# 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 Law governs the taking up, pursuit and oversight of the business of managers of alternative investment funds ("alternative investment fund managers - AIFMs") and alternative investment funds (AIFs).

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/or implement the following EEA laws:[2]

a) Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on the Management of Alternative Investment

1 Report and application, together with comments from the Government No. 54/2012 and 132/2012

2 Art. 1 (3) amended by LGBl. 2016 No. 46.

Funds and to amend Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No. 1060/2009 and (EU) No. 1095/2010 (Official Journal L 174 of 1.7.2011, p. 1).

Art. 2

*Validity*

1) This Law shall apply to:

a) an AIFM having its registered office in Liechtenstein, managing one or more AIF, irrespective of where the AIF is registered;

b) an AIFM having its registered office in another EEA Member State or in a third country, managing one or more AIF having its registered office in Liechtenstein;

c) an AIFM having its registered office in another EEA Member State or in a third country, that markets one or more AIF in Liechtenstein, irrespective where the AIF is registered;

d) an AIFM having its registered office in a third country and with Liechtenstein as EEA state of reference, irrespective of where the AIF is registered.

2) This Law shall not apply to:

a) an AIFM, that only manages one or more AIF in which the only investors are the AIFM itself or its parent undertaking or subsidiary 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 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision and the regulations enacted for its implementation, including any permitted AIFM of pensions funds and the persons acting for them pursuant to Art. 2 (1) of Directive 2003/41/EC or the investment managers appointed pursuant to Art. 19 (1) of Directive 2003/41/EC;

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

3) Repealed[1]

4) Repealed[2]

5) Repealed[3]

Art. 3

*Small AIFMs*

1) With the exception of the provisions concerning cross-border business pursuant to Chapter XI and XII and subject to the following provisions, this Law shall also apply to small AIFMs referred to in 2) and 3).

2) A small AIFM manages AIFs, whose total assets:

a) including the assets acquired by leverage do not amount to a sum corresponding to 100 million euro or its equivalent in Swiss Francs or a lower amount set by the Government by ordinance; or
b) do not exceed 500 million euro or the equivalent in Swiss Francs or a lower amount set by the Government by ordinance, if the managed AIFs are unleveraged and no redemption rights can be exercised during the first five years from the initial investment in the AIF in question.

3) In determining the total assets under management referred to in (2), assets that the AIFM manages directly or indirectly through a company with which it is associated through common management or control or by a qualifying direct or indirect holding, are to be included in the total amount.

1 Art. 2 (3) repealed by LGBl. 2016 no. 46.
2 Art. 2 (4) repealed by LGBl. 2016 no. 46.
3 Art. 2 (5) repealed by LGBl. 2016 no. 46.

4) Small AIFMs shall be registered under a simplified authorisation procedure. Registration shall be subject by analogy to the provisions concerning the authorisation of an AIFM set out in Chapter III Section A with the proviso that:

a) there is no minimum capital requirement(Art. 30 (1) a) in connection with Art. 32;
b) the scope of the documentation to be submitted is based on the applicable EEA law; the FMA may request further information to be completed on a form;
c) the provisions concerning remunerations policy (Art. 30 (1) f)) do not apply; and
d) the small AIFM shall appoint an authorised administrator (Art. 65 to 68).

5) Small AIFMs are subject to the provisions of Chapter III Section B concerning:

a) notice and approval of amendments (Art. 33) and the qualifying holding (Art. 34);
b) the code of conduct(Art. 35 (1));
c) valuation (Art. 42 to 45);
d) delegation of functions(Art. 46); and
e) liability and confidentiality (Art. 47 and 48) as well as lapse and withdrawal of authorisation (Art. 50 to 52).[1]

6) The small AIFM and the administrator shall establish the requirements with regard to the organisation, risk and liquidity management and the administration of the small AIFM in an organisation contract. The FMA may refuse registration if the organisation contract does not guarantee that the investors and the public interest are adequately protected. An organisation contract that reflects the requirements of authorised AIFMs shall in any case protect the investors and the public interest. The AIFM and the administrator shall inform the FMA of the conclusion, revocation and assignment of the organisation contract.

7) The managers of the small AIFM shall verify whether the assets managed by the AIFM exceed the thresholds set out in 2) and 3).

8) A small AIFM shall apply for authorisation as an AIFM if:

a) it opts for the full application of this Law; the opt-in decision is irrevocable, if:

1 Art. 3 (5) e amended by LGBl. 2016 no. 46.

1. pursuant to Chapter XI or XII the AIFM has started to operate on a cross-border basis within or outside the EEA;
2. the AIFM has exceeded the thresholds referred to in 2) and 3; or
3. the AIFM has referred to the opt-in decision or an application to the FMA for authorisation as an AIFM in its investor information, unless the AIFs it manages were exclusively marketed to professional investors and unless all investors consent to the decision to dispense with authorisation as an AIFM; or

b) the assets managed by the small AIFM exceed the thresholds established in (2) and (3); if this is the case an application must be submitted to the FMA for authorisation within 30 calendar days.

9) In the cases referred to in (8) the authorisation procedure is based on Chapter III Section A, with the proviso that the authorisation checks are restricted to the requirements additionally to be fulfilled in full application of this Law. Subject to more extensive statutory obligation or new facts arising, the FMA dispenses with the citation of documents and checks that have already been presented and/or conducted for the registration.

10) This article shall apply accordingly to self-managed AIFs with the proviso that the executive bodies of the AIF substitute the AIFM.

11) The Government may establish more specific rules concerning small AIFMs by ordinance, in particular:

a) the calculation of the thresholds referred to in (2) and (3);
b) clarification of the administrator's duties pursuant to (4) d), particularly with reference to the management of non-EEA AIFs;
c) the minimum requirements for the organisation contract and the reporting obligations to the FMA in accordance with (6).

### Art. 4

*Definition of terms and designations*

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

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 Law nor an investment undertaking as defined in the Investment Undertakings Law.[1]

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 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":[2]
   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.
7. "competent authorities" in relation to a depository:

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

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

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;[1]

b) the competent authorities as defined by Art. 4 (1) 22 of Directive 2004/39/EC, if the depositary is an investment firm authorised under that Directive and in Liechtenstein under the Banking Act;

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";

   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;

1 Art. 4 (1) 7 a) amended by LGBl. 2016 no. 46.

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 2004/39/EC;
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, or admitted in the case of Liechtenstein. An AIF is deemed to be established in its home Member State. If an AIF is not authorised or registered, or admitted in Liechtenstein, it is established wherever it has its registered office and/or its Head Office;
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 state of reference as provided in Chapter XII Section A and in whose sovereign territory the AIFM manages AIFs or markets units of an AIF;
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;[1]

1 Art. 4 (1) 18 amended by LGBl. 2014 no. 356.

19. "issuer": an 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) h) of the Asset Management Act are admitted for trading on a regulated market;
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 Law 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;[1]
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. "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 in the EEA and whose shares are not admitted for trading on a regulated market within the meaning of Art. 4 (1) 14 of Directive 2004/39/EC;
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

1 Art. 4 (1) 22 amended by LGBl. 2016 no. 46.

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 can be considered as a professional client or may on request be treated as a professional client within the meaning of Annex II to Directive 2004/39/EC;
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, 27 and 31 of the Disclosure Act are to be applied in the determination of the voting rights;
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;
    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, 2 of Regulation (EC) No. 24/2009 of the European Central Bank of 19 December 2008 concerning statistics on the assets and liabilities of financial vehicle corporations that are engaged in securitisation transactions, (OJ L 15 of 20 January 2009, p. 1) and other activities appropriate to achieve that purpose;
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 contractual conditions of an investment fund, the statutes of the investment company, the limited partnership or partnership of limited partners, the trust agreement of a collective trusteeship, any separate description of the investment policy, as well

as subsidiary agreements and regulations that fulfil the function of the aforementioned documents and other documents specified by the Government by ordinance, governing the basic principles of the AIF;

40. "originator": the natural or legal person who in the meaning of Art. 1, 3 of Regulation (EC) No. 24/2009 of the European Central Bank transfers the asset or the pool of assets and/or the credit risk of the asset or the pool of assets to the securitisation structure;
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.

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

3) In other respects the definition of terms of the applicable EEA Law, in particular Directive 2011/61/EU, shall also apply.

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

### Art. 5

*Designation and responsibility of the AIFM*

1) An AIFM must assume responsibility for compliance with the provisions of this Law for each AIF that is managed or marketed in Liechtenstein. Other persons authorised under Chapter IV of this Law 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 Law 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("Limited partnership"; "Partnership of Limited partners".

2) The Government may specify by ordinance that an AIF with its registered office in Liechtenstein may take a different domestic legal form than those referred to in Art. 6 to 14, provided that this does not obstruct the purpose of the Law, in particular the protection of investors and the public interest; the ordinance shall also establish whether the provisions of this Law apply accordingly for investment funds, collective trusteeships, investment companies, limited partnerships or partnerships of limited partners.[1]

1 Art. 6 (2) amended by LGBl. 2016 no. 46.

## 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 Law, 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 provisions on:

a) the investments, investment policy and investment restrictions;

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

c) the conditions of unit redemption or suspension;

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

e) information for investors;

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

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

h) the unit categories and if the investment fund is incorporated in an umbrella structure, the conditions for changing from one sub-fund separated in terms of assets and liabilities to another.

