

## Translation of Liechtenstein Law

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**Liechtenstein Legal Gazette**

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**Ordinance**

of 22 March 2016

**concerning the Managers of Alternative  
Investment Funds (AIFMV)**

On the basis of Art. 3 (5), Art. 4 (2), Art. 5 (1), Art. 6 (3), Art. 7 (4) and 8, Art. 8 (4) and 6, Art. 9 (4) and 10, Art. 10 (9), Art. 13 (3), Art. 15a (5), Art. 29 (7), Art. 30 (5), Art. 31 (13), Art. 32 (10), Art. 33 (6), Art. 34 (6), Art. 56 (4), Art. 66 (2), Art. 67 (5), Art. 70 (4), Art. 78 (8), Art. 95 (5), Art. 96 (6), Art. 101 (2), Art. 104 (6), Art. 107 (9), Art. 108, 110 (7), Art. 111 (4), Art. 112 (7), Art. 112a (3), Art. 113 (3), Art. 115 (3) and 6, Art. 116 (4), Art. 120 (4), Art. 122 (7), Art. 124 (3), Art. 125 (3), Art. 151 (6), Art. 151a (8), Art. 157 (3) to 5, Art. 175 (1) and 4, Art. 181 as well as 182 of the Law of 19 December 2012 concerning the Managers of Alternative Investment Funds (AIFMG), LGBL 2013 No. 49, in its current version, the Government decrees:<sup>1</sup>

**I. General Provisions****A. Object, purpose, scope of validity and definition of terms**

## Art. 1

*Object, purpose and applicable law*

1) In implementation of the AIFMG this Ordinance sets out specific details regarding the taking up, pursuit and oversight of the business of managers of alternative investment funds (AIFMs), that manage and/or market alternative investment funds (AIF).<sup>2</sup>

<sup>1</sup> Preamble amended by LGBL 2020 no. 24.

<sup>2</sup> Art. 1 (1) amended by LGBL 2020 no. 24.

2) It serves to transpose and/or implement the following EEA legislation:<sup>3</sup>

- a) Directive 2011/61/EU on the Managers of Alternative Investment funds<sup>4</sup>;
- b) Regulation (EU) no. 345/2013 on European Venture Capital Funds<sup>5</sup>;
- c) Regulation (EU) no. 346/2013 on European Social Entrepreneurship Funds<sup>7, 8</sup>.

3) It does not affect directly applicable implementing regulations issued by the EU Commission.<sup>9</sup>

3a) The applicable version of the EEA legislation stated in (2) and (3) is recorded in the promulgation of the Decisions of the EEA Joint Committee in the Liechtenstein Legal Gazette pursuant to Art. 3 (k) of the Publication Act.<sup>10</sup>

4) Unless specified otherwise in this Ordinance the provisions applying to AIFMs shall apply to self-managed AIFs accordingly, with the proviso that the executive bodies of the AIF replace the AIFM.

## Art. 2

### *Definition of terms and designations*

1) Head Office for the purposes of the AIFMG shall mean the place where the main centre for the senior management of the business is located.

<sup>3</sup> Art. 1 (2) amended by LGBL 2020 no. 24.

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

<sup>5</sup> Directive (EU) no. 345/2013 of the European Parliament and of the Council of 17 April 2013 concerning European Venture Capital Funds (OJ. L 115 of 25.4.2013, p. 1).

<sup>6</sup> Art. 1 (2) b) comes 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 (LGBL 2020 no. 24).

<sup>7</sup> Regulation (EU) no. 346/2013 of the European Parliaments and of the Council of 17 April 2013 on European Social Entrepreneurship Funds (OJ. L 115 of 25.4.2013, p. 18).

<sup>8</sup> Art. 1 (2) c) comes 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 (LGBL 2020 no. 24).

<sup>9</sup> Art. 1 (3) amended by LGBL 2020 no. 24.

<sup>10</sup> Art. 1 (3a) inserted by LGBL 2020 no. 24.

2) Investment firms as defined in Art. 2 (2) i) AIFMG are investment firms as defined in Art. 3 (2) Banking Act and all financial intermediaries that are authorised to manage financial instruments or trade in them on a regular basis.

3) Instructions according to the terms of Art. 96 (2) b) AIFMG applies to contractual relationships under civil law and other legal relationships that are to be understood as functionally equivalent to a contractual relationship, in particular structures with derivatives and agreements for the exercise of voting rights, according to which the AIFM can exercise control over the voting rights even without legal ownership of the company shares.

4) In other respects, the definitions of the applicable EEA legislation, in particular Commission Delegated Regulation (EU) no. 231/2013<sup>11</sup>, will apply.<sup>12</sup>

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

#### *Small AIFMs*

##### *Art. 3<sup>13</sup>*

###### *a) Registration*

1) The registration of small AIFMs is governed by Art. 5 in connection with Art. 110 (1) of Commission Delegated Regulation (EU) no. 231/2013; it shall be accomplished using the form provided by the FMA and the form set out in Annex IV of Commission Delegated Regulation (EU) no. 231/2013. The data must be updated at least once a year and as and when required.

2) The following are to be submitted in addition to the documents referred to in (1):

- a) Certificates of education and training and details of practical experience acquired during the career of the person in question as evidence

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<sup>11</sup> Commission Delegated Regulation (EU) no. 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision (OJ. L 83 of 22.3.2013, p.1).

<sup>12</sup> Art. 2 (4) amended by LGBl. 2020 no. 24.

<sup>13</sup> Art. 3 amended by LGBl. 2020 no. 24.

- of professional qualifications, as well as appropriate proof of the personal integrity of the directors;
- b) a programme of activity, containing in particular:
1. Information on:
    - aa) the organisation;
    - bb) the personnel, including signing powers;
    - cc) the business and office equipment;
  2. a balance sheet plan scrutinised by the auditor for mathematical accuracy and plausibility and a planned profit and loss account for the first three financial years;
- c) a Commercial Register extract as proof of the location of the head office in Liechtenstein;
- d) details of ownership;
- e) the constitutive documents of the AIFs under its management.
- 3) The FMA may set minimum requirements with regard to (2) b) no. 1.
- 4) The management of the small AIFM must be made up of at least two individuals.
- 5) The FMA shall register the small AIFM within 20 working days from receipt of the full application. It may extend the deadline to a maximum of two months, insofar as this is necessary for the protection of investors or in the public interest.
- 6) Reasons must be stated in writing for any extension of the deadline (5) or rejection of registration.
- 7) Registration as manager of European Venture Capital Funds (EuVECA) pursuant to Art. 14 of Regulation (EU) no. 345/2013 or as manager of European Social Entrepreneurship Funds (EuSEF) pursuant to Art. 15 of Regulation (EU) no. 346/2013 is accomplished at the same time as registration as a small AIFM.
- 8) The small AIFM may commence its activities immediately upon its registration by the FMA. The obligations pursuant to Art. 3 (3) AIFMG shall be met at all times.

Art. 4<sup>14</sup>*b) Calculation of thresholds*

The calculation of the thresholds referred to in Art. 3 (1) and (2) AIFMG shall be governed by Art. 2 to 4 in connection with Art. 6 to 11 of Commission Delegated Regulation no. 231/2013.

Art. 5<sup>15</sup>*c) Expiry and withdrawal of registration*

Art. 50 (1) and (2) AIFMG shall apply mutatis mutandis to the expiry of a registration, Art. 51 (1) a) to e) as well as (2) and (4) AIFMG shall likewise apply to withdrawal.

Art. 6<sup>16</sup>*d) Liquidation, appointment of an administrative agent and bankruptcy*

Art. 54 to 56 AIFMG shall apply mutatis mutandis to liquidation and bankruptcy of a small AIFM and appointment of an administrative agent for it.

Art. 7<sup>17</sup>

Repealed

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<sup>14</sup> Art. 4 amended by LGBL 2020 no. 24.

<sup>15</sup> Art. 5 amended by LGBL 2020 no. 24.

