Translation of Liechtenstein Law

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Law
of 19 December 2012
concerning the Managers of Alternative Investment Funds (AIFMG)

I hereby grant My Consent to the following resolution adopted by the Liechtenstein Parliament:[1]

I. General provisions

A. Object, purpose, scope of validity and definition of terms

Art. 1

Object and purpose

1) This Act governs the taking up, pursuit and oversight of the business of managers of alternative investment funds ("alternative investment fund managers - AIFMs"), who manage and/or market alternative investment funds (AIFs).[2]

2) Its purpose shall be to protect investors and safeguard confidence in Liechtenstein as an investment fund centre and the stability of the financial system.

3) It shall also serve to transpose and implement the following EEA acts:[3]

1 Report and application, together with comments from the Government No. 54/2012 and 132/2012.
2 Art. 1 (1) amended by LGBl. 2020 no. 8.
3 Art. 1 (3) amended by LGBl. 2021 no. 230.

a) Directive 2011/61/EU on Alternative Investment Fund Managers[4];

b) Regulation (EU) No 345/2013 on European venture capital funds[5];

c) Regulation (EU) No 346/2013 on European social entrepreneurship funds[6];

d) Regulation (EU) 2015/760 on European long-term investment funds[7];

e) Regulation (EU) 2017/1131 on money market funds[8];

f) […][9].

4) The version in force of the EEA acts referred to in this Act is derived from the promulgation of the decisions of the EEA Joint Committee in the Liechtenstein Legal Gazette pursuant to Art. 3 k) of the Promulgation Act.[10]

Art. 2

Validity

1) This Act shall apply to:[11]

a) EEA AIFMs who manage one or more AIF, irrespective of whether the AIF is an EEA AIF or non-EEA AIF;

b) Non-EEA AIFMs who manage one or more EEA AIF; and

c) Non-EEA AIFMs, who market one or more AIF in the EEA, irrespective of whether the AIF is an EEA AIF or non-EEA AIF.

2) This Act shall not apply to:

a) an AIFM, who only manages one or more AIF in which the only investors are the AIFM itself or its parent undertaking or subsidiary

4 Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1)

5 Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds (OJ L 115, 25.4.2013, p. 1)

6 Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds (OJ L 115 25.4.2013, p. 18)

7 Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds (OJ L 123, 19.5.2015, p. 98)

8 Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds (OJ L 169, 30.6.2017, p. 8)

9 Art. 1 (3) f) not yet in force.

10 Art. 1 (4) amended by LGBl. 2021 no. 230.

11 Art. 2 (1) amended by LGBl. 2020 no. 8.

undertaking and/or subsidiary undertakings of the parent undertakings, if none of the investors is itself an AIF;

b) Holding companies;

c) Institutions governed by Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) and the regulations enacted for its implementation, including any authorised AIFMs of pensions funds and the persons acting for them pursuant to Art. 2 (1) of Directive (EU) 2016/2341 or the investment managers appointed pursuant to Art. 32 of Directive 2016/2341;[12]

d) supranational institutions, in particular the European Central Bank, the International Monetary Fund and the World Bank, and similar international organisations, if such institutions or organisations manage AIFs in the public interest;

e) national central banks;

f) national, regional and local governments and bodies or other institutions that manage undertakings for collective investment for supporting social security or pension systems;

g) employee participation schemes or saving schemes;

h) Special purpose entities for the securitisation of assets;[13]

i) Investment firms, such as family office vehicles, which invest the private wealth of investors, without raising external capital.

3) Repealed[14]

4) Repealed[15]

5) Repealed[16]

12 Art. 2 (2) c) amended by LGBl. 2018 no. 466.
13 Art. 2 (2) h) amended by LGBl. 2020 no. 8.
14 Art. 2 (3) repealed by LGBl. 2016 no. 46.
15 Art. 2 (4) repealed by LGBl. 2016 no. 46.
16 Art. 2 (5) repealed by LGBl. 2016 no. 46.

Art. 3[17]

Small AIFMs

1) With the exception of Chapter X, XIII to XV and the following provisions, this Act shall not apply to small AIFMs, who manage the portfolios of AIFs of which the managed assets:

a) including the assets acquired by leverage do not exceed a threshold of 100 million euro or its equivalent in Swiss Francs; or

b) do not exceed a threshold of 500 million euro or the equivalent in Swiss Francs, if the portfolios of these AIFs are made up of AIFs that do not employ leverage and may not exercise redemption rights for a period of five years from the initial investment in the each of these AIFs.

2) The assets that the AIFM manages directly or indirectly through a company, with which the AIFM is associated through common management or joint control or by a qualifying direct or indirect holding are to be taken into account when determining the total assets under management referred to in (1).

3) Small AIFMs are obliged:

a) to get themselves registered with the FMA;

b) to identify themselves and the AIFs under their management to the FMA at the time of registration;

c) to submit information concerning the investment strategies of the AIFs under their management to the FMA at the time of registration;

d) to inform the FMA annually, and more frequently on request, of the most important instruments they trade in, and the highest risks and the concentration of the AIFs under their management, in order to enable the FMA to monitor systemic risks effectively;

e) to inform the FMA immediately of every launch of an AIF and every time winding up or liquidation of an AIF commences; and

f) to inform the FMA immediately if they can no longer meet the conditions set out in (1).

4) Small AIFMs shall apply to the FMA for authorisation as an AIFM pursuant to Chapter III within 30 calendar days, if the thresholds stated in (1) have been exceeded. Irrespective of the thresholds, small AIFMs may apply for authorisation pursuant to Chapter III at any time; once authorisation has been granted, they shall be subject to all provisions of this Act.

17 Art. 3 amended by LGBl. 2020 no. 8.

5) The Government may establish more specific rules concerning small AIFMs by ordinance.

Art. 3a[18]

Consolidated and supplementary supervision

1) Where AIFMs form a financial conglomerate, they are subject to the provisions of the Financial Conglomerates Act on a supplementary basis.

2) Where the Financial Conglomerates Act does not apply, AIFMs shall be included for purposes of consolidated and supplementary supervision under the relevant provisions of the Banking Act pertaining to supervision on a consolidated basis or the relevant provisions of the Insurance Supervision Act pertaining to supplementary supervision of the insurance undertakings of an insurance group.

3) For the supervision referred to in (1), an AIFM is deemed part of the sector to which it is assigned under (2).

4) The activities carried out by AIFMs shall be included in the identification of a financial conglomerate as significant, cross-sectoral activities in accordance with Art. 7 of the Financial Conglomerates Act.

Art. 4

Definition of terms and designations

1) The following definitions are established for the purposes of the present Act:

1. "AIF": any collective investment undertaking, including sub-funds thereof which:
   a) raises capital from a number of investors with a view to investing for the benefit of these investors in accordance with a defined investment strategy; and
   b) is not a UCITS as defined in the UCITS Act nor an investment undertaking as defined in the Investment Undertakings Act.[19]

   In order to qualify as an AIF the following shall have no significance: whether the AIF is of open-ended or closed type, whether the AIF is constituted under the law of contracts, in the form of a trust, under

18 Art. 3a inserted by LGBl. 2015 no. 212.
19 Art. 4 (1) 1 b) amended by LGBl. 2016 no. 46.

statutes or under any other legal form and whatever the structure of the AIF may be.

2. "AIFM": any legal entity whose regular business consists in managing one or more AIF;
3. "branch": when relating to an AIFM shall mean a place of business, that forms part of an AIFM without independent legal personality and provides services for which the AIFM has been granted authorisation; all places of business of an AIFM in one EEA Member State are regarded as one single branch;
4. "carried interest": any payment relating to the profits that the AIFM receives from the AIF, with the exception of shares in the profits accrued to the AIFM as a return for investments by the AIFM in the AIF;
5. "close links": a situation, in which two or more legal or natural persons are linked by:
   a) participation, i.e. ownership, directly or by way of control of at least 20 % of the voting rights or the capital of an undertaking; or
   b) control, i.e. the relationship between a parent undertaking and a subsidiary or a similar relationship between a natural or legal person and an undertaking. A subsidiary undertaking of a subsidiary shall also be regarded as a subsidiary of the parent undertaking at the head of this group of companies. A situation in which two or more natural or legal persons are permanently linked with one and the same person by a control relationship shall also be regarded as constituting a close link between such persons;
6. "competent authorities":[20]
   a) the authorities designated by EEA Member States pursuant to Art. 44 of Directive 2011/61/EU that are empowered to supervise AIFMs of an AIF, in Liechtenstein the FMA.
   b) the authorities designated by EEA Member States pursuant to Art. 3 m) of Regulation (EU) No 345/2013 that are empowered to register managers of undertakings for collective investment falling within the scope of this Regulation, in Liechtenstein the FMA;
   c) the authorities designated by EEA Member States pursuant to Art. 3 m) of Regulation (EU) No 346/2013 that are empowered to register managers of undertakings for collective investment falling within the scope of this Regulation, in Liechtenstein the FMA;

20 Art. 4 (1) 6 amended by LGBl. 2016 no. 46.

d) the competent authority for European long-term investment funds (ELTIFs) pursuant to Art. 2 nos. 10 and 13 of Regulation (EU) 2015/760, in Liechtenstein the FMA;[21]

e) the competent authority for money market funds pursuant to Art. 2 no. 17 b) and c) of Regulation (EU) 2017/1131, in Liechtenstein the FMA;[22]

7. "competent authorities" in relation to a depositary:

a) the competent authorities as defined in Art. 4 (1) 40 of (EU) Regulation No. 575/2013, if the depositary is an authorised credit institution;[23]

b) the competent authorities as defined in Art. 4 (1) 26 of Directive 2014/65/EU, if the depositary is an investment firm authorised under that directive and in Liechtenstein under the Banking Act;[24]

c) if the depositary is an institution referred to in Art. 57 (3) c), the competent authority pursuant to that provision, in Liechtenstein the FMA;

d) in other cases the competent authority of the EEA Member State in which the depositary has its registered office under its statutes, in Liechtenstein the FMA;

e) the relevant national authorities of the third country, in which the depositary has its registered office under its statutes, if pursuant to Art. 58 (2) the depositary is appointed as depositary for a non-EEA AIF and does not fall under a) to d);

8. "competent authorities of the EEA AIF": the national authorities of an EEA Member State, who are empowered by law or regulations to supervise AIFs;

9. "with registered office in":

a) for the AIFM of an AIF: "with its registered office under its statutes in";

b) for AIFs: "authorised or registered in", or, if the AIF is not authorised or registered: "with its registered office under its statutes in";

c) for depositaries: "with their registered office under their statutes or branch in";

21 Art. 4 (1) 6 d) inserted by LGBl. 2020 no. 319.
22 Art. 4 (1) 6 e) inserted by LGBl. 2020 no. 321.
23 Art. 4 (1) 7 a) amended by LGBl. 2016 no. 46.
24 Art. 4 (1) 7 b) amended by LGBl. 2017 no. 399.

d) for legal representatives who are legal persons: "with their registered office under their statutes or branch in";

e) for legal representatives who are natural persons: "domiciled in";

10. "EEA AIF":

a) an AIF, that is authorised or registered in an EEA Member State under the applicable national law; or

b) an AIF, whose registered office under its statutes and/or Head Office is in an EEA Member State;

11. "EEA AIFM": an AIFM with its registered office under its statutes in an EEA Member State;

12. "feeder AIF": an AIF, that:

a) invests at least 85 % of its assets in units of another AIF ("master AIF"); or

b) invests at least 85 % of its assets in more than one master AIF, if these master AIFs pursue identical investment strategies; or

c) otherwise has exposure of at least 85 % of its assets in a master AIF of this type;

13. "financial instrument": an instrument specified in Annex I Section C of Directive 2014/65/EU;[25]

14. "holding company": a company with shareholdings in one or more other company, the commercial purpose of which is to pursue a business strategy or strategies through its subsidiaries, associate companies or participations in order to contribute to their long-term value and which is either a company:

a) operating on its own account and whose shares are admitted for trading on a regulated market in the EEA; or

b) that as evidenced by its annual report or other official documents was not established for the main purpose of generating returns for its investors by means of divestment of its subsidiaries or associate companies;

15. "Home Member State of the AIF": the EEA Member State in which the AIF is authorised or registered in accordance with the applicable national law. An AIF is deemed to be established in its home Member State. If an AIF is not authorised or registered, it is established wherever it has its registered office and/or its Head Office;[26]

25 Art. 4 (1) 13 amended by LGBl. 2017 no. 399.

26 Art. 4 (1) no. 15 amended by LGBl. 2020 no. 8.

16. "home Member State of the AIFM": the EEA Member State, in which the AIFM has its registered office under its statutes; for non-EEA AIFMs the EEA state of reference as provided in Chapter XII Section A;
17. "host Member State of the AIFM": an EEA Member State, that is not the home Member State or EEA Reference State as provided in Chapter XII Section A and in the sovereign territory of which the EEA AIFM manages EEA AIFs, markets units of an EEA AIF or provides the services referred to in Art. 29 (3) a) and b);[27]
18. "capital": the initial capital referred to in Art. 9 of Directive 2011/61/EU including the own funds referred to in Art. 97 Regulation (EU) No. 575/2013;[28]
19. "issuer": any issuer as defined in Art. 3 (1) f) of the Disclosure Act, having its registered office under its statutes within the EEA and whose securities as defined in Art. 4 (1) 41 of the Asset Management Act are admitted for trading on a regulated market;[29]
20. "legal representative": a natural person domiciled within the EEA or a legal person with its registered office within the EEA, which has been expressly designated by a non-EEA AIFM to act on behalf of the non-EEA AIFM within the EEA with regard to the obligations of the non-EEA AIFM under this Act and Directive 2011/61/EU;
21. "leverage": any method by which an AIFM increases the exposure of an AIF it manages beyond the assets of the AIF by borrowing of cash or securities and by repos, derivatives or by any other means;
22. "management": performing, as a minimum, the investment managing functions referred to in Annex no. 1 a) or b) of Directive 2011/61/EU for one or more AIF;[30]
23. "marketing": the direct or indirect offering or placement, on the initiative of the AIFM or on its behalf, of units of the AIF to or with investors domiciled or having their registered office within the EEA;
24. "master AIF": any AIF, in which another AIF invests or has exposure pursuant to no. 12;
25. "EEA state of reference": the EEA Member State determined in accordance with Chapter XII Section A;
26. "non-EEA AIF": an AIF, that is not an EEA AIF;

27 Art. 4 (1) 17 amended by LGBl. 2017 no. 399.
28 Art. 4 (1) 18 amended by LGBl. 2014 no. 356.
29 Art. 4 (1) 19 amended by LGBl. 2017 no. 399.
30 Art. 4 (1) 22 amended by LGBl. 2016 no. 46.

27. "Non-EEA AIFM": any AIFM, that is not an EEA AIFM;
28. "non-listed company": a company that has its registered office under its statutes within the EEA and whose shares are not admitted for trading on a regulated market as defined in Art. 4 (1) 21 of Directive 2014/65/EU;[31]
29. "parent undertaking": a parent undertaking as defined in Art. 1 and 2 of Directive 83/349/EEC, for undertakings domiciled in Liechtenstein a parent undertaking as referred to in the accounting and reporting regulations of Title 20 of the Persons and Companies Act (PGR);
30. "prime broker": a credit institution, a regulated investment firm or another entity subject to prudential regulation and ongoing supervision, offering services to professional investors primarily to finance or execute transactions in financial instruments as a counterparty and which may also offer other services such as clearing and settlement of transactions, custodial services, securities lending and customised technologies and operational support facilities;
31. "professional investor": any investor who is considered as a professional client within the meaning of Annex II of Directive 2014/65/EU or may be treated as a professional client on request;[32]
32. "qualifying holding": a direct or indirect holding in an AIFM, that represents at least 10 % of the capital or the voting rights or that makes it possible to exercise considerable influence over the management of the AIFM in which the interest is held. Articles 25, 26, 26a, 27 and 31 of the Disclosure Act are to be applied in the determination of the voting rights;[33]
33. "employees' representative": representative of the employees as defined in Art. 3 and subsequent articles of the Employees' Participation Act;
34. "private investor": any investor who is not a professional investor;
35. "subsidiary": a subsidiary undertaking on the basis of the definition in Art. 1 and 2 of Directive 83/349/EEC, for undertakings domiciled in Liechtenstein a subsidiary undertaking in accordance with the accounting and reporting regulations in Title 20 PGR;
36. "supervisory authorities": in relation to:
    a) Non-EEA AIFs the authorities of a third country responsible for the supervision of AIFs;

31 Art. 4 (1) 28 amended by LGBl. 2017 no. 399.
32 Art. 4 (1) 31 amended by LGBl. 2017 no. 399.
33 Art. 4 (1) 32 amended by LGBl. 2016 no. 154 and LGBl. 2020 no. 8.

b) Non-EEA AIFMs the authorities of a third country responsible for the supervision of AIFMs;

37. "securitisation special purpose entities": companies, of which the sole purpose is to carry out securitisation as defined in Art. 1 no. 2 of Regulation (EU) no. 1075/2013 of the European Central Bank of 18 October 2013 concerning statistics on the assets and liabilities of financial vehicle corporations that are engaged in securitisation transactions (OJ. L 297 of 7 November 2013, p. 107) and activities appropriate to achieve that purpose;[34]

38. "UCITS": undertakings for collective investment in securities as defined in Art. 3(1) 1 UCITS Act, that are authorised pursuant to Art. 8 (1) UCITS Act or provisions of other EEA Member States that are equivalent to Art. 5 of Directive 2009/65/EC;

39. "constitutive documents": the fund contract of an investment fund, the trust agreement of a collective trusteeship, the articles of incorporation and the investment conditions of an investment company or the partnership deed of an investment limited partnership or investment partnership of limited partners;[35]

40. Repealed[36]

41. "ESMA": the European Securities and Markets Authority pursuant to Regulation (EU) No. 1095/2010;

42. "ESRB": the European Systemic Risk Board pursuant to Regulation (EU) No. 1092/2010;

43. "Administration": legal services as well as fund management accounting and reporting services, customer enquiries, valuation and pricing of AIF units, including tax returns, monitoring of regulatory compliance, maintenance of an investor register, distribution of income, issue and redemption of units, contract settlements, including despatch of certificates and keeping of records.

44. "European venture capital fund" or "EuVECA": a qualifying venture capital fund as defined in Art. 3 b) of Regulation (EU) no. 345/2013;[37]

45. "European social entrepreneurship fund" or "EuSEF": a qualifying social entrepreneurship fund as defined in Art. 3 (1) b) of Regulation (EU) no. 346/2013.[38]

34 Art. 4 (1) no. 37 amended by LGBl. 2020 no. 8.
35 Art. 4 (1) no. 39 amended by LGBl. 2020 no. 8.
36 Art. 4 (1) no. 40 repealed by LGBl. 2020 no. 506.
37 Art. 4 (1) no. 44 inserted by LGBl. 2016 no. 46.
38 Art. 4 (1) no. 45 inserted by LGBl. 2016 no. 46.

46. "Structural measures":[39]
    a) Mergers of:
        1. domestic AIFs or their sub-funds with domestic AIFs or their sub-funds;
        2. foreign AIFs or their sub-funds with domestic AIFs or their sub-funds;
        3. domestic AIFs or their sub-funds with foreign AIFs or their sub-funds, insofar as the law of the state in which the foreign AIF has its registered office, does not oppose it.
    b) De-mergers of AIFs or their sub-funds.
47. "European long-term investment fund" or "ELTIF": an EEA AIF or an EEA AIF sub-fund marketed in the EEA as a European long-term investment fund (ELTIF) as referred to in Art. 1 (1) of Regulation (EU) 2015/760.[40]
48. "money market fund": a fund as defined in Art. 3 (1) of Regulation (EU) 2017/1131;[41]
49. "pre-marketing": provision of information or communication, direct or indirect, on investment strategies or investment ideas by an EEA AIFM or on its behalf, to potential professional investors domiciled or with a registered office in the EEA in order to test their interest in an AIF or a sub-fund which is not yet managed or registered, or which is managed or registered, but not yet notified for marketing in accordance with Art. 112 or 113, in that EEA Member State where the potential investors are domiciled or have their registered office, and which in each case does not amount to an offer or placement to the potential investor to invest in the units or shares of that AIF or sub-fund.[42]

2) The Government may provide more detailed definitions of the terms listed in (1) by ordinance and define other terms used in this Act.

3) In other respects the definition of terms of the EEA legislation applicable pursuant to Art. 1 (3) shall apply.[43]

4) Terms used to designate persons or functions in this Act are to be understood as referring to both the male and female genders.

39 Art. 4 (1) no. 46 inserted by LGBl. 2020 no. 8.
40 Art. 4 (1) no. 47 inserted by LGBl. 2020 no. 319.
41 Art. 4 (1) no. 48 inserted by LGBl. 2020 no. 321.
42 Art. 4 (1) no. 49 inserted by LGBl. 2021 no. 230.
43 Art. 4 (3) amended by LGBl. 2020 no. 8.

Art. 5

Designation and responsibility of the AIFM

1) An AIFM must assume responsibility for compliance with the provisions of this Act for each AIF that is managed or marketed in Liechtenstein. Other persons authorised under Chapter IV of this Act may take responsibility with reference to the administration, marketing and other activities pursuant to Annex I no. 2 of Directive 2011/61/EU; the Government provides more specific details, in particular the conditions under which such persons are deemed to be the contracting party of the AIFM, by ordinance.

2) The AIFM may:

a) be a legal entity appointed by an AIF or on behalf of the AIF, who shall be responsible on the basis of this appointment (external AIFM); or

b) be the AIF itself, if the management of the AIF decides not to appoint an external AIFM and this is possible under the legal form of the AIF; in this case the AIF shall be authorised as an AIFM.

3) Unless specified otherwise, the provisions of this Act applying to AIFMs shall apply to self-managed AIFs accordingly, with the proviso that the executive bodies of the AIF will substitute the AIFM.

B. Legal forms

1. General

Art. 6

Basic principle

1) An AIF with its registered office in Liechtenstein may be constituted under the law of contracts ("investment fund"), in the form of a trust ("collective trusteeship"), constituted under statutes ("investment company") or in the form of a partnership("investment limited partnership"; "investment partnership of limited partners".

2) For AIFs having their registered office in Liechtenstein the FMA may at the request of the AIFM approve a domestic legal form other than those specified in Art. 9 in justified individual cases, provided this does not conflict with the purpose of the Act, in particular the protection of

investors and the public interest; the FMA specifies at the same time that the provisions of Art. 9 and Art. 15a shall apply accordingly.[44]

3) The Government may establish more specific regulations concerning the procedure for approval of other domestic legal forms referred to in (2) by Ordinance.[45]

2. Investment fund

Art. 7

Basic principle

1) An investment fund is a legal relationship established by a contract identical in substance between several investors and an AIFM 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 ("fund"), in which the investors have an interest.

2) Unless specified otherwise by this Act, the legal relationship between the investors and the AIFM is governed by the fund contract and, unless rules are laid down therein, 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 fund contract shall contain rules on:[46]

a) the name and duration of the investment fund; insofar as a limited duration has been set, the means of winding up of the investment fund and distribution to the investors;

b) the name and registered office of the AIFM and the depositary;

c) the investments, investment policy and investment restrictions;

d) the valuation, issue and redemption price of units and their securitisation, with the value of the unit being determined by dividing the value of the assets of the investment fund or sub-fund by the number of units in circulation;

e) the conditions for issue, redemption, suspension of redemption and paying out of units and compulsory redemption;

f) appropriation of profit and distributions;

44 Art. 6 (2) amended by LGBl. 2020 no. 8.
45 Art. 6 (3) inserted by LGBl. 2020 no. 8.
46 Art. 7 (3) amended by LGBl. 2020 no. 8.

g) the nature, amount and calculation of all fees, the issue and redemption commission, reimbursement of expenses and all other costs that may be charged to the assets of the investment fund;

h) termination of the management by the AIFM;

i) sub-division into sub-funds;

k) the unit categories and if the investment fund is incorporated in an umbrella structure, the conditions for changing from one sub-fund that is separate under property and liability law, to another;

l) the manner in which notifications and information from the investment fund are communicated to the participating investors;

m) the requirements for contractual amendments, implementation of structural measures and winding up and/or liquidation of the investment fund;

n) the investor base;

o) the financial year;

p) the unit of account

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

5) The AIFM is authorised to dispose of the items belonging to the investment fund and to exercise all rights arising therefrom in accordance with this Act and the terms of the fund contract; action on behalf of the investment fund must be transparent. The investment fund shall not be liable for the liabilities of the AIFM or the investors. The investment fund shall also include everything that the AIFM acquires on the basis of a right pertaining to the investment fund or through a legal transaction with reference to the investment fund or as a substitute for a right pertaining to the investment fund.[47]

6) The AIFM may only meet its claims for remuneration and reimbursement of expenses from the investment fund. The investors shall only be personally liable up to the amount invested.[48]

7) Repealed[49]

8) The investment fund shall be registered in the Commercial Register on the basis of confirmation from the FMA that it is managed by an

47 Art. 7 (5) amended by LGBl. 2020 no. 8.
48 Art. 7 (6) amended by LGBl. 2016 no. 46.
49 Art. 7 (7) repealed by LGBl. 2020 no. 8.

authorised AIFM. Registration is not however a condition for the formation of the investment fund. The Government shall establish more specific rules concerning the registration procedure by Ordinance.[50]

3. Collective trusteeship

Art. 8

Basic principle

1) A collective trusteeship is the formation of an identically structured trust in terms of content with a number of 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 share in the trust and are only personally liable up to the amount invested.