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 has the right to dispose of the items belonging to the investment fund in accordance with this Law and the fund contract in its own name and to exercise all rights arising therefrom; 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.

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.[1]

7) Insofar as the AIF is subject to prior authorisation, the fund contract and each of its amendments shall require the approval of the FMA in order to be valid. The fund contract is approved if it meets the requirements stated in (3) to (6) and does not compromise the protection of investors and the public interest. The FMA may approve or provide specimen fund contracts, which if used will imply approval of the fund contract.

8) Once it has been authorised or admitted the investment fund is to be registered in the Commercial Register. Registration is not however a condition for the formation of the investment fund and approval of the fund contract by the FMA. The Government shall establish more specific rules concerning the registration procedure by ordinance.

## 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 Law, the legal relationship between the investors and the AIFM is governed by the trust agreement

1 Art. 7 (6) amended by LGBl. 2016 no. 46.

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 regulations in respect of:

a)the investments, investment policy and investment restrictions;

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

c) the conditions for redemption or suspension of units;

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

e) information for the investors;

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

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

h) the unit categories and if the collective trusteeship is incorporated in an umbrella structure, the conditions for changing from one sub-fund separated in terms of assets and liabilities to another.

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

5) Insofar as the AIF is subject to prior authorisation, the trust agreement and each of its amendments shall require the approval of the FMA in order to be valid. The trust agreement is approved if it meets the requirements stated in (3) and (4) and does not compromise the protection of investors and the public interest. The FMA may approve or provide specimen trust agreements, which if used will imply approval of the trust agreement.

6) Once it has been authorised or admitted the collective trusteeship shall be registered in the Commercial Register. Registration is not however a condition for the formation of the collective trusteeship or approval of the trust agreement by the FMA. The Government shall provide more specific details concerning the registration procedure by ordinance.

## 4. Investment Company

### Art. 9

*Basic principle*

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

a) in which the liability of the investors as shareholders or participants after full payment of the amount invested is restricted to that amount;
b) the sole purpose of which is the investment of assets and management for the account of the investors; and
c) the units of which are placed with investors.

2) Unless specified otherwise in this Law, the legal relationship between the investors, the investment company and the AIFM is governed by the statutes of the investment company and, unless rules are laid down therein, by the provisions of the PGR concerning the public limited company, the establishment or foundation or those of the SE Act (SEG) on the European Company.

3) The statutes must contain regulations on:

a) investments, investment policy and investment restrictions;
b) valuation, issue and redemption of investor shares and their securitisation with the value of the investor share being determined by dividing the value of the assets of the investment company or sub-fund held for investment purposes by the number of investor shares in circulation;
c) the conditions for redemption or suspension of the investor shares;
d) the costs and expenses to be borne directly or indirectly by the investors and how these are calculated;
e) information for investors;

f) termination and forfeiture of the right to manage the investment company;
g) the conditions for amendment of the statutes and also for winding up, merger and division of the investment company;
h) the classes of shares and if the investment company is incorporated in an umbrella structure, the conditions for changing from one sub-fund separated in terms of assets and liabilities to another; and
i) the duties and functions of the executive bodies of the company in an externally managed investment company.

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

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

6) 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 statutes and the Government specify otherwise by ordinance, the provisions of this Law, 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 the SEG shall apply exclusively mutatis mutandis.

7) The statutes must state 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 also whether own assets and managed assets are separated. If own assets and managed assets are separated, the holders of the investor shares in establishments are to be qualified as entitled beneficiaries.

8) Unless the Government sets a higher minimum share capital by ordinance, a minimum share capital of 50 000 euro or the equivalent in Swiss Francs 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. Where there is a single-tier structure the decision to issue new shares is made by the Board of Directors and in the two-tier structure by the managing board, but with reference to the founder's shares by the General Meeting, unless specified otherwise by this Law, the statutes or the Ordinance.

9) An investment company under the terms of this article shall include the designation "Investmentgesellschaft" in its company style or an alternative designation of legal form pursuant to Art. 27 (2)c.

10) An investment company may be externally managed by an AIFM or managed internally by its own executive bodies. Unless specified otherwise by this Law, the provisions for AIFs and AIFMs shall apply by analogy to self-managed investment companies, with the proviso that the duties of the AIFs and AIFMs are to be performed by the executive bodies of the investment company.

11) Insofar as the AIF is subject to prior authorisation, the statutes and each of their amendments shall require the approval of the FMA in order to be valid. The statutes are approved if they meet the requirements stated in (3) to (10) and do not compromise the protection of investors and the public interest. The FMA may approve or provide specimen statutes, which if used will imply approval of the statutes.

12) The investment company is formed by registration in the Commercial Register. Prior to registration the provisions of the PGR in respect of the simple partnership shall apply, with the proviso that the liability of the investors is excluded. The Government shall provide more specific rules by ordinance.

## 5. Limited Partnership

### Art. 10

*Basic principle*

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

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

3) Repealed[1]

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

5) In an externally managed 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 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 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 open-ended 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 limited partnership is marketed to private investors, investors may only be excluded on significant grounds.

10) The 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 limited partnership and the general partners;

1 Art. 10 (3) repealed by LGBl. 2016 no. 46.

b) the amount of the limited liability capital or if it is an open-ended 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) whether it is a partnership or legal person;
i) the investments, investment policy and investment restrictions;
k) the valuation, issue and redemption of shares and their securitisation, with the value of the share being determined by dividing the value of the assets of the limited partnership held for investment purposes or of the relevant share class by the number of shares in circulation;
l) the conditions for redemption or suspension of shares;
m) the costs and expenses to be borne directly or indirectly by investors and how these are calculated;
n) the remuneration of the AIFM and/or the general partner or limited partner appointed to manage;
o) information for the investors;
p) termination and forfeiture of the right to manage the limited partnership and/or the requirements for the appointment and dismissal of the persons designated to perform the management;
q) the requirements for contractual amendments as well as winding up, merger and division of the limited partnership;
r) the share classes and if the limited partnership is incorporated in an umbrella structure, the conditions for changing from one sub-fund that is separate in terms of assets and liabilities to another;
s) if the limited partnership is self-managed, the persons (general partner or limited partner), who perform the duties of the AIFM.

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.[1]

1 Art. 11 (2) inserted by LGBl. 2016 no. 46.

3) Insofar as the AIF is subject to prior authorisation, the partnership deed and each of its amendments shall require the approval of the FMA in order to be valid. The partnership deed is approved if it meets the requirements stated in (1) and (2) and does not compromise the protection of investors and the public interest. The FMA may approve or provide specimen deeds of partnership, which if used will imply approval of the partnership deed.[1]

### Art. 12

*General partner and limited partner*

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

2) Self-managed 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. If a limited partnership is a legal person, the general partner may also hold limited partner's interests.

### Art. 13

*Formation of the limited partnership*

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

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

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

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

1 Art. 11 (3) inserted by LGBl. 2016 no. 46.

### 6. Partnership of limited partners

Art. 14

*Basic principle*

1) The Partnership of Limited Partners is an AIF in the form of a partnership or legal entity, in which after full payment of the amount invested, the liability of the investors as limited partners is restricted to that amount and of which the sole purpose is the investment of assets and management for the account of the investors. Unlike the limited partnership, the partnership of limited partners has no general partner with unlimited liability.

2) Unless specified otherwise below, Art. 10 (2) to (10) and Art. 11 to 13 on the limited partnership shall apply mutatis mutandis to the partnership of limited partners.[1]

3) For self-managed 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 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 partnership of limited partners is subject to the same rules as the general partner of the limited partnership.

## C. Status as securities

Art. 15

*Basic principle*

Units of an AIF are transferable securities, provided that the units are structured in a standardised format, in accordance with the constitutive documents of the AIF and are tradable and there is no restriction on their transferability.

1 Art. 14 (2) amended by LGBl. 2016 no. 46.

# II. Authorisation and admission of AIFs in Liechtenstein

## A. General

Art. 16

*Obligation to obtain authorisation and admission*

1) An AIFM having its registered office in Liechtenstein shall notify the FMA of an EEA AIF under its management in accordance with Art. 17 to 20 and apply for its authorisation, if it intends to market the units of the EEA AIF in Liechtenstein:

a) exclusively to professional investors; or

b) to professional and private investors and there is no obligation to obtain authorisation under (2).

1a) The provisions of (1) shall apply accordingly to management of AIFs without marketing.[1]

2) An AIFM having its registered office in Liechtenstein shall apply to the FMA for authorisation of an EEA AIF under its management in accordance with Art. 21 to 25, if it intends to market the units of the EEA AIF in Liechtenstein to private investors and:[2]

a) a leveraged EEA AIF pursuant to Chapter VI Section B is involved;

b) authorisation is required for the protection of investors and the public interest; the Government shall specify the cases in which authorisation is required, by ordinance; or

c) the investment strategy of the EEA AIF, insofar as Art. 92 applies, does not correspond to any of the fund types specified by the Government pursuant to Art. 91.[3]

3) An AIFM having its registered office in Liechtenstein may apply to the FMA in accordance with Art. 21 to 25 for authorisation of an EEA AIF under its management, in particular to obtain marketing authorisation in third countries or in order to meet the investment requirements of certain professional investors.

4) The right to market AIFs to professional and private investors in Liechtenstein is linked to the authorisation referred to in (2) and (3).