<sup>16</sup> Art. 6 amended by LGBL 2020 no. 24.

<sup>17</sup> Art. 7 repealed by LGBL 2020 no. 24.

## B. Legal forms<sup>18</sup>

### 1. General<sup>19</sup>

#### Art. 8<sup>20</sup>

##### *Recognition of different legal forms of an investment company*

1) At the request of the AIFM the FMA may recognise an establishment, foundation or limited liability company as the legal form of an investment company pursuant to Art. 9 AIFMG.

2) The articles of incorporation and/or the foundation deed shall be governed by the provisions of the PGR.

#### Art. 9

##### *Exclusion of investors*

1) An investor who fails to meet the investment criteria may be excluded in return for a refund of his contributions in accordance with the constitutive documents. Otherwise an investor may be excluded if this is provided for by the constitutive documents.

2) In the event of exclusion, equal treatment in financial terms shall be guaranteed.

### 2. Content of the constitutive documents

#### Art. 10

##### *Guidelines in respect of investment policy*

1) The investment policy included in the constitutive documents of the AIF shall define the investment objective and the investment strategies in accordance with Annex IV of the Commission Delegated Regulation (EU) no. 231/2013 and establish which investments are permitted.<sup>21</sup>

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<sup>18</sup> Heading before Art. 8 inserted by LGBl. 2020 no. 24.

<sup>19</sup> Heading before Art. 8 inserted by LGBl. 2020 no. 24.

<sup>20</sup> Art. 8 amended by LGBl. 2020 no. 24.

<sup>21</sup> Art. 10 (1) amended by LGBl. 2020 no. 24.

2) If the AIF replicates an index, the index must be named and the extent of the replication must be estimated in figures.

3) The constitutive documents shall indicate whether the look-through approach applies to the investment limits.

4) Within the first six months from its being paid upon subscription, an AIF may deviate from the investment limits within the scope of the investment policy.

#### Art. 11

##### *Rules on unit valuation*

1) The rules in the constitutive documents for valuation of the assets and the calculation of the issue and sale price and the redemption or repurchase price of an AIF's units and shares shall conform to market practices and international standards.

2) The FMA may declare standards equivalent to those referred to in (1) to be legally binding.

#### Art. 12

##### *Transparency requirement*

1) Deductions from the assets of an AIF or the investor for costs and charges are to be set out in detail in the constitutive documents.

2) The rules concerning costs and charges in the constitutive documents must be transparent. Transparency is deemed to pertain if the information to be provided in accordance with Art. 10 to 14 and Annex II of Regulation (EU) no. 583/2010<sup>22</sup> is transparent and comprehensible for the investors.<sup>23</sup>

<sup>22</sup> Commission Regulation (EU) no. 583/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website (OJ. L 176 of 10.7.2010, p. 1).

<sup>23</sup> Art. 12 (2) amended by LGBl. 2020 no. 24.



## Art. 13

*AIFM's remuneration, charges and costs*

1) The AIFM's remuneration system must be compliant with Annex II of Directive 2011/61/EU and Art. 107 Commission Delegated Regulation (EU) no. 231/2013.<sup>24</sup>

2) The nature, amount and calculation of the manager's remuneration, charges and costs in the constitutive documents shall conform to market practices and international standards, as well as the provisions of the AIFMG and this Ordinance.

3) The FMA may declare standards equivalent to those referred to in (1) to be legally binding.

## Art. 14

*Disclosure of regular charges, type of charges*

1) In the constitutive documents, regular charges debited to the assets of the AIF are to be subdivided into the following, with an indication of the amount or percentage:

- a) expenses dependent on the assets (variable);
- b) expenses not dependent on the assets (fixed);
- c) expenses dependent on investment performance.

2) Minimum charges may be levied for expenses dependent on the assets.

3) Regular charges debited to the assets of the AIF are to be subdivided into the following according to type:

- a) individual expenses referred to in Art. 15 (1);
- b) inclusive expenses, i.e. the combination of individual expenses referred to in Art. 15 to produce one or more inclusive charge. The expenditure included in the inclusive expenses may not be entered as a repeat entry in the individual expenses.

4) Arrangements whereby a fixed inclusive charge can be charged in addition to the individual expenses for the same service is not permitted.

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<sup>24</sup> Art. 13 (1) amended by LGBl. 2020 no. 24.

## Art. 15

*Minimum rules on regular charges*

1) The charging system in the constitutive documents shall contain arrangements in respect of expenditure for the following, as a minimum:

- a) the AIFM, if necessary subdivided in terms of administration, investment decision-making and risk management, as well as marketing;
- b) the depositary;
- c) the auditing;
- d) supervision;
- e) transaction costs;
- f) publications;
- g) costs of marketing abroad; and
- h) cost of exceptional measures.

2) Performance-related expenditure (Performance Fee) is to be disclosed as a separate entry in addition to expenditure for the AIFM.

3) Transaction-related payments within the remit of the AIFM for administration or risk management are to be disclosed separately. Transaction-related payments for investment decision-making or marketing are not permitted.

4) The cost of exceptional measures is made up of the expenditure serving exclusively to protect the interests of investors, arising in the course of regular business operations and which was not foreseeable when the fund was established; it refers in particular to legal consultancy and procedural costs in the interests of the AIF or investors.

## Art. 16

*Rules on issue and redemption of units*

1) The rules in the constitutive documents on the issue and redemption of units shall:

- a) conform to market practice and international standards that the FMA has declared legally binding;
- b) clearly state the cut-off time for each trading day;
- c) establish criteria for the suspension of unit redemption for open-ended AIFs.

2) The AIFM shall ensure that the marketing intermediaries comply with the cut-off time referred to in (1) b).

#### Art. 17

##### *Rules on the winding up of an AIF*<sup>25</sup>

1) The rules in the constitutive documents concerning winding up of an AIF shall provide, as a minimum, that the AIFM shall communicate the decision about the winding up of an AIF or a sub-fund to:<sup>26</sup>

- a) the investors immediately, but at least 30 days before the winding up commences; and<sup>27</sup>
- b) the FMA immediately after communication to the investors; a copy of the investor information shall be submitted to the FMA at the same time.

2) Repealed<sup>28</sup>

3) If the constitutive documents do not contain sufficiently specific rules on winding up, Art. 35 (1) shall apply *mutatis mutandis*.<sup>29</sup>

### 3. Entry in the commercial register

#### Art. 18<sup>30</sup>

##### *Basic principle*

The AIFM shall apply to the Office of Justice for entry in the Commercial Register within 30 days from delivery of the written confirmation pursuant to Art. 7 (8) AIFMG for the investment fund and pursuant to Art. 8 (6) AIFMG for the collective trusteeship.

<sup>25</sup> Art. 17 subject heading amended by LGBL 2020 no. 24.

<sup>26</sup> Art. 17 (1) introductory sentence amended by LGBL 2020 no. 24.

<sup>27</sup> Art. 17 (1) a) amended by LGBL 2020 no. 24.

<sup>28</sup> Art. 17 (2) repealed by LGBL 2020 no. 24.

<sup>29</sup> Art. 17 (3) amended by LGBL 2020 no. 24.

<sup>30</sup> Art. 18 amended by LGBL 2020 no. 24.

Art. 19<sup>31</sup>

Repealed

Art. 20

*Formation of the limited partnership and partnership of limited partners*

As long as a limited partnership or partnership of limited partners is not registered in the Commercial Register it shall be deemed a simple partnership. As soon as investors are involved, Art. 733 to 755 PGR shall apply accordingly in favour of the investors. The founders shall however continue to be liable as simple partners until registration.

**C. Sub-funds<sup>32</sup>**

Art. 20a<sup>33</sup>

*Basic principle*

1) “Sub-fund” as referred to in Art. 15 AIFMG also refers to subdivisions of the assets of an investment company, and investment-limited partnership or an investment-partnership of limited partners.

