

Non-official translation of the French original

Luxembourg, 21st January 2003

To all undertakings for collective investment and to those who act in relation to the operation and the control of such undertakings.

CIRCULAR CSSF 03/87

Concerns: **Coming into force of the law of 20th December 2002 relating to undertakings for collective investment**

Ladies and Gentlemen,

We would like to draw your attention to the coming into force of the law of 20th December 2002 relating to undertakings for collective investment (Mémorial A - N° 151 of 31st December 2002).

This law of 20th December 2002 implements into Luxembourg law the directives 2001/107/CEE and 2001/108/CEE and brings about a number of changes to the Luxembourg legal framework of undertakings for collective investment (UCIs).

The purpose of this circular is to present, in summary form, to the professionals of collective management, the main amendments brought forward by this law of 20th December 2002 and which relate to:

- I. the definitions set forth in the text of the law
- II. the extension of the investment policy of UCIs subject to part I of the law
- III. the rules concerning management companies
- IV. the simplified prospectus and the publication of documents of UCIs
- V. the transitional provisions.

I. - Definitions

Article 1 of the law comprises a number of definitions, most of which have been copied from directives 2001/107/CE and 2001/108/CE.

The law comprises, inter alia, a definition of the term "transferable securities".

Pursuant to article 1, item 26), "transferable securities" are defined as:

- shares and other securities equivalent to shares ("shares"),
- bonds and other debt instruments ("debt securities"),
- any other negotiable securities which carry the right to acquire any such transferable securities by subscription or exchange,

excluding however techniques and instruments referred to in article 42 of the law.

II.- Extension of the investment policy of UCITS subject to part I of the law

Compared to the amended law of 30th March 1988 relating to UCIs, the law extends the range of assets in which UCITS subject to part I of the law can invest in, and permits, under certain conditions, the investment in money market instruments, in units of UCITS and/or other UCIs, in deposits and in derivative financial instruments.

The transferable securities and other liquid financial assets in which UCITS subject to part I of the law may invest, must meet a certain number of criteria which are set forth in article 41 (1) of the law.

While extending the eligible investments for UCITS subject to part I, the law adjusts the specific investment limits applicable to investments in such transferable securities and other liquid financial assets referred to in article 41 (1).

The law also permits UCITS subject to part I to derogate, within specified conditions, to certain investment limits in a manner to permit them to replicate a recognised index of shares or bonds.

The detailed rules applicable to the investment policy and the investment restrictions applicable to UCITS subject to part I appear under chapter 5 of the law.

III.- Rules regarding management companies

Part IV of the law (chapters 13 and 14), which comprises the detailed rules applicable to management companies, distinguishes between management companies which act as management company for one or several UCITS complying with the amended

directive 85/611/CEE and the other management companies subject to Luxembourg law which do not act as management company for UCITS which comply with the aforesaid directive.

A.- Common provisions applicable to all management companies

The law provides that the activity of a management company to manage at least one UCI subject to Luxembourg law, requires a prior authorisation to be granted by the CSSF.

Under the provisions of the law, the CSSF can grant its authorisation only if the management company has its central administration and registered office in Luxembourg.

The law specifies that the application for authorisation must describe the structure of the organisation of the management company.

The authorisation is subject to the condition that the management company entrusts the audit of its annual accounting documents to one or more auditors (*réviseurs d'entreprises*), who can justify of an adequate professional experience.

Management companies which exist at the date of coming into force of the law have 12 months from the date of coming into force of the law to comply with the requirement that they must entrust the audit of their accounting documents to one or more auditors.

B.- Provisions concerning management companies complying with the directive 2001/107/CE

Chapter 13 of the law comprises the detailed rules applicable to management companies complying with the directive 2001/107/CE. It concerns all management companies which manage at least one UCITS complying with the amended directive 85/611/CEE. These management companies may also manage UCIs which are not complying with the amended directive 85/611/CEE.

The law extends the permitted activities of management companies complying with the directive 2001/107/CE. The law provides that these management companies may, aside the collective management for UCIs, undertake discretionary management activities for the account of individual and institutional investors, comprising also pension funds.

The law specifies the conditions for taking up business and the operating conditions applicable to management companies complying with the directive 2001/107/CE.

Article 78 of the law deals with the conditions for taking up business and comprises, inter alia, the capital requirements applicable to such management companies which manage one or several UCITS complying with the amended directive 85/611/CEE.

These capital requirements concern the initial capital and the additional amount of own funds required if the assets under management exceed a level of 250 million Euro.

For the purpose of the calculation of the amount of own funds, the assets the management of which is delegated are taken into account, whereas the assets managed by delegation are not taken into account.

The law provides that the own funds of the management company can at no times be less than the amount determined by annex IV of directive 93/6/CEE.

Article 78, paragraph (1), item b) provides that the persons who effectively conduct the business of the management company, who must at least be two in number, must meet the requirements of good repute and experience required in relation to the type of UCITS managed.

IV.- Simplified prospectus and publication of the documents of UCIs

The law introduces the simplified prospectus which must comprise, in summary form, the information necessary for investors to be able to make an informed judgment on the investment proposed to them and, in particular, on the risks attached thereto.