1 Art. 16 (1a) inserted by LGBl. 2016 no. 46.
2 Art. 16 (2) introductory sentence amended by LGBl. 2016 no. 46.
3 Art. 16 (2) c) amended by LGBl. 2016 no. 46.

5) If the EEA AIF is a feeder AIF, the obligation to obtain authorisation and admission and the marketing right are only governed by this chapter if the master AIF is also an EEA AIF managed by an AIFM with its registered office and authorisation in Liechtenstein. Otherwise Art. 126 to 128 shall apply.

6) The FMA shall inform the EFTA Surveillance Authority of the requirements for marketing AIFs to private investors in Liechtenstein.

## B. Admitted AIFs

Art. 17

*Marketing notification*

1) The AIFM shall present the FMA with a notification for each EEA AIF it is intending to market, in electronic form, in German, English or another language recognised by the FMA.

2) The marketing notification referred to in (1) must contain in particular:

a) a programme of activity containing information about the AIF and its registered office;

b) the constitutive documents of the AIF;

c)evidence of the appointment of the depositary and the auditor;

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) marketing information for investors pursuant to Art. 105 (1), unless this has already been provided pursuant to d);

g) a declaration from the management of the AIFM that the provisions of Directive 2011/61/EU are being complied with in full.

3) If the intention is to market units of the AIF exclusively to professional investors, in addition to the information referred to in (2) the notification shall also contain a description of the measures taken to avoid the marketing of AIFs to private investors, that also take into account recourse to undertakings independent of the AIFM.

4) If the intention is also to market the units of the AIF to private investors and the requirements for a private placement are not met, in addition to the information referred to in (2) the notification must be accompanied by:

a) a legally binding declaration from the management of the AIFM, that:
   1. there is no obligation to obtain authorisation pursuant to Art. 16 (2) with reference to the admitted AIF;
   2. a prospectus, up-to-date "key investor information" and annual and half-yearly reports will be regularly issued for the AIF and made available in Liechtenstein;
b) a prospectus with marketing information for investors, unless this has already been attached pursuant to (2) d);
c) "key investor information" on the AIF investment strategy.

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

a) the requirements in respect of the issue, updating and publication of:
   1. the prospectus referred to in (4) b); subject to the provisions of the Securities Prospectus Act and Annex XV to Regulation (EC) No. 809/2004;
   2. the "key investor information" referred to in (4) c);
   3. the annual and half-yearly report referred to in (4) a) 2;
b) the conditions under which a private placement is possible and may go ahead.

Art. 18

*Examination by the FMA*

1) Upon receipt of all the documentation referred to in Art. 17, the FMA shall exclusively verify whether the AIFM complies with the regulations of Directive 2011/61/EU. In the event of an infringement of the provisions of Directive 2011/61/EU the FMA shall refuse permission for marketing.

2) If the AIF units are also being marketed to private investors, the FMA may also refuse to permit marketing to private investors, if:

a) there is a reasonable suspicion of an infringement of other statutory provisions; or
b) circumstances exist that would appear to jeopardise the reputation of the financial centre or financial stability.

3) If marketing is not rejected immediately this does not rule out a later rejection of marketing to professional or private investors after receipt of the admission pursuant to Art. 19.

Art. 19

*Admission by the FMA*

1) The FMA shall send the AIFM an admission notification within a maximum period of 20 working days from receipt of the full notification.[1]

2) Repealed[2]

3) In its admission notification the FMA shall confirm that the AIFM has submitted all the documents required for the notification and to the knowledge of the FMA the regulations of Directive 2011/61/EU have been complied with.

1 Art. 19 (1) amended by LGBl. 2015 no. 196.
2 Art. 19 (2) repealed by LGBl. 2015 no. 196.

4) Reasons must be stated in writing for any refusal to allow marketing as referred to in Art. 18 (1) and (2). The FMA may levy additional charges for issuing an appealable order.[1]

5) The AIFM may commence marketing the AIF in Liechtenstein on receipt of the admission notification.

6) Art. 50 to 52 shall apply mutatis mutandis to the lapse or withdrawal of the admission.[2]

7) The Government shall provide more specific rules by ordinance. It may establish in particular:

a) a minimum amount of assets with a counter value of up to 10 million euro or the equivalent in Swiss Francs;
b) the period of time within which this minimum amount must be attained.

Art. 20

*Obligation to notify in the event of material changes*

1) The AIFM shall notify the FMA in writing of material changes to the information submitted in accordance with Art. 17 (2) and (4) at least one month before the change is made or immediately after an unscheduled change has occurred.

2) The FMA will reject the change if there is an infringement of the provisions of Directive 2011/61/EU. If the AIF units are also marketed to private investors, the FMA may also refuse to permit marketing to private investors if:

a) there is reasonable suspicion of an infringement of other statutory provisions; or
b) circumstances exist that would appear to jeopardise the reputation of the financial centre or financial stability.

3) The Government may establish more specific regulations by ordinance, in particular the cases in which there is a material change as defined in (1).

1 Art. 19 (4) amended by LGBl. 2015 no. 196.
2 Art. 19 (6) amended by LGBl. 2016 no. 46.

## C. AIFs that require authorisation

### Art. 21

*Conditions for granting authorisation*

1) The FMA shall grant an AIF authorisation after prior approval of:

a) the application of the authorised AIFM or the self-managed AIF to manage the AIF;

b) the appointment of the depositary and the auditor; and

c) the constitutive documents.

2) The FMA shall refuse the authorisation, if:

a) the AIF is not permitted to market its units in Liechtenstein for legal reasons, in particular because of a provision of its constitutive documents;

b) the managers or other responsible persons of the depositary do not have sufficient experience with reference to the type of AIF to be managed;

c) the AIFM is not authorised as an AIFM for the type of AIF to be managed;

d) circumstances exist that lead to the conclusion that the exposure limits set by the FMA pursuant to Art. 95 are likely to be exceeded or the AIFM has failed to take sufficient measures to keep within the exposure limits;

e) the auditor appointed for the AIF does not have sufficient experience with reference to the type of AIF to be audited.

3) For cross-border business, as referred to in Chapters XI und XII, the AIF does not necessarily

have to be managed by an AIFM with its registered office or business activity in Liechtenstein.

4) The Government may establish the following, by ordinance, for certain types of AIF:

a) a minimum amount of assets with a counter value of up to 10 million euro or the equivalent in Swiss Francs;
b) the period of time within which this minimum amount of assets must be attained.

Art. 22

*Authorisation application*

1) The application for the granting of authorisation of an AIF is to be submitted to the FMA by the AIFM or self-managed AIF.

2) The application for authorisation must contain in particular:

a) a programme of activity with information about the AIF and its registered office;
b) the constitutive documents of the AIF;
c) evidence of the appointment of the depositary and the auditor;
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) marketing information for investors as referred to in Art. 105 (1), unless this has already been provided in accordance with d);
g) a statement from the management of the AIFM that the statutory provisions are being complied with.

3) If the intention is to market units of the EEA AIF exclusively to professional investors, in addition to the information referred to in (2) the authorisation application shall also contain a description of the measures taken to avoid the marketing of AIFs to private investors, that also take into account recourse to undertakings independent of the AIFM.

4) If the intention is also to market the units of the EEA AIF to private investors and the requirements for a private placement are not met, in addition to the information referred to in (2) the notification must be accompanied by:

a) a legally binding statement from the management of the AIFM that a prospectus, up-to-date "Key investor information" and annual and half-yearly reports will be regularly issued for the AIF and made available in Liechtenstein;
b) a prospectus with marketing information for investors, unless this has already been attached pursuant to (2) d);
c) "Key investor information" on the AIF's investment strategy.

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

a) the form and content of the application with reference to (1);
b) the requirements in respect of the issue, updating and publication of:
    1. the prospectus referred to in (4) b), subject to the provisions of the Securities Prospectus Act;
    2. the "Key investor information" referred to in (4) c);
    3. the annual and half-yearly report referred to in (4) a);
c) the conditions under which a private placement is possible and may go ahead.

Art. 23

*Examination by the FMA*

Having received all the documentation referred to in Art. 22, the FMA examines whether, on the basis of the information to hand, there is any infringement of the provisions of this Law.

Art. 24

*Procedure before the FMA*

1) The FMA shall send the AIFM an acknowledgement of receipt within three working days from receipt of the complete application.

2) The FMA shall make a decision on the application within 20 working days from receipt of the complete set of documents. The FMA may extend the time limit by a maximum of two months.[1]

3) For leveraged AIFs, the expiry of the term referred to in (2) is deferred for the duration of the consultation with the ESMA and the supervisory authorities of other EEA Member States in accordance with Art. 95. The FMA shall:

a) initiate the consultation at the same time as sending the acknowledgement of receipt referred to in (1); and
b) inform the AIFM immediately on the result of the consultation upon receipt of the comments.

4) 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 any appealable order.

5) Once it has received the authorisation the AIFM may commence marketing the AIF in Liechtenstein to the extent permitted.

6) The Government may provide more specific rules by ordinance, in particular on:

a) the acknowledgement of receipt referred to (1);
b) the reasons for an extension of the time allowed referred to in (2).

1 Art. 24 (2) amended by LGBl. 2016 no. 46.

Art. 25

*Amendments*

1) Art. 21 to 24 shall apply accordingly as regards amendment of the constitutive documents of an authorised AIF.