2) A depositary must be appointed for each sub-fund. The assets of more than one sub-fund under the same umbrella may be held with different depositaries.

3) Umbrella funds with a single sub-fund are permitted. Reference is to be made to the fact that there is only one sub-fund under the umbrella in the investor information. Until a second sub-fund is established under an umbrella, the name of the one sub-fund may not suggest that it would be possible to switch to another sub-fund.

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<sup>31</sup> Art. 19 repealed by LGBl. 2020 no. 24.

<sup>32</sup> Heading before Art. 20a inserted by LGBl. 2020 no. 28.

<sup>33</sup> Art. 20a inserted by LGBl. 2020 no. 24.

## II. Authorisation and admission of AIFs in Liechtenstein

Art. 21<sup>34</sup>

Repealed

Art. 22<sup>35</sup>

Repealed

Art. 23<sup>36</sup>

Repealed

Art. 24<sup>37</sup>

Repealed

## III. Authorisation and obligations of AIFMs

### A. Authorisation of AIFMs

Art. 25<sup>38</sup>

#### *Organisation of the AIFM*

The AIFM must have a managing board and supervisory board, whose functions in accordance with the statutes or the articles of incorporation are consistent with the functions of a managing board pursuant to Art. 344 to 349 PGR or the functions of a supervisory board pursuant to Art. 27 to 34 SEG.

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<sup>34</sup> Art. 21 repealed by LGBl. 2020 no. 24.

<sup>35</sup> Art. 22 repealed by LGBl. 2020 no. 24.

<sup>36</sup> Art. 23 repealed by LGBl. 2020 no. 24.

<sup>37</sup> Art. 24 repealed by LGBl. 2020 no. 24.

<sup>38</sup> Art. 25 amended by LGBl. 2020 no. 24.

Art. 26<sup>39</sup>*Investment strategies*

The authorisation of the AIFM must include at least one of the investment strategies contained in Annex IV of Commission Delegated Regulation (EU) no. 231/2013.

Art. 27<sup>40</sup>*Minimum assets of the AIF*

1) The minimum assets of each AIF managed shall be 1,25 million euro or the equivalent in Swiss Francs and must be achieved within one year from authorisation of the AIFM pursuant to Art. 28, or if the business activity commences with a marketing notification in accordance with Art. 112 AIFMG, within a year from when the AIFM receives the notification from the FMA pursuant to Art. 112 (3) AIFMG. A higher amount for minimum assets may be set by the AIFM for each AIF in the constitutive documents.

2) The FMA may upon a request from the AIFM for which a justified reason is given, extend the deadline referred to in (1) on a maximum of two occasions by six months in each case. In such a case, no minimum fees can be charged to the AIF.

3) Clauses (1) and (2) shall apply mutatis mutandis in the event that the assets sink below the minimum amount at any time.

4) If the minimum assets have not been achieved within the time limits specified in (1) to (3), the AIFM shall cease management and/or marketing of the AIF and wind up the AIF.

Art. 28<sup>41</sup>*Evidence of professional qualifications*

1) Details of practical experience acquired during the working career of the managers as referred to in Art. 30 (1) b) AIFMG are required as well as certificates of training and continuing education as proof of their professional qualifications.

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<sup>39</sup> Art. 26 amended by LGBL 2020 no. 24.

<sup>40</sup> Art. 27 amended by LGBL 2020 no. 24.

<sup>41</sup> Art. 28 amended by LGBL 2020 no. 24.

2) The managers shall attend to their own training and continuing education, as well as the training and development of the remaining executive board members and employees in accordance with Art. 21 d) and Art. 22 of Commission Delegated Regulation (EU) no. 231/2013.

Art. 29<sup>42</sup>

*Minimum contents of the programme of activity*

1) The AIFM shall produce a programme of activity in addition to the information to be submitted in accordance with Directive 2011/61/EU and Art. 110 of Commission Delegated Regulation (EU) no. 231/2013.

2) The programme of activity referred to in Art. 31 (2) c) AIFMG shall contain in particular:

a) Details of:

1. the organisation;
2. personnel, including signing powers;
3. office and business equipment;

b) a balance sheet plan scrutinised by the auditor for mathematical accuracy and plausibility and a planned profit and loss account for at least the first three financial years.

3) The programme of activity shall indicate the periods in which the targets are expected to be achieved.

4) The FMA may establish minimum requirements in respect of (2) a).

Art. 30

*Guarantee of proper business conduct*

1) The managers of the AIFM must in general be sufficiently suited in professional terms to perform the functions expected of them on the basis of their education or their practical experience.

2) The investment strategies of the AIFs that the AIFM intends to manage or market must be taken into account when assessing professional suitability.<sup>43</sup>

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<sup>42</sup> Art. 29 amended by LGBI. 2020 no. 24.

3) If more than one investment strategy is managed, the managers of the AIFM must overall be professionally qualified and suitable for each investment strategy to be managed.<sup>44</sup>

4) The managers shall generally be capable of performing their duties smoothly, taking into consideration their place of residence as well as the infrastructure and organisation of the AIFM and the investment strategies that are managed. Each member of the management and the Board of Directors must have sufficient time at their disposal to perform their functions.<sup>45</sup>

5) The FMA may stipulate that managers must sign jointly in twos in order to ensure that the business is conducted properly.

6) The persons assigned to the management and the Board of Directors and/or the managing board and supervisory board must have a good reputation as business professionals.

## **B. Obligations of the AIFM**

### **1. Organisational requirements**

#### Art. 31

##### *Professional liability insurance, capital, investment options*

1) The specific details concerning cover for professional liability risks referred to in Art. 32 (10) b) AIFMG are governed by Art. 12 to 15 of Commission Delegated Regulation (EU) no. 231/2013.<sup>46</sup>

2) The capital referred to in Art. 32 (7) AIFMG is to be invested in particular in:

- a) credit balances at an authorised bank or a credit institution;
- b) fixed-term deposits;
- c) short-term investment-grade government bonds;
- d) money-market funds.

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<sup>43</sup> Art. 30 (2) amended by LGBL 2020 no. 24.

<sup>44</sup> Art. 30 (3) amended by LGBL 2020 no. 24.

<sup>45</sup> Art. 30 (4) amended by LGBL 2020 no. 24.

<sup>46</sup> Art. 31 (1) amended by LGBL 2020 no. 24.



## Art. 32

*Material changes and new authorisation in the event of particularly significant changes*

1) No material changes as referred to in Art. 33 (1) AIFMG shall be deemed to have occurred if the information in the authorisation application referred to in Art. 31 (2) and (3) has only been subject to drafting changes. The FMA may specify what constitutes a material change in more detail in a guidance note.<sup>47</sup>

2) A new authorisation as referred to in Art. 33 (6) a) AIFMG is required if there have been particularly significant changes to the conditions of authorisation. The following in particular are deemed to be particularly significant changes:

- a) change of all qualified participants;
- b) change or resignation of all managers;
- c) transfer of all organisational and personnel resources to another legal entity;
- d) a complete change in the investment strategies administered by the AIFM on behalf of the AIF.

## Art. 33

*Qualifying holdings*

1) The intention to purchase, increase or sell a qualifying holding according to the terms of Art. 34 (1) AIFMG is deemed to exist if a binding offer or a final decision to purchase, increase or sell has been made by the management or the Board of Directors, as determined by whichever occurs first.

2) The procedure and the criteria pertaining to assessment of the acquisition, increase or disposal of qualifying holdings are governed by Annex 8 of the Banking Ordinance *mutatis mutandis*.

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<sup>47</sup> Art. 32 (1) amended by LGBl. 2020 no. 24.

Art. 34<sup>48</sup>*Code of Conduct, remuneration system, conflicts of interest, organisation and risk and liquidity management*

1) The specific details concerning the code of conduct (Art. 35 AIFMG), conflicts of interest (Art. 37 AIFMG), organisation (Art. 38 AIFMG), risk and liquidity management (Art. 39 and 40 AIFMG) and investment in securitised assets (Art. 41 AIFMG) are governed by Art. 16 to 66 of Commission Delegated Regulation no. 231/2013.