2) Unless specified otherwise in this Act, the legal relationship between the investors and the AIFM is governed by the trust agreement and, unless rules are laid down therein, by the provisions of the PGR concerning trusts. To the extent that the constitutive documents do not expressly specify otherwise, only the AIFM shall be considered as trustee and that person alone may conclude the relevant legal transactions for the account of the AIF.

3) The trust agreement shall contain the information referred to in Art. 7 (3).[51]

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) Repealed[52]

6) The collective trusteeship shall be registered in the Commercial Register on the basis of confirmation from the FMA that it is managed by an authorised AIFM. Registration is not however a condition for the formation of the collective trusteeship. The Government shall establish more specific rules concerning the registration procedure by Ordinance.[53]

50 Art. 7 (8) amended by LGBl. 2020 no. 8.
51 Art. 8 (3) amended by LGBl. 2020 no. 8.
52 Art. 8 (5) repealed by LGBl. 2020 no. 8.
53 Art. 8 (6) amended by LGBl. 2020 no. 8.

4. Investment Company

Art. 9

Basic principle

1) The investment company is an AIF in the form of a public limited company or a European company (SE):[54]

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 in this Act, the legal relationship between the investors, the investment company and the AIFM is governed by the instruments of incorporation and the investment conditions of the investment company and, if no provisions are laid down therein, by the provisions of the PGR concerning the public limited company, or those of the SE Act (SEG) concerning the European Company.[55]

3) The instruments of incorporation shall contain the following provisions in particular:[56]

a) for a public limited company, statements concerning the articles pursuant to Art. 279 and if applicable, 280 PGR;

b) for a European company, statements concerning the articles pursuant to Art. 8 et seq. SEG.

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) In addition to the instruments of incorporation the investment company shall establish investment conditions as set out in Art. 7 (3), which do not form a component of the instruments of incorporation.[57]

6) The investment company may be managed by its own bodies (self-managed investment company) or by an AIFM (externally managed

54 Art. 9 (1) introductory sentence amended by LGBl. 2020 no. 8.
55 Art. 9 (2) amended by LGBl. 2020 no. 8.
56 Art. 9 (3) amended by LGBl. 2020 no. 8.
57 Art. 9 (5) amended by LGBl. 2020 no. 8.

investment company). The investment company must be managed in the interests of the investors.[58]

7) The executive 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 managing board manages the business, and the supervisory board supervises its management. Unless the instruments of incorporation 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 executive bodies; where there is a two-tier organisational structure the provisions of Art. 199 PGR as well as the provisions of the SEG shall apply.[59]

8) The instruments of incorporation must state:[60]

a) whether, and the extent to which the investment company issues founder and investor shares with and without voting rights and with or without a right to participate in the General Meeting; and

b) whether own assets and managed assets are separated.

9) Unless the Government sets a higher minimum share capital by ordinance, a minimum share capital of 50 000 Francs or the equivalent in another currency must be held through the founder's shares in the event of separation of assets. The capital adequacy requirement referred to in Art. 32 is not affected.[61]

10) The investment company is formed by registration in the Commercial Register. Prior to registration the PGR's provisions on the simple partnership and Art. 108 PGR shall apply. The Government shall provide more specific rules by ordinance.[62]

11) Repealed[63]

12) Repealed[64]

58 Art. 9 (6) amended by LGBl. 2020 no. 8.
59 Art. 9 (7) amended by LGBl. 2020 no. 8.
60 Art. 9 (8) amended by LGBl. 2020 no. 8.
61 Art. 9 (9) amended by LGBl. 2020 no. 8.
62 Art. 9 (10) amended by LGBl. 2020 no. 8.
63 Art. 9. (11) repealed by LGBl. 2020 no. 8.
64 Art. 9 (12) repealed by LGBl. 2020 no. 8.

5. Investment Limited Partnership

Art. 10

Basic principle

1) The investment limited partnership is an AIF in the form of a partnership in which the liability of the investors as limited partners after full payment of the sum invested is limited to that amount and the sole purpose of which is the investment of assets and management on behalf of the investors.[65]

2) Unless provided otherwise in this Act and its ordinances based thereon, the legal relationships of the investment limited partnership are governed by the partnership deed of the investment limited partnership and, insofar as no rules are laid down therein, by the provisions of the PGR in respect of limited partnerships.

3) Repealed[66]

4) 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 an AIFM. The investment limited partnership must be managed in the interests of the investors.

5) In an externally managed investment limited partnership an AIFM shall be liable in the same way as in an externally managed investment company. An authorised AIFM may act at the same time for several investment limited partnerships, other AIFs or certain undertakings for collective investment in securities.

6) The investors as limited partners shall be excluded from management, unless specified otherwise in the partnership deed. If the investors are not responsible for management, they are by derogation from Art. 740 PGR conclusively excluded from representing the limited partnership and are under no duty of allegiance.

7) The investment limited partnership holds a register of investors as limited partners. This register, or more precisely the identity of the investors does not have to be registered in the Commercial Register.

8) The total amount of the limited liability apportioned to the investors as limited partners must be registered in the Commercial Register. For

65 Art. 10 (1) amended by LGBl. 2020 no. 8.
66 Art. 10 (3) repealed by LGBl. 2016 no. 46.

open-ended investment limited partnerships it will be sufficient to state a minimum and maximum amount.

9) The Government shall regulate the procedure in respect of exclusion of investors from the partnership by ordinance. If the investment limited partnership is marketed to private investors, investors may only be excluded on significant grounds.

10) The investment limited partnership shall not be liable for the liabilities of the AIFM or the investors.

Art. 11

Partnership deed

1) The partnership deed 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 maximum and minimum 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 management;

f) transferability of the limited partner's interest;

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

h) Repealed[67]

i) the commercial purpose of the investment and the management of the assets in accordance with established investment policies and investment goals;[68]

k) for self-managed investment limited partnerships the persons (general or limited partner), who perform the functions of the AIFM;[69]

l) the winding up and/or liquidation of the investment limited partnership;[70]

67 Art. 11 (1) h) repealed by LGBl. 2020 no. 8.
68 Art. 11 (1) i) amended by LGBl. 2020 no. 8.
69 Art. 11 (1) k) amended by LGBl. 2020 no. 8.
70 Art. 11 (1) l) amended by LGBl. 2020 no. 8.

m) other information relating to funds as referred to in Art. 7 (3);[71]

n) Repealed[72]

o) Repealed[73]

p) |Repealed[74]

q) Repealed[75]

r) Repealed[76]

s) Repealed[77]

2) The Government may place further requirements on the deed of partnership by ordinance, insofar as this is required for the protection of investors and the public interest.[78]

3) Repealed[79]

Art. 12[80]

General partner and limited partner

1) General partners may be one or more Liechtenstein national or foreign natural or legal person. General partners may act as general partner for more than one investment limited partnership.

71 Art. 11 (1) m) amended by LGBl. 2020 no. 8.
72 Art. 11 (1) n) repealed by LGBl. 2020 no. 8.
73 Art. 11 (1) o) repealed by LGBl. 2020 no. 8.
74 Art. 11 (1) p) repealed by LGBl. 2020 no. 8.
75 Art. 11 (1) q) repealed by LGBl. 2020 no. 8.
76 Art. 11 (1) r) repealed by LGBl. 2020 no. 8.
77 Art. 11 (1) s) repealed by LGBl. 2020 no. 8.
78 Art. 11 (2) inserted by LGBl. 2016 no. 46.
79 Art. 11 (3) repealed by LGBl. 2020 no. 8.
80 Art. 12 amended by LGBl. 2020 no. 8.

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 euro or the equivalent in Swiss Francs. The general partner or limited partner appointed to manage shall make a contribution corresponding to the sum of at least 50 000 euro or the equivalent in Swiss Francs.

Art. 13[81]

Formation of the investment limited partnership

1) The investment limited partnership is formed upon registration in the Commercial Register. Prior to registration the provisions of the PGR on the simple partnership and Art. 108 PGR shall apply.

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

3) The Government may establish more specific rules by ordinance.

6. Investment partnership of limited partners

Art. 14

Basic principle

1) The investment partnership of limited partners is an AIF in the form of a partnership 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 on behalf the investors. Unlike the investment limited partnership, the investment partnership of limited partners has no general partner with unlimited liability.[82]

2) Unless specified otherwise below, Art. 10 (2) to (10) and Art. 11 to 13 on the investment limited partnership shall apply mutatis mutandis to the investment partnership of limited partners.[83]

81 Art. 13 amended by LGBl. 2020 no. 8.
82 Art. 14 (1) amended by LGBl. 2020 no. 8.
83 Art. 14 (2) amended by LGBl. 2016 no. 46.

3) For self-managed investment partnerships of limited partners a limited partner must be appointed in the deed of partnership to manage investments. This investment manager shall be registered in the Commercial Register and pay a limited partnership contribution corresponding to at least 50 000 euro or its equivalent in Swiss Francs. 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 duty of allegiance. With the exception of the limit on the liability of his 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. Sub-funds[84]

Art. 15[85]

Basic Principle

1) In an AIF consisting of more than one sub-fund, each sub-fund is to be considered as a separate AIF.

2) The constitutive documents must grant the right to open further sub-funds and to wind up or merge existing sub-funds. If only one sub-fund is left after winding up or merger of sub-funds, the provisions of this article shall no longer apply.

3) For each sub-fund, steps must be taken to ensure that:

a) the assets of the individual sub-funds are kept separate;

b) payments and liabilities in respect of individual sub-funds are allocated according to their originator;

c) costs that cannot be allocated on the basis of their originator are charged to the individual sub-funds in proportion to the assets;

d) the investor is only entitled to the assets and income of the sub-fund in which he has invested.

4) Claims of investors and creditors directed against a sub-fund, or which have arisen when the sub-fund was established, during its existence or upon its liquidation, are restricted to that sub-fund.

84 Heading before Art. 15 amended by LGBl. 2020 no. 8.
85 Art. 15 amended by LGBl. 2020 no. 8.

5) Information intended for investors and authorities may be summarised for all sub-funds. This information must:

a) indicate the properties of the umbrella-AIF referred to in (3);

b) include a note stating whether changing from one sub-fund to another will incur charges.

6) The transaction costs incurred when changing from one sub-fund to another must be offset by a fixed redemption and issue commission in favour of the fund.

7) The Government may establish more specific rules by ordinance, in particular:

a) the extent of a ban on cost charging between the sub-funds;

b) possible investment restrictions on investment by sub-funds in other sub-funds.

D. Name of the AIF [86]

Art. 15a[87]

Basic principle

1) The name of an AIF may not give rise to confusion or misrepresentation. If the name implies a specific investment strategy, this shall be the strategy that is implemented overall.

2) The name of the investment fund or collective trusteeship shall include the relevant legal form, or one of the designations or abbreviations listed below:

a) for an investment fund: "common contractual fund", "CCF" or "C.C.F.", "fonds commun de placement", "FCP" or "F.C.P.", "Fonds" or "Fund ";

b) for a collective trusteeship: "Anlagefonds", "Fonds" or "Fund" or "unit trust", "authorized unit trust" or "AUT ".

3) The name of the investment company or the investment limited partnership and/or investment partnership of limited partners shall contain

86 Heading before Art. 15a inserted by LGBl. 2020 no. 8.

87 Art. 15a inserted by LGBl. 2020 no. 8.

the relevant legal form, or one of the designations or abbreviations listed below:

a) for a public limited company with variable capital: "AGmvK", "open-ended investment company" or "OEIC", "société d`investissement à capital variable" or "SICAV";

b) for a European company with variable capital: "SEmvK" or "SICAV-SE";

c) for a public limited company with fixed capital: "AGmfK", "closed-ended investment company" or "CEIC", "société d`investissement à capital fix" or "SICAF";

d) for a European company with fixed capital: "SEmfK" or "SICAF-SE";

e) for an investment limited partnership: "Anlagekommanditgesellschaft", "Anlage-KG", "limited partnership" or "L.P." / "LP", "société en commandite de placements collectives" or "SCPC";

f) for an investment partnership of limited partners: "Anlagekommanditärengesellschaft", "Anlage-KommanditärenG", "limited liability partnership" or "LLP" / "L.L.P".

4) If the name of an AIF, including the legal form, designation or abbreviation is changed, the constitutive documents shall be amended accordingly.

5) The Government may provide more specific rules by Ordinance.

II. Authorisation and admission of AIFs in Liechtenstein

Art. 16[88]

Repealed

Art. 17[89]

Repealed

88 Art. 16 repealed by LGBl. 2020 no. 8.
89 Art. 17 repealed by LGBl. 2020 no. 8.

Art. 18[90]

Repealed

Art. 19[91]

Repealed

Art. 20[92]

Repealed

Art. 21[93]

Repealed

Art. 22[94]

Repealed

Art. 23[95]

Repealed

Art. 24[96]

Repealed

Art. 25[97]

Repealed

90 Art. 18 repealed by LGBl. 2020 no. 8.
91 Art. 19 repealed by LGBl. 2020 no. 8.
92 Art. 20 repealed by LGBl. 2020 no. 8.
93 Art. 21 repealed by LGBl. 2020 no. 8.
94 Art. 22 repealed by LGBl. 2020 no. 8.
95 Art. 23 repealed by LGBl. 2020 no. 8.
96 Art. 24 repealed by LGBl. 2020 no. 8.
97 Art. 25 repealed by LGBl. 2020 no. 8.

Art. 26[98]

Repealed

Art. 27[99]

Repealed

III. Authorisation and obligations of AIFMs

A. Authorisation of AIFMs

Art. 28[100]

Obligation to obtain authorisation and applicable law

1) An AIFM having its registered office in Liechtenstein requires authorisation from the FMA in order to conduct its business activities. The provisions concerning cross-border activities stated in Chapter XI, XII and XIIa are reserved.

2) Banks, investment firms and asset management companies require no authorisation as referred to in (1) for securities services that they provide for AIFs on behalf of AIFMs, in particular individual portfolio management. They may only offer and place units in AIFs within the EEA, if marketing of the units is permitted within the EEA pursuant to Chapters XI, XII and XIIa of this Act or regulations of other EEA Member States equivalent to Chapter VI of Directive 2011/61/EU.

Art. 29

Scope of the authorisation

1) Authorisation as an AIFM is valid in all EEA Member States and subject to the provisions of Chapters XI, XII and XIIa, entitles the AIFM to manage AIFs within the EEA.[101]

98 Art. 26 repealed by LGBl. 2020 no. 8.
99 Art. 27 repealed by LGBl. 2020 no. 8.
100 Art. 28 amended by LGBl. 2020 no. 8.
101 Art. 29 (1) amended by LGBl. 2020 no. 8.

2) In the course of collective management of an AIF the authorisation may, in addition to investment management, also include:[102]

a) administration;

b) activities related to the assets of the AIF, including services required in order to meet the fiduciary duties of the AIFM, in particular facility management, real estate administration, advice to undertakings on capital structure, industrial strategy and related matters, consultation and services related to mergers and the acquisition of undertakings and other services associated with the management of AIFs and the undertakings and other assets, in which investments have been made on behalf of the AIF;

c) marketing.[103]

3) In addition to the management of AIFs, the FMA may grant the AIFM authorisation for the provision of the following services:

a) individual management of individual portfolios with discretion under a mandate from the investors;

b) insofar as the authorisation covers services referred to in a):

   1. investment consultation;
   2. safe-custody and technical administration in respect of units of undertakings for collective investment; and
   3. in cases in which the AIFM manages other undertakings for collective investment, the acceptance and transmission of orders involving financial instruments; and

c) the management of UCITS under the conditions set out more specifically in the UCITSG.

4) Out of the investment management services the AIFM must, as a minimum, take on the portfolio management or risk management. Art. 46 is not affected.

5) A self-managed AIF may only manage its own assets.

6) The FMA may give authorisation for all or individual investment strategies of the AIF that the AIFM intends to manage.[104]

7) The Government may provide more specific rules by Ordinance, in particular concerning:[105]

102 Art. 29 (2) introductory sentence amended by LGBl. 2020 no. 8.
103 Art. 29 (2) c) inserted by LGBl. 2020 no. 8.
104 Art. 29 (6) amended by LGBl. 2020 no. 8.
105 Art. 29 (7) amended by LGBl. 2020 no. 8.

a) the investment strategies of the AIF referred to in (6);

b) the setting of the minimum assets for an AIF managed by the AIFM and the period within which it must be achieved.

Art. 30

Conditions for granting authorisation

1) The FMA shall grant the AIFM authorisation, if:

a) the capital held pursuant to Art. 32 is adequate;

b) the managers of the AIFM or other persons, in respect of whom the AIFM can demonstrate that they actually conduct the business of the AIFM, have adequate professional qualifications and personal integrity; at least two persons, who meet the said conditions must determine the management of the AIFM;

c) Repealed[106]

d) the qualifying stakeholders satisfy the requirements for ensuring that the AIFM will be properly and prudently managed;

e) the head office and registered office of the AIFM are in Liechtenstein;

f) Repealed[107]

g) Repealed[108]

2) The FMA shall refuse authorisation, if:

a) the statutory requirements for the activities of an AIFM have not been met;

b) the exercise of its supervisory function is prevented by close links between the AIFM and other persons;

c) it is prevented in the exercise of its supervisory function by the laws, regulations and administrative provisions of a third country, governing persons with whom the AIFM has close links, or by difficulties arising in their enforcement;

d) Repealed[109]

3) Art. 15, 16, 24 and 25 of Directive 2014/65/EU concerning the initial capital endowment, the organisational requirements, the basic principles

106 Art. 30 (1) c) repealed by LGBl. 2020 no. 8.
107 Art. 30 (1) f) repealed by LGBl. 2020 no. 8.
108 Art. 30 (1) g) repealed by LGBl. 2020 no. 8.
109 Art. 30 (2) d) repealed by LGBl. 2020 no. 8.

for the protection of investors and the assessment of suitability and appropriateness and reporting to clients shall apply mutatis mutandis to authorisations for services referred to in Art. 29 (3) a) and b). Authorisation is granted if the AIFM joins an investor compensation scheme as defined in the Deposit Guarantee and Investor Compensation Act.[110]

4) Asset management companies whose area of business includes the provision of services referred to in Art. 3 (1) of the Asset Management Act may be authorised as AIFMs if they renounce their licence in writing pursuant to Art. 30 (1) b) of the Asset Management Act.[111]

5) The Government may establish more specific rules concerning the authorisation requirements by ordinance.[112]

Art. 31

Application and authorisation procedure

1) The application for the granting of authorisation to operate as an AIFM is to be submitted to the FMA in the form specified by the Government by ordinance.

2) With reference to the AIFM the application must be accompanied by:[113]

a) information about the persons effectively conducting the business of the AIFM;

b) information on the identity of all unit holders or members of the AIFM, who have a qualified holding in it, irrespective of whether it is a direct or indirect holding, or whether they are natural persons or legal entities and the amount of these holdings;

c) a programme of activity that apart from the organisational structure of the AIFM also contains information about how the AIFM intends to meet its obligations under this Act;

d) information concerning the remuneration policies and practice as referred to in Art. 36;

e) information concerning agreements made regarding the delegation and sub-delegation of functions to third parties as referred to in Art. 46.

110 Art. 30 (3) amended by LGBl. 2019 no. 107.
111 Art. 30 (4) amended by LGBl. 2024 no. 180.
112 Art. 30 (5) amended by LGBl. 2020 no. 8.
113 Art. 31 (2) amended by LGBl. 2020 no. 8.

3) With reference to each AIF to be managed the application must be accompanied by:[114]

a) information about the investment strategies including the types of underlying funds if the AIF is a fund of funds, and the principles the AIFM adopts as regards the use of leverage, and the risk profiles and other characteristics including details of the registered office of the AIF;[115]

b) for feeder AIFs, information on the registered office of the master AIF, for funds of funds, information about the type of underlying funds;

c) the constitutive documents;

d) information about the appointment of depositaries;

e) investor information as referred to in Art. 105 (1), unless this has already been enclosed in accordance with a) to d);[116]

f) documents referred to in Art. 151 (1) b) to d) if marketing to private investors is taking place.[117]

4) The FMA shall send the applicant an acknowledgement of receipt within ten working days from receipt of the complete application. An application is deemed to be complete if the AIFM has submitted as a minimum the information listed in (2) a) to d) and (3) a) and b).[118]

5) The FMA shall make a decision on the full application within three months from receipt of the same.

6) The FMA may extend the period allowed under (5) to a maximum of six months from receipt of the full application if this is necessary for the protection of investors or the public interest.

7) Reasons must be stated in writing for any extension of the period allowed, rejection or restriction of the authorisation. The FMA may charge additional fees for issuing an appealable order.

8) Before granting the authorisation the FMA shall consult the competent authorities of the other EEA Member State concerned, if the AIFM:

a) is a subsidiary or affiliate of: another AIFM, a UCITS management company, an investment firm, a credit institution or an insurance company with authorisation in another EEA Member State;

114 Art. 31 (3) introductory sentence amended by LGBl. 2020 no. 8.
115 Art. 31 (3) a) amended by LGBl. 2020 no. 8.
116 Art. 31 (3) e) amended by LGBl. 2020 no. 8.
117 Art. 31 (3) f) amended by LGBl. 2020 no. 8.
118 Art. 31 (4) amended by LGBl. 2020 no. 8.

b) is controlled by the same natural or legal persons as another AIFM, a UCITS management company, an investment firm, a credit institution or an insurance company with authorisation in another EEA Member State.

9) Upon receipt of the authorisation the AIFM may commence management of AIFs in Liechtenstein with the investment strategies described in the application in accordance with (3) a), but must however wait at least one month after submitting any missing information referred to in (2) e) and (3) c) and d).[119]

10) The FMA may extend the scope of the authorisation granted pursuant to Art. 29 (6) to include additional investment strategies, if the AIFM:[120]

a) submits an application to the FMA in accordance with (1) containing the information referred to in (3); and

b) the requirements of Art. 30 have been met.

11) The AIFM shall inform the FMA of the winding up or liquidation of each AIF under its management. The FMA may adjust the scope of the authorisation, if an investment strategy included therein is no longer being administered by AIFs in the long term.[121]

12) In the event of an application from a management company authorised pursuant to Art. 13 UCITSG and Art. 6 of Directive 2009/65/EC, the documents referred to in (2) and (3) no longer have to be submitted if they are already held by the FMA and are still up to date.[122]

13) The Government may establish more specific rules concerning the application and the authorisation procedure by ordinance, in particular:[123]

a) the application form;

b) the minimum content of the programme of activity referred to in (2) c);

c) the acknowledgement of receipt and the completeness of the application as referred to in (4);

d) the extension of the time limit referred to in (6) and the reasons referred to in (7);

119 Art. 31 (9) amended by LGBl. 2020 no. 8.
120 Art. 31 (10) amended by LGBl. 2020 no. 8.
121 Art. 31 (11) amended by LGBl. 2020 no. 8.
122 Art. 31 (12) inserted by LGBl. 2020 no. 8.
123 Art. 31 (13) inserted by LGBl. 2020 no. 8.

e) the procedure for extending the scope of the authorisation pursuant to (10) and for adjustment of its scope pursuant to (11).

B. Obligations of the AIFM

1. Organisational requirements

Art. 32

Capital

1) The capital must be at least:

a) for self-managed AIFs: 300 000 euro or the equivalent in Swiss Francs;

b) for AIFMs: 125 000 euro or the equivalent in Swiss Francs.

2) If the value of the portfolios managed by the AIFM exceeds 250 million euro or the equivalent in Swiss Francs, the capital must additionally constitute 0.02 % of the amount by which the value of the portfolios managed exceeds 250 million euro or its equivalent in Swiss Francs; the capital shall be a maximum of 10 million euro or the equivalent in Swiss Francs. Portfolios managed by the AIFM are understood as any UCITS and AIFs it manages as well as any other undertakings for collective investment 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 (2) the capital must be equivalent to at least a quarter of the fixed general costs of the most recent financial year; for start-ups the fixed general costs of the AIFM specified in the programme of activity 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.[124]

4) Repealed[125]

5) The additional capital required under (2) may be evidenced up to 50 % by a guarantee for the same amount issued by a credit institution or an insurance company. The guarantor must have its registered office in an EEA Member State, in Switzerland or a third country with equivalent

124 Art. 32 (3) amended by LGBl. 2020 no. 8.

125 Art. 32 (4) repealed by LGBl. 2014 no. 356.

supervisory provisions and be authorised to operate a business in Liechtenstein accordingly.[126]

6) In order to cover liability risks the AIFM shall either have an additional capital endowment or professional liability insurance for risks arising from negligence.

7) The capital must be fully paid up and invested in liquid assets or assets that are readily convertible to cash in the short term. It may not include speculative positions.

8) The reference rates set by the European Central Bank (ECB) are to be used for conversion of the amounts under (1) and (2).

9) A management company with authorisation pursuant to Art. 13 UCITSG only has to comply with (6) and (7) in addition to the provisions of the UCITSG.

10) The Government may establish more specific rules by ordinance. It may, subject to observance of the principle of proportionality and in compliance with the provisions of EEA law, specify in particular:

a) that in certain cases the capital must amount to 1 million euro or the equivalent in Swiss Francs;

b) the risks that must be covered by the professional liability insurance or the capital, the conditions determining its appropriateness and how the capital or professional liability is to be adjusted;

c) the permitted investments referred to in (7).

Art. 33

Reportable changes[127]

1) The FMA shall be notified in advance of all material changes to the information and documents submitted in accordance with Art. 31 (2) and (3).

2) The FMA may object to the changes referred to in (1) within one month.

3) The FMA may extend the period referred to in (2) by one month at a time by a notification to the AIFM, stating the reasons.