2) Change of the AIFM, the administrator, the risk manager and the depositary shall require the approval of the FMA, even if such changes do not involve amendment to the constitutive documents. More specific details are established under Art. 33.

3) The AIFM shall notify the FMA of a change in the auditor of the AIF, a manager of the AIFM, as well as a change in the Board of Directors or Supervisory Board of the AIFM. The name, address and evidence of suitability of the new auditor, the new manager or the member of the Board of Directors must be given together with the notification.

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

Art. 26[1]

*Lapse and withdrawal of the authorisation*

Art. 50 to 52 shall apply mutatis mutandis to the lapse and withdrawal of authorisation of the AIF.

## D. Name of the AIF

Art. 27

*Basic principle*

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

2) Provided that protection of investors and the public interest are not compromised, an AIF shall have the right to add an indication of its legal form to its name, or one of the designations or abbreviations listed below:

1 Art. 26 amended by LGBl. 2016 no. 46.

a) for an investment fund: "common contractual fund", "CCF", "C.C.F.", "fonds commun de placement", "FCP" or "F.C.P.";
b) for a collective trusteeship: "Anlagefonds", "unit trust", "authorized unit trust" or "AUT";
c) for an investment company:
   1. with variable capital: "open-ended investment company", "OEIC", "société d`investissement à capital variable" or "SICAV";
   2. with fixed capital: "closed-ended investment company", "CEIC", "société d`investissement à capital fix" or "SICAF";
d) for a limited partnership: "Anlage-KG", "limited partnership" or "L.P.", "société en commandite de placements collectives" or "SCPC";
e) for a partnership of limited partners: "Anlage-KommanditärenG", "partnership of limited partners" or "PLP";[1]
f) another designation or abbreviation specified by the Government by ordinance.

3) If the name of an AIF, including the designation or abbreviation is changed, the constitutive documents shall be adjusted accordingly. The FMA shall be notified of such changes.

4) Persons or entities other than AIFMs or AIFs may not use designations that imply the activity of an AIFM or an AIF.

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

## III. Authorisation and obligations of AIFMs

### A. Authorisation of AIFMs

Art. 28

*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 pursuant to Chapters XI and XII are reserved.

1 Art. 27 (2) e) amended by LGBl. 2016 no. 46.

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 pursuant to Chapters XI and XII of this Law, or regulations of other EEA Member States equivalent to Chapter VI of Directive 2011/61/EU, the units may be marketed within the EEA.

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 and XII entitles the AIFM to manage and market AIFs within the EEA.

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

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.

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 grant authorisation for all, or only for individual types of AIF.

7) The Government may establish more specific rules, in particular with regard to the legal form of the AIFM and the types of AIF referred to in (6)by ordinance.

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) there is a programme of activity, as a minimum showing the organisational structure of the AIFM and giving an indication of how the AIFM will meet its statutory obligations;
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) the remuneration policy takes into account the provisions of Art. 36; and

g) the agreements on the delegation and sub-delegation of functions to third parties comply with Art. 46.

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) the qualifying stakeholders do not satisfy the requirements for ensuring sound and prudent management of the AIFM.

3) Art. 12, 13 and 19 of Directive 2004/39/EC on the provision of services as a counterparty, the capital endowment, the organisational requirements and code of conduct in the provision of customer services shall apply accordingly to the authorisation of services referred to in Art. 29 (3) a) and b). In such a case the AIFM shall join an investor-compensation scheme within two months from authorisation. The AIFM may not commence the business activities with reference to the separately authorised activities until the regulations in respect of investor protection applying mutatis mutandis to investment firms referred to in Art. 7 of the Banking Act (BankG) have been met.[1]

4) Asset management companies, whose area of business includes the provision and arrangement of services referred to in Art. 3 (1) of the Asset Management Act, may be authorised as AIFMs, if pursuant to Art. 30 (1) c) of the Asset Management Act they forego their approval in writing.[2]

5) The Government may establish more specific rules, in particular regarding the minimum contents of the programme of activity referred to in (1) c), by ordinance.

1 Art. 30 (3) amended by LGBl. 2014 no. 356.
2 Art. 30 (4) amended by LGBl. 2016 no. 46.

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) The application shall be accompanied by the information and documents required in evidence of meeting the conditions stated in Art. 30 with reference to the AIFM. The management of the AIFM shall also confirm that no grounds for refusal exist as referred to in Art. 30 (2).

3) The application must be accompanied, with reference to each AIF to be managed, in particular by:

a) information concerning the investment strategy, risk structure, the employment of leverage and the registered office of the AIF;
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;
f) if the AIF is marketed to private investors in Liechtenstein a prospectus as referred to in Art. 17 (4) b) and/or Art. 22 (4) b).

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, as a minimum, submitted the information referred to in Art. 30 (1) a) to d) and the declaration of the management with reference to the information referred to in Art. 30 (2) a) and b).

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;
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 immediately commence its operations in Liechtenstein, but must however wait one month after submitting any missing information referred to in (2) and (3).

10) The Government may establish more specific rules concerning the acknowledgement of receipt, the application form, the procedure, the completeness of the application pursuant to (4), extension of the period allowed referred to in (6) and the reasons referred to in (7) by ordinance.

11) In the event of an application concerning 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) do not have to be resubmitted if they are still held by the FMA and are still up to date.

## 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 previous 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.

4) Repealed[1]

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 supervisory provisions and be authorised to operate a business in Liechtenstein accordingly.[2]

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;

1 Art. 32 (4) repealed by LGBl. 2014 no. 356.
2 Art. 32 (5) amended by LGBl. 2016 no. 46.

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

Art. 33

*Reportable changes*[1]

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.

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.[2]

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[3]

*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

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

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

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

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-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) The Government shall establish more specific rules in compliance with EEA Law by ordinance.

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) The Government shall establish more specific rules regarding the remuneration principles and practices in accordance with EEA Law by ordinance.

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:

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) The Government shall establish more specific rules regarding conflicts of interest in accordance with EEA Law, by ordinance.

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) The Government shall establish more specific rules regarding the organisation in accordance with EEA Law, by ordinance.

### 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).[1]

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, the prospectus and the marketing material.

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

1 Art. 39 (1) amended by LGBl. 2016 no. 46.

a) the maximum level of leverage;

b) the provision of collateral under the leverage arrangements.

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 Government shall establish more specific rules by ordinance. In accordance with EEA Law it may establish:

a) the conditions under which the requirement to separate functions may be dispensed with;

b) more specific provisions for the risk management of the AIFM and the measures referred to in (3);

c) the areas of risk management and the conditions under which the requirement for functional and hierarchical separation can be disregarded with the permission of the FMA.

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) The Government may establish more specific rules by ordinance. In accordance with EEA Law it may establish:

a) the definitions of the liquidity management systems and procedures;

b) the circumstances under which the AIF is considered to be open-ended or employs leverage.

Art. 41

*Avoidance of disincentives for investments in securitised assets*

In order to guarantee cross-sectoral consistency and to avoid disincentives between the interests of originators and AIFMs which invest on behalf of AIFs in financial instruments arising from securitisation transactions, the Government may in accordance with EEA Law provide by ordinance:

a) the conditions under which an AIFM may invest in financial instruments arising from securitisation transactions of an originator, in particular:
   1. that the originator must retain an economic interest of not less than 5 %;
   2. that when marketing to private investors in Liechtenstein the originator is an institution subject to prudential supervision; and
   3. how conflicts of interest between AIFM and originator are to be approached;
b) the qualitative and formal requirements that AIFMs that invest in these securities, or other financial instruments, on behalf of one or more AIF must meet.

**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 Law, 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.

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

*Performance provisions*

The Government shall establish more specific rules concerning the valuation of assets by ordinance.

In accordance with EEA Law it may establish:
a) the criteria for the appropriate valuation of assets and units of an AIF;
b) the appropriate degree of independence of the valuer;

c) the circumstances under which the valuation will not be deemed to be independent;
d) the suitability of the professional measures to ensure effective accomplishment of a valuation;
e) the appropriateness of indemnity insurance in relation to the risks arising from the valuation;
f) the conditions under which the FMA may demand valuation as referred to in Art. 43 (6);
g) the period of time within which an external valuer is to be appointed in the manner referred to in Art. 43 (7).

### 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;
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:[1]

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;[2]
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.

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;[3]

1 Art. 46 (2) introductory clause amended by LGBl. 2016 no 46.
2 Art. 46 (2) a) amended by LGBl. 2016 no 46.
3 Art. 46 (5) b) amended by LGBl. 2016 no. 46.

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) The Government may establish more specific rules regarding delegation of functions in accordance with EEA Law by ordinance, in particular:

a) the conditions for meeting the requirements stated in this article;
b) when due to the extent of the delegation of functions the AIFM can no longer be regarded as manager of the AIF and becomes no more than a letter-box entity;
c) the conditions under which the supervision of a third country is equivalent pursuant to (2) b);
d) the time limit for the notification referred to in (3).

## 4. Liability and confidentiality

### Art. 47

*Liability*

1) An AIFM, a liquidator or an administrative agent shall be liable to the investors for losses arising from contravention of Art. 32 to 46 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.

2) If material information in a prospectus, an annual or half-yearly report that has to be drawn up under this Law is incorrect or incomplete or if a prospectus has not been issued in accordance with these provisions, 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, the summary of the prospectus or in advertising, including any translations thereof is only accepted, if they are misleading, inaccurate or inconsistent with the relevant sections of the prospectus.