2) The FMA may in accordance with EEA Law issue additional guidelines on codes of conduct, remuneration systems, conflicts of interest and risk and liquidity management or declare existing guidelines to be binding.

**2. Dissolution and liquidation, continuation of the AIFM**

## Art. 35

*Basic principle*

1) Unless specified otherwise in the AIFMG and provided that the FMA does not stipulate a different procedure for the protection of investors, winding up and liquidation procedures (Art. 54 and 56 AIFMG) are governed by the provisions of the PGR. The liquidator must have suitable professional qualifications or employ a professionally suitable person.

2) With the consent of the FMA the AIFM that has been wound up pursuant to Art. 54 (1) AIFMG may resolve to continue its business operations with a different company aim. The resolution of continuation may furthermore be structured in such a way that it becomes effective upon winding up pursuant to Art. 54(1) AIFMG.

3) An AIFM may only relinquish the authorisation when it finally ceases to manage any AIFs.

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<sup>48</sup> Art. 34 amended by LGBI. 2020 no. 24.

## IV. Business partners of the AIFM and the depositary<sup>49</sup>

### A. Administrator

#### Art. 36

##### *Scope of application*

1) The AIFM shall appoint an administrator authorised pursuant to Art. 65 to 68 AIFMG, if it delegates all administrative functions as defined in Art. 4 (1) 43) AIFMG and confines itself to supervision of the administrator.

2) Art. 46 (1) and (3) to (7) AIFMG shall apply exclusively to the delegation of individual administrative functions.

3) Employment of the services of such professionals as referred to in Art. 65 (3) AIFMG is not affected by (1). In such a case the administrator and such professionals must conclude an agreement for exchange of information.

#### Art. 37

##### *Administrator's capital requirement*

The capital adequacy requirements stated in Art. 32 AIFMG shall apply to a management company operating in accordance with the UCITSG that is also authorised to act as an administrator.

#### Art. 38

##### *Obligations of the administrator in the event of delegation of functions*

1) In the event of delegation of functions the administrator shall guarantee compliance with the following provisions in particular:

- a) the provisions of the AIFMG;
- b) the provisions of Commission Delegated Regulation no. 231/2013;<sup>50</sup>
- c) the provisions of this Ordinance;

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<sup>49</sup> Heading before Art. 36 amended by LGBL 2020 no. 24.

<sup>50</sup> Art. 38 (1) b) amended by LGBL 2020 no. 24.

- d) the AIFM's internal guidelines insofar as they apply to administration;
- e) the stipulations in the constitutive documents and the investor information;
- f) Repealed<sup>51</sup>

2) Delegation of individual administrative functions shall be governed by Art. 46 (1) and (3) to (7) AIFMG. In derogation thereof Art. 44 AIFMG shall apply to delegation of the valuation function.

3) If individual administrative functions are delegated by an authorised administrator this must not be to another authorised administrator.

## B. Risk manager

Art. 39

### *Basic principle*

The provisions of Section A applying to the administrator shall apply to the risk manager *mutatis mutandis*.

## C. Selling agent

Art. 40

### *Functions*

1) The AIFM may appoint a suitable selling agent for the AIFs under its management.<sup>52</sup>

2) The selling agent shall be responsible for the organisation and monitoring of the marketing of the units of the specific AIFs managed by the AIFM. It shall ensure that the provisions concerning the investor information are complied with.

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<sup>51</sup> Art. 38 (1) f) repealed by LGBl. 2020 no. 24.

<sup>52</sup> Art. 40 (1) amended by LGBl. 2020 no. 24.

## Art. 41

*Relationship with the Banking Act and the Asset Management Act*

1) Insofar as the selling agent performs activities referred to in Annex 2 of the Banking Act or in Art. 3 (1) of the Asset Management Act, it shall require authorisation pursuant to the Banking Act or the Asset Management Act.

2) As far as financial instruments are concerned, banks as defined in the Banking Act and asset managers as defined in the Asset Management Act shall respectively be deemed selling agents pursuant to Art. 40.

**V. Structural measures****A. Merger**Art. 42<sup>53</sup>*Communication of the merger plan*

At the request of an investor the AIFM shall communicate the merger plan free of charge. It is not obliged to publish the merger plan.

Art. 43<sup>54</sup>*Investor information*

1) The investor information submitted to the FMA in accordance with Art. 78 (3) c) AIFMG must be published. It is to be kept brief and written in language that is generally easy to understand, to enable the investors to reach an informed decision about the effects of the proposed merger on their investments and to exercise their rights. The FMA may establish more specific rules in a guidance note.

2) In the event of a cross-border merger, the transferring AIF and the absorbing AIF shall clarify all terms and procedures with reference to the other AIF that are different from the terms and procedures normally used in the other EEA Member State.

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<sup>53</sup> Art. 42 amended by LGBl. 2020 no. 24.

<sup>54</sup> Art. 43 amended by LGBl. 2020 no. 24.

3) The information for the investors of the absorbing AIF shall focus on the merger process and the potential effects on the absorbing AIF.

4) The private investors of the transferring AIF must be supplied with an up-to-date version of the key information for investors of the absorbing AIF.

5) The information for investors is to be communicated on a durable medium or provided in the publication referred to in Art. 85, insofar as the constitutive documents specify communication in the publication.

### **B. De-merger<sup>55</sup>**

Art. 44<sup>56</sup>

#### *Basic principle*

The provisions referring to merger in Art. 42 and 43 shall apply mutatis mutandis to de-mergers of AIFs.

Art. 45<sup>57</sup>

Repealed

Art. 46<sup>58</sup>

Repealed

Art. 47<sup>59</sup>

Repealed

Art. 48<sup>60</sup>

Repealed

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<sup>55</sup> Heading before Art. 44 inserted by LGBl. 2020 no. 24.

<sup>56</sup> Art. 44 amended by LGBl. 2020 no 24.

<sup>57</sup> Art. 45 repealed by LGBl. 2020 no. 24.

<sup>58</sup> Art. 46 repealed by LGBl. 2020 no. 24.

<sup>59</sup> Art. 47 repealed by LGBl. 2020 no. 24.

<sup>60</sup> Art. 48 repealed by LGBl. 2020 no. 24.

Art. 49<sup>61</sup>  
Repealed

Art. 50<sup>62</sup>  
Repealed

Art. 51<sup>63</sup>  
Repealed

Art. 52<sup>64</sup>  
Repealed

Art. 53<sup>65</sup>  
Repealed

Art. 54<sup>66</sup>  
Repealed

Art. 55<sup>67</sup>  
Repealed

Art. 56<sup>68</sup>  
Repealed

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61 Art. 49 repealed by LGBl. 2020 no. 24.

62 Art. 50 repealed by LGBl. 2020 no. 24.

63 Art. 51 repealed by LGBl. 2020 no. 24.

64 Art. 52 repealed by LGBl. 2020 no. 24.

65 Art. 53 repealed by LGBl. 2020 no. 24.

66 Art. 54 repealed by LGBl. 2020 no. 24.

67 Art. 55 repealed by LGBl. 2020 no. 24.

68 Art. 56 repealed by LGBl. 2020 no. 24.

## VI. Investment policy

### A. AIF investment strategies<sup>69</sup>

#### Art. 57

##### *Basic principle*

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

2) The following must be established in the constitutive documents:

- a) the investment periods within which the respective investment limits have to be reached;
- b) the procedure to be applied in the event of deviations from the investment limits.

3) The FMA may set out the investment strategies of AIFs in more specific detail. It is authorised in particular, to stipulate further requirements if certain assets and techniques are used for investment.<sup>70</sup>

#### Art. 58<sup>71</sup>

Repealed

#### Art. 59<sup>72</sup>

Repealed

#### Art. 60<sup>73</sup>

Repealed

<sup>69</sup> Heading before Art. 57 amended by LGBL 2020 no. 24.