126 Art. 32 (5) amended by LGBl. 2016 no. 46.

127 Art. 33 Subject heading amended by LGBl. 2016 no. 46.

4) If the FMA consents to the application for a change within a shorter time or does not object to it within the periods referred to in (2) and (3), the change referred to in (1) may be made.[128]

5) The AIFM shall provide the FMA with all information that it will require in order to assess the changes referred to in (1) in full and to ascertain that all the conditions for granting authorisation are still in place.

6) The Government may establish more specific rules by ordinance, in particular the cases in which:

a) a new authorisation is required;

b) there is a material change as referred to in (1).

Art. 34[129]

Qualifying holdings

1) Any intended direct or indirect acquisition, any intended direct or indirect increase, or any intended sale of a qualifying holding in an AIFM is to be reported to the FMA 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 AIFM would become the subsidiary of a purchaser or would no longer be a subsidiary of the seller. Art. 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 (1) the FMA shall consult the authorities who are responsible for the authorisation of the purchaser or the company, 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 company or an AIFM authorised in an EEA Member State;

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

c) a natural or legal person, who controls a company referred to in a).

3) If the AIFM becomes aware of an acquisition or a sale of holdings in its capital such as referred to in (1), it shall inform the FMA. The AIFM shall also inform the FMA at least once a year of the names of the unit-

128 Art. 33 (4) amended by LGBl. 2016 no. 46.

129 Art. 34 amended by LGBl. 2016 no. 46.

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 (2) the FMA shall work together with the competent authorities of the other EEA Member States. The collaboration shall consist in particular of the exchange of all information relevant to the assessment of the acquisition or the increase of a holding.

6) The Government shall establish more specific rules 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 AIFs that deviate from (1) and (3).

Art. 35

Code of conduct

1) The AIFM shall:

a) perform its activities honestly, with due skill, care, diligence and integrity;

b) in the performance of its activities act fairly and appropriately in the best interest of the AIF, the investors and the integrity of the market;

c) have the resources and procedures required for the proper conduct of the business activities and employ them effectively;

d) endeavour to avoid conflicts of interest and if they cannot be avoided, ensure that the AIFs under its management are treated properly and fairly;

e) comply with all the provisions applying to the performance of its activity in the best interest of the AIFs, the investors and integrity of the market, and;

f) treat all investors of the AIFs fairly. No investor in an AIF may receive preferential treatment, unless such preferential treatment is provided for in the constitutive documents of the AIF.

2) An AIFM, whose authorisation also extends to individual portfolio management with discretion as referred to in Art. 29 (3) a):

a) may not invest the customer's assets either fully or partly in units of the AIFs under its management, unless the customer has given a general consent beforehand;

b) with reference to the services referred to in Art. 29 (3) a) and b) is subject to the relevant provisions on investor-compensation schemes.

3) Repealed[130]

Art. 36

Remuneration

1) The AIFM must in consideration of Appendix II to Directive 2011/61/EU establish remuneration principles and practices for all employees, including its management employees, whose actions may have a significant influence on the risk structure of the AIF under their management. The principles and practices must be consistent with reasonable and effective risk management or be conducive to such risk management; the risk management must be compatible with the risk structure and the constitutive documents of the AIF.

2) The remuneration principles and practices must be appropriate and proportionate to the nature, scope and complexity of the AIFM's activities and the AIFs under its management.

3) Repealed[131]

Art. 37

Conflicts of interest

1) Each AIFM must be organised and structured in such a way as to minimise the risk of conflicts of interest that adversely affect the interests of the AIF or of the customers and should conflicts nevertheless arise, in a way that ensures they are recognised and dealt with appropriately. Particular attention should be paid to conflicts of interest between the AIFM, its customers, AIFs, investors and if applicable prime brokers – in each case in the relationship to the AIFM and between themselves.

2) AIFMs shall:

130 Art. 35 (3) repealed by LGBl. 2020 no. 8.

131 Art. 36 (3) repealed by LGBl. 2020 no. 8.

a) maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps to identify, prevent, manage and monitor conflicts of interest;

b) within their operations segregate tasks and responsibilities that might be regarded as incompatible with one another or that may potentially generate systematic conflicts of interest;

c) assess whether their operating conditions might involve any other material conflicts of interest and disclose them to the investors of the AIFs.

3) Where the organisational arrangements made by the AIFM are not sufficient, the AIFM shall unambiguously disclose the general nature and sources of conflicts of interest to the investors before the conclusion of any transactions and develop appropriate strategies and procedures.

4) Repealed[132]

Art. 38

Organisation

1) The AIFM must have sound administrative and accounting procedures, control and safeguarding arrangements for electronic data processing and appropriate internal control mechanisms, including in particular rules for personal transactions by its employees and for the holding and management of investments in financial instruments for the purpose of investing on its own account.

2) The rules referred to in (1) must ensure as a minimum that:

a) each transaction involving the AIF can be reconstructed according to its origin, counterparty and the time and place it was concluded; and

b) the assets of the AIF are invested in accordance with the constitutive documents and the applicable law.

3) An AIFM must have appropriate procedures in place through which its employees can report actual or potential violations of this Act and the ordinances issued in connection therewith, internally via a special, independent and autonomous reporting line.[133]

132 Art. 37 (4) repealed by LGBl. 2020 no. 8.

133 Art. 38 (3) amended by LGBl. 2020 no. 8.

Art. 39

Risk management

1) An AIFM shall assign risk management and portfolio management to various persons. An AIFM, for which separation of functions is inappropriate due to the nature, size and complexity of the AIF, may dispense with separation of functions for specific areas of risk management established by the Government by ordinance, with the consent of the FMA, provided that this does not compromise the effectiveness of the risk management procedures outlined in (2).[134]

2) An AIFM shall employ appropriate risk management procedures that enable it to monitor and measure the risk associated with the investment positions and the respective share in the overall risk profile of the investment portfolio at all times. The risk management procedures must be reviewed and adjusted at least once a year.

3) The AIFM shall:

a) conduct an appropriate, documented and regularly updated examination procedure ("due diligence"), for the AIF, if it undertakes investments for the AIF;

b) ensure that the risks arising from each asset and their effects on the AIF's portfolio can be properly identified, measured and monitored on an ongoing basis, in particular through appropriate stress testing procedures;

c) ensure that the risk structure of the AIF is appropriate to its size, the composition of its assets, its investment strategy, the investment objectives and the information in the constitutive documents and the marketing material;[135]

d) ensure, that the credit rating, taking into account the nature, the scope and complexity of the AIF's business activities, is not exclusively and automatically based on ratings issued by credit rating agencies as defined in Art. 3 (1) b) of Regulation (EC) no. 1060/2009.[136]

4) The AIFM shall set a limit for each AIF on:

a) the maximum level of leverage;

b) the provision of collateral under the leverage arrangements.

134 Art. 39 (1) amended by LGBl. 2016 no. 46.
135 Art. 39 (3) c) amended by LGBl. 2021 no. 230.
136 Art. 39 (3) d) inserted by LGBl. 2016 no. 46.

5) In setting the limits referred to in (4) the AIFM shall take into account the following:

a) the type and investment strategy of the AIF;

b) the sources of leverage;

c) systemic risks arising from the connection or relevant relationship with other financial services institutions;

d) the need to limit the exposure to each individual counterparty;

e) the collateral for the leverage;

f) the asset-liability ratio;

g) the scale, nature and extent of the activities of the AIFM on the markets concerned.

6) The AIFM shall act in the best interest of the investors of the AIF concerned and, if necessary, take corrective measures to the extent that it has entered into a securitisation which no longer meets the requirements of Regulation (EU) 2017/2402.[137]

Art. 40

Liquidity management

1) In order to monitor and assess liquidity risks the AIFM shall:

a) implement appropriate liquidity management systems and procedures for open-ended AIFs or when leverage is employed;

b) conduct regular stress tests under normal and exceptional conditions;

c) ensure that the investment strategy, the liquidity of assets and the obligations of the AIF, in particular concerning unit redemption, are compatible with one another.

2) Repealed[138]

137 Art. 39 (6) amended by LGBl. 2020 no. 506.

138 Art. 40 (2) repealed by LGBl. 2020 no. 8.

Art. 41[139]

Repealed

2. Valuation

Art. 42

Valuation obligation

The AIFM shall ensure that appropriate and consistent valuation procedures are established for each AIF in accordance with Art. 43 to 45.

Art. 43

Valuation principles

1) Unless specified otherwise by this Act, the valuation of assets and the calculation of the net asset value per unit or share ("net asset value"; NAV) and – in the case of an open-ended AIF – of the issue or sale price and the repurchase or redemption price shall be determined by the constitutive documents of the AIF.

2) The assets are to be valued and the net asset value per unit is to be calculated at least once a year. The investors shall be informed of the valuation of the assets and the calculation of the net asset value per unit or share in accordance with the constitutive documents of the AIF.

3) For open-ended AIFs the valuations and calculations shall be made at a frequency that is appropriate in relation to the specific features of the assets and the rules for issue and redemption of units or shares.

4) Notwithstanding (2), for closed-end AIFs a valuation shall be carried out as a minimum in the event of an increase or decrease in capital.

139 Art. 41 repealed by LGBl. 2020 no. 506.

5) The valuation shall be carried out by:

a) an external valuer as set out in Art. 44;

b) the AIFM itself, if the valuation function is functionally independent of the portfolio management and the remuneration policy and other measures ensure that conflicts of interest are kept to a minimum and an undue influence on employees is prevented.

6) If no independent valuation takes place, the FMA may as home Member State authority require the AIFM to have its valuation procedures and/or valuations inspected by an external valuer or the auditors.

7) If the AIFM fails to comply with the FMA's requirement within an appropriate time limit, the FMA may appoint an external valuer at the AIFM's expense.

Art. 44

External valuation requirements

1) The AIFM is responsible for the proper valuation of the assets and the calculation and publication of the net asset value. It must also effectively supervise the activities of the external valuer. The activities of the external valuer may in particular not prevent the AIFM from acting in the best interests of the investors.

2) An external valuer must:

a) be carefully selected, qualified, competent to carry out valuations;

b) be subject to a mandatory professional or statutory obligation or an obligation recognised by law to obtain registration, approval or authorisation;

c) guarantee that he is able to carry out the valuation effectively;

d) satisfy the requirement for delegation of functions referred to in Art. 46;

e) be independent of the AIF, the AIFM and other persons with close links to the AIF or the AIFM.

3) The external valuer may not delegate the valuation to third parties.

4) The depositary appointed for an AIF may also be appointed as external valuer, provided there is a functional and hierarchical separation of the performance of its depositary functions from the performance of its valuation functions and the potential conflicts of interest are duly identified, managed and disclosed to the investors of the AIF.

5) As the competent authority of the home Member State of the AIFM, the FMA is to be notified of the employment of an external valuer. The FMA may demand the appointment of a different valuer in the event of lack of independence and an infringement of (2). Art. 43 (7) shall apply accordingly.

6) The AIFM is responsible for the proper valuation of the assets, the calculation of the net asset value and the publication of the unit value. An exclusion of liability vis-à-vis the AIF and the investors shall have no validity.

7) The external valuer shall perform his duties with due skill, care and diligence. He shall be liable for losses he causes the AIFM through culpable non-performance or defective performance of the duties of the valuer.

Art. 45[140]

Repealed

3. Delegation of functions

Art. 46

Basic principle

1) An AIFM may delegate parts of its functions to third parties in the interests of efficient management, if:

a) the AIFM is able to justify the suitability of its overall structure for delegation of functions with objective reasons;

b) the delegate disposes of sufficient resources to perform the relevant functions and the persons who effectively conduct the business of the delegate are of good repute and have sufficient experience;

140 Art. 45 repealed by LGBl. 2020 no. 8.

c) the delegation does not adversely affect the effectiveness of the supervision of the AIFM; in particular it must not prevent the AIFM from acting in the interests of its investors, nor prevent the AIF being managed in the interests of the investors;

d) the AIFM can demonstrate that:

   1. the delegate in question has the necessary qualifications and is capable of undertaking the functions involved and that it was selected with due care by the AIFM;

   2. the AIFM is in a position effectively to monitor the delegated function, to give further instructions to the delegate at any time and to withdraw the delegation with immediate effect if this is in the interests of the investors;

e) the AIFM reviews the services provided by the delegates on an ongoing basis; and

f) it is guaranteed that the AIFM does not delegate its functions to an extent that in essence it can no longer be considered to be the manager of the AIF and that it becomes nothing more than a letter-box entity.

2) If an AIFM delegates the portfolio management or the risk management, in addition to the requirements under (1) it must be guaranteed that:[141]

a) functions are only delegated to delegates who are authorised and subject to supervision for asset management or – insofar as risk management alone is concerned - for risk management pursuant to Art. 65; if this condition cannot be met, delegation is only permissible further to the prior approval of the FMA;[142]

b) where the delegation is conferred to a delegate with its registered office in a third country, in addition to the requirements under a), cooperation between the FMA and the competent supervisory authority for the delegate in the third country will be assured;

c) no functions will be delegated to:

   1. the depositary or a delegate of the depositary; or

   2. another delegate whose interests might conflict with those of the AIFM or the investors of the AIF, unless such a delegate has made a functional and hierarchical separation of the performance of investment management tasks from other potentially conflicting tasks and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the AIF.

141 Art. 46 (2) introductory clause amended by LGBl. 2016 no 46.

142 Art. 46 (2) a) amended by LGBl. 2016 no 46.

3) The AIFM shall inform the FMA of the delegation of functions before the delegation agreement comes into effect.

4) The liability of the AIFM or the depositary shall not be affected by the delegation and sub-delegation of functions.

5) The delegate may sub-delegate functions to other persons, if:

a) the AIFM has consented beforehand;

b) the AIFM has informed the FMA, as competent authority of the home Member State, of the sub-delegation before the delegation becomes effective;[143]

c) the conditions set out in (1) and (2) with regard to the sub-delegate have been met; in particular the delegate must review the services performed by the sub-delegate on an ongoing basis.

6) (4) shall apply to delegations by the sub-delegate and subsequent sub-delegates accordingly.

7) Repealed[144]

4. Liability and confidentiality

Art. 47

Liability

1) An AIFM, a manager of EuVECAs or EuSEFs, a liquidator or an administrative agent shall be liable to the investors for losses arising from breach of Art. 32 to 46 of this Act or the provisions of EEA acts applicable pursuant to Art. 1 (3) unless it can demonstrate that it is in no way at fault. The liability is not affected by delegation of functions and sub-delegation to third parties as referred to in Art. 46. Any limitation of this liability is excluded.[145]

2) If key information in an annual report that has to be drawn up under this Act is incorrect or incomplete, the responsible persons referred to in (1) shall be liable to each investor for the losses the latter has incurred, unless they can demonstrate that they are in no way at fault. Liability for statements in the key information for the investors or in advertising,

143 Art. 46 (5) b) amended by LGBl. 2016 no. 46.
144 Art. 46 (7) repealed by LGBl. 2020 no. 8.
145 Art. 47 (1) amended by LGBl. 2020 no. 8.

including any translations thereof, is accepted only if they are misleading or inaccurate.[146]

3) Repealed[147]

4) In external relationships with third parties, several parties concerned shall be liable as joint and several debtors, in internal relationships according to the fault that is proportionately attributable to them. Recourse between the parties concerned is determined by evaluation of all the circumstances.

5) The claim to compensation under (1) and (2) shall become statute-barred at the end of five years from the occurrence of the loss, but at the latest one year after redemption of the unit or from becoming aware of the loss.[148]

6) The Princely Court of Justice shall in any case be competent for all claims arising from the legal relationship with a domestic AIF or of a domestic AIFM or for claims of a domestic investor arising from a foreign AIF, of which the units are marketed in Liechtenstein.

Art. 48

Confidentiality

1) The members of the executive bodies of AIFMs or of managers of EuVECAs or EuSEFs and their employees, as well as other persons acting for such AIFMs or managers, have an obligation of confidentiality in respect of facts entrusted, or made accessible to them, on the basis of the business relationships with customers. The obligation of confidentiality has no restriction in time.[149]

2) The statutory provisions in respect of the obligation to provide evidence or information to the criminal courts, the Financial Intelligence Unit and the supervisory authorities and bodies and the provisions concerning cooperation with the Financial Intelligence Unit or with the supervisory authorities and bodies remain reserved.[150]

146 Art. 47 (2) amended by LGBl. 2021 no. 230.
147 Art. 47 (3) repealed by LGBl. 2020 no. 8.
148 Art. 47 (5) amended by LGBl. 2020 no. 8.
149 Art. 48 (1) amended by LGBl. 2020 no. 8.
150 Art. 48 (2) amended by LGBl. 2016 no. 41.

C. Lapse and withdrawal of authorisation[151]

Art. 49[152]

Repealed

Art. 50[153]

Lapse of authorisation

1) Authorisation granted shall lapse if:

a) it is relinquished in writing;

b) bankruptcy proceedings are opened in respect of the AIFM 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) In the event of lapse of authorisation as referred to in (1) the FMA as competent authority in respect of the AIFM shall notify the competent authorities of the host Member States.

3) Lapse of authorisation is to be published in the publications specified by the Government at the AIFM's expense.

Art. 51[154]

Withdrawal of the authorisation

1) The FMA may withdraw authorisation, if:

a) the business operation has not commenced within a period of one year;

b) the business operation has ceased for at least six months;

c) the conditions under which the authorisation was granted are no longer being met and the legal status is not expected to be restored within a reasonable time limit;

151 Heading before Art. 49 amended by LGBl. 2016 no. 46.
152 Art. 49 repealed by LGBl. 2016 no. 46.
153 Art. 50 amended by LGBl. 2016 no. 46.
154 Art. 51 amended by LGBl. 2016 no. 46.

d) the AIFM systematically breaches the legal obligations in a way that is serious and fails to comply with the FMA's requests to restore the legal status;

e) the AIFM obtained the authorisation by making false statements or by any other irregular means;

f) the AIFM's capital no longer satisfies the requirements under Art. 32 – for individual portfolio management referred to in Art. 29 (3) a) and the provisions on capital adequacy under Art. 95 to 98 of Regulation (EU) No. 575/2013 – and the legal status is not expected to be restored within a reasonable time limit;

g) the continued operation of the AIFM's business would be likely to jeopardise confidence in Liechtenstein as a fund centre, the stability of the financial system or the protection of investors.

2) The AIFM is to be informed of the withdrawal of the authorisation by a written order, stating the reasons, and after the order becomes enforceable the withdrawal of authorisation is to be published in the publications specified by the Government at the AIFM's expense.

3) In the event of withdrawal as referred to in (1) the FMA as the competent authority of the AIFM shall notify the competent authorities of the host Member States.

4) The provisions concerning immediate measures as referred to in Art. 158 are unaffected.

Art. 52[155]

Repealed

155 Art. 52 repealed by LGBl. 2016 no. 46.

D. Reporting obligation in the event of violation of the Act or Directive

Art. 53

General principle

1) If an AIFM is unable to ensure that the requirements of this Act or Directive 2011/61/EU will be complied with in respect of AIFs, it shall immediately inform:

a) the competent authority of its home Member State;

b) the competent authorities for the EEA AIF under its management in other EEA Member States; and

c) the FMA.

2) The FMA as the competent authority of the AIFM shall oblige the AIFM to restore the situation to legitimacy. If nevertheless the requirements of this Act continue to be contravened, the FMA shall [156]

a) if an EEA AIFM or an EEA AIF is involved, as competent authority withdraw the right to manage the AIF from the AIFM; upon withdrawal the right to market AIFs to professional investors in Liechtenstein referred to in Art. 112 and other EEA Member States referred to in Art. 115 and the right to market AIFs to professional and private investors in Liechtenstein referred to in Art. 128 and 151 shall be forfeit; or

b) as competent authority of the EEA reference state, if a non-EEA AIFM manages an AIF, withdraw the AIFM's right to market AIFs to professional investors in Liechtenstein and other EEA Member States pursuant to Art. 144 and the right to market AIFs to professional and private investors in Liechtenstein pursuant to Art. 150 and 151.

3) Otherwise Art. 50 (2) and (3) and Art. 51 shall apply mutatis mutandis.[157]

4) The FMA shall inform the competent authorities of the host Member States of the withdrawal of the authorisation.

156 Art. 53 (2) amended by LGBl. 2020 no. 8.

157 Art. 53 (3) amended by LGBl. 2016 no. 46.

E. Liquidation, appointment of an administrative agent and insolvency proceedings[158]

Art. 54

Dissolution and liquidation after loss of authorisation

1) Lapse or withdrawal of the authorisation of the AIFM shall result in the winding up and liquidation of the AIFM, unless it holds another authorisation in accordance with the UCITSG or authorisation under the Investment Undertakings Act (IUG).[159]

2) The FMA shall inform the Office for Justice and the depositary of the legally enforceable loss of authorisation. The Office for Justice shall enter the liquidation in the Commercial Register and shall appoint a liquidator proposed by the FMA in accordance with Art. 133 PGR. The provision of Art. 133 (6) PGR shall only apply if the Government consents to coverage of costs.

3) The costs of winding up and liquidation are borne by the AIFM, for investment companies with separation of assets as referred to in Art. 9 (8) b) by their own assets and for investment limited partnerships and investment partnerships of limited partners by the assets of the general partner and additionally, if applicable, an asset-managing limited partner, as appropriate.[160]

4) The winding up and liquidation of the AIFM or the individual assets of the investment company, investment limited partnership or investment partnership of limited partners shall proceed in accordance with Art. 133 et seq. PGR or another liquidation procedure specified with the consent of the Office for Justice and the FMA, with the proviso that the FMA undertakes the supervision of the liquidation.

5) Art. 56 shall apply to the managed assets of AIFs.

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

158 Heading before Art. 54 amended by LGBl. 2020 no. 398.
159 Art. 54 (1) amended by LGBl. 2016 no. 46.
160 Art. 54 (3) amended by LGBl. 2020 no. 8.

Art. 55

Appointment of an administrative agent

1) The FMA shall appoint an administrative agent for an AIFM that is legally incapacitated. 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 AIFM, but does not undertake the management of new AIFs;

b) decides on the issue and redemption of shares and units and if applicable arranges the suspension of a share deal arranged by the AIFM;

c) applies to the FMA within a year for permission to continue the business operation, the establishment of a new AIFM 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 AIFM.

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

Art. 56

Managed assets in the event of dissolution and insolvency of the AIFM and the depositary[161]

1) In the event of dissolution or insolvency proceedings in respect of the assets of the AIFM or, if a separation of assets has taken place, in respect of self-managed AIFs, the assets managed for the purposes of collective investment on behalf of the investors do not form part of their insolvency assets and are not liquidated with their own assets. Each AIF or sub-fund constitutes a separate fund in favour of its investors. Each separate fund is to be transferred to another AIFM with the consent of the FMA or, if no AIFM has declared itself willing to take over the fund within three months from the opening of bankruptcy proceedings, to be liquidated by means of a separate settlement in favour of the investors of

161 Art. 56 Heading amended by LGBl. 2020 no. 398.

the AIF or sub-fund 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.[162]

2) In the event of the bankruptcy of the depositary, the managed assets of each AIF or sub-fund are to be transferred with the consent of the FMA to another depositary or liquidated by means of separate settlement in favour of the investors of the AIF or sub-fund in question.

3) The costs of liquidation of the AIF or sub-fund in the cases referred to in (1) and (2) will be charged to the investors of the respective separate fund.

4) The Government may provide more specific rules by ordinance.

IV. Depositary and other counterparties of the AIFM and the depositary

A. Depositary

Art. 57

Depositary of a domestic AIF and an EEA AIF

1) The safe custody of the assets is to be delegated:

a) for a domestic AIF to a depositary in Liechtenstein;

b) for an EEA AIF to a depositary in the home Member State of the AIF.

2) The appointment of the depositary is to be settled by a written depositary contract.

3) 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 within the EEA, established in accordance with the Banking Act and authorised for safe-custody; or

162 Art. 56 (1) amended by LGBl. 2020 no. 398.

c) a trustee or a trust company authorised under the Trustee Act if an AIF is involved:[163]

1. for which no redemption rights can be exercised within five years from the first investments being made; and
2. that in accordance with its core investment strategy does not in principle invest in assets that have to be kept in safe custody pursuant to Art. 59 (1) a), in issuers or non-listed companies, in order potentially to gain control over such companies as stated in Chapter VI Section C.

4) The following may not be appointed as depositary:

a) the AIFM of the AIF;

b) a prime broker acting as a counterparty to an AIF, unless the performance of his depositary functions are hierarchically and functionally separated from his operation as a prime broker and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the AIF. The depositary may delegate custody functions to the prime broker in accordance with the conditions for delegation of functions.

Art. 58

Depositary of a Non-EEA AIF

1) For Non-EEA AIFs the depositary may also be an undertaking of the same nature as a bank or an investment firm under the conditions set out in (2) and (3).[164]

2) For non-EEA AIFs the depositary must have its registered office in the AIF's country of domicile, in the home Member State of the AIFM or in the EEA reference state of the AIFM.

3) In addition to the requirements for EEA AIFs set out in Art. 57, the following conditions shall apply to depositaries having their registered office in a third country:

a) The competent authorities of the home Member State and marketing state of the AIF, the AIFM and the depositary have concluded contracts concerning cooperation and the exchange of information.

b) In the domicile country of the depositary, depositaries are effectively regulated and supervised in accordance with the provisions of EEA law.