3) The persons referred to in (1) as well as the acting and responsible persons shall be liable to the investors for the accuracy of the statement

referred to in Art. 17 (4) a) and Art. 22 (4) a) for the losses they have incurred, unless they can demonstrate that they are not at fault in any way.

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) to (3) 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.

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 and their employees, as well as other persons acting for such AIFMs 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.

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.[1]

1 Art. 48 (2) amended by LGBl. 2016 no. 41.

## C. Lapse and withdrawal of authorisation[1]

Art. 49[2]

Repealed

Art. 50[3]

*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 limited partnership or the 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[4]

*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;

1 Heading before Art. 49 amended by LGBl. 2016 no. 46.
2 Art. 49 repealed by LGBl. 2016 no. 46.
3 Art. 50 amended by LGBl. 2016 no. 46.
4 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[1]

Repealed

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

## D. Reporting obligation in the event of violation of the Law or Directive

Art. 53

*General principle*

1) If an AIFM is unable to ensure that the requirements of this Law 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 legal status. If nevertheless the requirements of this Law continue to be contravened, the FMA shall:

a) if an EEA AIFM or an EEA AIF is involved, withdraw the right to manage the AIF from the AIFM as competent authority; upon withdrawal the right to market AIFs to professional investors in Liechtenstein 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. 119 and 128 shall lapse; 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. 115 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.[1]

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

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

## E. Administrative agent, liquidation, bankruptcy

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).[1]

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 (7) by their own assets and for limited partnerships and partnerships of limited partners by the assets of the general partner and additionally, if applicable, an asset-managing limited partner.

4) The winding up and liquidation of the AIFM or the individual assets of the investment company, limited partnership or 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.

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.

1 Art. 54 (1) amended by LGBl. 2016 no. 46.

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 bankruptcy of the AIFM and the depositary*

1) In the event of dissolution or bankruptcy of the AIFM or, if a separation of assets has taken place, for self-managed AIFs, the assets managed for the purposes of collective investment on behalf of the investors do not fall within their bankruptcy estate and are not liquidated with their own assets. Each 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 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.

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

c) a trustee or a trust company authorised under the Trustee Act if an AIF is involved:[1]

   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.

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

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).[1]

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.

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

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

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 Law 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 Law 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 Law or the constitutive documents of the AIF; if the AIFM contravenes the provisions of this Law 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. 26 and 51, the depositary shall inform the FMA;

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 Law 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.

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 Law 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

*Implementation provisions*

The Government may provide more specific rules concerning the depositaries in accordance with EEA Law by ordinance, in particular:

a) the details to be included in the depositary contract pursuant to Art. 57 (2);

b) further details with reference to Art. 57 (3) c);

c) the general criteria for effective regulation, supervision and implementation in third countries pursuant to Art. 58 (3);

d) the conditions for the performance of the functions of a depositary pursuant to Art. 59, including:

   1. the type of financial instruments held in safe custody by the depositary pursuant to Art. 59 (1) a);
   2. the conditions, under which the depositary may perform its custody duties over financial instruments held in custody with a central depositary;
   3. the conditions under which the depositary secures the holding of registered assets in accordance with Art. 59 (1) b);
   4. the requirements for the qualification of a bank in accordance with Art. 59 (1) c) 3;

e) the due diligence duties of the depositary in accordance with Art. 60 (2) c) and d);

f) the obligation to segregate assets pursuant to Art. 60 (2) e) 3;

g) the conditions under which and the circumstances in which the financial instruments held in custody pursuant to Art. 61 (1) are considered to be lost;
h) what is to be understood as force majeure as defined in Art. 61 (1);
i) the conditions under which and the circumstances in which there are objective reasons for a contractual discharge of liability pursuant to Art. 61 and 62;
k) the persons who may act as depositaries in Liechtenstein, the conditions under which they may operate and how authorisation is obtained;
l) the conditions under which and the circumstances in which delegation and sub-delegation of functions is permitted.

## 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 for the authorisation and obligations of the AIFM set out in Chapter III shall apply mutatis mutandis to administrators and risk managers, with the proviso that the authorisation conditions and obligations shall refer exclusively to the administration or the risk management.

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;
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.[1]

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 Law 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 Law and the constitutive documents that will be considered to be major contraventions.

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

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.

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) For small AIFMs as referred to in Art. 3, in an investment company, limited partnership and partnership of limited partners the liability of the administrator or risk manager shall be towards the AIF, otherwise towards the investors of the AIF in question.

## 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.

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

Art. 70

*Conditions of authorisation and obligations*

1) The rules governing the authorisation and obligations of the AIFM set out in Chapter III shall apply mutatis mutandis to selling agents, with

the proviso that the authorisation conditions and obligations refer exclusively to marketing.

2) The capital of the selling agent shall be a minimum of EUR 125,000 or the equivalent in Swiss Francs.

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).

### 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 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 Law 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 Law 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) The Government may establish more specific regulations in accordance with EEA Law by ordinance, in particular:

a) how the AIFM is expected to fulfil its obligation of selection and supervision of the prime broker;
b) how the AIFM, in implementation of (5) ensures that the cash flows of AIFs are properly monitored with reference to prime brokers;

c) the measures for the avoidance of conflicts of interest and their disclosure.

## 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;

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 and XII.

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 82/891/EEC, as amended by Directives 2007/63/EC and 2009/109/EC in addition to the provisions of this Chapter;

b) in the event of a merger (amalgamation) the provisions of Directive 2011/35/EU and if closed-ended AIFs from different EEA Member States in the legal form of incorporated companies are involved, the provisions of Directive 2005/56/EC, in addition to the provisions of this Chapter.

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 pursuant to this Chapter are to be entered in the Commercial Register.

6) The Government shall regulate the registration procedure for structural measures by ordinance.

Art. 77

*Structural limitation*

In the event of cross-border structural measures involving AIFs, the structural measure must be permissible under the law of the states in which the AIFs involved have their registered office.

## B. Merger

Art. 78

*Basic principle*

In the course of a domestic or cross-border merger an AIF may amalgamate with one or more other AIF, irrespective of the legal form of the AIF and whether the absorbing or transferring AIF has its registered office in Liechtenstein.

Art. 79

*Obligation to obtain authorisation*

1) The merger of AIFs requires prior notification to the FMA, provided that all the AIFs involved have their registered office in Liechtenstein and the transferring AIF is not obliged to obtain authorisation.

2) The AIFM shall submit the following documents to the FMA for each AIF referred to under (1):

a) the merger plan approved by the AIFs participating in the merger in accordance with Art. 81 or evidence that the investors pursuant to Art. 81 (3)have decided not to draw up a merger plan;
b) the documents required for the notification pursuant to Art. 17 to 20 in the version in which they are to be used after the merger comes into effect;
c) a declaration made by all depositaries of the AIFs involved in the merger, that they have checked that the information meets the requirements of this Law and the constitutive documents of the AIF, for which they are acting, or evidence that the investors have decided to refrain from a check pursuant to Art. 82 (2);
d) the information that the AIFs involved in the merger provide to their respective unit holders concerning the planned merger pursuant to Art. 84 or evidence that the investors have decided to forego investor information pursuant to Art. 84 (6).

3) The documents are to be submitted in German, English or another language accepted by the FMA for this purpose.

4) If the shares and units of the AIF are only marketed to professional investors, the FMA shall inform the AIFM that the documents are complete or request additional material to complete them within ten working days from receipt of the documents. Once the complete application has been submitted the FMA shall confirm to the AIFM involved that the documents are complete within ten working days. The FMA may extend these deadlines to 20 days in each case, with a notification of the reason. The AIFM may commence the merger process on receipt of the confirmation that the documentation is complete.

5) If the merger involves AIFs whose shares and units are also marketed to private investors, and not all the private investors have expressly opted out of receiving or reviewing the merger plan and the investor information in accordance with Art. 82 (2):

a) the FMA shall weigh up the effects on the investors of the AIFs involved in the merger, in order to assess whether the investors have been properly informed about the merger;
b) the FMA may instruct the AIFM of the transferring AIF in writing to improve the quality of the investor information pursuant to (2) d), insofar as it considers this necessary;
c) the FMA shall advise within 20 working days from receipt of the complete set of documents or the documents that have been amended in accordance with b) that the investor information is satisfactory;

d) the AIFM may start to proceed with the accomplishment of the merger as from receipt of the notification referred to in c).

6) The Government shall provide more specific regulations by ordinance. It may in particular stipulate, in accordance with EEA Law:

a) the conditions for opting out referred to in (5);
b) the form of the evidence referred to in (2) a), c) and d).

### Art. 80

*Obligation to obtain approval*

1) A merger of AIFs shall require the prior approval of the FMA, if:

a) the transferring AIF has its registered office and is obliged to obtain authorisation in Liechtenstein;
b) one of the AIFs involved has its registered office abroad; or
c) the absorbing AIF has its registered office in Liechtenstein and the merger represents a material change to the authorisation under Art. 25.