<sup>70</sup> Art. 57 (3) amended by LGBL 2020 no 24.

<sup>71</sup> Art. 58 repealed by LGBL 2020 no. 24.

<sup>72</sup> Art. 59 repealed by LGBL 2020 no. 24.

<sup>73</sup> Art. 60 repealed by LGBL 2020 no. 24.



Art. 61<sup>74</sup>

Repealed

## B. Marketing forms

Art. 62<sup>75</sup>

Repealed

Art. 63<sup>76</sup>

Repealed

## C. Leverage

Art. 64<sup>77</sup>

### *Setting of leverage limits*

1) Art. 112 of the Commission Delegated Regulation no. 231/2013 shall apply to the setting of leverage limits.

2) The FMA may specify more extensive requirements relating to risk management for the eventuality that leverage exceeds three times the net asset value as stated in Art. 111 of Commission Delegated Regulation no. 231/2013.

3) The competent authorities and the ESMA shall be notified as set out in Art. 116 of Commission Delegated Regulation no. 231/2013.

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<sup>74</sup> Art. 61 repealed by LGBL 2020 no. 24.

<sup>75</sup> Art. 62 repealed by LGBL 2020 no. 24.

<sup>76</sup> Art. 63 repealed by LGBL 2020 no. 24.

<sup>77</sup> Art. 64 amended by LGBL 2020 no. 24.

## D. Acquisition of control of undertakings

### Art. 65

#### *Scope of application*

The provisions of this section shall apply to all target companies with registered office within the EEA, irrespective of their legal form.

### Art. 66

#### *Requirements concerning the break-up of companies*

1) The duties of the AIFM in accordance with Art. 101 (1) AIFMG shall extend to the following:

- a) distributions to unit-holders that are made if the net assets reported in the company's annual financial statements on the closing date of the last financial year are, or following such a distribution would become lower than the amount of subscribed capital plus reserves, which may not be distributed under the Law or the articles of association, in which case the uncalled part of the subscribed capital, if it is not included in the assets shown in the balance sheet, is deducted from the amount of subscribed capital;
- b) distributions to shareholders, the amount of which would exceed the amount of the profits of the last financial year, plus any profits brought forward and sums drawn from the reserves available for this purpose, less any losses from previous financial years and sums to be placed in reserves in accordance with the Law or articles of association;
- c) insofar as the purchase of own units is permitted, purchases by the company, including units, that have already previously been acquired and held by the company, and units acquired by a person, acting in their own name but on the instructions of the company, which would have the effect of reducing the net assets to below the threshold set out in a).

2) For the purposes of (1) the following shall apply:

- a) the expression "distribution" used in (1) a) and b) refers in particular to the payment of dividends and interest in connection with units;
- b) the provisions concerning reductions in capital do not extend to reductions in subscribed capital made in order to compensate for losses incurred or to allocate funds to a reserve that is not available for dis-

tribution, on the condition that after this action has been taken such a reserve does not exceed 10 % of the subscribed capital that has been reduced; and

- c) the restriction referred to in (1) c) is based on Art. 61 (1) b) to h) of Directive (EU) 2017/1132<sup>78,79</sup>.

## VII. Master-feeder structures and sub-funds

Art. 67<sup>80</sup>

Repealed

Art. 68<sup>81</sup>

Repealed

## VIII. Information for investors and the authorities

### A. Annual Report<sup>82</sup>

Art. 69

#### *Basic principle*

1) The AIF's accounting practice is governed by the principle of "forward pricing". A valuation is made on the basis of closing prices on the valuation reference date of the net asset value.

2) If an AIF has more than one sub-fund, separate accounts shall be held for each sub-fund.

3) A material change as referred to in Art. 104 (3) f) AIFMG and Art. 106 of Commission Delegated Regulation (EU) no. 231/2013 applies to

<sup>78</sup> Directive (EU) 2017/1132 of the European Parliaments and the Council of 14 June 2017 relating to certain aspects of company law (OJ. L 169 of 30.6.2017, p. 46).

<sup>79</sup> Art. 66 (2) c) amended by LGBl. 2020 no. 24.

<sup>80</sup> Art. 67 repealed by LGBl. 2020 no. 24.

<sup>81</sup> Art. 68 repealed by LGBl. 2020 no. 24.

<sup>82</sup> Heading before Art. 69 amended by LGBl. 2020 no. 24.

information which might lead the investor to revise his investment decision, in particular:<sup>83</sup>

- a) changes in the investment strategy;
- b) changes in remuneration;
- c) changes in the valuation rules.

4) The number of beneficiaries as defined in Art. 104 (3) d) AIFMG shall correspond to the number of employees (including members of the Board of Directors) of the AIFM, who receive remuneration on the basis of a direct indicator, even if the payment of the remuneration is effected through the AIFM.

#### Art. 70

##### *Annual report*

1) The annual report of any given AIF shall contain, as a minimum, the information set out in Art. 103 to 109 of Commission Delegated Regulation (EU) no. 231/2013.<sup>84</sup>

2) In conformity with EEA Law, the FMA shall lay down the structure and the minimum information required in the annual report. If applicable, the minimum information shall be supplemented by mandatory information that has to be included in the annual report, in accordance with the constitutive documents of the AIF.

3) All commission and costs that are regularly charged to the assets of an AIF are to be published in the annual report, in accordance with market practices and international standards, with an indication of the Total Expense Ratio (TER). The FMA may declare certain market practices and international standards to be binding.

4) Repealed<sup>85</sup>

5) The annual report must be accessible to the investors and forwarded to them free of charge on request.

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<sup>83</sup> Art. 69 (3) introductory sentence amended by LGBl. 2020 no. 24.

<sup>84</sup> Art. 70 (1) amended by LGBl. 2020 no 24.

<sup>85</sup> Art. 70 (4) repealed by LGBl. 2020 no. 24.

Art. 71<sup>86</sup>

Repealed

Art. 72<sup>87</sup>

Repealed

## **B. Prospectus for marketing of units to private investors**

Art. 73<sup>88</sup>

Repealed

Art. 74<sup>89</sup>

Repealed

Art. 75<sup>90</sup>

Repealed

Art. 76<sup>91</sup>

Repealed

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<sup>86</sup> Art. 71 repealed by LGBl. 2020 no. 24.

<sup>87</sup> Art. 72 repealed by LGBl. 2020 no. 24.

<sup>88</sup> Art. 73 repealed by LGBl. 2020 no. 24.

<sup>89</sup> Art. 74 repealed by LGBl. 2020 no. 24.

<sup>90</sup> Art. 75 repealed by LGBl. 2020 no. 24.

<sup>91</sup> Art. 76 repealed by LGBl. 2020 no. 24.

**C. Key investor information in the marketing of units to private investors who are not qualifying investors pursuant to Art. 62 (2)**

Art. 77<sup>92</sup>

Repealed

Art. 78<sup>93</sup>

Repealed

Art. 79<sup>94</sup>

Repealed

Art. 80<sup>95</sup>

Repealed

**D. Communication and provision of investor information<sup>96</sup>**

Art. 81

*Accessibility*

1) Investor information required under the AIFMG, under Art. 108 and 109 of Commission Delegated Regulation no. 231/2013 or in accordance with this Ordinance shall be communicated to the investor free of charge or provided in the publication referred to in Art. 85.<sup>97</sup>

2) The form of the investor information referred to in (1) shall be established in the constitutive documents of the AIF.

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<sup>92</sup> Art. 77 repealed by LGBL 2020 no. 24.

<sup>93</sup> Art. 78 repealed by LGBL 2020 no. 24.

<sup>94</sup> Art. 79 repealed by LGBL 2020 no. 24.

<sup>95</sup> Art. 80 repealed by LGBL 2020 no. 24.

<sup>96</sup> Heading before Art. 81 amended by LGBL 2020 no. 24.