163 Art. 57 (3) c) Introductory clause amended by LGBl. 2016 no. 46.

164 Art. 58 (1) amended by LGBl. 2016 no. 46.

c) The domicile country of the depositary is not listed as a Non-Cooperative Country and Territory by the Financial Action Task Force on Money Laundering and Terrorist Financing (FATF).

d) The domicile country of the depositary has signed an agreement with the home Member State of the AIFM and with every state in which marketing is intended, that fully complies with the standards laid down by Art. 26 of the OECD Model Tax Agreement for the avoidance of double taxation of income and assets and ensures an effective exchange of information in tax matters, including any multilateral tax agreements.

e) The depositary is contractually liable to the AIF or its investors pursuant to Art. 60 und 61 and expressly agrees to meet the conditions concerning delegation of functions referred to Art. 60.

4) If the competent authorities of another EEA Member State disagree with the assessment made on the application of (3) by the competent authorities of the home Member State of the AIFM, the competent authorities may in accordance with the EEA Agreement refer the matter to the ESMA, which may act in accordance with the powers conferred on it.

Art. 59

Duties of the depositary

1) The depositary shall be obliged:

a) to hold financial instruments capable of being registered and other financial instruments delivered to it in safe custody, on an account. The depositary shall ensure that all financial instruments capable of being registered are registered in segregated accounts, held in the name of or for the account of the AIF, in such a way that they can be clearly identified as belonging to the AIF. The Government may provide more specific rules in accordance with Art. 16 of Directive 2006/73/EC by ordinance;

b) in respect of all other assets to verify and keep a record of the legal ownership of the AIF or if applicable of the AIFM acting on behalf of the AIF, on the basis of information or documents delivered by the AIF or the management company. The assessment of the ownership shall be based on external evidence, where this is available. The depositary shall keep its record of assets up to date;

c) in general, to ensure that:

1. the payment transactions of the AIF are properly supervised;

2. all payments arising from subscription of shares by and on behalf of investors are received; and
3. cash assets belonging to the AIF are entered on accounts held in the name of the AIFM or the depositary for the account of the AIF with:
   aa) a Liechtenstein-based bank;
   bb) a central bank;
   cc) a credit institution with its registered office in the EEA; or
   dd) an institution comparable to those referred to in aa) to cc) in the third country, where cash accounts are required.

   If the depositary acting on behalf of the AIF opens accounts, no cash of the depositary and/or the institutions referred to in aa) to cc) may be placed in them.

2) Apart from functions referred to in (1) the depositary shall also ensure that:

a) the sale, issue, repurchase, redemption and cancellation of units or shares of the AIF are carried out in accordance with the conditions of this Act and the constitutive documents of the AIF;
b) the value of the units of the AIF is calculated in accordance with the provisions of this Act and the constitutive documents of the AIF and the procedures for valuation laid down in Art. 42 to 45;
c) the instructions of the AIFM are carried out unless they conflict with the provisions of this Act or the constitutive documents of the AIF; if the AIFM contravenes the provisions of this Act or the constitutive documents, the auditor is to be informed immediately; if the AIFM contravenes in such a way that there is a reasonable suspicion to justify withdrawal of authorisation pursuant to Art. 51, the depositary shall inform the FMA;[165]
d) in transactions involving AIF assets the counter-value is remitted within the usual time limits;
e) the income of the AIF is employed in accordance with the provisions of this Act and the constitutive documents of the AIF.

3) The depositary shall act honestly, fairly, professionally, independently and in the interests of the AIF or its investors.

165 Art. 59 (2) c) amended by LGBl. 2020 no. 8.

4) A depositary may not perform tasks that might create conflicts of interest between the AIF, its investors, the AIFM and the depositary, unless the performance of its depositary tasks has been functionally and hierarchically separated from its other potentially conflicting tasks and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the AIF.

5) The depositary or the undertaking to which the depositary has delegated functions pursuant to Art. 60 may not reuse assets of the AIF without the permission of the AIF or the AIFM.

Art. 60

Delegation of functions

1) The depositary may not delegate its functions referred to in Art. 59 to third parties, with the exception of the functions referred to in Art. 59 (1) a) and b). Services provided within the context of securities settlement systems entrusted with the safe custody of assets under the Finality Act and Directive 98/26/EC or similar services through non-EEA securities settlement systems are not understood as a delegation as defined in this Article.

2) The functions referred to in Art. 59 (1) a) and b) may be delegated to third parties, if:

a) the functions are not delegated with the intention of circumventing the requirements of this Act and Directive 2011/61/EU;

b) there is an objective reason for the delegation;

c) the selection and appointment of the delegate is made with the due skill, care and diligence;

d) the depositary regularly supervises and reviews the delegate with due skill, care and diligence;

e) the depositary guarantees that the delegate, in the performance of the tasks delegated to it:

   1. has the organisational structures and expertise that are appropriate and proportionate to the nature and complexity of the assets entrusted to it;

2. with reference to custody tasks delegated further to Art. 59 (1) a) is subject to effective supervisory law (including minimum capital requirements), effective supervision and regular audits, that guarantee that the financial instruments are in its possession;
3. segregates the assets of the customers of the depositary from its own and the assets of the depositary, in such a way that the assets can at any time be clearly identified as belonging to customers of a specific depositary;
4. does not make use of the assets without the prior consent of the AIF or the AIFM and prior notification to the depositary;
5. complies with Art. 59 (1) a) and b) as well as (3)to (5).

3) The delegates of the depositary as referred to in (1) may in turn sub-delegate these functions on the assumption that the same conditions will be met and also the sub-delegates in question and – in the event of further sub-delegation – the succeeding delegates are obliged to meet the conditions; Art. 61 shall apply to the parties concerned accordingly.

Art. 61

Liability of the depositary

1) In the event of the loss of financial instruments referred to in Art. 59 (1) a) the depositary shall immediately obtain financial instruments of identical type and corresponding amount for the AIF or transfer them to its investors or pay compensation, unless the losses are due to force majeure, the consequences of which would have been unavoidable in spite of all reasonable efforts to the contrary.

2) Delegation to third parties pursuant to Art. 60 does not affect the liability of the depositary.

3) In the event of loss of financial instruments by a sub-depositary, the depositary may however be released from liability by contract if:

a) the depositary has met all its obligations in respect of delegation of functions and supervision;
b) a contract between the depositary and the delegate establishes the following, as a minimum:
   1. an arrangement whereby the liability of the depositary is expressly transferred to the delegate;
   2. the right of the AIF or the AIFM acting on behalf of the AIF or the depositary to make a claim in respect of the loss of financial instruments against the delegate; and

c) a contract between the depositary and the AIF or the AIFM acting on behalf of the AIF contains, as a minimum:

1. a discharge of the depositary's liability; and

2. one objective reason for the discharge of liability.

4) The depositary shall be liable to the AIF or the investors in addition to (1) for all other losses suffered by them on account of a negligent failure to meet the depositary's obligations.

5) The AIFM is in any case entitled and obliged to invoke liability claims of the investors. The individual investors are also entitled to invoke claims.

6) any compensation claim shall become statute-barred at the end of five years from the occurrence of the loss, but no later than one year from the redemption of a unit or from when the eligible claimant became aware of the loss.

7) Legal action against the depositary of an AIF having its registered office in Liechtenstein may still be brought in Liechtenstein notwithstanding the concurrent jurisdiction of foreign courts. The Princely Court of Justice shall have jurisdiction.

Art. 62

Depositary constraints in third countries

1) When the law of a third country requires that certain financial instruments are held in custody by a local institution and there is no local depositary that satisfies the requirements referred to in Art. 60 (2) e) 2, the provisions of this article shall apply.

2) The depositary may only delegate its functions to another local institution insofar as and as long as it is required by the law of the third state and no local depositary meets the legal requirements. Furthermore:

a) the investors of the relevant AIF must be duly informed, before making their investments, that such an assignment is necessary due to legal constraints under the law of the third state; in this connection the circumstances justifying the delegation are to be stated; and

b) the AIF or the AIFM acting on behalf of the AIF must instruct the depositary to delegate the safe custody of these financial instruments to one such institution.

3) The delegate may in turn sub-delegate its functions according to the conditions set out in (1) and (2); Art. 61 (2) and (3) shall apply accordingly to the relevant parties concerned.

4) The depositary is released from liability pursuant to Art. 61, if:

a) the constitutive documents of the AIF expressly permit a discharge from liability under the further provisions of this article;

b) the investors are duly informed of the discharge from liability and its conditions before making their investment decision;

c) the AIF or AIFM has instructed the depositary to delegate the custody of these financial instruments to the local institution;

d) a written contract between the depositary and the AIF or the AIFM expressly permits the discharge from liability;

e) in a written contract between the depositary and the delegate, the delegate expressly accepts the liability of the depositary and grants the AIF, the AIFM or the depositary the right to assert claims pursuant to Art. 61 against the delegate.

Art. 63

Exchange of information

The depositary shall pass all information that the depositary has obtained in the performance of its duties and which the competent authorities of the depositary, the AIF or the AIFM require, to the competent authorities of its home Member State on request. If different authorities are involved, they shall immediately exchange the information received between themselves.

Art. 64[166]

Repealed

166 Art. 64 repealed by LGBl. 2020 no. 8.

B. Administrator and risk manager

Art. 65

Obligation to obtain authorisation

1) The administrator and risk manager of AIFs must be authorised by the FMA.

2) The authorisation to operate as an AIFM under Chapter III Section A also includes authorisation to act as a risk manager and may include authorisation to act as an administrator provided the relevant conditions have been met.

3) No authorisation as referred to in (1) is required for legal, financial consultancy and accountancy services, in accordance with the applicable professional rules of conduct.

Art. 66

Conditions and obligations relating to the granting of authorisation

1) The rules shall apply mutatis mutandis to administrators and risk managers in respect of:[167]

a) authorisation of the AIFM pursuant to Chapter III Section A with the proviso that the information referred to in Art. 31 (2) d) and e) does not have to be included with the authorisation application;

b) the following obligations of the AIFM in accordance with Chapter III Section B:

   1. notification of changes (Art. 33);

   2. the code of conduct (Art. 35);

   3. protection of confidentiality (Art. 48); and

   4. the lapse and withdrawal of authorisation (Art. 50 and 51).

2) The Government may provide more specific rules in respect of the conditions for granting authorisation to an administrator and risk manager and their obligations by ordinance, in particular:

a) requirements for the management;

b) organisational arrangements;

167 Art. 66 (1) amended by LGBl. 2020 no 8.

c) the amount of capital funding and the basis for its calculation, with a limit on the initial capital of up to 1 million Francs.

Art. 67

Delegation to authorised administrators and risk managers

1) If in accordance with Art. 46 an authorised AIFM delegates all or certain aspects of the administrative functions to an authorised administrator or all or specific areas of the risk management to an authorised risk manager, the essential personnel and organisational requirements for the administration or the risk management placed on the AIFM shall be deemed to be met.[168]

2) When considering the authorisation of the AIFM the FMA shall with reference to the administration or the risk management only consider whether the requirements for delegation of functions set out in Art. 46 and the risk management of the overall organisation have been met.

3) The authorised administrator or risk manager is obliged to report to and notify the FMA in the same way as if the operation was performed by the AIFM itself.

4) The administrator or risk manager shall report major contraventions of provisions of this Act and the constitutive documents to the FMA. Art. 111 shall apply mutatis mutandis.

5) The Government may provide more specific regulations by ordinance, in particular:

a) the notification and reporting obligations of the administrator and risk manager;

b) the contraventions of this Act and the constitutive documents that will be considered to be major contraventions.

Art. 68

Liability of the administrator and risk manager

1) The administrator and the risk manager shall accept liability for the culpable breach of the obligations incumbent upon them.

168 Art. 67 (1) amended by LGBl. 2016 no. 46.

2) Insofar as functions have been delegated by the AIFM to the administrator or risk manager under the terms of Art. 46, the administrator or risk manager shall be liable towards the AIFM. In the event of withdrawal of the authorisation or the insolvency of the AIFM, the administrator or risk manager shall be directly liable to the investors of the AIF in question. If this is the case only the amount remaining after the investors have been satisfied may be assigned to the liquidation assets or insolvency estate of the AIFM.

3) Unless the functions of the administrator or risk manager have been delegated pursuant to Art. 46, the liability of the administrator or risk manager in an investment company, investment limited partnership and investment partnership of limited partners shall be towards the AIF, otherwise towards the investors of the AIF in question.[169]

C. Selling agent

Art. 69

Obligation to obtain authorisation

1) The selling agent of AIFs in Liechtenstein must be authorised by the FMA.

2) The authorisation to operate as an AIFM under Chapter III Section A also includes the authorisation to operate as a selling agent for the AIFs under its management, provided that marketing is included within the scope of the authorisation.[170]

3) The authorisation to market AIFs under EEA law is not affected by (1).

Art. 70

Conditions of authorisation and obligations

1) Rules shall apply mutatis mutandis to selling agents in respect of:[171]

a) the authorisation of the AIFM in accordance with Chapter III Section A with the proviso that Art. 30 (1) a) does not apply and that the

169 Art. 68 (3) amended by LGBl. 2020 no. 8.
170 Art. 69 (2) amended by LGBl. 2020 no. 8.
171 Art. 70 (1) amended by LGBl. 2020 no. 8.

information referred to in Art. 31 (2) d) and e) does not have to be included with the authorisation application;

b) the following obligations of the AIFM in accordance with Chapter III Section B:

1. notification of changes (Art. 33);
2. the code of conduct (Art. 35);
3. protection of confidentiality (Art. 48); and
4. the lapse and withdrawal of authorisation (Art. 50 and 51).

2) Repealed[172]

3) Authorisation for marketing is not required for selling agents:

a) which are subject to the prudential supervision of the FMA in accordance with other regulations; and

b) in respect of which it is to be assumed that they possess the required expertise for the marketing of AIFs.

4) The Government may provide more specific regulations concerning the authorisation conditions and obligations of a selling agent, by ordinance, in particular:

a) the requirements placed on the management of the selling agent;

b) the organisational arrangements to be made by the selling agent;

c) the persons and groups of persons, who meet the requirements referred to in (3).

d) the form to be used for the application.[173]

Art. 71

Delegation to authorised selling agents

1) If an authorised AIFM delegates certain functions or the entire marketing operation to an authorised selling agent pursuant to Art. 46, the essential organisational and personnel requirements for marketing placed on the AIFM are deemed to have been met.

2) When considering the authorisation of the AIFM the FMA shall, with reference to the marketing, only consider whether the requirements

172 Art. 70 (2) repealed by LGBl. 2020 no. 8.
173 Art. 70 (4) d) inserted by LGBl. 2020 no. 8.

for delegation of functions set out in Art. 46 and the risk management of the overall organisation have been met.

3) The selling agent is obliged to report to and notify the FMA in the same way as if the operation was performed by the AIFM itself.

4) The selling agent shall report major contraventions of provisions of this Act and the constitutive documents to the FMA. Art. 111 shall apply accordingly.

5) The Government may provide more specific regulations by ordinance, in particular:

a) the notification and reporting obligations of the selling agent with reference to marketing;

b) the contraventions of this Act and the constitutive documents that will be considered to be major contraventions.

Art. 72

Liability of the selling agent

1) The selling agent shall accept liability for the culpable breach of the obligations incumbent upon it.

2) Insofar as the functions have been delegated to the selling agent by the AIFM under the terms of Art. 46, the selling agent shall be liable towards the AIFM. In the event of withdrawal of the authorisation or the insolvency of the AIFM, the selling agent shall be directly liable to the investors of the AIF in question. If this is the case only the amount remaining after the investors have been satisfied may be assigned to the liquidation assets or insolvency estate of the AIFM.

3) Insofar as the functions of the selling agent have not been delegated in accordance with Art. 46, the liability of the selling agent shall be towards the investors of the relevant AIF.

D. Prime broker

Art. 73

Hiring of a prime broker

1) The selection and hiring of a prime broker must be compatible with the constitutive documents of the AIF.

2) The AIFM and the prime broker must agree the terms and conditions of assignment in a written contract.

3) The following must be agreed in particular in the contract referred to in (2):

a) whether or not the assets of the AIF can be transferred and reused; and

b) the designation of the depositary.

4) The Government may provide more detailed regulations in accordance with EEA law by ordinance.

Art. 74

Prime broker as sub-depositary

The provisions of Chapter IV shall apply to the appointment and functions of a prime broker as sub-depositary in addition to Art. 73.

Art. 75

Prime broker as counterparty of the AIFM

1) Insofar as functions other than depositary functions alone are performed, prime brokers may provide other prime broker services with the AIFM with effect for or for the account of the AIF (prime broker as counterparty).

2) The services of a prime broker as a counterparty of the AIFM do not form part of the arrangements for the delegation of functions to a sub-depositary.

3) The AIFM shall select and hire a prime broker as counterparty with due skill, care and diligence.

4) The responsibility for the selection and supervision of the prime broker as counterparty lies with the AIFM.

5) Prime brokers as counterparties may enter into an account relationship with the AIFM.

6) The obligations of the depositary are governed by Art. 59 (1) c).

7) Repealed[174]

V. Structural measures

A. General

Art. 76

Basic principle

1) Unless provided otherwise in this Chapter:

a) for the purposes of this Chapter, an AIF includes the sub-funds associated with it, irrespective of the legal form;[175]

b) the provisions of this Chapter shall apply mutatis mutandis to self-managed AIFs;

c) the provisions of this Chapter shall apply to both Liechtenstein-based and foreign AIFs, provided there is no conflict with the applicable law of the foreign AIF, subject to the provisions on cross-border operations pursuant to Chapters XI, XII and XIIa.[176]

2) If AIFs in the form of a public limited company or the European company (SE) participate in a demerger or merger, the following provisions shall apply:

a) in the case of a demerger, the provisions of Directive (EU) 2017/1132 in addition to the provisions of this Chapter;[177]

b) in the event of a merger (amalgamation) and in the case of closed-ended funds from different EEA Member States in the legal form of incorporated companies, the provisions of Directive (EU) 2017/1132 in addition to the provisions of this Chapter.[178]

174 Art. 75 (7) repealed by LGBl. 2020 no. 8.
175 Art. 76 (1) a) amended by LGBl. 2020 no. 8.
176 Art. 76 (1) c) amended by LGBl. 2020 no. 8.
177 Art. 76 (2) a) amended by LGBl. 2020 no. 303.
178 Art. 76 (2) b) amended by LGBl. 2020 no. 303.

3) In the cases referred to in (2) the checking procedures, documents and information required under this Chapter shall as far as possible be coordinated with the checking procedures, documents and information required under the EEA legal provisions. If the provisions of the EEA legislation referred to in (2) are incompatible with individual provisions of this Chapter, the provisions in the EEA legislation referred to shall take precedence. Insofar as other provisions of the PGR are incompatible with provisions of this Chapter, those of this Chapter will take precedence.

4) Structural measures between UCITS and AIFs shall be subject to the provisions of the UCITSG.

5) Structural measures with reference to AIFs exclusively managed by the same AIFM fall within the application of Art. 33 with the proviso that the documents referred to in Art. 78 (3) must additionally be submitted to the FMA.[179]

6) Repealed[180]

Art. 77[181]

Repealed

B. Merger

Art. 78[182]

Obligation to obtain approval, approval conditions and procedures

1) Merger of AIFs requires the prior approval of the FMA.

2) The FMA shall grant approval provided that:

a) the written consent of the depositaries concerned has been obtained;

b) the constitutive documents of the AIFs involved allow for the possibility of a merger;

179 Art. 76 (5) amended by LGBl. 2020 no. 8.
180 Art. 76 (6) repealed by LGBl. 2020 no. 8.
181 Art. 77 repealed by LGBl. 2020 no. 8.
182 Art. 78 amended by LGBl. 2020 no. 8.

c) the authorisation of the AIFM of the absorbing AIF allows the management of the investment strategies of the AIF to be absorbed;

d) the assets of the AIFs involved in the merger are valued, the conversion rate is calculated and the assets and liabilities are taken over on the same day.

3) The AIFM shall submit the following documents to the FMA:

a) a merger plan with information on:

1. the AIFs involved;
2. the expected effects of the planned merger on the investors of the AIFs involved;
3. the criteria adopted for the valuation of the assets and if applicable the liabilities at the time of calculating the conversion rate; and
4. the scheduled merger date;

b) the constitutive documents of the absorbing AIF;

c) information for investors concerning the merger and the investor's right of surrender.

4) The FMA shall decide whether to approve the merger within one month from receipt of the complete documents. The time limit may in justified cases be extended to six months. The FMA shall inform the AIFM of its decision.

5) The merger shall take effect on the merger date. The transferring AIF shall cease to exist when the merger takes effect.

6) The AIFM of the transferring AIF shall inform the FMA of the conclusion of the merger and communicates the certification from the competent auditor of proper execution and of the conversion rate at the time the merger takes effect pursuant to (5). The investors are to be informed accordingly of the conclusion of the merger.

7) The merger is to be recorded in the annual report of the absorbing AIF in the following year. An audited closing statement must be drawn up for the transferring AIF .

8) The Government may establish more specific rules concerning the approval of the merger by ordinance.

Art. 79[183]

Merger of AIFs with marketing to private investors

If an AIF involved in the merger is also marketed to private investors, the following requirements must also be met in addition to those in Art. 78:

a) private investors must be informed of the projected merger at least 30 days before the effective date; and

b) the costs of the merger may not be charged to either the AIF or the private investors, unless the private investors have agreed to absorb the costs by a qualified majority.

C. Demerger[184]

Art. 80[185]

Basic principle

The provisions for merger referred to in Art. 78 and 79 shall apply mutatis mutandis to the demerger of AIFs.

Art. 81[186]

Repealed

Art. 82[187]

Repealed

Art. 83[188]

Repealed

183 Art. 79 amended by LGBl. 2020 no. 8.
184 Heading before Art. 80 inserted by LGBl. 2020 no. 8.
185 Art. 80 amended by LGBl. 2020 no. 8.
186 Art. 81 repealed by LGBl. 2020 no. 8.
187 Art. 82 repealed by LGBl. 2020 no. 8.
188 Art. 83 repealed by LGBl. 2020 no. 8.

Art. 84[189]

Repealed

Art. 85[190]

Repealed

Art. 86[191]

Repealed

Art. 87[192]

Repealed

Art. 88[193]

Repealed

Art. 89[194]

Repealed

Art. 90[195]

Repealed

Art. 91[196]

Repealed

189 Art. 84 repealed by LGBl. 2020 no. 8.
190 Art. 85 repealed by LGBl. 2020 no. 8.
191 Art. 86 repealed by LGBl. 2020 no. 8.
192 Art. 87 repealed by LGBl. 2020 no. 8.
193 Art. 88 repealed by LGBl. 2020 no. 8.
194 Art. 89 repealed by LGBl. 2020 no. 8.
195 Art. 90 repealed by LGBl. 2020 no. 8.
196 Art. 91 repealed by LGBl. 2020 no. 8.

Art. 92[197]

Repealed

Art. 93[198]

Repealed

VI. Leverage and acquisition of control of undertakings[199]

A. Leverage[200]

Art. 94

Use and exchange of information by supervisory authorities

1) The FMA shall use the information obtained in accordance with Art. 107 to identify systemic risks, the risk of market disturbances or long-term risks to the growth of the economy.

2) In the interests of cooperation in supervisory matters the FMA shall make the information concerning the employment of leverage available to the competent authorities of other EEA Member States responsible for financial market supervision and for monitoring systemic risks and to the ESMA and the ESRB. The reporting obligation shall also apply if an AIFM or an AIF might represent a significant counterparty risk for a credit institution or a systemically important financial institution in another EEA Member State.

Art. 95

Setting of leverage limits

1) The AIFM shall demonstrate that the leverage limit set for each AIF is appropriate and that the limits set are not being exceeded at any time.

2) The FMA shall assess the risks arising from the employment of leverage for AIFMs with their registered office in Liechtenstein.

197 Art. 92 repealed by LGBl. 2020 no. 8.
198 Art. 93 repealed by LGBl. 2020 no. 8.
199 Heading before Art. 94 inserted by LGBl. 2020 no. 319.
200 Heading before Art. 94 amended by LGBl. 2020 no. 319.

3) In order to ensure the stability and integrity of the financial system the FMA shall:

a) impose limits on the level of leverage referred to in (1) and/or take other appropriate measures to avoid or contain systemic risks in the financial system and market disturbances; the AIFM is responsible for ensuring that the limits are adhered to and the other measures are complied with;

b) no later than ten working days before the proposed measure set out in a) is due to come into effect or be renewed, notify the ESMA, the ESRB and if applicable the competent authority for the AIF; the notification shall contain details of the proposed measure, the reasons for the measure and when the measure is intended to take effect;

c) in urgent cases order the immediate or prompt enforcement of the measure referred to in a); the notification referred to in b) shall in this case be given immediately.

4) Repealed[201]

5) Repealed[202]

B. Acquisition of control of undertakings[203]

Art. 96

Scope of application

1) This section refers to AIFMs that gain or could gain control over AIFs individually, or jointly on the basis of an agreement with other AIFMs, over a non-listed target company.

2) For the purpose of this section control shall, with reference to non-listed target companies mean the holding of more than 50 % of the voting rights. The share of the voting rights is calculated on the basis of the total number of shares to which voting rights are attached, even if the exercise of these voting rights has been suspended. In the calculation of the share of voting rights held, apart from the voting rights held directly by AIFs, the voting rights held by the following shall also be taken into account:

a) undertakings controlled by the AIF;

201 Art. 95 (4) repealed by LGBl. 2020 no. 8.
202 Art. 95 (5) repealed by LGBl. 2020 no. 8.
203 Heading before Art. 96 amended by LGBl. 2020 no. 319.

b) natural or legal persons, acting in their own name, but on the instruction of the AIF or of an undertaking controlled by the AIF.