The requirement to publish a simplified prospectus is however not applicable to UCIs subject to part II of the law, and therefore only UCITS subject to part I of the law must publish a simplified prospectus, whereas UCIs subject to part II of the law may, but are not obliged to publish such simplified prospectus.

The simplified prospectus is structured and written in such way that it can be easily understood by the average investor. It can be attached to the full prospectus as a removable part thereof.

It is to be noted that the simplified prospectus can be used as a marketing tool designed to be used in all EU member states without alterations except its translation.

The content of the simplified prospectus is described in schema C of annex I of the law.

With respect to the publication of documents of UCIs, article 114 of the law introduces a new provision pursuant to which the CSSF may publish or arrange the

publication of the documents of UCIs by all means which the CSSF deems appropriate.

The purpose of this text is to avoid possible legal hurdles to the publication of UCI documents in the context of a project commonly referred to as "*référentiel de la place*" which aims to build up a data base centralising the information on Luxembourg UCIs.

V.- Transitional provisions

The law is applicable as from 1st January 2003.

For reasons relating, inter alia, to the implementation provisions provided for by the two directives 2001/107/CE and 2001/108/CE, it was decided to draw up a new law on UCIs, rather than to proceed to an amendment of the amended law of 30th March 1988.

To the extent that the two directives 2001/107/CE and 2001/108/CE comprise transitional provisions which provides for a deadline expiring on 13th February 2007 to permit UCITS existing on 13th February 2002 and management companies authorised prior to 13th February 2004 to comply with the new provisions, the law comprises in its transitional and abolishing provisions certain provisions to implement the transitional provisions comprised in the directives.

A.- Transitional provisions concerning UCIs

The law provides that UCITS subject to part I of the amended law of 30th March 1988 relating to UCIs and which have been created prior to 13th February 2002, have the choice, until 13th February 2007 to remain subject to the amended law of 30th March 1988 or to submit themselves to the law of 20th December 2002.

As from 13th February 2007, they will be subject to the law of 20th December 2002 by operation of law.

The law provides that the creation of a new compartment does not affect the foregoing option. This option must be exercised in respect of the UCITS in its entirety, comprising all its compartments.

UCITS subject to part I of the amended law of 30th March 1988 relating to UCIs and which have been created between 13th February 2002 and 1st January 2003 have the choice, until 13th February 2004, to remain subject to the amended law of 30th March 1988 or to submit themselves to the law of 20th December 2002.

As from 13th February 2004, they will be subject to the law of 20th December 2002 by operation of law.

UCITS within the meaning of article 1 of the amended law of 30th March 1988 relating to UCIs, excluding those concerned by article 2 of such same law, and created between 1st January 2003 and 13th February 2004 have the choice to submit themselves to the amended law of 30th March 1988 or to the law of 20th December 2002.

As from 13th February 2004, they will be subject to the law of 20th December 2002 by operation of law.

UCIs created prior to 1st January 2003 and subject to part II of the amended law of 30th March 1988 remain subject to the provisions of the amended law of 30th March 1988 relating to UCIs until 13th February 2004. They may however submit themselves to the law of 20th December 2002 as from 1st January 2003.

As from 13th February 2004, they will be subject to the law of 20th December 2002 by operation of law.

UCIs created between 1st January 2003 and 13th February 2004 have the choice to submit themselves to the provisions of the law of 20th December 2002 or to the provisions of the amended law of 30th March 1988 relating to UCIs.

As from 13th February 2004, they will be subject to the law of 20th December 2002 by operation of law.

All UCIs created as from 13th February 2004 are subject to the law of 20th December 2002, unless they are subject to a special law.

An investment company is deemed to be created as from the date of its incorporation before notary.

A common fund is deemed created as from the date of execution of its management regulations or from the date of coming into force of its management regulations if the management regulations specifically provide for such a date.

B.- Transitional provisions concerning management companies

Management companies existing on 1st January 2003 are subject, by operation of law, to the provisions of chapter 14 and are deemed authorised in accordance with article 91 (1) of the law of 20th December 2002.

To the extent that they manage UCITS subject to the amended directive 85/611/CEE, such management companies must comply, at the latest by 13th February 2007, with the provisions of chapter 13 of the law of 20th December 2002.

Management companies authorised between 1st January 2003 and 13th February 2004 which act as management company for UCITS subject to the amended directive 85/611/CEE must comply, at the latest by 13th February 2007, with the provisions of chapter 13.

In this context, it is important to note that the amended law of 30th March 1988 will remain in force until 13th February 2007 and that, as a consequence there will be, until such date, two laws which will govern on a parallel basis matters regarding UCIs.

It is the intention of the CSSF to clarify by means of circulars a number of other items referred to in the law of 20th December 2002. Accordingly, there will be CSSF circulars which will provide further clarifications, inter alia, on the following subjects:

- the rules regarding management companies governed by Luxembourg law
- the rules of conduct applicable to professionals of collective management in Luxembourg
- the risk management methods and valuation methods applicable to transactions on derivative instruments.

The rules set forth in circular IML 91/75 will also be amended and adjusted by means of a new CSSF circular.

Yours sincerely,

COMMISSION FOR THE SUPERVISION OF THE FINANCIAL SECTOR

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