<sup>97</sup> Art. 81 (1) amended by LGBL 2020 no. 24.

## **E. Communication of investor information to the competent authorities**

Art. 82

### *Basic principle*

1) The AIFM shall communicate the investor information relating to each AIF to the FMA and, on request, also to the competent authority of the home Member State of the AIF.

2) The provisions of (1) have no effect on the AIFM's other reporting obligations to the FMA.

## **F. Marketing to professional investors<sup>98</sup>**

Art. 83<sup>99</sup>

Repealed

Art. 84

### *Measures to prevent marketing of units to private investors*

1) When marketing units of an AIF to professional investors action shall be taken to avoid marketing of units to private investors, in particular by:<sup>100</sup>

- a) an appropriate design of the subscription form;
- b) references on documents; and
- c) exclusion of marketing of units to private investors in the marketing contracts.

2) Repealed<sup>101</sup>

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<sup>98</sup> Heading before Art. 83 amended by LGBl. 2020 no. 24.

<sup>99</sup> Art. 83 repealed by LGBl. 2020 no. 24.

<sup>100</sup> Art. 84 (1) introductory sentence amended by LGBl. 2020 no. 24.

<sup>101</sup> Art. 84 (2) repealed by LGBl. 2020 no. 24.

## G. Publication

### Art. 85

#### *Publication*

1) Provided that it is compatible with EEA Law, the publication for AIFMs registered in Liechtenstein shall, for the purposes of this Ordinance, be the website of the Liechtenstein Investment Fund Association (LAFV). The FMA may permit notices in other publications. The right of the AIFM to make the same information available by other means at the same time is not affected.

2) If they have no access to the publication referred to in (1) AIFMs that are not registered in Liechtenstein must make the information that would normally be published in that publication available on their website.

## IX. Auditor

### Art. 86

#### *Qualification of the Auditor*

1) Auditors are qualified pursuant to Art. 157 (4) AIFMG if they possess the required skills for the scrutiny of the AIFM's portfolio and risk management – according to the scope of the authorisation pursuant to Art. 29 (6) AIFMG - and are able to guarantee appropriate and ongoing performance of the audit and reporting functions through their operational organisation – in particular through appropriate representational rules.

2) Auditors who are authorised in another EEA Member State in accordance with Commission Directive 2006/43/EC and wish to perform auditing and reporting functions in accordance with the AIFMG in Liechtenstein, must perform a function with respect to the supervisory authorities of other EEA Member States, that is comparable with the auditing and reporting operations required under the AIFMG, on a regular basis.

3) Auditors for the purposes of the AIFMG and this Ordinance shall also include audit companies in accordance with the Law on Auditors and Audit Companies.



## Art. 87

*Proof of Qualification*

- 1) The auditor shall provide the FMA with evidence of his qualifications.
- 2) The FMA shall publish a list of the auditors who are qualified for the purposes of Art. 157 (4) AIFMG and Art. 86 of this Ordinance on its website.

## Art. 88

*Audit specifications*

- 1) The FMA may after consultation with the Liechtenstein Auditors' Association provide mandatory audit forms for AIFs and their AIFMs.
- 2) The FMA may provide more specific details on the principle of the risk-oriented approach to auditing and the form and content of the annual audit report by issuing guidelines.

## Art. 89

*Duties of the Auditor*

- 1) The professional fees received from one audit assignment may not on average make up more than 20 % of the auditor's total annual income from professional fees. Auditing assignments of all undertakings for collective investments that are under the management of the same AIFM are deemed to be a single audit assignment.
- 2) The auditors shall be obliged:
  - a) to inform the FMA of any change in the statutes and rules and any change in personnel with respect to the composition of their executive bodies and the auditors in charge;

- b) to assign the conduct of the audit exclusively to auditors who are registered with the FMA and who meet the necessary conditions;
- c) to provide the FMA with details of the manager responsible for the audit assignment and the auditor in charge before the audit commences; and
- d) to submit the annual report to the FMA every year.

3) The FMA may request information about the reasons for the withdrawal of members of the management and auditors in charge reported to the FMA.

#### Art. 90

##### *Change of auditor*

1) The AIFM shall inform the FMA in writing of any change in its auditor or change in the auditor of the AIF one month before the change comes into effect, stating the reasons in writing.<sup>102</sup>

2) The notification referred to in (1) is to be signed jointly by the previous auditor. If the AIFM and the auditor are unable to agree on the reason for the change, the previous auditor shall submit his own notification pursuant to (1).

3) The AIFM shall publish the change in the AIF's auditor in the publication when the change comes into effect. If the AIFM manages open-ended AIFs the investors shall be informed that they may request the redemption of their units.<sup>103</sup>

4) If the auditor's qualification should lapse or if an auditor has his authorisation withdrawn, the AIFM shall immediately appoint a new auditor, within one month at the latest. In exceptional cases the FMA may extend this time limit appropriately on request. The FMA shall be informed of the appointment of the new auditor within one week from his being commissioned.

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<sup>102</sup> Art. 90 (1) amended by LGBl. 2020 no. 24.

<sup>103</sup> Art. 90 (3) amended by LGBl. 2020 no. 24.

## Art. 91

*Interim audit of the AIFM and the  
AIF*

1) The auditor shall conduct at least one unannounced interim audit of the AIFM in the course of the financial year.

2) In application of the risk-oriented approach, the auditor shall, in the course of the interim audit of the AIFM, check that the following, in particular, are being complied with:

- a) the authorisation conditions;
- b) the rules on risk management;
- c) the code of conduct;
- d) the rules concerning delegation of functions and the associated obligations of the AIFM; and
- e) the rules concerning the marketing organisation of the AIFM, if no selling agent has been appointed pursuant to Art. 69 AIFMG.

3) During the interim audit of the AIF, the auditor shall check, in particular, whether:

- a) the accounting is conducted properly;
- b) the counter-value of newly issued units has accrued to the assets of the AIF;
- c) the valuation of the assets, the calculation and publication of the issue and redemption prices and the issue and redemption of units comply with the provisions of the AIFMG and the prospectus;
- d) the constitutive assets of the fund have been maintained in full;
- e) the investment rules have been complied with;
- f) any unencumbered promissory notes are held in safe custody by the depositary;
- g) the rules concerning the minimum assets pursuant to Art. 27 (1) are complied with at all times.<sup>104</sup>

4) The FMA has the right to establish more key focus areas for the audit.

5) The result of the interim audit is to be reported in the annual audit report.

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<sup>104</sup> Art. 91 (3) g) amended by LGBL 2020 no. 24.

6) If in the course of the interim audit, the auditor detects serious violations or irregularities, he shall inform the FMA immediately and send it a report on the interim audit within 30 days.

#### Art. 92

##### *Appointment of the auditor for AIFMs operating under the AIFMG with authorisation as a management company pursuant to the UCITSG or IUG*

An AIFM shall appoint the same auditor for its operations in accordance with the AIFMG, the UCITSG or the IUG (Investment Undertakings Act).

#### Art. 93

##### *Reporting obligations*

Notifications in terms of Art. 111 (1) AIFMG are to be made to the FMA within three working days from verification of the circumstances.

#### Art. 94

##### *Audit reports*

1) Audit reports are the confidential, detailed reports of the auditor on the audit of the AIFM and the AIFs under its management conducted in accordance with supervisory regulations. They are not for publication.

2) The audit report shall mention all the information and notices communicated, verbally and in writing, to the AIFM and the AIFs under its management with reference to objections and legal doubts.

3) The audit report for the AIFM shall in addition to the information in the annual report contain, as a minimum:

- a) information on the ongoing compliance with the authorisation conditions referred to in Art. 30 AIFMG;
- b) information on compliance with the obligations of the AIFM set out in Art. 32 to 48 AIFMG; and
- c) the results of the interim audit of the AIFM pursuant to Art. 91.