3) This section does not apply to acquisition of control in:

a) small and medium-sized enterprises; small and medium-sized enterprises are enterprises that employ fewer than 250 persons and either achieve an annual turnover of no more than 50 million euro or the equivalent in another currency, or whose balance sheet total does not exceed an amount corresponding to 43 million euro or the equivalent in another currency;

b) special-purpose companies for the acquisition, ownership and management of real estate.

4) Art. 98 (1) and (2) and Art. 101 shall apply mutatis mutandis to acquisition of control in issuers. In derogation of (2) control in respect of issuers is measured in accordance with Art. 25 of the Takeover Act.

5) The conditions and restrictions referred to in Art. 6 of Directive 2002/14/EC are not affected by the provisions of this section.

6) The Government may establish more detailed regulations by ordinance, concerning in particular:

a) acquisition of control in target companies having their registered office in Liechtenstein; in derogation of (1) to (5) the Government may enact more stringent regulations on acquisition of control;

b) the legal forms of the target company;

c) the conditions that a company must meet to be deemed an issuer for the purpose of this section.

Art. 97

Notification of acquisition of control

1) Within ten working days of gaining control an AIFM with registered office in Liechtenstein shall inform the shareholders whose addresses are known or accessible to it, as well as the FMA of the fact of having acquired control of the target company.

2) The notification referred to in (1) must contain the following information:

a) the circumstances in respect of voting rights arising because of the acquisition of control;

b) the conditions on which control has been acquired, in particular information about the shareholders involved, the persons entitled to exercise voting rights for shareholders and the undertakings through which the AIF holds voting rights;

c) the date of acquisition of control;

d) a request to the management of the target company to inform the employees' representatives or the employees immediately of the acquisition of control; the AIFM shall use its best efforts to ensure that the management complies with this request.

Art. 98

Duty of disclosure upon the acquisition of control

1) An AIFM with registered office in Liechtenstein shall further to acquisition of control disclose the information set out in (2) to:

a) the target company;

b) the shareholders of the target company, whose addresses are known or available to it;

c) the FMA;

d) the competent authorities for the target company; if the target company has its registered office in Liechtenstein, a notification in accordance with c) will suffice.

2) The notification referred to in (1) shall contain the following information:

a) the name of the AIFM that has acquired control, individually or jointly with other AIFMs;

b) the rules for prevention and handling of conflicts of interest, in particular between the AIFM and target company, including information about the specific safeguards established to ensure that agreements between the AIFM and/or the AIFs and the undertaking are concluded as such between independent partners;

c) the rules for external and internal communication with reference to the target company, in particular with reference to employees;

d) a request to the management of the target company to notify the employees' representatives or employees immediately of the information set out in

a) to c); the AIFM shall use its best efforts to ensure that the management complies with this request.

3) The notification to target company and shareholders referred to in (1) shall also set out the intentions as regards future business development and the likely repercussions on employment, including any material change in the conditions of employment.

Art. 99

Notification of the acquisition of major holdings

1) If an AIF acquires, sells or holds shares of a target company the AIFM shall inform the FMA when the AIF's share reaches, exceeds or falls below the thresholds of 10 %, 20 %, 30 %, 50 % and 75 % of the voting rights.

2) As soon as an AIF can exercise control over a non-listed company, the AIFM shall furnish the investors of the AIF and the FMA with information about the financing of the acquisition of control.

Art. 100

Annual report of the AIF

1) The AIFM shall ensure that the annual report of the target company is published in accordance with (2) or the information about the target company is provided in the annual report of the AIF pursuant to (3) within the prescribed time limits and shall announce this pursuant to (4).

2) The AIFM shall ensure that the annual report of the target company is drawn up within the relevant national time limits, in the case of a target company with registered office in Liechtenstein within six months from the end of the financial year (Art. 1048 (2) PGR), to include the information referred to in (3).

3) The AIFM shall incorporate the following information concerning the target companies in its annual report pursuant to Art. 104:

a) a report on the situation at the end of the financial year that provides a true picture of the actual circumstances;

b) events of a particular significance that have occurred after the end of the financial year;

c) the anticipated development of the target company;

d) information on the acquisition of own shares as set out in Art. 1068 PGR.

4) The AIFM:

a) shall employ its best efforts to ensure that the management of the target company conveys the reports referred to in (2) and (3) to the employees' representatives or the employees; in the cases referred to in (3) the reports shall be provided within six months from the end of the financial year;

b) shall make the reports referred to in (1) available to its investors after the annual accounts have been drawn up, but within six months from the end of the financial year at the latest.

Art. 101

Break up of companies

1) The AIFM may not within 24 months from acquiring control permit, facilitate, support or arrange reduction in the target company's capital funding by distribution, capital reduction or share redemption, nor vote in favour of such measures within the governing bodies of the target company. The AIFM shall employ its best efforts against the reduction of own funds.

2) The Government shall establish more specific regulations by ordinance, in particular the extent of the obligations referred to in (1).

VII. Master-feeder structures and sub- funds

Art. 102[204]

Repealed

Art. 103[205]

Repealed

204 Art. 102 repealed by LGBl. 2020 no. 8.

205 Art. 103 repealed by LGBl. 2020 no. 8.

VIII. Information to investors and authorities

Art. 104

Annual report

1) For each EEA AIF and each AIF marketed in EEA Member States the AIFM shall within the first six months from the end of the financial year:

a) issue an annual report;

b) make the annual report available to the authorities of the home Member State of the AIFM and the AIF;

c) make the annual report available to the investors free of charge on request.

2) Insofar as the AIF is obliged to draw up and publish an annual report under the Disclosure Act or Directive 2004/109/EC:

a) the annual report shall be made available within the first four months from the end of the financial year;

b) the information referred to in (3) is to be made available to investors separately or as part of the annual report.

3) The annual report referred to in (1) shall with reference to the past financial year contain:

a) a balance sheet or a statement of assets and liabilities;

b) an income and expenditure account;

c) a report on the activities;

d) the total amount of the remuneration paid, divided into fixed and variable remuneration paid by the AIFM to its employees, the number of beneficiaries and if applicable, the carried interests paid by the AIF;

e) the aggregate amount of remuneration broken down according to senior management and other employees whose activities have a material impact on the AIF's risk structure;

f) any material change in the information listed in Art. 105.

4) The figures contained in the annual reports shall be prepared in conformity with the constitutive documents in accordance with the statutory accounting regulations of the home Member State of the EEA

AIF or the third country in which the non-EEA AIF has its registered office.[206]

5) The figures shall be audited by an auditor, whose audit certificate and any qualifications reported therein must be reproduced in full in the annual report.

6) The Government may establish more specific regulations by ordinance, in particular:

a) the form and content of the annual report;

b) the accounting standards permitted for the relevant legal form;

c) the cases in which there is a material change as defined in (3) f);

d) who is a beneficiary as referred to in (3) d);

e) a reduction in the time limit referred to in (1) to four months or a publication of the annual report in the publications specified by the Government, insofar as the AIF is also marketed to private investors in Liechtenstein.

Art. 105

Investor information[207]

1) For each of the EEA AIFs that it manages, and for each of the EEA AIFs that it markets or for each AIF that it markets in the EEA, an AIFM shall make the following information available to investors in the version currently applying before they acquire units or shares in accordance with the form specified in the constitutive documents:[208]

a) a description of the AIF's investment strategy and objectives;

b) information about the registered office of the master AIF, if the AIF is a feeder AIF;

c) information about the registered office of the underlying funds, if the AIF is a fund of funds;

d) a description of:

   1. the type of assets that the AIF may invest in;

   2. the techniques it may employ and all the risks associated therewith, any investment restrictions, the circumstances in which the AIF may employ leverage, the nature and sources of the leverage

206 Art. 104 (4) amended by LGBl. 2020 no. 8.

207 Art. 105 Subject heading amended by LGBl. 2016 no. 46.

208 Art. 105 (1) introductory sentence amended by LGBl. 2021 no. 230.

permitted and the associated risks, other restrictions on the employment of leverage and agreements on collateral and on the reuse of assets, as well as the maximum level of leverage that the AIFM may employ on behalf of the AIF;

3. the procedures and conditions for changing the investment strategy and policy;

e) a description of the most important legal aspects of the contractual relationship entered into for the investment, including information on:

1. the competent courts;
2. the applicable law; and
3. the enforceability of judgements in the domicile state of the AIF;

f) the identity and obligations of all service undertakings acting for the AIF, in particular the AIFM, the depositary of the AIF and the auditor, with a description of investors' rights;

g) a description of how the AIFM covers a potential liability arising from the performance of professional activities;

h) a description of any delegated management or custody functions, identification of the delegate and any conflict of interests associated with the delegation;

i) a description of the valuation procedures and methods used by the AIF, taking into account the hard-to-value assets referred to in Chapter III Section B;

k) a description of procedures for handling the AIF's liquidity risks, taking into account the redemption rights in both normal and exceptional circumstances and redemption arrangements with investors;

l) a description of the fees, charges and other expenses, stating the respective maximum amounts, insofar as these are to be directly or indirectly borne by the investors;

m) a description of how the AIFM ensures fair treatment of investors, as well as a description of any preferential treatment accorded, stating the type of investors benefitting from such preferential treatment and, if applicable, the legal or financial connections between these investors, the AIF or the AIFM;

n) the latest annual report;

o) the procedures and conditions for the issue and sale of units in an AIF;

p) the most recent net asset value of the AIF or the most recent market price of its units pursuant to Art. 43;

q) where available, the past performance of the AIF;

r) if applicable, as regards the prime broker:
   1. its identity;
   2. a description of any material arrangements between the AIF and the prime brokers, the way in which conflicts of interest in this respect are resolved, the provision in the contract with the depositary on the possible right to transfer and reuse the assets of the AIF and information about any existing transfer of liability to the prime broker;

s) a description of the manner in which and the time at which the information required in accordance with Art. 106 (1) b) and (2) will be disclosed.

2) The AIFM shall inform the investors before they invest in units and thereafter immediately, of any arrangements for discharge of liability and changes in the liability of the depositary referred to in Art. 61 and 62.

3) Insofar as the AIF has to issue a prospectus under the Securities Prospectus Act, the information referred to in (1) and (2) which is not included in the prospectus, must be published separately or as a supplement to the prospectus.[209]

4) The Government may establish more specific regulations by ordinance, in particular:

a) the form in which and the time at which the information referred to in (1) and (2) is to be made available or disclosed;

b) the content of the identity details and the scope of the obligations for the purposes of (1) f);

c) with reference to the information referred to in (1) b) and c);

d) the breakdown of the marketing information to be produced in accordance with this article;

e) Repealed[210]

Art. 106

Regular information

1) During the period of the investment the AIFM is obliged:

a) to inform investors immediately of changes in the liability of the depositary of an AIF;

209 Art. 105(3) amended by LGBl. 2019 no. 161.

210 Art. 105 Abs. 4 Bst. e repealed by LGBl. 2021 no. 230.

b) for each EEA AIF under its management and non-EEA AIFs it markets within the EEA to disclose regularly to the investors:

1. the percentage of the assets of the AIF that are subject to special arrangements due to their lack of liquidity;
2. any new arrangement for managing the liquidity of the AIF;
3. the current risk profile of the AIF and the risk management systems used by the AIFM to manage these risks.

2) An AIFM that employs leverage for the EEA AIFs under its management and non-EEA AIFs it markets within the EEA, must regularly disclose:

a) changes in the maximum level of leverage;

b) any right of reuse of collateral set up for the leverage arrangements;

c) the total amount of indebtedness.

3) Repealed[211]

Art. 107

Periodic and event-driven reporting obligations to the FMA

1) An AIFM with its registered office in Liechtenstein shall report regularly to the FMA on:

a) the principal markets and instruments for the AIFs on which and/or in which it trades on behalf of the AIF; and

b) the principal risk exposures and concentrations.

2) For each EEA AIF under its management and for each AIF it markets in the EEA an AIFM with its registered office in Liechtenstein shall provide the FMA with the following information:

a) the percentage of the assets of the AIF that are subject to special arrangements due to their lack of liquidity;

b) any new arrangement for managing the liquidity of the AIF;

c) the current risk profile of the AIF and the risk management systems used by the AIFM to manage the market, liquidity, counterparty and other risks, particularly operational risks;

d) the most important types of assets;

e) the result of the stress test referred to in Art. 39 and 40.

211 Art. 106 (3) repealed by LGBl. 2020 no. 8.

3) An AIFM with registered office in Liechtenstein shall make the following information available to the FMA on request:

a) the annual report (Art. 104) for each managed EEA AIF and each AIF marketed in the EEA;[212]

b) at the end of each quarter a detailed statement of the AIFs under its management.

4) An AIFM having its registered office in Liechtenstein, that manages AIFs that employ leverage to a significant extent, shall provide the FMA with the following information:[213]

a) the overall amount of the leverage employed for each of the AIFs under its management;

b) a breakdown between leverage arising from borrowing or securities lending and leverage embedded in derivatives;

c) information about the extent to which the assets of the AIFs have been reused under leverage arrangements.

5) The information referred to in (4) shall include for each AIF:

a) information on the identity of the five largest financing partners; and

b) information on the respective amounts of leverage obtained from these sources for each of the AIFs mentioned.

6) For non-EEA AIFMs the reporting obligations referred to in (4) and (5) are restricted to the EEA AIFs under their management and the non-EEA AIFs marketed by them within the EEA.

7) The FMA may call for information regularly or on an ad-hoc basis, insofar as this is necessary for effective monitoring of systemic risks, in addition to that stipulated in this article; it shall inform the ESMA of the additional requirements.

8) In exceptional circumstances and insofar as it is necessary in order to ensure the stability and integrity of the financial system or to promote long-term sustainable growth, the FMA shall at the request of the ESMA impose additional reporting requirements on AIFMs with their registered office in Liechtenstein.

9) The Government may establish more specific regulations by ordinance, in particular:[214]

212 Art. 107 (3) a) amended by LGBl. 2020 no. 8.

213 Art. 107 (4) introductory sentence amended by LGBl. 2020 no. 8.

214 Art. 107 (9) introductory sentence amended by LGBl. 2020 no. 8.

a) Repealed[215]
b) the obligation to report and provide information;
c) the types of assets; and
d) the form to be used for making the report.

IX. Redemption of units, distribution and reinvestment

Art. 108

Basic principle

The Government may stipulate the requirements for redemption of units, distribution and reinvestment by ordinance, but these requirements may not be more stringent than the corresponding stipulations specified in Chapter IX UCITSG.

X. Auditor

Art. 109

Appointment of the auditor

1) An auditor is to be appointed for each AIF and each holder of authorisation under this Act. For the purposes of this Chapter a small AIFM shall count as an authorisation holder. Unless a depositary is subject to scrutiny of its activities by an auditor under other laws, an auditor shall also be appointed for this function.

2) The auditor must hold an authorisation pursuant to the Auditors Act or be registered pursuant to Art. 69 of the Auditors Act. Art. 157 (4) and (5) shall otherwise apply.[216]

3) The auditor shall devote itself exclusively to its auditing function and business directly relating thereto. It may not engage in any asset management. The auditor must be independent of the AIF subject to audit, the AIFM and the depositary.

215 Art. 107 (9) a) repealed by LGBl. 2020 no. 8.
216 Art. 109 (2) amended by LGBl. 2019 no. 21.

4) The auditors of the AIF, of the holders of authorisation under this Act and of the depositary have the right mutually to exchange all information necessary for the audit with reference to the AIFM and all AIFs under its management.

Art. 110

Duties of the auditor

1) Unless provided otherwise in this Act the auditor shall verify in particular:

a) that the conditions of authorisation continue to be met;

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

c) and examine the annual reports of the AIF, of the holders of authorisation under this Act and of the depositary.

2) Art. 48 shall apply accordingly to the auditor's obligation of confidentiality. In derogation of this the auditors of the AIF, of the holders of authorisation under this Act and of the depositary are obliged and entitled to cooperate.

3) The audit report with comments on the supervisory legislation is to be submitted no later than six months from the end of the financial year simultaneously to:

a) the holder of authorisation under this Act and/or the depositary;

b) the auditor of the holder of authorisation under this Act and of the depositary; and

c) the FMA.

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

5) Repealed[217]

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

7) The Government may establish more specific regulations by ordinance, in particular:

217 Art. 110 (5) repealed by LGBl. 2019 no. 21.

a) the details of the audit report;

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

Art. 111

Duty of notification

1) Auditors shall immediately 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 contravention of the legal and administrative provisions and of the constitutive documents that apply to the authorisation or performance of the business activities of an AIF, an AIFM, a depositary and other companies involved in their business activities;

b) the impairment of the functioning of the AIF 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.[218]

2) The reporting obligation referred to in (1) also applies to undertakings that maintain close links with the AIF 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 (1) in good faith, it shall not be in contravention of any contractual or statutory obligation of confidentiality. He shall be excluded from any liability for the disclosure.

4) The Government shall establish more specific regulations by ordinance.

218 Art. 111 (1) c) amended by LGBl. 2016 no. 46.

XI. Pre-marketing, marketing, and management of AIFs by EEA AIFMs[219]

A. Pre-marketing of EEA AIFs by EEA AIFMs having their registered office in Liechtenstein to professional investors in Liechtenstein or in another EEA Member State[220]

Art. 111a[221]

Preconditions

1) An AIFM having its registered office in Liechtenstein may engage in pre-marketing in the EEA if the information presented to potential professional investors:

a) is not sufficient to allow investors to commit to acquiring units or shares of a particular AIF;

b) does not amount to subscription forms or similar documents whether in a draft or a final form; or

c) does not amount to constitutional documents, a prospectus or offering documents in a final form of an AIF that has not yet been established or registered.

2) Where a draft prospectus or offering documents are provided, they shall not contain information sufficient to allow investors to take an investment decision and shall clearly state that:

a) they do not constitute an offer or an invitation to subscribe to units or shares of an AIF; and

b) the information presented therein should not be relied upon, because it is incomplete and may be subject to change.

3) Before engaging in pre-marketing, the AIFM need not notify the FMA of the content or of the addressees of pre-marketing, nor need it fulfil any conditions or requirements other than those set out in this Article.

4) Art. 112 to 116 shall apply to professional investors which subscribe to units or shares of an AIF with 18 months of the beginning of pre-marketing if the AIF:

219 Heading before Art. 111a inserted by LGBl. 2021 no. 230.
220 Heading before Art. 111a inserted by LGBl. 2021 no. 230.
221 Art. 111a inserted by LGBl. 2021 no. 230.

a) is referred to in the information provided in the pre-marketing; or

b) has been notified for marketing as a result of pre-marketing.

5) The AIFM must notify the FMA within two weeks that it has begun pre-marketing, either in writing or by electronic means. The notification must contain the following details:

a) details concerning the EEA Member State in which pre-marketing is taking place or has taken place;

b) details concerning the periods during which pre-marketing is taking place or has taken place;

c) a brief description of the pre-marketing, including information on the investment strategies presented; and

d) where relevant, a list of the AIFs and sub-funds of AIFs which are or were the subject of pre-marketing.

6) The FMA shall promptly inform the competent authorities of the other EEA Member States in which the AIFM is or was engaged in pre-marketing that pre-marketing has begun and shall, on request, provide further information to those authorities on the pre-marketing.

7) The AIFM may allow a third party to engage in pre-marketing on behalf of the AIFM if the third party is authorised as an investment firm or tied agent in accordance with Directive 2014/65/EU, as a credit institution in accordance with 2013/36/EU, as a UCITS management company in accordance with 2009/65/EC, or as an AIFM in accordance with Directive 2011/61/EU. The third party must also fulfil the preconditions set out in this Article.

8) The AIFM must adequately document the pre-marketing.

9) The Government may establish more specific rules governing the preconditions of pre-marketing by ordinance.

B. Pre-marketing of EEA AIFs by EEA AIFMs having their registered office in another EEA Member State to professional investors in Liechtenstein[222]

Art. 111b[223]

FMA as host Member State authority

1) If the FMA is the host Member State authority:

a) it shall accept the transmission of a notification corresponding to Art. 111a (5) by the home Member State authorities in electronic form;

b) it is entitled to request further information from the home Member State authority on the pre-marketing taking place or having taken place in Liechtenstein;

c) it shall arrange electronic archiving and cost-free retrieval of the documents referred to in Art. 111a.

2) Otherwise it shall not request any further documents or information under the notification procedure described in Art. 111a (4).

C. Marketing of EEA AIFs by EEA AIFMs having their registered office in Liechtenstein to professional investors in Liechtenstein[224]

Art. 112[225]

Marketing notification

1) An AIFM having its registered office in Liechtenstein shall submit a written notification to the FMA for each EEA AIF under its management that it intends to market in Liechtenstein.

2) The marketing notification must contain:

a) a programme of activity with information on the AIF and its registered office;

222 Heading before Art. 111b inserted by LGBl. 2021 no. 230.
223 Art. 111b inserted by LGBl. 2021 no. 230.
224 Heading before Art. 112 amended by LGBl. 2021 no. 230.
225 Art. 112 amended by LGBl. 2020 no. 8.

b) the constitutive documents of the AIF;

c) the name of the depositary;

d) a description of the investor information available on the AIF referred to in the notification;

e) if the AIF is a feeder-AIF, information on the registered office of the master-AIF;

f) the investor information referred to in Art. 105 (1), if not already enclosed in accordance with d);

g) a description of the measures to prevent marketing of AIFs to private investors that also takes into account recourse to companies independent of the AIF.

3) The FMA shall inform the AIFM whether he can commence marketing the said EEA AIF within 20 working days from receipt of all the documents. The AIFM may commence marketing upon delivery of this notification.

4) The FMA may prohibit marketing of the EEA AIF in respect of which notification has been given, if in the course of his management activities the AIFM is, or will be, in breach of the provisions of this Act. If marketing is not prohibited immediately, this does not rule out a ban on marketing at a later date. The reasons for any ban on marketing must be given in writing. The FMA may make an additional charge for issuing an appealable order.

5) If the EEA AIF is a feeder-AIF, the FMA will only give permission for marketing in accordance with 3) if the master-AIF is also an EEA AIF managed by an EEA AIFM authorised in an EEA Member State.

6) If the EEA AIF is an AIF registered in another EEA Member State the FMA shall inform the competent authorities of the home Member State of the EEA AIF, that the AIFM may commence marketing of the units of the EEA AIF in Liechtenstein.

7) The Government may establish more specific details by ordinance, in particular concerning the form and content of the marketing notification.

Art. 112a[226]

Duty to notify material changes

1) The AIFM shall inform the FMA in writing of material changes to the information communicated in accordance with Art. 112 (2) at least one month before implementation of the planned change or immediately after an unplanned change has taken place.

2) The FMA shall inform the AIFM immediately if a planned change cannot be permitted, insofar as this would lead to a violation of the provisions of this Act. It shall take all the appropriate measures or, if necessary, prohibit marketing, if:

a) the planned change is implemented notwithstanding the prohibition by the FMA; or

b) an unplanned change leads to a violation of the provisions of this Act on the part of the AIFM.

3) The Government may establish more specific rules by ordinance, concerning, in particular:

a) the cases in which a material change as defined in (1) is deemed to have occurred;

b) the form and content of the notification referred to in (1).

D. Marketing of EEA AIFs by EEA AIFMs having their registered office in Liechtenstein to professional investors in another EEA Member State[227]

Art. 113

Duty of notification

1) The AIFM shall submit a notification to the FMA for each EEA AIF it intends to market, in electronic form, in English or another language recognised by the FMA.

2) The marketing notice referred to in (1) must contain:

a) a programme of activities identifying the AIF and its registered office;

b) the constitutive documents of the AIF;

226 Art. 112a inserted by LGBl. 2020 no. 8.

227 Heading before Art. 113 amended by LGBl. 2021 no. 230.

c) the name of the depositary;

d) a description of the AIF or the available investor information concerning the AIF;

e) for feeder AIFs the registered office of the master AIF;

f) the investor information referred to in Art. 105 (1) unless this has already been provided in accordance with d);[228]

g) the names of the EEA Member States in which the marketing to professional investors is to take place;

h) a description of the measures to prevent marketing of AIFs to private investors that also takes into account recourse to companies independent of the AIFM, in accordance with the legal provisions and supervision of the state of marketing.

i) the details and address required for the billing or notification by the authority of the state of marketing of any applicable official fees or charges;[229]

k) the details of the facilities responsible for performing the tasks referred to in Art. 151a.[230]

3) The Government shall establish more specific regulations by ordinance, in particular the form and content of the marketing notice.

Art. 114

Scrutiny by the FMA

1) Upon full receipt of all the documents referred to in Art. 113 the FMA shall check exclusively to establish whether the AIFM is complying with the provisions of this Act or Directive 2011/61/EU as appropriate.[231]

2) The fact that further to a notification there is no immediate prohibition does not exclude a later prohibition on marketing to professional investors, even after receipt of the acknowledgement of receipt referred to in Art. 115.

228 Art. 113 (2) f) amended by LGBl. 2020 no. 8.
229 Art. 113 (2) i) inserted by LGBl. 2021 no. 230.
230 Art. 113 (2) k) inserted by LGBl. 2021 no. 230.
231 Art. 114 (1) amended by LGBl. 2020 no. 8.

Art. 115

Acknowledgement of receipt and forwarding by the FMA

1) The FMA shall address an acknowledgement of receipt to the AIFM no later than ten working days from receipt of the full notification. For self-managed AIFs the time limit shall be three months.

2) The FMA is entitled to extend the time limit referred to in (1)to up to 20 working days, in the case of self-managed AIFs to up to six months.

