiary makes such payments only after the disgorgement of benefits, the amount paid shall be refunded up to the amount of payments for which there is supporting evidence. The amount of the financial benefit may be estimated.

3) The disgorgement of benefits shall become time-barred after a period of five years since the end of the infringement.

4) The procedure shall be governed by the provisions of the National Administration Act.

5) Forfeiture in the event of misdemeanours under Article 70(1) and (2) shall be governed by §§ 20 et seq. of the Criminal Code.

Article 72

Responsibility

Where violations are committed in the business operations of a legal person, a general partnership, an investment limited partnership, an investment partnership of limited partners, or a sole proprietorship in connection with an investment undertaking, then the penal provisions shall apply to the persons who acted or should have acted on its behalf; the legal person, partnership, or sole proprietorship shall, however, be jointly and severally liable for monetary penalties and fines.

XII. Transitional and final provisions

Article 73

Implementing ordinance

The Government shall issue the ordinance necessary to implement this Act.

Article 74

Repeal of existing law

The following enactments are hereby repealed:

a) Law of 19 May 2005 on Investment Undertakings for Other Values or Real Estate (Investment Undertakings Act; IUG), LGBl. 2005 No. 156;

b) Law of 25 November 2005 amending the Investment Undertakings Act, LGBl. 2006 No. 30;

c) Law of 13 December 2006 amending the Investment Undertakings Act, LGBl. 2007 No. 45;

d) Law of 23 May 2007 amending the Investment Undertakings Act, LGBl. 2007 No. 198;

e) Law of 20 September 2007 amending the Investment Undertakings Act, LGBl. 2007 No. 268;

f) Law of 23 October 2008 amending the Investment Undertakings Act, LGBl. 2008 No. 358;

g) Law of 21 November 2008 amending the Investment Undertakings Act, LGBl. 2008 No. 373;

h) Law of 27 May 2009 amending the Investment Undertakings Act, LGBl. 2009 No. 186;

i) Law of 27 May 2009 amending the Investment Undertakings Act, LGBl. 2009 No. 189;

k) Law of 25 November 2010 amending the Investment Undertakings Act, LGBl. 2011 No. 9;

l) Law of 28 June 2011 amending the Investment Undertakings Act, LGBl. 2011 No. 296;

m) Law of 7 November 2014 amending the Investment Undertakings Act, LGBl. 2014 No. 358.

Transitional provisions

Article 75[1]

a) existing investment undertakings

1) Investment undertakings existing at the time of entry into force of this Act under the Investment Undertakings Act for Other Values or Real Estate may continue their activities in accordance with the provisions of the law hitherto in force until 31 March 2018.

2) By 31 March 2018 at the latest, the management company shall have all investment undertakings that are neither authorised as an AIF under the AIFMG nor transformed into UCITS under the UCITSG certified at the FMA as investment undertakings in accordance with Article 17 of this Act. This Act shall apply to such investment undertakings from the date of certification. Any transfer to another management company under this Act or under the UCITSG or an AIFM under the AIFMG must also be effected by 31 March 2018.

3) Investment undertakings under the Investment Undertakings Act for Other Values or Real Estate which do not meet the requirements of paragraph 2 by 31 March 2018 shall be liquidated in accordance with the Investment Undertakings Act for Other Values or Real Estate.

1 Article 75 amended by LGBl. 2017 No. 205.

Article 76[1]

b) existing management companies

1) A licence for a management company under the Investment Undertakings Act for Other Values or Real Estate existing at the time of entry into force of this Act shall remain valid if the management company has applied to the FMA for certification in accordance with this Act for at least one investment undertaking by 31 March 2018 at the latest.

2) An existing management company under the Investment Undertakings Act for Other Values or Real Estate may submit an application to the FMA for authorisation as a management company pursuant to the UCITSG or as an AIFM pursuant to the AIFMG by 31 March 2018. Such an application shall suspend the time limit set out in paragraph 3 and Article 75(3).

3) If the management company does not manage certified investment undertakings under the Investment Undertakings Act for Other Values or Real Estate, the existing licence shall lapse, subject to paragraph 4, at the latest on expiry of the deadline set out in paragraph 1. In both cases, Article 75(3) shall apply *mutatis mutandis*.

4) In the cases referred to in paragraph 3, the FMA may exceptionally extend the period referred to in paragraph 1 by a maximum of six months upon a substantiated request from the management company, provided that the request for extension of the period is submitted to the FMA no later than one month before the end of the period.

Article 77

c) existing external audit offices

External audit offices licensed under the law hitherto in force may continue to perform their activities in accordance with the new law, provided that they have a licence as an auditor under the Auditors and Auditing Companies Act.

1 Article 76 amended by LGBl. 2017 No. 205.

Article 78

Entry into force

This Act shall enter into force at the same time as the decision of the EEA Joint Committee incorporating Directive 2011/61/EU.[1]

Representing the Reigning Prince:
signed *Alois*
Hereditary Prince

signed *Adrian Hasler*
Prime Minister

1 Entry into force: 1 October 2016 (LGBl. 2016 No. 305).