4) The audit report for the AIF shall in addition to the information in the annual report contain, as a minimum:

- a) information on the ongoing compliance with the provisions concerning investment policy set out in Art. 94 et seq. AIFMG; and<sup>105</sup>
- b) the results of the interim audit of the AIF pursuant to Art. 91.

5) Insofar as the auditors of the AIFM and the AIF are identical, audit reports on the AIFM and those on the AIF may be combined. The information concerning the AIFM and the AIF is to be stated in separate sections of the audit report. The audit report on the AIF may make reference to the information in the audit report on the AIFM.

6) The audit reports pursuant to the AIFMG and UCITSG may be combined. Otherwise (5) shall apply accordingly.

## X. Marketing and management of AIFs by EEA-AIFMs<sup>106</sup>

### A. Marketing of EEA-AIFs to professional investors in Liechtenstein by EEA-AIFMs domiciled in Liechtenstein<sup>107</sup>

Art. 94a<sup>108</sup>

#### *Marketing notices*

1) The FMA may provide a form for the marketing notices referred to in Art. 112 AIFMG.

2) Die FMA may extend the time limit referred to in Art. 112 (3) AIFMG, if:

- a) the applicant does not use the form provided by the FMA pursuant to (1) or does not complete it in full;
- b) there are reasons to suspect an infringement of the Law and more information is required in clarification; or
- c) it is not clear from the constitutive documents whether the investment policy is covered within the scope of the AIFM's authorisation.

<sup>105</sup> Art. 94 (4) a) amended by LGBL 2020 no. 24.

<sup>106</sup> Heading before Art. 94a inserted by LGBL 2020 no. 24.

<sup>107</sup> Heading before Art. 94a inserted by LGBL 2020 no. 24.

<sup>108</sup> Art. 94a inserted by LGBL 2020 no. 24.

Art. 94b<sup>109</sup>*Material changes and form of notification of changes*

1) No material changes as referred to in Art. 112a (1) AIFMG shall be deemed to have occurred, if the information in the marketing notice has only been subject to drafting changes. The FMA may specify what constitutes a material change in more detail in a guidance note.

2) The FMA may provide a form for notification of a change pursuant to Art. 112a AIFMG.

**B. Marketing of EEA-AIFs by EEA-AIFMs domiciled in Liechtenstein to professional investors in another EEA Member State<sup>110</sup>**

## Art. 95

*Marketing notices*

The FMA provides a form for marketing notices referred to in Art. 113 AIFMG.

## Art. 96

*Grounds for extension of time limits*

1) The FMA may extend the time limits referred to in Art. 115 AIFMG, if:

- a) the applicant does not use the form provided by the FMA or has not completed it in full;
- b) an extension of the time limits is appropriate or necessary due to reports from the supervisory authorities of other EEA Member State or third countries regarding the AIFM or its managers;
- c) there are reasons to suspect an infringement of the Law and more information is required in order to clarify the situation; or

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<sup>109</sup> Art. 94b inserted by LGBl. 2020 no 24.

<sup>110</sup> Heading before Art. 95 inserted by LGBl. 2020 no. 24.

d) it is not clear from the statements concerning the investment policy whether the investment policy complies with the provisions of the AIFMG and this Ordinance.<sup>111</sup>

2) Grounds for extending the time limit referred to in Art. 115 (3) AIFMG may be due in particular to the number of applications received by the FMA, the personnel or technical resources of the FMA or exceptional events on the financial market.

3) If a time limit is extended, the reason for the extension referred to in (1) and (2) is to be stated, quoting the relevant provision of the Ordinance.

4) The FMA shall determine the form and remittance of the documents, according to the terms of Art. 115 (3) and (4) AIFMG.

Art. 96a<sup>112</sup>

*Material changes and form of notification of changes*

Art. 94b of this Ordinance shall apply mutatis mutandis to material changes and the form of the notification of changes pursuant to Art. 116 AIFMG.

**C. Management of EEA-AIFs having their registered office in another EEA Member State and provision of services by EEA-AIFMs domiciled in Liechtenstein<sup>113</sup>**

Art. 97

*Management notification*

The FMA shall provide a form for the management notifications referred to in Art. 120 AIFMG.

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<sup>111</sup> Art. 96 (1) d) amended by LGBL 2020 no. 24.

<sup>112</sup> Art. 96a inserted by LGBL 2020 no. 24.

<sup>113</sup> Heading before Art. 97 amended by LGBL 2020 no. 24.

## Art. 98

*Scrutiny and transmission by the FMA*

Art. 96 of this Ordinance shall apply mutatis mutandis to the extension of time limit referred to in Art. 122 (2) AIFMG.

Art. 99<sup>114</sup>*Material changes and form of notification of changes*

Art. 94b of this Ordinance shall apply mutatis mutandis to material changes and the form of the notification of changes pursuant to Art. 123 AIFMG.

**D. Management of a non-EEA-AIF with no marketing authorisation in the EEA<sup>115</sup>**

## Art. 100

*Basic Principle*

The provisions that according to the terms of Art. 125 (3) AIFMG replace the provisions of Directive 2011/61/EU shall be governed by the Law of the AIF's home Member State as far as the depositary and the annual report are concerned.

Art. 101<sup>116</sup>

Repealed

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<sup>114</sup> Art. 99 amended by LGBL 2020 no. 24.

<sup>115</sup> Heading before Art. 100 amended by LGBL 2020 no. 24.

<sup>116</sup> Art. 101 repealed by LGBL 2020 no. 24.



## XI. Marketing of AIFs by non-EEA-AIFMs<sup>117</sup>

Art. 102<sup>118</sup>

### *Basic principle*

Art. 94a and 94b of this Ordinance shall apply mutatis mutandis to the marketing of AIFs by non-EEA-AIFMs pursuant to Art. 150 AIFMG.

## XIa. Marketing of AIFs to private investors in Liechtenstein by AIFMs<sup>119</sup>

### *Key investor information and basic information sheets<sup>120</sup>*

Art. 102a<sup>121</sup>

#### *a) Up-dating*

The information concerning the key elements of the AIF in question must be kept up-to-date at all times. It must in any case be updated if one of the figures or percentages stated deviates by more than 5 % from the figure in the latest version of key investor information or published in the basic information sheets. The information must always be updated if a significant number of new investors is to be expected as a result of marketing measures.

<sup>117</sup> Heading before Art. 102 amended by LGBL 2020 no. 24.

<sup>118</sup> Art. 102 amended by LGBL 2020 no. 24.

<sup>119</sup> Heading before Art. 102a inserted by LGBL 2020 no. 24.

<sup>120</sup> Subject heading before Art. 102a inserted by LGBL 2020 no. 24.

<sup>121</sup> Art. 102a inserted by LGBL 2020 no. 24.

Art. 102b<sup>122</sup>*b) Publication and communication to the FMA*

The key investor information or the basic information sheets must be published in the publication as referred to in Art. 85 immediately after being updated, and communicated to the FMA at the same time. The units of an AIF may only be marketed after the information has been published and communicated to the FMA.

Art. 102c<sup>123</sup>*c) Communication to investors*

1) An AIFM, who markets units of an AIF directly or through another natural person or legal entity, acting in his name and under his full and unconditional responsibility, shall communicate the key information or the basic information sheet in respect of this AIF to the investors free of charge in good time before subscription.

2) In other cases, the AIFM shall communicate the key investor information to product designers and sales intermediaries or supply the basic information sheets on request in the publication as referred to in Art. 85 for their benefit. Sales intermediaries shall in turn pass the key investor information or the basic information sheets to the customer free of charge in the course of marketing or providing investment advice.

3) In the event that the key investor information or the basic information sheets are communicated to investors on a durable medium other than paper, Art. 38 of Regulation (EU) no. 583/2010 shall apply *mutatis mutandis*.

Art. 102d<sup>124</sup>*Prospectus for AIFs of the closed-end type*

1) The prospectus for AIFs of the closed-end type, where the units are securities, shall in addition to the information covered by the provisions of legislation on securities prospectuses, contain the information referred to in Art. 105 AIFMG, provided this is not already included in the prospectus.