2) The AIFM shall submit the following documents to the FMA for each of its transferring AIFs:

a) the merger plan referred to in Art. 81 approved by the AIFs involved in the merger or evidence that the investors have decided not to draw up a merger plan in accordance with Art. 81 (3);[1]
b) the documents required for the notification under Art. 17 in the version that will be used after the merger comes into effect;
c) a declaration issued by all depositaries of the AIFs involved in the merger, that they have checked that the information meets the requirements of this Law and the constitutive documents of the AIF, on behalf of which they are acting or evidence that the investors have decided to forego such a check in accordance with Art. 82 (2);
d) the information that the UCITS involved in the merger give to their respective unit holders regarding the planned merger pursuant to Art. 84 or evidence that the investors have opted out of receiving investor information as referred to in Art. 84 (6).

3) The documents are to be submitted in German, English or another language accepted by the FMA for this purpose.

1 Art. 80 (2) a) amended by LGBl. 2016 no. 46.

4) If the documents referred to in (2) are incomplete the FMA shall request a full set of documents within ten working days from receipt. Once the complete application has been received the FMA shall confirm to the AIFM concerned that the documents are complete within ten working days.

5) The FMA shall decide whether to approve the merger within one month from receipt of the complete set of documents referred to in (2). The time limit may be extended to up to six months with a notification stating the reason.

6) The FMA shall approve the merger if:

a) the requirements of the law have been met;
b) if applicable, other requirements established under international agreements or under cooperation arrangements with foreign supervisory authorities have been met.

7) The FMA shall inform the AIFMs of the AIFs involved in the merger of its decision and if applicable the supervisory authorities responsible for the AIFs involved in the merger.

8) On receipt of the approval the AIFMs may begin the merger process.

9) The Government may provide more specific regulations by ordinance. In consideration of the principle of proportionality and in accordance with the provisions of EEA Law, it may in particular stipulate:

a) the requirements that may be set as regards the exchange of information between the FMA and other supervisory authorities;
b) the form of the evidence referred to in (2) a), c) and d).

### Art. 81

### *Merger plan*

1) A joint merger plan shall be drawn up for the transferring and absorbing AIF.

2) If AIFs whose units are also marketed to private investors are involved in the merger, the merger plan shall include the following information:

a) the AIFs involved;
b) an indication whether the merger is a merger by absorption, a merger based on a start-up or a merger with partial liquidation;

c) the background and the motivation for the planned merger;
d) the anticipated effects of the planned merger on the investors of the transferring and the absorbing AIF;
e) the criteria established for the valuation of the assets and if applicable the liabilities at the time of calculating the conversion rate referred to in Art. 86 (1);
f) the method for calculating the conversion rate;
g) repealed[1]
h) the regulations applying to the transfer of assets and the conversion of shares and units;
i) for a merger based on a start-up and a merger involving partial liquidation the constitutive documents of the newly established, absorbing AIF;
k) if applicable, additional information required in accordance with the constitutive documents of one of the AIFs involved.

3) AIFMs may decide not to draw up a merger plan with the qualified agreement of all the investors of the AIFs involved in the merger.

4) If the units of the AIFs involved in the merger are only marketed to professional investors, the information required in accordance with theconstitutive documents of one of the AIFs involved is to be included in the merger plan as a minimum. If the constitutive documents do not contain any rules, a merger plan containing the information referred to in (2) will in any case be sufficient.

5) The liability of the AIFM for the accuracy of the information in the merger plan cannot be excluded.

6) The Government may establish more specific regulations concerning the merger plan by ordinance, in accordance with Art. 5 to 7 of Directive 2005/56/EC and Art. 5, 6, 9 and 11 of Directive 2011/35/EU, in particular:
a) the requirements for the qualified agreement of all investors as referred to in (3);
b) the publication of the merger plan.

1 Art. 81 (2) g) repealed by LGBl. 2016 no. 46.

Art. 82

*Review of the merger plan by the depositary*

1) The depositaries of the AIFs involved in the merger shall check that the information referred to in Art. 81 (2) a), b), g) and h) meets the requirements of this Law and Directive 2011/61/EU and the constitutive documents of the AIF on behalf of which they are acting.

2) AIFMs may decide to waive having a check of the merger plan conducted by the depositary with the qualified consent of all investors of the AIFs involved in the merger.

3) If the units of all the AIFs involved in the merger are only marketed to professional investors:

a) there is no obligation to check, provided that the information referred to in Art. 81 (2) is not required;

b) the constitutive documents of the AIFs involved may establish different rules.

4) The Government may establish more specific regulations by ordinance, in particular concerning the qualified agreement and the minimum scope of the checking process in accordance with the provisions of EEA Law.

Art. 83

*Report by the depositary or the independent auditor*

1) A depositary according to the terms of Art. 57 to 64, or an independent auditor as referred to in Art. 109 to 111, shall after due inspection confirm:

a) the criteria for the valuation of the assets and if applicable the liabilities at the time of calculating the rate of conversion referred to in Art. 88 (1);

b) the cash payment per unit, if applicable;

c) the method of calculation of the rate of conversion and the actual conversion rate at the time of calculating that rate pursuant to Art. 88 (1).

2) The statutory auditors of the transferring or absorbing AIF shall be deemed independent auditors for the purposes of (1).

3) If a transferring AIF is domiciled in another state, the law of that state shall determine whether the confirmation is to be provided by a depositary or an independent auditor.

4) The investors and the supervisory authorities of the AIFs involved in the merger are to be provided with a copy of the report containing the confirmation referred to in (1) free of charge, on request.

5) AIFMs may decide to dispense with a report by the depositary or the independent auditor with the agreement of all investors of the AIFs involved in the merger.

6) If the units of all the AIFs involved in the merger are only marketed to professional investors:

a) there is no obligation to make a report, provided that the information referred to in Art. 81 (2) is not required;

b) the constitutive documents of the AIFs involved may establish different rules.

7) The Government may establish more specific regulations by ordinance, in accordance with the provisions of EEA Law, in particular Art. 8 of Directive 2005/56/EC and Art. 10 of Directive 2011/35/EU.

## Art. 84

### *Investor information*

1) AIFMs are obliged to provide the investors of the AIFs involved in the merger with accurate and appropriate information regarding the planned merger. The same obligation shall exist if the merger involves a change in the notification referred to Art. 16 (1) or the authorisation referred to in Art. 16 (2). This investor information shall be sufficient to enable the investors to make an informed judgement about the effects of the plan on their investment and the assertion of their rights referred to in Art. 85 and 86.

2) The investor information referred to (1) shall contain key information for investors of the absorbing AIF, as well as details of:

a) background and motivation for the planned merger;

b) potential effects of the planned merger on the investors, including significant differences in investment policy and strategy, costs, the anticipated outcome, periodic reports, any dilution in performance and if necessary, a clear warning that the tax treatment of investors may be subject to change in the course of the merger;

c) the specific rights of the investors with reference to the planned merger, in particular the right to additional information, the right to receive a copy of the report referred to in Art. 83, the right to redeem units or, if applicable, convert units as referred to in Art. 86 (1) and the time limit for the exercise of rights;
d) the essential procedural aspects and the scheduled date of merger.

3) The investor information pursuant to (1) is to be remitted to the investors of all AIFs that are obliged to obtain authorisation and admission (Art. 79 (1) and Art. 80 (1)):

a) in the case of AIFs obliged to obtain admission, immediately upon being notified by the FMA pursuant to Art. 79 (4) and (5) c), that the investor information is satisfactory;
b) in the case of AIFs obliged to obtain authorisation, immediately after the FMA has consented to the merger pursuant to Art. 80 (6);
c) if an AIF having its registered office in another state is involved and the competent authorities of that state are obliged to become involved in the AIF's merger, as soon as these authorities have become involved.

4) The investor information shall be provided at least 30 days before the latest deadline for an application for redemption of units or, if applicable, conversion without additional costs pursuant to Art. 86 (2), but in any case 30 days before the merger comes into effect in accordance with Art. 88.

5) Provided the principles referred to in (1) are respected, with the agreement of all investors:

a) the investor information set out in (2) may be entirely or partly dispensed with;
b) the period allowed in (4) may be shortened or dispensed with.

6) If the units of the relevant AIF are exclusively marketed to professional investors, the constitutive documents of the AIF may provide that:

a) no investor information as set out in (2) has to be produced; or
b) the period allowed referred to in (4) may be shortened or dispensed with.

7) If the absorbing AIF has hitherto been marketed exclusively to professional investors and if AIFs that are also marketed to private investors are involved in the merger, the AIFM shall meet the requirements of Art. 17 (4) as soon as the merger takes effect.

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

### Art. 85

*Agreement of the investors*

1) Unless the constitutive documents of an AIF provide otherwise, the merger of AIFs does not require the agreement of the investors.

2) If the constitutive documents of an AIF having its registered office in Liechtenstein stipulate that the agreement of the investors is required for mergers between AIFs, each unit shall basically confer one vote. The majority of the votes actually cast by the investors who are present or represented at the General Meeting is required for the agreement.

3) The binding acceptance of the conversion offer shall be deemed as consent to the merger at the General Meeting as set out in (2). If the quorum as set out in (2) has already been achieved before the General Meeting, it will no longer be necessary to hold the General Meeting.

### Art. 86

*Right of conversion, suspension authority of the FMA*

1) The investors of every AIF obliged to obtain authorisation or admission (Art. 79 (1) and Art. 80 (1)) may, without incurring any costs other than those that may be withheld by the AIF to cover winding up costs, request:

a) resale of their units;
b) redemption of their units; or
c) conversion of their units into those of another AIF with similar investment policies; the right of conversion shall only exist if the AIF with similar investment policies is managed by the same AIFM or a company with close links to the AIFM.