3) The FMA shall remit the documents referred to in Art. 113, in electronic form, to the authorities of the states of marketing no later than ten working days from receipt of the full set of documents. The remittance is to be accompanied by a confirmation in English or another language customarily used in the world of finance and agreed between the competent authorities, that the AIFM is authorised to manage an AIF with the relevant investment strategy. The time limit may be extended to a maximum of 20 working days by a notification stating the reason; the Government shall establish more specific regulations by ordinance.

4) The FMA shall immediately inform the following of the remittance of the documents referred to in (3):

a) the AIFM; and

b) if the FMA is not responsible for the supervision of the AIF, the competent authority for the AIF.

5) Upon delivery of the notification referred to in (4) the AIFM may commence marketing of AIFs to professional investors in the state of marketing.[232]

6) The Government may establish more specific regulations by ordinance, in particular:

a) the cases in which the time limit referred to in (2) may be extended;

b) the form and content of the notification referred to in (4).

Art. 116

Reporting obligation in the event of material changes

1) In the event of material changes to the particulars communicated in accordance with Art. 113 (2), the AIFM shall inform the FMA of the

232 Art. 115 (5) amended by LGBl. 2016 no. 46.

changes in writing at least one month before implementation of the change, or immediately after an unplanned change has occurred.

2) The FMA shall inform the AIFM within 15 working days after complete receipt of the information and documents referred to in Art. 113 (2) that a planned change cannot be permitted, insofar as this would lead to a breach of the provisions of this Act or of Directive 2011/61/EU, and it shall immediately inform the authority of the state of marketing. The FMA shall take all measures called for under Art. 157, including, if necessary, prohibition of marketing, and it shall immediately inform the authority of the state of marketing if:[233]

a) a planned change is implemented notwithstanding the prohibition by the FMA; or

b) an unplanned change or a change not notified in accordance with (1) leads to a breach of this Act on the part of the AIFM.

3) If the changes are compatible with the provisions of this Act and/or Directive 2011/61/EU, the FMA shall inform all authorities of the states of marketing of the changes within one month.[234]

4) The Government may establish more specific regulations by ordinance, in particular:

a) the cases in which a material change exists in terms of (1);

b) the form and content of the notification pursuant to (1).

Art. 116a[235]

Notification of revocation of marketing

1) The AIFM shall submit to the FMA a notification for the revocation of marketing of each EEA AIF for which a notification pursuant to Art. 113 has been made, in electronic form in English or another language recognised by the FMA.

2) The notification of revocation of marketing referred to in paragraph 1 must contain:

a) a flat-rate offer without fees or deductions to repurchase or redeem all EEA AIFs held by investors, excluding closed-ended AIFs and ELTIFs, which is publicly available for a period of at least 30 working

233 Art. 116 (2) amended by LGBl. 2021 no. 230.
234 Art. 116 (3) amended by LGBl. 2020 no. 8.
235 Art. 116a inserted by LGBl. 2021 no. 230.

days and is addressed individually, directly or through financial intermediaries, to all investors in that EEA Member State whose identity is known;

b) the announcement of the intention to revoke marketing of some or all of the EEA AIFs by means of a generally available medium, including electronic means, which is customary for the marketing of EEA AIFs and suitable for investors;

c) the amendment or termination of contractual agreements with financial intermediaries or representatives with effect from the date of the revocation of marketing.

3) The AIFM shall refrain from any new direct or indirect offering or placement of the EEA AIF it manages as of the date referred to in (2) c).

4) The FMA shall verify whether the notification of revocation transmitted by the AIFM is complete. No later than 15 working days after receipt of the complete notification, the FMA shall forward it to the competent authority of the state of marketing and to ESMA. The FMA shall immediately inform the AIFM of the forwarding of the notification.

5) The AIFM shall not engage in pre-marketing in the EEA Member State referred to in the notification for a period of three years from the date referred to in (2) c) with respect to the EEA AIFs referred to in the notification or with respect to comparable investment strategies or ideas.

6) The AIFM shall provide the investors who maintain their investments in the EEA AIF and the FMA with the annual report in accordance with Article 103 and the investor information in accordance with Article 105 in electronic form or by using other means of distance communication.

7) The FMA shall transmit to the competent authorities of the states of marketing all changes to the information and documents referred to in Art. 113 (2) b) to f).

E. Marketing of EEA AIFs by EEA AIFMs registered in another EEA Member State to professional investors in Liechtenstein[236]

Art. 117

FMA as competent authority of the state of marketing

1) If the FMA is the competent authority of the state of marketing:[237]

a) it shall accept the transmission of the documents and changes thereto as referred to in Art. 113 (2) and Art. 116a (2) by the competent home Member State authorities in electronic form;

b) it shall arrange electronic archiving and cost-free retrieval of the documents referred to in Art. 113 and the deletion thereof after a notification of revocation has been made.

2) Otherwise it shall not request any further documents or information under the notification procedure described in Art. 113 to 116a nor compliance with national laws, regulations, and administrative provisions governing marketing requirements as referred to in Art. 5 of Regulation (EU) 2019/1156 from the time of transmission of a notification in accordance with Art. 116a (7).[238]

3) The shares and units of the AIF may only be marketed to professional investors in Liechtenstein on receipt of the notification via the competent authority of the home Member State in accordance with Art. 115 (4).

236 Heading before Art. 117 amended by LGBl. 2021 no. 230.
237 Art. 117 (1) amended by LGBl. 2021 no. 230.
238 Art. 117 (2) amended by LGBl. 2021 no. 230.

F. Marketing of EEA AIFs by EEA AIFMs as referred to in Art. 3 (2) of Directive 2011/61/EU having their registered office in another EEA Member State to professional investors in Liechtenstein[239]

Art. 118[240]

Marketing notification

1) An EEA AIFM having his registered office in another EEA Member State that meets the conditions stated in Art. 3 (2) of Directive 2011/61/EU, may market EEA AIFs under his management in Liechtenstein if:

a) it is registered with the authority of the home Member State; and

b) the home Member State also permits marketing of EEA AIFs managed by an AIFM as referred to in Art. 6 and the marketing of these EEA AIFs is not subject to more stringent requirements than under this Act.

2) The AIFM shall notify the FMA in advance of intended marketing as referred to in (1). He shall include the following information and documents with the marketing notification:

a) a certificate of his registration from the authority of the home Member State;

b) a declaration that he will notify the FMA of all material changes concerning his registration, and give proof of the details of the changes;

c) other information and documents concerning his business, if this is requested by the FMA.

3) Marketing can be started provided that the conditions stated in (1) and (2) have been met and the FMA does not reject the notification within one month. Upon the request and at the expense of the AIFM, the FMA may confirm that the conditions stated in (1) and (2) have been met.

Art. 119[241]

Repealed

239 Heading before Art. 118 amended by LGBl. 2021 no. 230.
240 Art. 118 amended by LGBl. 2020 no. 8.
241 Art. 119 repealed by LGBl. 2020 no. 8.

G. Management of EEA AIFs registered in another EEA Member State and the provision of services by EEA AIFMs having their registered office in Liechtenstein[242]

Art. 120

Reporting obligation

1) The EEA AIFM shall inform the FMA of its intention to manage an EEA AIF registered in another EEA Member State and provide services as referred to in Art. 29 (3) a) and b) in another EEA Member State on a cross border basis, electronically in English, or another language recognised by the FMA.[243]

2) If the intended cross-border business referred to in (1) is conducted by means of cross-border movement of services, the notice must contain the following information as a minimum:[244]

a) the EEA Member State in which EEA AIFs are to be managed or services as referred to in Art. 29 (3) a) and b) are to be provided;

b) a programme of activity indicating which EEA AIFs are to be managed or which services as referred to in Art. 29 (3) a) and b) are to be provided.

3) If it intends to establish a branch in the host Member State the AIFM shall also furnish the FMA with the following information, in addition to the particulars stated in (2):

a) the organisational structure of the branch;

b) an address at which documents can be retrieved in the host Member State;

c) names and contact details of the managers of the branch.

4) The Government may establish more specific regulations by ordinance, in particular the form and content of the notification referred to in (2) and (3).

242 Heading before Art. 120 amended by LGBl. 2021 no. 230.
243 Art. 120 (1) amended by LGBl. 2017 no. 399.
244 Art. 120 (2) amended by LGBl. 2017 no. 399.

Art. 121

Scrutiny by the FMA

1) The FMA shall check that the documents submitted in accordance with Art. 120 are complete.

2) The FMA shall also verify whether the AIFM:

a) is authorised to practice the activities described in Liechtenstein; and

b) complies with the provisions of Directive 2011/61/EU with reference to the AIFs to be managed in the host Member State.

Art. 122

Transmission by the FMA

1) Within ten working days of receiving the full set of documents referred to in Art. 120 (2) and (3) the FMA shall remit them in electronic form to the competent authorities of the host Member State.

2) The time limit referred to in (1) may be extended to a maximum of one month by a notification stating the reasons, in the case referred to in Art. 120 (2), and to a maximum of two months in the case referred to in Art. 120 (3).

3) The documents are to be accompanied by a confirmation in English or another language customarily used in the world of finance and agreed between the competent authorities, that the AIFM is authorised to engage in the activities described.

4) The FMA shall immediately inform the AIFM of the remittance of the documents to the authorities of the host Member State.

5) The AIFM may commence its operations in the host Member State upon receipt of the notification referred to in (4).

6) In the host Member State the AIFM:

a) shall not have to comply with any further provisions beyond the requirements of Directive 2011/61/EU in the areas covered by Directive 2011/61/EU;

b) shall in other respects comply with the provisions applying in the host Member State.

7) The Government may establish more specific regulations by ordinance, in particular:

a) the conditions for extension of the time limit referred to in (2);

b) the rules to be respected by the AIFM pursuant to (6) b);

c) the form and content of the communication referred to in (1).

Art. 123

Duty of notification in the event of material changes

1) In the event of material changes to the particulars communicated in accordance with Art. 120 (2) and (3), the AIFM shall inform the FMA of the changes in writing at least one month before implementation of the change, or immediately after an unplanned change has occurred.

2) The FMA shall inform the AIFM within 15 working days after complete receipt of the information and documents referred to in Art. 120 (2) and (3) that a planned change cannot be permitted, insofar as this would lead to a breach of the provisions of this Act or of Directive 2011/61/EU. The FMA shall take all measures called for under Art. 157 and shall immediately inform the host Member State authority if:[245]

a) a planned change is implemented notwithstanding the prohibition by the FMA; or

b) an unplanned change or a change not notified in accordance with (1) leads to a breach of this Act on the part of the AIFM.

3) If the changes are compatible with the provisions of this Act and/or Directive 2011/61/EU, the FMA shall inform all authorities of the host Member State of the changes within one month.[246]

4) The Government may establish more specific regulations by ordinance, in particular:

a) the cases in which a material change exists in terms of (1);

b) the form and content of the notice referred to in (1).

245 Art. 123 (2) amended by LGBl. 2021 no. 230.

246 Art. 123 (3) amended by LGBl. 2020 no. 8.

H. Management of EEA AIFs registered in Liechtenstein and provision of services by EEA AIFMs registered in another EEA Member State[247]

Art. 124

FMA as competent authority of the host Member State: Commencing Operations

1) An AIF with authorisation in another EEA Member State may engage in the activities permitted by its home Member State authority in accordance with Art. 29, in Liechtenstein, without authorisation from the FMA, through a branch in Liechtenstein or in the course of cross-border movement of services, if the home Member State authority has informed the FMA of the intention to establish a branch pursuant to Art. 120 (3) or to operate on the basis of cross-border movement of services pursuant to Art. 120 (2).[248]

2) The FMA shall inform the AIFM within one month of receipt of the notice referred to in (1) of the reporting obligations towards the FMA and the provisions of this Act relevant to its business that go beyond the provisions of Directive 2011/61/EU.

3) The Government shall establish more specific regulations by ordinance.

I. Management of a non-EEA AIF without marketing authorisation in the EEA[249]

Art. 125

Basic principle

1) An AIFM with authorisation in Liechtenstein may manage non-EEA AIFs that are exclusively marketed in third countries, if:

247 Heading before Art. 124 amended by LGBl. 2021 no. 230.
248 Art. 124 (1) amended by LGBl. 2016 no. 46.
249 Heading before Art. 125 amended by LGBl. 2021 no. 230.

a) the AIFM meets all the requirements laid down in Directive 2011/61/EU for these AIFs, with the exception of the requirements concerning the depositary and the annual report;

b) appropriate arrangements exist concerning the cooperation and the exchange of information between the FMA and the authorities of the third country, at the registered office of the non-EEA AIF, that enable the FMA to perform its duties under Directive 2011/61/EU.

2) When marketing in third countries the AIFM shall, in addition to the requirements referred to in (1), comply with the law of the state of marketing.

3) The Government may establish more specific regulations by ordinance, in accordance with the provisions of EEA law, in particular the provisions replacing the provisions excluded in accordance with (1) a).

K. Marketing of a non-EEA AIF to professional investors in the EEA on the basis of an EEA passport[250]

Art. 126[251]

[…]

Art. 127[252]

[…]

250 Heading before Art. 126 amended by LGBl. 2021 no. 230.

251 Art. 126 not yet in force. See Art. 190 (2).

252 Art. 127 not yet in force. See Art. 190 (2).

L. Marketing of a non-EEA AIF to professional investors in the EEA without an EEA passport[253]

Art. 128

Basic principle

1) Notwithstanding Art. 126 and 127 an EEA AIFM is authorised for exclusive marketing of units of non-EEA AIFs under its management and of EEA feeder AIFs, of which the master-AIF is not an EEA AIF, to professional investors, if the following conditions have been met as a minimum:[254]

a) The AIFM meets all the requirements laid down in Directive 2011/61/EU, with the exception of the requirements concerning the depositary referred to in Art. 21 of Directive 2011/61/EU. The AIFM shall however appoint at least one agent to monitor payments, safe custody and supervisory functions as referred to in Art. 21 (7) to (9) of Directive 2011/61/EU. The AIFM may not perform these functions itself. The AIFM shall inform its home Member State authority of the agent it has appointed, in Liechtenstein the FMA.

b) Appropriate agreements are in place for cooperation and exchange of information between the FMA or the home Member State authority of the AIFM and the supervisory authorities of the domicile state of the non-EEA AIF for the oversight of systemic risks.

c) The third country is not listed as a Non-Cooperative Country and Territory by the Financial Action Task Force on Money Laundering and Terrorist Financing (FATF).

2) In other respects the provisions of Art. 112 und 112a shall apply accordingly.[255]

3) Repealed[256]

4) The Government may establish more specific regulations by ordinance, in particular:

a) the other requirements for the authorisation referred to in (1) for the protection of investors and the public interest;

253 Heading before Art. 128 amended by LGBl. 2021 no. 230.
254 Art. 128 (1) introductory sentence amended by LGBl. 2020 no. 8.
255 Art. 128 (2) amended by LGBl. 2020 no. 8.
256 Art. 128 (3) repealed by LGBl. 2020 no. 8.

b) the particulars and documents required as evidence that the conditions referred to in (1) have been met.

Art. 129[257]

Repealed

Art. 130[258]

Repealed

Art. 131[259]

Repealed

Art. 132[260]

Repealed

XII. Management and marketing of AIFs by non-EEA AIFMs[261]

A. General

Art. 133[262]

[…]

257 Art. 129 repealed by LGBl. 2020 no. 8.
258 Art. 130 repealed by LGBl. 2020 no. 8.
259 Art. 131 repealed by LGBl. 2020 no. 8.
260 Art. 132 repealed by LGBl. 2020 no. 8.
261 Heading before Art. 133 amended by LGBl. 2020 no. 8.
262 Art. 133 not yet in force. See Art. 190 (2).

B. Selection of the EEA reference state and authorisation of the non-EEA AIFM

Art. 134[263]

[…]

Art. 135[264]

[…]

Art. 136[265]

[…]

Art. 137[266]

[…]

Art. 138[267]

[…]

Art. 139[268]

[…]

Art. 140[269]

[…]

263 Art. 134 not yet in force. See Art. 190 (2).
264 Art. 135 not yet in force. See Art. 190 (2).
265 Art. 136 not yet in force. See Art. 190 (2).
266 Art. 137 not yet in force. See Art. 190 (2).
267 Art. 138 not yet in force. See Art. 190 (2).
268 Art. 139 not yet in force. See Art. 190 (2).
269 Art. 140 not yet in force. See Art. 190 (2).

Art. 141[270]

[…]

Art. 142[271]

[…]

Art. 143[272]

[…]

C. Marketing and management of EEA AIFs with EEA passport

Art. 144[273]

[…]

Art. 145[274]

[…]

Art. 146[275]

[…]

270 Art. 141 not yet in force. See Art. 190 (2).
271 Art. 142 not yet in force. See Art. 190 (2).
272 Art. 143 not yet in force. See Art. 190 (2).
273 Art. 144 not yet in force. See Art. 190 (2).
274 Art. 145 not yet in force. See Art. 190 (2).
275 Art. 146 not yet in force. See Art. 190 (2).

D. Marketing of non-EEA AIFs with EEA passport

Art. 147[276]

[…]

Art. 148[277]

[…]

Art. 149[278]

[…]

E. Marketing of EEA AIFs and non-EEA AIFs to professional investors without an EEA passport[279]

Art. 150

Marketing of an AIF managed by a non-EEA AIFM in Liechtenstein[280]

1) Notwithstanding Art. 134 to 149 the FMA shall permit a non-EEA AIFM to market units of AIFs under its management in Liechtenstein, if the following conditions have been met:[281]

a) The provisions concerning annual report (Art. 104), investor information (Art. 105 and 106) and reporting obligations to the competent authorities (Art. 107) and, if applicable, the provisions concerning acquisition of control in target companies must be complied with for each AIF. The competent authorities and investors are the authorities and investors in Liechtenstein.

b) Appropriate agreements are in place for the oversight of systemic risks between the FMA and the competent authorities of other EEA Member States in which the AIFs are also marketed and, if applicable,

276 Art. 147 not yet in force. See Art. 190 (2).
277 Art. 148 not yet in force. See Art. 190 (2).
278 Art. 149 not yet in force. See Art. 190 (2).
279 Heading before Art. 150 amended by LGBl. 2021 no. 230.
280 Art. 150 subject heading amended by LGBl. 2020 no. 8.
281 Art. 150 (1) introductory sentence amended by LGBl. 2020 no. 8.

the competent authorities of the third country, in which the non-EEA AIFM or the non-EEA AIF has its registered office, ensuring an effective exchange of information that enables duties established by this Act to be performed.

c) The third country in which the non-EEA AIFM and, if applicable, the non-EEA AIF has its registered office is not listed as a Non-Cooperative Country and Territory by the Financial Action Task Force on Money Laundering and Terrorist Financing (FATF).

2) If the competent authority for an EEA AIF does not conclude the agreement required under (1) b) concerning cooperation within a reasonable period, the FMA may under the EEA Agreement inform the ESMA of the matter, which may take action to the extent of its powers.

3) In other respects Art. 112 and 112a shall apply accordingly.[282]

3a) The marketing of units of a non-EEA AIF does not require a marketing notification in accordance with (3) if:[283]

a) no advertising to the general public takes place;

b) the category of persons is specified and the parties approached are in a qualified relationship with the advertiser;

c) the category of persons is limited and small in terms of numbers, with the time when these persons are approached and whether they are approached at the same time or in stages, or whether the advertising was successful being irrelevant;

d) the public advertising does not take place more frequently than specified; or

e) an asset management agreement is in place governing the intermediation, with no advisory function, of units of an AIF.

4) Repealed[284]

282 Art. 150 (3) amended by LGBl. 2020 no. 8.
283 Art. 150 (3a) introductory sentence amended by LGBl. 2020 no. 8.
284 Art. 150 (4) repealed by LGBl. 2020 no. 8.

XIIa. Marketing of AIFs to private investors in Liechtenstein by AIFMs [285]

Art. 151[286]

Conditions for marketing

1) EEA AIFMs and non-EEA AIFMs may market units of AIFs, managed by them in accordance with the provisions of this Act or Directive 2011/61/EU, to private investors in Liechtenstein, if the following conditions have been met:

a) a marketing notification:
   1. for the marketing of EEA AIFs by an AIFM registered in Liechtenstein pursuant to Art. 112;
   2. for the marketing of EEA AIFs by an AIFM registered in another EEA Member State pursuant to Art. 117 or Art. 32 of Directive 2011/61/EU as appropriate;
   3. for the marketing of non-EEA AIFs by an EEA AIFM pursuant to Art. 127 or 128;
   4. for the marketing of AIFs by a non-EEA AIFM pursuant to Art. 144 or 148 or Art. 150;
b) key investor information as referred to in Art. 78 et seq. of Directive 2009/65/EC or a key information document as referred to in Art. 5 et seq. of Regulation (EU) no. 1286/2014[287];[288]
c) a prospectus in accordance with the provisions of securities prospectus law, if the AIF is of the closed-end type; if this prospectus also contains investor information, that has to be submitted within a marketing notification pursuant to a), or key investor information pursuant to b) this no longer has to be enclosed; and
d) the leverage recorded in the constitutive documents may not be higher than three times the net asset value (NAV), calculated using the commitment method.

285 Heading before Art. 151 amended by LGBl. 2020 no. 8.

286 Art. 151 amended by LGBl. 2020 no. 8.

287 Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) (OJ L 352, 9.12.2014, p. 1)

288 Art. 151 (1) b) amended by LGBl. 2021 no. 230.

2) The provisions of Art. 112a and 117 (2) shall apply mutatis mutandis to amendments to the marketing notifications pursuant to (1) a).

3) For prospectuses as referred to in (1) c) the scrutiny of the FMA shall be restricted:

a) to the conformity of the content with the minimum requirements under securities prospectus law for AIFs of the closed-end type of which the units are securities; or

b) in other cases, to the conformity of the content with the minimum formal requirements laid down by the Government by ordinance.

4) If the prospectus deviates from the sequence of annexes specified in securities prospectus law or uses other sub-divisions, the AIFM must submit a summary demonstrating that it meets the requirements of securities prospectus law or the minimum requirements established by the Government by ordinance.

5) For cross-border marketing of AIFs to private investors in other EEA Member States or third countries an AIFM registered in Liechtenstein shall comply with the law of the relevant state of marketing.

6) The Government may establish more specific regulations on marketing to private investors by ordinance.

Art. 151a[289]

Facilities, investor information, and designation of legal form

1) Without prejudice to Art. 26 of Regulation (EU) 2015/760, an EEA AIFM and a non-EEA AIFM intending to market units or shares of an AIF to private investors in Liechtenstein shall make available facilities to perform the following tasks:

a) process subscription, payment, repurchase and redemption orders of investors for units or shares of the AIF in accordance with the conditions set out in the documents of the AIF;

b) provide investors with information on how orders referred to in a) can be made and how repurchase and redemption proceeds are paid;

c) facilitate the handling of information and access to procedures and arrangements relating to the investors' exercise of their rights arising from their investment in AIFs in Liechtenstein;

289 Art. 151a amended by LGBl. 2021 no. 230.

d) make the annual report referred to in Art. 103 and the investor information referred to in Art. 105 available to investors for the purposes of inspection and obtaining copies thereof;

e) provide investors with information relevant to the tasks that the facilities perform in a durable medium as referred to in Art. 3 (1) no. 15 UCITSG; and

f) act as a contact point for communicating with the FMA.

2) The facilities shall also be provided for the electronic performance of the tasks referred to in (1), namely:

a) in German or in a language recognised by the FMA;

b) by the AIFM, by a third party which is subject to the provisions and supervision by the FMA governing the tasks to be performed, or by both.

3) Where, for the purposes of (2) b), the tasks are performed by a third party, that third party shall be designated in a written contract. That contract must also specify which of the tasks referred to in (1) are not performed by the AIFM and that the third party will receive all the relevant information and documents from the AIFM.

4) In addition to the tasks set out in (1), the AIFM must furthermore:

a) translate the key investor information or key information documents referred to in Art. 151 (1) b) and the summary of the prospectus referred to in Art. 151 (1) c) into German for the investor;

b) translate other information or documents into German, a language recognised by the FMA or English according to the preference of the AIFM.

5) The translations of information and documents as referred to in (4) must accurately reproduce the content of the original information.

6) The provisions of (4) and (5) shall apply mutatis mutandis to amendments of the information and documents.

7) The frequency of the publication of the issue, sale, resale or redemption prices of the units or shares of an AIF shall be governed by the law of the home state of the AIF.

8) If units or shares of AIFs registered in another EEA Member State or third country are marketed in Liechtenstein, AIFs may use the same reference to their legal form as in their home state.

9) This provision does not apply if the conditions referred to in Art. 150 (3a) have been met.

10) The Government may establish more specific rules on facilities, investor information, and designation of legal form by ordinance.

XIII. Supervision

A. General

Art. 152

Basic principle

Responsibility for the implementation of this Act is conferred on:

a) the Financial Market Authority (FMA);

b) the Princely Court of Justice;

c) the Conciliation Board.

Art. 153[290]

Processing of personal data

The competent domestic authorities and agencies may process personal data, including personal data concerning criminal convictions and offences, or give instructions for such data to be processed, insofar as this is necessary for the performance of their duties under this Act.

Art. 154

Professional confidentiality

1) All persons acting for the FMA and the authorities it consults or who have acted for them, as well as the auditors and experts acting on its instructions are subject to professional confidentiality.

2) Confidential information acquired by such persons in their professional capacity may not be disclosed to any person or authority, save in a summarised or general form, in such a way that the AIF, the AIFM, the administrator, the marketing agent and the depositary cannot

290 Art. 153 amended by LGBl. 2018 no. 303.

be identified. Provisions of criminal law and particular statutory provisions are reserved.