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<sup>122</sup> Art. 102b inserted by LGBI. 2020 no. 24.

<sup>123</sup> Art. 102c inserted by LGBI. 2020 no. 24.

<sup>124</sup> Art. 102d inserted by LGBI. 2020 no. 24.

2) The prospectus for AIFs of the closed-end type that do not fall under (1) shall contain the following additional information apart from the information referred to in Art. 105 AIFMG:

- a) information concerning the transfer restrictions and special privileges of the AIFM, or of one or more investor or of a third person;
- b) information on the structure of the units and their accompanying rights.

3) If applicable, the mandatory data that has to be included in the prospectus in accordance with the constitutive documents of the AIF must also be added to the minimum information required in the prospectus.

Art. 102e<sup>125</sup>

*Paying agents, investor information, rights of appeal*

1) If the AIF is marketed to private investors, the AIFM shall provide the following information pursuant to Art. 151a (1) AIFMG:

- a) the definition of the term "marketing of AIF units" or the equivalent legal term under Liechtenstein Law or in accordance with standard practice;
- b) requirements for the content, format and presentation of marketing notices, including the compulsory warnings and restrictions regarding the use of certain words or phrases;
- c) notwithstanding Chapter VIII AIFMG concerning investor information, details of all additional information that must be provided to investors;
- d) details of all exemptions from regulations and requirements for marketing agreements, applying in Liechtenstein for specific AIFs, certain classes of AIF units or certain categories of investors;
- e) requirements relating to reporting or communication of information to the FMA and the procedure for providing up-dated versions of the required documents;
- f) requirements in respect of charges or other sums that have to be paid in Liechtenstein either when marketing commences or afterwards, at regular intervals to the FMA or another body governed by public law;

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<sup>125</sup> Art. 102e inserted by LGBL 2020 no 24.

- g) requirements relating to the facilities that must be available to investors pursuant to Art. 151a (1) AIFMG;
- h) conditions for the discontinuation of marketing of AIF units in Liechtenstein by an AIF that is established in another EEA Member State;
- i) detailed information concerning the notification and the procedure for on-the-spot verification and investigation and exchange of information between the competent authorities;
- k) the email address advised by the FMA to be used for up-dating investor information.

2) The information referred to in (1) is to be provided in the form of an explanatory statement or a combination of an explanatory statement and references or links to the source documents.

3) If there is no branch established in Liechtenstein, the obligations set out in Art. 151a (1) AIFMG must be covered by appointing a paying agent.

## **XII. Oversight**

### **A. General**

#### Art. 103

##### *Lists*

1) Indicating the scope of the authorisation in accordance with Art. 29 (6) AIFMG, the FMA shall issue a separate list for each of the following entities authorised in Liechtenstein:

- a) AIFMs;
- b) AIFs;
- c) Depositaries;
- d) Administrators;
- e) Risk managers; and
- f) Selling agents.

1a) It shall also issue a separate list for each of the following entities registered in Liechtenstein:<sup>126</sup>

- a) small AIFMs;
- b) managers of EuVEECAs;<sup>127</sup>
- c) managers of EuSEFs;<sup>128</sup>
- d) EuVEECAs; and<sup>129</sup>
- e) EuSEFs.<sup>130</sup>

2) The lists are to be made available to interested parties in an appropriate manner.

#### Art. 104

##### *Languages*

1) Applications for authorisation and registration, and marketing notices in accordance with the AIFMG are to be submitted in either German or English. The FMA can require applications to be made in German. It may accept applications in other languages.<sup>131</sup>

2) The documents that are to be enclosed with the applications are to be submitted in either German or English. The FMA may accept the documents in other languages or it may require certified translations of such documents.

3) The FMA may, at the request and at the expense of an applicant, produce a translation of an order issued under the AIFMG into a foreign language or arrange for a translation and confirm the contents of this translation.

<sup>126</sup> Art. 103 (1a) inserted by LGBl. 2020 no. 24.

<sup>127</sup> Art. 103 (1a) b) comes into effect 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 (LGBl. 2020 no. 24).

<sup>128</sup> Art. 103 (1a) c) comes into effect 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 (LGBl. 2020 no. 24).

<sup>129</sup> Art. 103 (1a) d) comes into effect 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 (LGBl. 2020 no. 24).

<sup>130</sup> Art. 103 (1a) e) comes into effect 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 (LGBl. 2020 no. 24).

<sup>131</sup> Art. 104 (1) amended by LGBl. 2020 no. 24.

## B. FMA

### Art. 105

#### *Reporting*<sup>132</sup>

1) The FMA may request quarterly reports from individual AIFMs or concerning individual AIFs for supervisory purposes. In such cases the AIFMs shall draw up these reports on the basis of the form provided by the FMA and submit them to the FMA within two months from the cut-off date specified by the FMA.<sup>133</sup>

2) AIFMs shall draw up a report every six months on the basis of the form provided by the FMA and submit it to the FMA within two months from the relevant cut-off date.

3) The provisions of (1) and (2) shall apply mutatis mutandis to the domestic branches of foreign AIFMs, with the proviso that the report is confined to the compliance with the applicable Liechtenstein Law for the management and marketing of AIFs to private investors, in particular the code of conduct.

### Art. 106

#### *Exceptional audit*

1) The FMA may commission an auditor qualified in accordance with Art. 157 (4) AIFMG, in connection with Art. 86 of this Ordinance, to perform an exceptional audit as defined in Art. 157 (2) e) AIFMG.

2) The FMA may ask all authorisation holders for an advance on costs for the audit.

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<sup>132</sup> Art. 105 subject heading amended by LGBI. 2020 no. 24.

<sup>133</sup> Art. 105 (1) amended by LGBI. 2020 no. 24.

### XIII. Extrajudicial dispute resolution

Art. 107

#### *Extrajudicial Mediation Body*

The provisions of the Ordinance on Financial Services Mediation Bodies shall apply to the exceptional mediation body.

### XIV. Final Provisions

Art. 108<sup>134</sup>

#### *Translations*

The Secretariat General of the Ministry for General Government Affairs and Finance shall arrange for the translation of the AIFMG and this Ordinance pursuant to Art. 182 AIFMG.

Art. 109

#### *Repeal of the previous Law*

The following are repealed:

- a) Ordinance of 2 July 2013 concerning the managers of alternative investment funds (AIFMV), LGBL. 2013 no. 259;
- b) Ordinance of 10 December 2013 on the amendment of the Ordinance concerning the managers of alternative investment funds, LGBL. 2013 no. 441;
- c) Ordinance of 20 January 2015 on the amendment of the Ordinance concerning the managers of alternative investment funds, LGBL. 2015 no. 21;
- d) Ordinance of 30 June 2015 on the amendment of the Ordinance concerning the managers of alternative investment funds, LGBL. 2015 no. 173.

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<sup>134</sup> Art. 108 amended by LGBL. 2019 no. 40.

## Art. 110

*Coming into Effect*

This Ordinance shall come into effect simultaneously with the resolution of the EEA Joint Committee concerning the adoption of Directive 2011/61/EU.<sup>135</sup>

Princely Government:  
signed *Adrian Hasler*  
Head of the Princely Government

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<sup>135</sup> Entry into force: 1 October 2016 (LGBL 2016 no. 305).





951.321

**Transitional provisions and provisions concerning entry  
into force**

**951.321 O concerning the managers of alternative  
investment funds (AIFMV)**

**Liechtenstein Legal Gazette**

2020

No. 24

issued on 29 January 2020

**Ordinance**

of 21 January 2020

**amending the Ordinance concerning the  
Managers of Alternative Investment Funds**

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**II.****Entry into force**

1) Subject to (2) this Ordinance shall come into force on 1 February 2020.

2) Art. 1 (2) b) and c) as well as Art. 103 (1a) b) to e) shall come 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.

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