2) The right established in (1) arises when investor information is remitted pursuant to Art. 84 and shall lapse five working days before the

time set for calculation of the rate of conversion pursuant to Art. 88 (1). The constitutive documents may stipulate a longer time limit.

3) If units of the AIF are also marketed to private investors, the FMA, as competent authority of an AIF involved in the merger, may require or permit a temporary suspension of subscription, redemption or repurchase of units if this is required for the protection of investors or the public interest.

4) The AIFM may refrain from granting a right of conversion with the qualified agreement of all investors.

5) If the units of the AIF are marketed only to professional investors:

a) the constitutive documents of the AIF may waive the rights of the investors under this article or amend or dispense with the time limit referred to in (2);
b) the AIFM may within one year prior to the merger ask the investors to make a binding declaration to exercise the rights under this article with the proviso that investors who do not respond to this request forfeit their rights under (4).

6) The Government may establish more specific regulations by ordinance, in particular concerning the requirements for the agreement of the investors referred to in (4), respecting the principle of proportionality and in accordance with the provisions of EEA Law.

### Art. 87

*Ban on assigning costs to the investors*

1) If an AIF is managed by an AIFM, legal, consultancy or administrative costs associated with the preparation and accomplishment of the merger may not be charged either to the AIFs involved in the merger nor to the investors.

2) The ban on assigning costs may be waived with the qualified agreement of all investors. The Government shall establish more specific regulations by ordinance.

3) If the units of the AIF are only marketed to professional investors:

a) the constitutive documents of the AIF may dispense with the ban on assignment of costs;
b) the AIFM may within one year prior to the merger ask the investors to make a binding declaration to release the AIFM from the ban on

assigning costs under this article, with the proviso that investors who do not respond to the request shall forfeit their right of objection.

Art. 88

*Legal effect of the merger*

1) If the absorbing AIF is domiciled in Liechtenstein, - unless stipulated otherwise in the provisions of Art. 351h and 352 PGR – the following time limits for coming into effect shall apply:[1]

a) If the investors' agreement to the merger is not required, the merger shall be effective on commencement of the 30th day from provision of the investor information.

b) If the investors' agreement to the merger is required in accordance with Art. 85, the merger shall become effective when the General Meeting resolutions have been adopted with legally binding effect, but no earlier than the commencement of the 30th day after provision of the investor information. The resolutions of the General Meeting shall gain legal force, unless within two working days from the date of the meeting, at the request of the investors whose units represent at least 5 % of the AIF's managed assets, the Princely Court of Justice issues an interim injunction and the applicants bring a legal challenge within five working days from the date of the meeting. Evidence of the 5 % quorum is to be provided in conjunction with the application. The claim is to be dismissed, if this falls short during the period of the subsequent claim.

2) The 30-day limit referred to in (1) may:[2]

a) be extended by the merger plan or by order of the FMA for the protection of investors or the public interest;

b) be shortened or dispensed with altogether with the qualified agreement of all investors involved in the AIFs;

c) be shortened by the provisions of the constitutive documents of the AIF if the units of the AIF are exclusively marketed to professional investors, or be dispensed with.

3) The coming into effect of the merger shall be published in the publications specified by the Government by ordinance and the competent authorities of the home Member States of the AIFs involved in the merger shall be notified. Furthermore the merger of AIFs shall be entered in the

1 Art. 88 (1) amended by LGBl. 2016 no. 46.

2 Art. 88 (2) Introductory clause amended by LGBl. 2016 no. 46.

Commercial Register at the time specified in (1) and (2) and be published pursuant to Art. 958 no. 2 PGR.

4) If the absorbing AIF is domiciled in another state, the law of that state shall apply to the coming into effect of the merger and its publication. The time limits referred to in (1) are to be observed in any case.

5) The Government may establish more specific regulations by ordinance, in accordance with the provisions of EEA Law, in particular Art. 12 and 13 of Directive 2005/56/EC and Art. 7, 8, 17 and 18 of Directive 2011/35/EU.

### Art. 89

*Legal consequences of the merger*

1) A merger by absorption shall have the following consequences:

a) All assets and liabilities of the transferring AIF are transferred to the absorbing AIF or if applicable to the depositary of the absorbing AIF.

b) The investors of the transferring AIF become investors of the absorbing AIF; they may also be entitled to a cash payment of up to a maximum of 10 % of the net asset value of their units in the transferring AIF.

c) The transferring AIF shall cease to exist when the merger takes effect.

2) A merger based on a start-up shall have the following consequences:

a) All assets and liabilities of the transferring AIF are transferred to the newly established absorbing AIF or, if applicable, to the depositary of the absorbing AIF.

b) The investors of the transferring AIF become investors of the newly established absorbing AIF; they may be entitled to a cash payment of up to a maximum of 10 % of the net asset value of their units in the transferring AIF.

c) The transferring AIF shall cease to exist when the merger takes effect.

3) A merger involving partial liquidation shall have the following consequences:

a) The net assets of the transferring AIF are transferred to the absorbing AIF or, if applicable, the depositary of the absorbing AIF.

b) The investors of the transferring AIF become investors of the absorbing AIF.

c) The transferring AIF continues to exist until all liabilities have been paid.

4) Immediately upon completion the AIFM of the absorbing AIF shall confirm to the depositary of the absorbing AIF in writing, that the transfer of the assets and if applicable, the liabilities, has been concluded.

5) The Government may establish more specific regulations by ordinance, in accordance with the provisions of EEA Law, in particular Art. 14 of Directive 2005/56/EC and Art. 19 in connection with Art. 23 of Directive 2011/35/EU.

## C. Equivalent application of the merger provisions to other structural measures

Art. 90[1]

*Basic principle*

Unless the Government provides otherwise by ordinance, the provisions of Art. 78 to 89 shall apply accordingly to:

a) domestic or cross-border mergers involving sub-funds and unit classes;
b) splitting of AIFs and sub-funds within Liechtenstein or across borders;
c) the transfer of a sub-fund from one umbrella structure to another umbrella structure;
d) other structural measures concerning the AIF or sub-fund.

1 Art. 90 amended by LGBl. 2015 no. 196.

# VI. Investment policy

## A. Fund types and type constraints

Art. 91

*Fund types*

1) The Government shall specify the fund types by ordinance, depending on the selected investment strategy. In doing so it may be guided by the recommendations of the European Commission or the ESMA.

2) The list of fund types specified by ordinance pursuant to (1) is not exhaustive. Subject to the constraints regarding fund types referred to in Art. 92, the authorisation, the organisation and the powers of the AIFM, as well as the other provisions of this Law, AIFMs have the right to manage AIFs using any preferred investment strategy.

3) Repealed[1]

4) The fund types specified under this article are also to be used in determining the scope of the authorisation pursuant to Art. 29 (6).

Art. 92

*Constraints on small AIFMs as regards fund type*

1) A small AIFM, that does not fully apply the provisions of this Law pursuant to Art. 3 (1) to (7), must allocate each of the AIFs under its management to one of the fund types referred to in Art. 91 (1) and ensure that the relevant provisions relating to that type are complied with.

2) (1) shall apply accordingly for self-managed AIFs with the proviso that instead of the AIFM the executive bodies of the self-managed AIF are liable.

Art. 93

*Freedom of type for AIFMs and certain small AIFMs*

1) AIFMs and small AIFMs that apply the provisions of this Law in full, may, subject to their authorisation, the constitutive documents and this Law:

1 Art. 91 (3) repealed by LGBl. 2015 no. 196.

a) invest the assets of the AIF in any capital asset; and
b) manage the assets of the AIF with the appropriate investment strategies, techniques and instruments.

2) The AIFM may decide to manage AIFs with a investment strategy corresponding to a specific fund type referred to in Art. 91 (1). In this case:

a) the fund type is to be specified in the constitutive documents of the AIF; and
b) the AIFM shall comply with the conditions concerning investment strategy laid down for the relevant fund type according to Art. 91 (1).

## B. Leverage

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.

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) The FMA shall follow the recommendations of the ESMA concerning the level of leverage in accordance with the EEA Agreement.

5) The Government shall establish more specific regulations by ordinance, in particular:

a) the conditions under which the other competent authorities of the EEA Member States and the ESMA are to be notified. In this connection, the different strategies of AIFs, the various market conditions in which the AIFs operate and the possible pro-cyclical effect of applying the provisions are to be taken into account;

b) what is to be understood as a reasonable level of leverage.

## C. Acquisition of control of undertakings

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;
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

*Master-feeder structure*

1) Any AIF may be part of a master-feeder structure.

2) The constitutive documents shall specify whether the AIF is to be a master fund or a feeder fund.

3) The Government may establish more specific regulations by ordinance, in particular the conditions for a conversion of a feeder or master AIF into an AIF and vice versa.

Art. 103

*Sub-funds*

1) In an AIF, that is made up 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 other sub-funds and to wind up or amalgamate existing sub-funds. If only one sub-fund remains after the winding up or amalgamation, the provisions of this chapter will no longer apply.

3) It must be guaranteed for each sub-fund, that:

a) the assets of the individual sub-funds are segregated;
b) credits and liabilities are allocated to the individual sub-funds according to their origin;
c) costs that cannot be allocated according to their origin are charged to the individual sub-funds in relation to their assets;
d) the investor is only entitled to the assets and earnings of the sub-funds in which it has a holding.