3) If an AIF or an undertaking contributing towards its business activity has been cited in bankruptcy proceedings or 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) Professional secrecy shall not prevent the exchange of information between the FMA and the competent authorities of other EEA Member States or competent authorities of third countries in accordance with this Act. The information exchanged shall be subject to the conditions of professional confidentiality. When communicating information to the competent authorities of other EEA Member States the FMA shall point out that the information communicated may only be published and disclosed with the express permission of the FMA. Such permission may only be granted if the exchange of information can be reconciled with the public interest and the protection of investors.[291]

5) The Government or the FMA, acting on its authority, may only conclude cooperation agreements providing for exchange of information with the competent authorities of third countries or with the authorities or agencies of third countries as determined in (4) and Art. 167 (1) for the purpose of performance of the supervisory functions of these authorities or agencies, 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 EEA Member State, it may only be published and disclosed with the express consent of the disclosing authorities and if applicable, only for purposes for which these authorities have given their consent.[292]

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

a) for verifying whether the notification or authorisation conditions applying to the AIF or the undertakings contributing to its business activity have been met and to facilitate the monitoring of the conditions of the conduct of the business, management 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;

291 Art. 154 (4) amended by LGBl. 2016 no. 46.

292 Art. 154 (5) amended by LGBl. 2016 no. 46.

d) in the course of proceedings referred to in Art. 170.

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

8) (1) to (3) and (6) shall not preclude the communication of confidential information to the agencies involved in the management of compensation systems in the EEA.

Art. 155

Supervisory charges and fees

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

B. FMA

Art. 156

Duties

1) The FMA shall monitor execution of this Act and the associated implementing ordinances as well as the EEA acts applicable pursuant to Art. 1 (3). It shall take the appropriate measures directly, in collaboration with other supervisory bodies or report matters to the Office of the Public Prosecutor.[293]

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

a) the granting, amendment and the withdrawal of authorisations and approval or otherwise of marketing notices;[294]

b) approval of specimen documents;[295]

c) scrutiny of the reports by the auditors;

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

e) registration of EuVECA and EuSEF managers and their removal from the respective registers in accordance with Regulations (EU) No

293 Art. 156 Abs. 1 amended by LGBl. 2020 no. 8.
294 Art. 156 (2) a) amended by LGBl. 2020 no. 8.
295 Art.156 (2) b) amended by LGBl. 2020 no. 8.

345/2013 and 346/2013, including the notification thereof to ESMA and the competent authorities of the EEA host Member States;[296]

e^bis) the registration of an AIF as an EuVECA and EuSEF upon application by an authorised AIFM in accordance with Regulations (EU) No 345/2013 and 346/2013;[297]

f) the issue of an appealable order where a registration is refused pursuant to e) and e^bis;[298]

f^bis) authorisation of ELTIFs and approval for the EEA AIFM to manage ELTIFs under Regulation (EU) 2015/760, including the notification to ESMA in this regard;[299]

f^ter) authorisation of money market funds and approval of the AIFM to manage money market funds;[300]

g) cooperation to facilitate oversight with the competent authorities of the other EEA Member States;[301]

h) impose penalties for infringements as referred to in Art. 176.[302]

Art. 157

Powers

1) If the FMA becomes aware of violations of this Act or of the EEA acts applicable pursuant to Art. 1 (3) or other abuses, it shall take the measures necessary to restore the legal status and remedy the abuses.[303]

2) The FMA is empowered in particular:

a) to demand all reports, information and documents required for the execution of this Act from all persons subject to this Act, the EEA acts applicable pursuant to Art. 1 (3) and its supervision, the depositary, any person connected with the activities of the AIFM, the manager of EuVECAs or EuSEFs, the AIF, EuVECA, EuSEF, ELTIF or money market fund and such persons who are under suspicion of conducting

296 Art. 156 (2) e) amended by LGBl. 2020 no. 8.
297 Art. 156 (2) ebis) inserted by LGBl. 2020 no. 8.
298 Art. 156 (2) f) amended by LGBl. 2020 no. 8.
299 Art. 156 (2) fbis) inserted by LGBl. 2020 no. 319.
300 Art. 156 (2) fter) inserted by LGBl. 2020 no. 321.
301 Art. 156 (2) g) amended by LGBl. 2020 no. 8.
302 Art. 156 (2) h) inserted by LGBl. 2020 no. 8.
303 Art. 157 (1) amended by LGBl. 2020 no. 8.

activities in breach of the obligations of authorisation and registration under this Act or the EEA acts applicable pursuant to Art. 1 (3);[304]

b) to issue decisions and orders; it may publish these after prior warning, if the AIFM or the manager of EuVECAs or EuSEFs continues to defy such decisions and orders or refuses to restore the legal status;[305]

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 safeguard against the decline of assets in accordance with the Code of Criminal Procedure;[306]

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

f) to request the suspension of the issue, redemption or repurchase of units in the interests 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 breach of this Act or the EEA acts applicable pursuant to Art. 1 (3);[307]

i) impose on the manager of EuVECAs or EuSEFs a prohibition on the use of the designation "EuVECA" or "EuSEF" in accordance with the EEA acts applicable pursuant to Art. 1 (3) and remove the manager of EuVECAs or EuSEFs from the respective register.[308]

k) impose on the AIFM of ELTIFs a prohibition on the use of the designation "ELTIF" or "European long-term investment fund" in accordance with the EEA acts applicable pursuant to Art. 1 (3).[309]

3) The FMA is empowered to demand a quarterly report from the holders of authorisation in accordance with this Act or managers of EuVECAs or EuSEFs, with reference to themselves and the depositary and from the AIFM or the managers of EuVECAs or EuSEFs also for each AIF or sub-fund under its management. The Government may establish more detailed rules by ordinance.[310]

304 Art. 157 (2) a) amended by LGBl. 2020 no. 321.
305 Art. 157 (2) b) amended by LGBl. 2020 no. 8.
306 Art. 157 (2) d) amended by LGBl. 2016 no. 161.
307 Art. 157 (2) h) amended by LGBl. 2020 no. 8.
308 Art. 157 (2) i) amended by LGBl. 2020 no. 8.
309 Art. 157 (2) k) amended by LGBl. 2020 no. 319.
310 Art. 157 (3) amended by LGBl. 2020 no. 8.

4) The Government may stipulate by ordinance that only qualified auditors are authorised to conduct the inspections and reports required under this Act and determine the procedure to establish the qualifications of the auditors. This excludes checking of the figures quoted in the annual reports as referred to in Art. 104.

5) The FMA may require confirmation by an auditor qualified in accordance with (4) for all or individual statements, data or information in respect of facts enclosed with an application for authorisation or approval or collected for supervisory purposes. The Government may restrict the FMA's powers to specific facts by ordinance.

6) If the FMA publishes forms for the submission of applications, notices, reports and notifications required under this Act or the EEA acts applicable pursuant to Art. 1 (3), 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.[311]

7) 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 AIFs and their AIFMs. The right to conduct on-site inspections pursuant to Art. 26 (4) of the Financial Market Authority Act is not affected.

8) If there are grounds to assume that a non-EEA AIFM is failing to meet its obligations under this Act, the FMA shall inform the ESMA as soon as possible.

Art. 158

Emergency measures

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

a) collect information from the AIFM, the auditor, the depositary, from all delegates as defined in Art. 46 and 60 and from all other parties involved; in this connection the FMA may also operate on site;

311 Art. 157 (6) amended by LGBl. 2020 no. 319.

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

c) employ a commissioner without whose consent the AIFM or its managers cannot make any statements of intent for the AIFM or the AIFs;

d) with reference to some or all AIFs:

1. require the suspension of unit issue and redemption;

2. prohibit the marketing of AIFs;

3. Repealed[312]

e) employ a commissioner without whose involvement the AIFM or the AIFM's managers are unable to make statements of intent for the AIFM or the AIFs;

f) order a ban on disposal with reference to the assets of the AIFM;

g) employ an administrative agent with the functions set out in Art. 55 instead of the previous managers;

h) order the withdrawal of the AIFM's authorisation;

i) order the winding up of the AIFM.

2) The measures referred to in (1) d) to i) are, in derogation of Art. 963 (5) PGR, to be noted in the Commercial Register with respect to the AIFM and the AIFs concerned, with a reference to the pending legal validity of the order 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's Internet site.

3) The FMA may request an advance on costs from the AIFM for the measures referred to in (1) and (2). The obligation to pay an advance on costs may be linked to the measure. The advance shall be refunded if no legal infringements 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 (1) and (2).

4) The FMA shall consider the proportionality of means when selecting the measures referred to (1).

5) The Government may establish more specific regulations by ordinance, in particular in respect of:

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

312 Art. 158 (1) d) no. 3 repealed by LGBl. 2020 no. 8.

b) the collaboration of the previous managers with the commissioner referred to in (1) c) and e);

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

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

Art. 159

Authorisation subject to conditions, binding reports and specimen documents

1) If it is not counter to the public interest the FMA may in appropriate cases, on request, make the granting of one or more authorisation subject to conditions. Conditions may be of a formal, temporal or objective nature. The authorisation comes into effect upon fulfilment of the conditions.[313]

2) Provided that the material facts are correctly and fully disclosed upon application, the FMA may respond in advance to opinions concerning issues of law and fact on request, by binding statements. 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 a binding statement to the extent of its written statements. Verbal statements do not establish any protection of legitimate expectations.

3) The FMA may approve specimen documents of constitutive documents.[314]

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

5) The Government may establish more specific regulations by ordinance.

Art. 160[315]

Repealed

313 Art. 159 (1) amended by LGBl. 2020 no. 8.
314 Art. 159 (3) amended by LGBl. 2020 no. 8.
315 Art. 160 repealed by LGBl. 2020 no. 8.

Art. 161

Liability of the FMA

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

C. Administrative assistance

1. Cooperation with domestic authorities, authorities of other EEA Member States and the ESMA

Art. 162

Basic principle

1) In the exercise of its supervisory function the FMA works together with other domestic authorities, the competent authorities of other EEA member states and the ESMA.

1a) The competent domestic authorities and agencies may exchange data, including personal data concerning criminal convictions and offences, insofar as this is necessary for the performance of their supervisory duties.[316]

1b) Cooperation with foreign authorities shall be governed by Art. 26b (2) and (4) FMAG, subject to the following paragraphs, as well as Art. 154 (4) to (6) and Art. 163 to170.[317]

2) In the course of its cooperation referred to in (1) with the competent authorities of other EEA Member States, the ESMA and the ESRB, it is authorised and obliged:

a) to make use of its powers, even if the practice that is the subject of investigation does not represent a violation of Liechtenstein legal provisions;

b) to communicate immediately the information required for the exercise of its functions and powers;

c) to communicate or request a copy of the agreements concluded in respect of cooperation in accordance with Art. 126 (1) b), Art. 138 and/or Art. 147 (1) b) and in accordance with Art. 166.

316 Art. 162 (1a) inserted by LGBl. 2018 no. 303.

317 Art. 162 (1b) inserted by LGBl. 2018 no. 303.

3) The FMA as host Member State authority may require an AIFM that manages or markets AIFs in Liechtenstein – irrespective of whether this takes place through a branch or not -, to present information required for the performance of its duties and exercise of its powers.

4) If the FMA as host Member State authority is of the opinion that the contents of the agreements referred to in (2) c) in respect of cooperation do not meet the applicable technical standards, it may in accordance with the EEA Agreement bring the matter to the attention of the ESMA, which may act in accordance with the powers conferred on it.

5) For the performance of the tasks of the FMA under the EEA acts applicable pursuant to Art. 1 (3), the provisions of this section shall apply mutatis mutandis.[318]

Art. 163

Common anti-abuse measures

1) If the FMA has reasonable grounds to assume that persons who are not subject to its supervision are, or have been in breach of EEA legal provisions in another EEA Member State, the FMA shall inform the competent authorities of this fact as accurately as possible. The powers of the FMA are not affected.

2) If the FMA receives notification as defined in (1) from the competent authority of another EEA Member State, it shall take appropriate measures and inform the notifying authority of the outcome of these measures and – as far as possible – of any significant developments occurring in the meantime.

3) The FMA shall inform the ESMA if a notification as referred to in (1) is rejected or no answer has been received within a reasonable period of time.

Art. 164

On-site investigations conducted by the FMA in other EEA Member States

1) The FMA may request the competent authorities of another EEA Member State for cooperation in a monitoring operation, an inspection on

318 Art. 162 (5) amended by LGBl. 2020 no. 8.

site or an investigation in the sovereign territory of this EEA Member State.

2) The FMA may inform the ESMA if a request:

a) for an inspection or an investigation on site or an exchange of information has been declined or did not produce any response within a reasonable time; or

b) for permission to accompany the competent authority has been rejected or did not produce any response within a reasonable time.

3) Repealed[319]

Art. 165

On-site investigations by competent authorities of another EEA Member State in Liechtenstein

1) If the FMA receives a request for cooperation in a monitoring operation, an inspection on site or an investigation in Liechtenstein by the competent authority of another EEA Member State:

a) it shall conduct the inspection or investigation itself. The requesting authority may accompany the FMA;

b) it shall permit the requesting authority to conduct the inspection or investigation. The FMA shall accompany the requesting authority; or

c) it shall appoint auditors or experts to conduct the inspection or investigation.

2) The FMA may decline a request for exchange of information or cooperation in an investigation or inspection on site, if:

a) the investigation, the inspection on site or the exchange of information might compromise the sovereignty, the security or public order of Liechtenstein;

b) court proceedings are pending or a final judgement has already been passed against the person in question in respect of the same actions in Liechtenstein.

3) The requesting authority must be informed of the rejection and the reasons for it.

4) Repealed[320]

319 Art. 164 (3) repealed by LGBl. 2020 no. 8.

320 Art. 165 (4) repealed by LGBl. 2020 no. 8.

5) The Government may establish more specific regulations by ordinance.

Art. 166

Mediation of disputes between the FMA and the competent authorities of other EEA Member States with the involvement of the ESMA

1) If the FMA, as the competent host Member State authority of an AIFM that manages and/or markets AIFs in Liechtenstein – irrespective of whether or not this operation takes place through a branch – ascertains that the AIFM is in breach of one of the provisions of this Act, it shall require the AIFM in question to put an end to the breach and shall inform the competent authorities of the home Member State accordingly.

2) If the AIFM in question refuses to provide the FMA with the information which it is entitled to demand or fails to take the steps required to bring the breach referred to in (1) to an end, the FMA shall inform the competent authorities of its home Member State.

3) If the FMA as home Member State authority of an AIFM is informed by the competent authorities of the host Member State of the AIFM of breaches and/or rejection of the obligation to provide information:

a) it shall immediately take all appropriate measures to ensure that the AIFM in question presents the information required by the competent authorities of its host Member State in accordance with Art. 162 (3) or puts an end to the breach in accordance with (1); the competent authorities of the host Member State of the AIFM are to be informed of the nature of the measures;

b) it shall request the appropriate supervisory authorities in third countries immediately to provide information.

4) If in spite of the measures referred to in (3)taken by the FMA or because such measures prove to be inadequate or are not available, the AIFM continues to refuse to provide the information requested by the competent authorities of its host Member State in accordance with (2), or persists in breaching the legal or regulatory provisions of its host Member State referred to in (1), the competent authorities of the host Member State of the AIFM may, after informing the FMA, take appropriate measures, including the measures laid down in Art. 156 to 158 and 176, in order to prevent or penalise further breaches; where necessary they may also refuse to allow the AIFM to initiate new business transactions in its host Member State. Where the operation conducted in the host Member State of the

AIFM is the management of AIFs, the host Member State may require the AIFM to cease management of those AIFs.

5) If the FMA, as competent authority of the host Member State of an AIFM, has clear and demonstrable grounds for believing that the AIFM is in breach of obligations arising from rules in respect of which it has no responsibility for supervising compliance, it shall inform the competent authorities of the home Member State of the AIFM of its findings.

6) If despite the measures taken by the competent authorities of its home Member State or because such measures prove to be inadequate or the home Member State of the AIFM fails to act in time, the AIFM persists in acting in a manner that is clearly prejudicial to the interests of the investors of the AIF in question, the financial stability or the integrity of the market in Liechtenstein, the FMA may, after informing the competent authorities of the home Member State of the AIFM, take all steps required to protect the investors of the AIF in question, the financial stability and the integrity of the market; it also has the option of preventing the AIFM in question from further marketing of the shares and units of the AIF concerned in Liechtenstein.

7) The procedure laid down in (5) and (6) shall also apply, if the FMA has clear and demonstrable objections to the authorisation of a non-EEA AIFM by the Member State of reference.

8) If there is no agreement between the FMA and the competent authorities in question with reference to a measure taken by a competent authority in accordance with (1) to (7), they may bring the matter to the attention of the ESMA in accordance with the EEA Agreement, which may act in accordance with the powers conferred on it.

9) In the event of disagreements with the competent authorities of other EEA Member States concerning an evaluation, measure or omission in an area, in which this Act provides for cooperation or coordination, in accordance with the EEA Agreement the FMA shall refer the matter to the ESMA, which may act in accordance with the powers conferred on it.

Art. 167

Exchange of information

1) The FMA shall exchange information with other domestic authorities, the competent authorities of other EEA Member States and the ESMA, 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 winding up, insolvency or similar proceedings in respect of an AIF and undertakings that contribute to its business activity;[321]

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) Repealed[322]

3) The disclosure of information communicated in the course of an exchange of information referred to in (1), is permissible, if:[323]

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

b) professional confidentiality pursuant to Art. 154 is respected;

c) for information that has been communicated by the competent authorities of another EEA Member State, their consent to disclosure has been given. The FMA shall on behalf of the competent domestic authorities in accordance with (1) inform the communicating authorities of the name and exact function of the persons to whom the information in question is to be sent.[324]

Art. 168

Disclosure of information to central banks and similar institutions

1) The FMA exchanges information with central banks of other EEA Member States and other institutions with similar functions, in their capacity as monetary authorities, that will assist them in the performance of their duties.

2) The FMA exchanges information that is covered by professional confidentiality as set out in Art. 154, 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

321 Art. 167 (1) b) amended by LGBl. 2020 no. 398.
322 Art. 167 (2) repealed by LGBl. 2018 no. 303.
323 Art. 167 (3) introductory sentence amended by LGBl. 2018 no. 303.
324 Art. 167 (3) c) amended by LGBl. 2018 no. 303.

infringements – or also possible infringements – by market participants. The FMA may only disclose information communicated in the course of exchange of information by competent authorities of other EEA Member States with the express consent of the communicating authorities.[325]

3) The information communicated under (1) and (2) is subject to professional confidentiality (Art. 154).

4) The Government may establish more specific regulations by ordinance.

Art. 169

Exchange of information on systemic risks involved in the AIFMs' activities

1) The FMA shall communicate to the competent authorities for the oversight of AIFMs and depositaries of other EEA Member States, as well as the ESMA and the ESRB, information that is important for oversight and the response to threats to the stability of systemically relevant institutions and the orderly functioning of markets through the activities of individual, or all AIFMs on the markets on which they operate.

2) In accordance with the EEA Agreement the FMA shall communicate the aggregated information on the activities of AIFMs to the ESMA and the ESRB.

3) Repealed[326]

Art. 170

Exchange of data with the ESMA

The FMA shall report the authorisations granted and withdrawn for AIFMs in Liechtenstein to the ESMA on a quarterly basis.

325 Art. 168 (2) amended by LGBl. 2016 no. 46.
326 Art. 169 (3) repealed by LGBl. 2020 no. 8.

2. Cooperation with competent authorities of third countries

Art. 171[327]

Basic principle

The FMA may exchange information with the competent authorities of third countries as provided in Art. 26b (3) and (4) FMAG if:

a) the disclosure of information is necessary for the protection of investors and the public interest; Art. 167 and 168 shall apply mutatis mutandis; and

b) the conditions set out in Chapter V of Regulation 2016/679[328] are met in respect of the transmission of personal data.

3. Involvement of and procedure before the ESMA

Art. 172

Adoption of guidelines, recommendations and standards of the ESMA

1) In accordance with the EEA Agreement, the FMA shall undertake all necessary measures in order to comply with the guidelines, recommendations, standards and other measures adopted by the ESMA for standardised, efficient and effective practices with regard to oversight.

2) The FMA shall in accordance with the EEA Agreement confirm within two months from the issue of a guideline or recommendation, whether it will comply with this guideline or recommendation. In the event of a rejection it shall inform the ESMA and state its reasons.

3) The FMA shall participate in the activities of the ESMA and if appropriate of the ESRB.

327 Art. 171 amended by LGBl. 2021 no. 230.

328 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1)

Art. 173

Information and procedures before the ESMA in the event of difference of opinion

The FMA may inform the ESMA:

a) that it does not agree with:
   1. the application of Art. 136 (2);
   2. the decision of the AIFM concerning the EEA state of reference;
   3. the assessment of the application of the criteria for the selection of the EEA reference state;
   4. the authorisation of the non-EEA AIFM by the authority of the EEA state of reference;
   5. an application for exchange of information in accordance with the standards produced by the ESMA and the European Commission;
   6. a release from provisions of Directive 2011/61/EU granted by the competent authority of the EEA reference state;
   7. the establishment of the new EEA reference state;
   8. the evaluation of the application of Art. 147 (2) by the EEA reference state authority;[329]
b) that a competent authority for an EEA AIF of another EEA Member State has not concluded the cooperation agreement required under Art. 125, 126, 128, 138, 147 or 150 within an appropriate timeframe.

XIV. Right of appeal, procedures and extrajudicial dispute resolution

Art. 174

Right of appeal and procedures

1) Appeals may be lodged against decisions and orders of the FMA with the FMA Complaints Commission within 14 days of delivery.

2) If no decision is taken in respect of a complete application for authorisation or registration of an AIFM, a self-managed AIF, an ELTIF, or a money market fund or for registration of a manager of EuVECAs or

329 Art. 173 a) no. 8 amended by LGBl. 2020 no. 8.

EuSEFs within three months from receipt, an appeal may be lodged with the FMA Complaints Commission.[330]

3) Appeals may be lodged against decisions and orders of the FMA Complaints Commission with the Administrative Court of Liechtenstein within 14 days of delivery.

4) In the interests or at the initiative of the investors, the Office of Economic Affairs shall have all legal rights of recourse and remedies at its disposal in order to ensure that the provisions of this Act are applied.

5) Unless specified otherwise in this Act the proceedings shall be subject to the provisions of the National Administration Act.

Art. 175

Extrajudicial mediation body

1) The Government shall appoint a mediation body by ordinance for the resolution of disputes between investors, AIFMs, self-managed AIFs, managers of EuVECAs or EuSEFs, depositaries, administrators and selling agents.[331]

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 establish more specific regulations by ordinance, in particular the organisational structure, composition and the procedure. In doing so it may establish different rules for professional and private clients.

330 Art. 174 (2) amended by LGBl. 2020 no. 321.
331 Art. 175 (1) amended by LGBl. 2020 no. 8.

XV. Criminal provisions

Art. 176

Offences and infringements

1) The following shall be punished for an offence by the Princely Court of Justice with a custodial sentence of up to one year or a fine of up to 360 daily units:

a) a board member or employee or person acting in another capacity for an AIF, an AIFM, or a manager of EuVECAs or EuSEFs or a person acting as auditor who knowingly violates the obligation of confidentiality or induces or seeks to induce such violation;[332]

b) Repealed[333]

c) any person operating as an AIFM without an authorisation pursuant to Chapter III Section A or as a non-EEA AIFM without an authorisation pursuant to Chapter XII Section B;[334]

d) any person who knowingly makes false statements or withholds essential information in the constitutive documents, periodic reports, prospectuses or key information for investors and the reports and notifications to the FMA or other competent supervisory authorities of EEA Member States or of third countries;[335]

e) any person who markets the units or shares of an AIF in Liechtenstein to professional investors without a marketing notification as referred to in Art. 112, 144, 148, or 150.[336]

f) any person operating as a small AIFM without the required registration as referred to in Art. 3 (3) a);[337]

g) any person operating without the authorisation as an administrator, risk manager or selling agent as required under Art. 65 and 69.

h) Repealed[338]

i) Repealed[339]

332 Art. 176 (1) a) amended by LGBl. 2020 no. 8.
333 Art. 176 (1) b) repealed by LGBl. 2020 no. 8.
334 Art. 176 (1) c) amended by LGBl. 2021 no. 230.
335 Art. 176 (1) d) amended by LGBl. 2020 no. 8.
336 Art. 176 (1) e) amended by LGBl. 2021 no. 230.
337 Art. 176 (1) f) amended by LGBl. 2020 no. 8.
338 Art. 176 (1) h) repealed by LGBl. 2020 no. 8.
339 Art. 176 (1) i) repealed by LGBl. 2020 no. 8.

k) any person marketing units of an AIF to private investors in Liechtenstein without meeting the requirements referred to in Art. 151.[340]

2) The following shall be punished for an offence by the Princely Court of Justice with a custodial sentence of up to six months or a fine of up to 180 daily units:

a) any person who is in breach of FMA requirements in connection with an authorisation or registration;

b) Repealed[341]

c) any person who fails to provide information to the FMA or the auditor or gives them false or incomplete information;

d) any auditor in gross breach of his obligations, who in particular knowingly makes untrue statements or withholds essential facts in his report or fails to make a prescribed request to the AIFM or fails to issue prescribed reports and notifications;

e) a board member of an AIFM or a self-managed AIF who fails in the obligation to segregate assets pursuant to Art. 38 and to transfer the assets to a depositary pursuant to Art. 57 (1);

f) any person who fails to maintain proper business accounts or fails to keep business accounts, documents and receipts in safekeeping;

g) any person in breach of capital adequacy requirements pursuant to Art. 32;

h) any person failing to take the precautions described in Art. 112 (2) g) and Art. 113 (2) h) to prevent marketing of AIFs to private investors and failing to monitor marketing activities adequately in the event of indirect marketing;[342]

i) any person in breach of the obligation to make an application for authorisation within the time allowed pursuant to Art. 3 (4);[343]

k) a depositary in breach of the obligations set out in Art. 59 (1);

l) Repealed[344]

m) Repealed[345]

340 Art. 176 (1) k) inserted by LGBl. 2020 no. 8.
341 Art. 176 (2) b) repealed by LGBl. 2020 no. 8.
342 Art. 176 (2) h) amended by LGBl. 2020 no. 8.
343 Art. 176 (2) i) amended by LGBl. 2020 no. 8.
344 Art. 176 (2) l) repealed by LGBl. 2020 no. 8.
345 Art. 176 (2) m) repealed by LGBl. 2020 no. 8.

n) Repealed[346]

o) Repealed[347]

p) any person in breach of capital adequacy requirements pursuant to Art. 10 of Regulation (EU) No 345/2013 or Art. 11 of Regulation (EU) No 346/2013.[348]

3) The following will be sanctioned by the FMA for infringement by fines of up to 200 000 Francs:

a) any person failing to make periodic reports to the FMA and investors in the manner specified or submitting them late;

b) any person who fails to have a proper audit conducted or conducted in the manner prescribed by the FMA;

c) any person in breach of their obligations to the auditors;

d) any person who fails to submit the prescribed reports, announcements and notifications to the FMA or competent authorities of another EEA Member State or whose reports, announcements and notifications are incorrect or late;

e) any person who fails to comply with the request to restore the legal status or other order from the FMA;

f) any person failing to comply with a request for cooperation in investigative proceedings from the FMA;

g) any person who is in breach of the requirements for marketing communications set out in Art. 4 of Regulation (EU) 2019/1156;[349]

h) any person who does not comply with the code of conduct (Art. 35);

i) any person who, contrary to Art. 38, does not operate and maintain effective organisational and administrative arrangements to prevent the negative impact on customer interests through conflicts of interest;

k) any person who, contrary to Art. 39, fails to employ effective risk management systems and fails to assign staff to risk management, as required by the programme of activities, or fails to deploy them to the required extent;

l) any person who, contrary to Art. 40, does not employ effective liquidity management systems and the staff assigned to liquidity management in the programme of activities or not to the extent provided for liquidity management;

346 Art. 176 (2) n) repealed by LGBl. 2020 no. 8.
347 Art. 176 (2) o) repealed by LGBl. 2020 no. 8.
348 Art. 176 (2) p) inserted by LGBl. 2020 no. 8.
349 Art. 176 (3) g) amended by LGBl. 2021 no. 230.

m) any person who does not meet the requirements for investment in securitized products in accordance with Art. 41;

n) any person who, contrary to Art. 42 to 45, does not have the valuation conducted, or has it conducted in a manner different from that specified in Art. 43 or - in an external valuation – by a person other than such specified in Art. 44 (2);

o) an external valuer referred to in Art. 44 (2) in breach of its obligations under Art. 43 and 44;

p) a depositary in breach of the obligations set out in Art. 59 (2);[350]

q) Repealed[351]

r) an auditor who is in breach of his obligations under this Act, in particular under Art. 109 (3), Art. 110 (1) and (3) or Art. 111 (1) and (2);

s) any person who is in breach of the obligation to make facilities and investor information available under Art. 151a;[352]

t) any person who, contrary to Art. 97 (2) d) fails to inform the management of the target company and its employees of the acquisition of control or delays informing them;

u) any person who, contrary to Art. 95 (3) a) does not comply with the leverage limits or fails to comply with other measures established by the FMA;

v) any person who presents key investor information or a key information document as referred to in Art. 151 (1) b) or the prospectus referred to in Art. 151 (1) c) in a form that is in all probability incomprehensible to private investors, or fails to provide such information or provides information that is inaccurate, incomplete or late.[353]

w) any person who is in breach of Regulation (EU) No 345/2013 by:[354]

1. contrary to Art. 5, failing to comply with the requirements that apply to portfolio composition;
2. contrary to Art. 6, marketing the units and shares referred to therein;
3. contrary to Art. 7 a), failing to act honestly, fairly or with due skill, care or diligence in conducting their business;

350 Art. 176 (3) p) amended by LGBl. 2020 no. 8.
351 Art. 176 (3) q) repealed by LGBl. 2020 no. 8.
352 Art. 176 (3) s) amended by LGBl. 2021 no. 230.
353 Art. 176 (3) v) amended by LGBl. 2020 no. 8.
354 Art. 176 (3) w) amended by LGBl. 2020 no. 8.

4. contrary to Art. 7 b), failing to apply appropriate policies and procedures for preventing malpractices;
5. contrary to Art. 12, repeatedly failing to present an annual report to the FMA or to do so correctly, completely, or in a timely manner;
6. contrary to Art. 13, repeatedly failing to inform investors or, contrary to Art. 15, the FMA, or failing to do so correctly, completely, in the prescribed manner, or in a timely manner;
7. contrary to Art. 14, using the designation "EuVECA" without the required registration or having obtained the registration through false statements or any other irregular means;
8. contrary to Art. 14a, using the designation "EuVECA" without the required registration or having obtained the registration through false statements or any other irregular means;
9. using the designation "EuVECA" for the marketing of a fund which is not established in an EEA Member State;

x) any person who is in breach of Regulation (EU) No 346/2013 by:[355]

1. contrary to Art. 5, failing to comply with the requirements that apply to portfolio composition;
2. contrary to Art. 6, marketing the units and shares referred to therein;
3. contrary to Art. 7 a), failing to act honestly, fairly or with due skill, care or diligence in conducting their business;
4. contrary to Art. 7 b), failing to apply appropriate policies and procedures for preventing malpractices;
5. contrary to Art. 13, repeatedly failing to present an annual report to the FMA or to do so correctly, completely, or in a timely manner;
6. contrary to Art. 14, repeatedly failing to inform investors or, contrary to Art. 16, the FMA, or failing to do so correctly, completely, in the prescribed manner, or in a timely manner;
7. contrary to Art. 15, using the designation "EuSEF" without the required registration or having obtained the registration through false statements or any other irregular means;
8. contrary to Art. 15a, using the designation "EuSEF" without the required registration or having obtained the registration through false statements or any other irregular means; or

355 Art. 176 (3) x) amended by LGBl. 2020 no. 8.

9. using the designation "EuSEF" for the marketing of a fund which is not established in an EEA Member State;

y) any person who is in breach of Regulation (EU) No 2015/760 by:[356]

1. contrary to Art. 4 and 5, using the designation "ELTIF" or "European long-term investment fund" without the required authorisation or having obtained the authorisation through false statements or any other irregular means;
2. contrary to Art. 9, investing in a non-eligible investment asset or undertaking an impermissible activity;
3. contrary to Art. 13 (1), failing to invest at least 70 % of its capital as referred to in Art. 2 (7) in an eligible investment asset;
4. contrary to Art. 13 (2) to (6) and Art. 14, violating a diversification requirement referred to therein;
5. contrary to Art. 16, borrowing cash;
6. contrary to Art. 21, failing to inform the FMA in a timely manner;
7. contrary to Art. 23 (1) to (4), Art. 24 (2) to (5), and Art. 25 (1) and (2), failing to publish a prospectus or, contrary to Art. 23 (5), an annual report, or to do so correctly, completely, or in the prescribed manner;
8. contrary to Art. 23 (6), failing to provide the information referred to therein, or to do so correctly, completely, or in the prescribed manner;
9. contrary to Art. 24 (1), failing to send a prospectus or any amendments thereto, or to do so correctly, completely, or in a timely manner;
10. contrary to Art. 28 and 30, marketing a unit or share to a private investor; or
11. contrary to Art. 29 (5), reusing an asset;

z) any person who is in breach of Regulation (EU) 2017/1131 by:[357]

1. contrary to Art. 5, having obtained authorisation of money market funds through false statements or any other irregular means;
2. contrary to Art. 6, using the designation "money market fund" or "MMF";
3. contrary to Art. 9 to 16, failing to comply with any of the requirements regarding asset composition;

356 Art. 176 (3) y) inserted by LGBl. 2020 no. 319.
357 Art. 176 (3) z) inserted by LGBl. 2020 no. 321.

4. contrary to Art. 17, 18, 24 or 25, failing to comply with any of the portfolio requirements;
5. contrary to Art. 19 or 20, failing to comply with any of the requirements regarding the internal credit quality assessment;
6. contrary to Art. 21, 23, 26 to 28 or 36, failing to comply with any of the governance, documentation or transparency requirements;
7. contrary to Art. 29 to 34, failing to comply with any of the requirements regarding valuation; or
8. contrary to Art. 37, failing to comply with any of the reporting requirements.

4) If an offence is committed through negligence the upper limits of the relevant penalties shall be reduced by half. In the event of repeat offending, in the case of a loss exceeding 75 000 Francs and in the case of malicious intent to cause damage, the upper limits of the penalties shall be doubled.

5) If the AIF uses a name other than those permitted under Art. 15a or a designation of legal form or abbreviation other than those permitted under Art. 15a, the AIFM or the self-managed AIF will be sanctioned by the FMA with a spot fine of up to 10 000 Francs. This spot fine may be imposed continuously until a legitimate situation has been restored.[358]

6) The FMA shall impose fines pursuant to (3) on a legal entity if the infringements have been committed in the performance of the commercial business of the legal entity (underlying offences) by persons who have acted either alone or as a member of the board of directors, the management, the managing board or supervisory board of the legal entity or on the basis of another management position within the legal entity, on the basis of which they:[359]

a) are authorised to represent the legal entity externally;

b) exercise powers of control in an executive position; or

c) otherwise exercise a considerable influence over the management of the legal entity.

7) The legal entity shall also be responsible for infringements committed by employees of the legal entity, even if they are not personally at fault, if the infringement was made possible or significantly facilitated

358 Art. 176 (5) amended by LGBl. 2020 no. 8.
359 Art. 176 (6) inserted by LGBl. 2020 no. 8.

by the fact that the persons referred to in (6) have omitted to take the necessary and reasonable measures to prevent such underlying offences.[360]

8) The responsibility of the legal entity for the underlying offence and the culpability of the persons referred to in (6) or employees referred to in (7) for the same offence are not mutually exclusive. The FMA may refrain from imposing a penalty on a natural person, if a fine has already been imposed on the legal entity for the same offence and there are no special circumstances that would make it impossible not to impose a penalty.[361]

9) The responsibility of legal entities for an offence referred to in (1) or (2) shall be governed by §§ 74a et seq. of the Criminal Code.[362]

10) If the Court of Justice is competent in the same case on account of an offence in the Criminal Code or one mentioned in (1) and (2), the Court of Justice shall also be competent instead of the FMA for the prosecution of infringements referred to in (3). Competence shall revert to the FMA if the proceedings are terminated by the Court of Justice.[363]

11) If several criminal offences should coincide, Art. V (5) of the Criminal Law Adjustment Act shall apply with the proviso that:[364]

a) the special sentencing guidelines listed in Art. 176a are applied for offences and infringements referred to in (1) to (3) as well as the financial penalty criteria referred to in this Article; and

b) the term of imprisonment replacing a fine that is uncollectible in the case mentioned in (3) may not exceed one year.

12) A conviction under this Article is not binding for the civil court judges with reference to the assessment of guilt and illegality, and the determination of the loss.[365]

13) The statute-barred period for prosecution shall be three years.[366]

360 Art. 176 (7) inserted by LGBl. 2020 no. 8.
361 Art. 176 (8) inserted by LGBl. 2020 no. 8.
362 Art. 176 (9) inserted by LGBl. 2020 no. 8.
363 Art. 176 (10) inserted by LGBl. 2020 no. 8.
364 Art. 176 (11) inserted by LGBl. 2020 no. 8.
365 Art. 176 (12) inserted by LGBl. 2020 no. 8.
366 Art. 176 (13) inserted by LGBl. 2020 no. 8.

Art. 176a[367]

Proportionality and imperative of efficiency

1) In the imposition of penalties pursuant to Art. 176 the Court of Justice and the FMA shall consider:

a) with reference to the infringement in particular:
   1. its severity and duration;
   2. the profits achieved or losses prevented, insofar as they can be determined in figures;
   3. third party losses, insofar as they can be determined in figures;
   4. possible effects relevant to the system;

b) with reference to the natural or legal persons responsible for the infringement, in particular:
   1. the degree of responsibility;
   2. financial strength;
   3. the willingness to cooperate with the FMA;
   4. reports to the internal reporting system of an AIFM pursuant to Art. 38 (3);
   5. previous infringements and the measures taken to prevent a repetition of these infringements.

2) In other respects the General Section of the Criminal Code shall apply mutatis mutandis.

Art. 177

Disgorgement of benefit

1) If an infringement is committed pursuant to Art. 176 (3) and a financial advantage is achieved, the FMA shall order the disgorgement of the financial benefit and oblige the beneficiary to pay a corresponding sum of money.

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

367 Art. 176a inserted by LGBl. 2020 no. 8.

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

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

5) Expiry in the event of offences referred to in Art. 176 (1) and (2) shall be governed by §§ 20 et seq. of the Criminal Code.[368]

Art. 178

Responsibility

If infringements are committed in the business operation of a legal person, a collective partnership, an investment limited partnership or an investment partnership of limited partners or a sole trader in connection with an AIF, the criminal provisions shall apply to the persons, who acted or should have acted for them, but with joint and several liability of the legal person, the company or the sole trader for fines and financial penalties.

Art. 179

Publication of sanctions; Binding force of convictions[369]

1) The FMA may publish the imposition of legally enforceable penalties and fines at the expense of the person concerned, provided that the publication does not seriously jeopardise the stability of the financial markets, does not adversely affect the interests of investors and that it is proportionate.[370]

2) A conviction under this Act is not binding for the civil court judges with reference to the assessment of guilt and illegality and the determination of the loss.

368 Art. 177 (5) amended by LGBl. 2016 no. 177.
369 Art. 179 Heading amended by LGBl. 2018 no. 303.
370 Art. 179 (1) amended by LGBl. 2018 no. 303.

Art. 180

Reporting obligations[371]

1) The courts shall provide the FMA with a complete copy of all judgements and closure decisions that affect members of the administration or management of AIFMs and auditors.

2) The FMA shall send the ESMA an annual summary of all the administrative measures and sanctions imposed in accordance with Art. 176.[372]

XVI. Transitional and final provisions

Art. 181

Implementation ordinances

The Government shall enact the required ordinances for the implementation of this Act.

Art. 182

Electronic provision of legal provisions

The FMA shall make this Act and the implementing ordinances issued in connection therewith available for retrieval in German and English, in the version currently applying, on its Internet site or an Internet site that can be reached via its website. The Government shall establish who shall arrange for the translation of the legal provisions, by ordinance.

Art. 183[373]

Transitional provisions for the legislative amendment of 4 December 2019

1) Small AIFMs already authorised before this Act comes into effect shall be deemed to be registered pursuant to Art. 3 (3) and may continue their operations in accordance with the provisions of this Act.

371 Art. 180 Subject heading amended by LGBl. 2016 no. 46.
372 Art. 180 (2) inserted by LGBl. 2016 no. 46.
373 Art. 183 amended by LGBl. 2020 no. 8.

2) Constitutive documents of an AIF of the open-ended type already in existence at the time this Act comes into effect are to be adjusted to the new law within five years from the coming into effect of this Act.

3) Investment companies that were already authorised in the legal form of an establishment or foundation before the coming into effect of this Act must be recognised by the FMA pursuant to Art. 6 (2), unless a change to another legally regulated legal form takes place. A relevant application is to be made within three months from the coming into effect of this Act.

4) Authorisations of AIFMs, relating to all investment strategies, existing at the time this Act comes into effect, shall, with reference to investment strategies not being managed within three years, be restricted by the FMA to the investment strategies actually being managed.

5) Authorisations of administrators, risk managers and selling agents existing at the time the Act comes into effect shall continue to be valid, provided the requirements of this Act are being met.

6) AIFs that were authorised or admitted before the coming into effect of this Act may continue to be managed and/or marketed in accordance with the terms of their authorisation or admission.

7) Qualified investors are to be classified as professional investors or private investors within five years from the coming into effect of this Act. If no classification is possible, AIFMs must comply with the regulations for marketing to private investors as stated in Art. 151 and 151a.

8) The existing law shall apply to proceedings already pending when this Act comes into effect.

Art. 184[374]

Repealed

Art. 185[375]

Repealed

374 Art. 184 repealed by LGBl. 2016 no. 46.
375 Art. 185 repealed by LGBl. 2016 no. 46.

Art. 186[376]

Repealed

Art. 187[377]

Repealed

Art. 188[378]

Repealed

Art. 189[379]

Repealed

Art. 190

Coming into effect

1) Subject to Art. 189 and (2) this Act shall come into effect on 22 July 2013.

2) The Government shall, in consideration of Art. 67 of Directive 2011/61/EU, set the date of the coming into effect of Art. 126, 127 and 133 to 149, by ordinance.[380]

376 Art. 186 repealed by LGBl. 2016 no. 46.
377 Art. 187 repealed by LGBl. 2015 no. 196.
378 Art. 188 repealed by LGBl. 2016 no. 46.
379 Art. 189 repealed by LGBl. 2020 no. 8.
380 Art. 190 (2) amended by LGBl. 2013 no. 242.

By proxy for the Prince of Liechtenstein:
signed *Alois*
Hereditary Prince

signed *Dr. Klaus Tschütscher*
Head of the Princely Government

Transitional Provisions

951.32 L on managers of alternative investment funds (AIFMG)

Liechtenstein Legal Gazette
2014 No. 356 issued on 23 December 2014

Law
of 7 November 2014
concerning the amendment of the Law on Managers of Alternative Investment funds

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II.

Transitional provision

AIFMs that at the time at which this Act[381] comes into effect are authorised for the provision of services in accordance with Art. 29 (3) a) and b), may continue to engage in their activities if, no later than nine months after the coming into effect of this Act, they sign up to a system for the compensation of investors. Proof of this is to be supplied to the FMA immediately. If this time limit is not observed Art. 51 (1) a) AIFMG shall apply.

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381 Entry into force: 1 February 2015.

Liechtenstein Legal Gazette
2016 No. 46 issued on 4 February 2016

Law
of 2 December 2015
concerning the amendment of the Law on Managers of Alternative Investment Funds

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II.
Entry into Force

1) Subject to (2) and (3) this Act shall enter into force at the same time as the Investment Undertakings Act of 2 December 2015.

2) Art. 1 (3) c) and d), Art. 4 (1) no. 6 b) and c) as well as nos. 44 and 45, Art. 156 (1) and 2 g) Art. 157 (1), (2) a) and h) to k) as well as (3), Art. 162 (5) as well as Art. 176 (1) a), h) and i), (2) l) to o) as well as (3) w) and x) shall enter into force at the same time as the Decision of the EEA Joint Committee concerning the incorporation of Regulation (EU) nos. 345/2013 and 346/2013. [382]

3) Art. 1 (3) b) and Art. 39 (3) d) shall enter into force at the same time as the Decision of the EEA Joint Committee concerning the incorporation of Directive 2013/14/EU.[383]

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382 Entry into force: 2 August 2021 (IV. Coordination provision LGBl. 2021 no. 230).
383 Entry into force: 1 January 2020 (LGBl. 2019 no. 336).

Liechtenstein Legal Gazette
2020 No. 8 issued on 29 January 2020

Law
of 4 December 2019
concerning the amendment of the Law on Managers of Alternative Investment Funds

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IV.
Entry into force

1) Provided that the referendum deadline expires unutilised this Act shall enter into force on 1 February 2020, otherwise on the day after promulgation

2) Art. 47 (1), Art. 48 (1), Art. 156 (1) and (2) e), f), g) and h), Art. 157 (1), (2) a), b), h), i) and k) as well as (3), Art. 162 (5), Art. 174 (2), Art. 175 (1), Art. 176 (1) a), h) and i), (2) l) to o) as well as (3) w) no. 1 to 4, 6, 7 and 9 as well as x) no. 1 to 4, 6, 7 and 9 shall enter into force at the same time as the Decision of the EEA Joint Committee no. 64/2018 of 23 March 2018 amending Annex IX (Financial services) of the EEA Agreement. [384]

3) Art. 156 (2) e[bis]), Art. 176 (2) p) and (3) w) no. 5 and 8 as well as x) no. 5 and 8, as well as Chapter III (Implementation of EEA legislation) shall enter into force at the same time as the Decision of the EEA Joint Committee concerning the incorporation of Regulation (EU) 2017/1991. [385]

4) Chapter II (amendment of designations) shall enter into force at the same time as the Law of 2 March 2016 regarding the amendment of the Disclosure Act.

384 Entry into force: 2 August 2021 (IV. Coordination provision LGBl. 2021 no. 230).
385 Entry into force: 2 August 2021 (IV. Coordination provision LGBl. 2021 no. 230).

5) The Government shall establish the entry into force of Art. 126 (2) a), Art. 127 subject heading, Art. 133 (1) a) no. 1, first indent, b) no. 1, first indent and e) no. 1, first indent, Art. 134 (2), Art. 139 (2) b), Art. 144, 147 (2) as well as Art. 148 in consideration of Art. 67 of Directive 2011/61/EU by ordinance.

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Liechtenstein Legal Gazette
2020 No. 319 issued on 27 October 2020

Law
of 3 September 2020
concerning the amendment of the Law on Managers of Alternative Investment Funds

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II.
Entry into force

This Act shall enter into force at the same time as Decision of the EEA Joint Committee No 19/2020 of 7 February 2020 amending Annex IX (Financial Services) to the EEA Agreement.[386]

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386 Entry into force: 2 August 2021 (IV. Coordination provision LGBl. 2021 no. 230).

Liechtenstein Legal Gazette
2020 No. 321 issued on 27 October 2020

Law
of 3 September 2020
concerning the amendment of the Law on Managers of Alternative Investment Funds

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II.
Entry into force

This Act shall enter into force at the same time as Decision of the EEA Joint Committee No 22/2020 of 7 February 2020 amending Annex IX (Financial Services) to the EEA Agreement.[387]

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387 Entry into force: 2 August 2021 (IV. Coordination provision LGBl. 2021 no. 230).

Liechtenstein Legal Gazette
2021 No. 230 6 July 2021

Law
of 6 May 2021
concerning the amendment of the Law on Managers of Alternative Investment Funds

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III.
Applicability of EU acts

1) Until their incorporation into the EEA Agreement, the following shall be deemed national legal provisions:

a) Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds (OJ L 293, 10.11.2017, p. 1);

b) Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds (OJ L 115, 25.4.2013, p. 18);

c) Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds (OJ L 123, 19.5.2015, p. 98);

d) Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds (OJ L 169, 30.6.2017, p. 8);

e) Regulation (EU) 2017/1991 of the European Parliament and of the Council of 25 October 2017 amending Regulation (EU) No 345/2013 on European venture capital funds and Regulation (EU) No 346/2013 on European social entrepreneurship funds (OJ L 293, 10.11.2017, p. 1);

f) Regulation (EU) 2019/1156 of the European Parliament and of the Council of 20 June 2019 on facilitating cross-border distribution of collective investment undertakings (OJ L 188, 12.7.2019, p. 55);

g) the implementing acts for the EU acts referred to in a) to f).

2) The full text of the acts referred to in (1) is published in the Official Journal of the European Union at http://eur-lex.europa.eu; it may also be accessed on the FMA website at www.fma-li.li.

IV.

Coordination provision

1) The following shall enter into force at the same time as this Act:

a) the provisions referred to in Chapter II (2) of the Law of 2 December 2015 concerning the amendment of the Law on Managers of Alternative Investment Funds, LGBl. 2016 No. 46;

b) the provisions referred to in Chapter IV (2) and (3) of the Law of 4 December 2019 concerning the amendment of the Law on Managers of Alternative Investment Funds, LGBl. 2020 No. 8;

c) the Law of 3 September 2020 concerning the amendment of the Law on Managers of Alternative Investment Funds, LGBl. 2020 No. 319;

d) the Law of 3 September 2020 concerning the amendment of the Law on Managers of Alternative Investment Funds, LGBl. 2020 No. 321;

e) the Law of 4 December 2019 amending the Due Diligence Act, LGBl. 2020 No. 12.

2) The timing of entry into force of the provisions referred to in (1) shall be in ascending order of their promulgation in the Liechtenstein Legal Gazette.

V.

Entry into force

1) Provided that the referendum period expires without a referendum being called, this Act shall enter into force on 2 August 2021, otherwise on the day after its promulgation.

2) The Government shall establish the entry into force of Art. 126 (2) b), Art. 133 (1) a) no. 1, second indent, and no. 2, b) no. 1, second indent, and no. 2, c) no. 2, d) no. 2, e) no. 2 and f) no. 2, Art. 145 (1), Art. 147 (2), Art. 149 (1), introductory sentence, and Art. 173 a) no. 8 in consideration of Art. 67 of Directive 2011/61/EU by ordinance.

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Liechtenstein Legal Gazette
2018 No. 466 issued on 21 December 2018

Law
of 9 November 2018
concerning the amendment of the Law on Managers of Alternative Investment Funds

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II.

Entry into force

This Act shall enter into force at the same time as the Decision of the EEA Joint Committee concerning the incorporation of Directive (EU) 2016/2341.[388]

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388 Entry into force: 1 August 2023 (LGBl. 2023 no. 262).