4) Claims of investors and creditors raised against a sub-fund or arising on the occasion of the establishment, during the existence or from liquidation of the sub-fund shall be confined to that sub-fund.

5) The information addressed to investors and authorities may be combined for all sub-funds. This information must:

a) refer to the features of the umbrella AIF referred to in (3);
b) contain a reference, if the change from one sub-fund to another sub-fund is not free of charge.

6) The transaction costs arising from the change from one sub-fund to another sub-fund shall be covered by a fixed redemption and issue commission in favour of the fund.

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

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

b) possible investment restrictions in the case of investments by sub-funds in other sub-funds.

## 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 accordance with the constitutive documents, giving an indication of the accounting standards selected, as follows:

a) for AIFs in Liechtenstein, at the option of the AIFM according to the accounting provisions of Chapter 20 PGR or, provided that this does not contravene EEA Law, also according to other internationally recognised accounting standards;
b) for other EEA AIFs according to the accounting standards permitted under the law of the home Member State of the AIF;
c) for non-EEA AIFs, at the option of the AIFM according to the accounting provisions of Chapter 20 PGR, according to the accounting standards of the third country or in accordance with other internationally recognised accounting standards.

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*[1]

1) For each of the EEA AIFs that it manages and it markets, or each AIF marketed in the EEA, an AIFM shall make the following information available to investors in the version currently applying before they acquire units in accordance with the form specified in the constitutive documents – if the AIF is also marketed to private investors in Liechtenstein, as prospectus and key investor information:[2]

1 Art. 105 Subject heading amended by LGBl. 2016 no. 46.
2 Art. 105 (1) Introductory clause amended by LGBl. 2016 no. 46.

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 permitted and the associated risks, other restrictions on the employment of leverage and agreements on collateral and on the re-use 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) If the AIF is required to produce a prospectus in accordance with Directive 2003/71/EC or in accordance with the provisions of the Securities Prospectus Act, the information listed in (1) and (2) that is not included in the prospectus shall be disclosed separately or as supplementary information in the prospectus.

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) the content of the marketing information, namely a reference as to whether the AIF was authorised or admitted by the FMA.

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;

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) The Government shall establish more detailed regulations by ordinance, in particular:

a) the details of the duty of disclosure referred to in (1) b) and (2);

b) the breakdown of the information in accordance with this article.

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.

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 EEA AIF and each non-EEA AIF marketed within the EEA;
b) at the end of each quarter a detailed statement of the AIFs under its management.

4) An AIFM with its registered office in Liechtenstein that manages AIFs with a high level of leverage, shall provide the FMA with the following information:

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 accordance with the provisions of EEA Law and avoiding excessive administrative expenditure, in particular:

a) when it is to be assumed that significant levels of leverage are employed for the purposes of (4);
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 Law. 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) An auditor must hold an authorisation pursuant to Directive 2006/43/EC or the Act on Auditors and Audit Companies. Art. 157 (4) and (5) shall otherwise apply.[1]

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.

4) The auditors of the AIF, of the holders of authorisation under this Law 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 Law the auditor shall verify in particular:

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

b) that the provisions of this Law 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 Law 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 Law 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 Law and/or the depositary;

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

c) the FMA.

1 Art. 109 (2) amended by LGBl. 2015 no. 196.

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) In the audit of the AIF, of the holders of authorisation under this Law and of the depositary, the auditor shall apply the audit standards set out in Art. 10a (1) of the Law on Auditors and Audit Companies.

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:

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.[1]

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.

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

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

## XI. Cross-border business activities of EEA AIFMs

### A. General

Art. 112

*Scope of application*

1) Unless specified otherwise in this Law, the following shall apply:

a) Art. 113 to 116, if an AIFM with its registered office in Liechtenstein is interested in marketing an EEA AIF to professional investors in an EEA Member State other than Liechtenstein;[1]

b) Art. 117, if an AIFM with its registered office in another EEA Member State is interested in marketing an EEA AIF to professional investors in Liechtenstein;

c) Art. 118, if an AIFM with its registered office in Liechtenstein is interested in marketing an EEA AIF to private investors in other EEA Member States;

d) Art. 119, if an AIFM with its registered office in another EEA Member State is interested in marketing an EEA AIF to private investors in Liechtenstein;

e) Art. 120 to 123, if an AIFM with its registered office in Liechtenstein is interested in managing an EEA AIF with its registered office in other EEA Member States on a cross-border basis;

f) Art. 124, if an AIFM with its registered office in another EEA Member State is interested in managing an EEA AIF with its registered office in Liechtenstein on a cross-border basis;

g) Art. 125, if an AIFM with its registered office in Liechtenstein is interested in managing a non-EEA AIF on a cross-border basis, without marketing it in Liechtenstein or another EEA Member State;

h) Art. 126, if an AIFM with its registered office in Liechtenstein is interested in marketing a non-EEA AIF under its management to professional investors within the EEA using the EEA passport;

1 Art. 112 (1) a) amended by LGBl. 2016 no. 46.

i) Art. 127, if an AIFM with its registered office in another EEA Member State is interested in marketing a non-EEA AIF under its management to professional investors in Liechtenstein using the EEA passport;
k) Art. 128, if an AIFM with its registered office in Liechtenstein or another EEA Member State is interested in marketing a non-EEA AIF to professional or private investors in Liechtenstein on the basis of authorisation from the FMA;
l) Art. 128 (3), if an AIFM with its registered office in Liechtenstein is interested in marketing a non-EEA AIF to private investors in Liechtenstein.

2) In the cases referred to in (1) a) and b) the master AIF for a feeder AIF must be an EEA AIF managed by an EEA AIFM.

## B. Cross-border marketing of EEA AIFs to professional investors

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;
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 marketing information for investors referred to in Art. 105 (1), unless already included in accordance with d);
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 inde-

pendent of the AIFM, in accordance with the legal provisions and supervision of the state of marketing.

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 receipt of the full set of documents referred to in Art. 113 the FMA shall only verify whether the AIFM meets the provisions of Directive 2011/61/EU.

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.

## 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 state 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.[1]

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 changes in writing at least one month before implementation of the change, or immediately after an unplanned change has occurred.

2) The FMA shall reject the change if there is a violation of the provisions of Directive 2011/61/EU. If the change is implemented notwithstanding or if a change triggered by an unforeseeable circumstance would lead to a violation of the provisions of Directive 2011/61/EU, the FMA shall take the necessary action and if necessary prohibit the marketing of the AIF.

3) If the changes are compatible with the provisions of Directive 2011/61/EU, the FMA shall inform all authorities of the states of marketing immediately.

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. 117

*FMA as competent authority of the state in which marketing takes place*

1) If the FMA is the competent authority of the state of marketing:

1 Art. 115 (5) amended by LGBl. 2016 no. 46.

a) it shall accept the remittance of the documents referred to in Art. 113 via the competent home Member State authorities in electronic form;
b) it shall arrange electronic archiving and the cost-free electronic retrieval of the documents referred to in Art. 113.

2) Otherwise it shall not request any further documents, certificates or information in accordance with the notification procedure described in Art. 113 to 116.

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).

## C. Cross-border marketing of EEA AIFs to private investors

Art. 118

*Marketing of EEA AIFs to private investors in other EEA Member States by Liechtenstein AIFMs*

An AIFM with its registered office in Liechtenstein intending to market EEA AIFs to private investors in other EEA Member States on a cross-border basis shall comply with the law of the state in which marketing is to take place.

Art. 119

*Marketing of EEA AIFs to private investors in Liechtenstein through EEA AIFMs*

The marketing of EEA AIFs to private investors in Liechtenstein on a cross-border basis by an AIFM with its registered office in another EEA Member State shall be governed by the provisions of Chapter II. Provided no private placement is involved the provisions of Art. 129 to 132 shall also apply.

## D. Management of EEA AIFs on a cross-border basis

Art. 120

*Reporting obligation*

1) The AIFM shall notify the FMA of its intention to manage an AIF with its registered office in another EEA Member State on a cross-border basis, in electronic form, in English or another language recognised by the FMA.

2) If the cross-border management involves cross-border movement of services, the notice must contain the following information as a minimum:

a) the EEA Member State in which the AIFs are to be managed;

b) a programme of activity detailing the proposed activities and services and the AIFs to be managed in the host Member State.

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).

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 reject the change if there is a violation of the provisions of Directive 2011/61/EU. If the change is implemented notwithstanding or if a change triggered by an unforeseeable circumstance would lead to a violation of Directive 2011/61/EU, the FMA shall take the necessary action and if necessary prohibit management and marketing of the AIF.

3) If the changes are compatible with the provisions of Directive 2011/61/EU, the FMA shall inform all authorities of the host Member States of the changes immediately.

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).

### 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).[1]

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 Law relevant to its business that go beyond the provisions of Directive 2011/61/EU.

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

1 Art. 124 (1) amended by LGBl. 2016 no. 46.

## E. Cross-border activity of the EEA AIFM with reference to non-EEA AIFs

### 1. Cross-border management of a non-EEA AIF with no marketing authority in the EEA

Art. 125

*Basic principle*

1) An AIFM with authorisation in Liechtenstein may manage non-EEA AIFs that are exclusively marketed in third countries, if:

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).

### 2. Cross-border marketing of a non-EEA AIF by an EEA AIFM with the EEA passport

Art. 126[1]

*AIFM with registered office in Liechtenstein*

1) An AIFM with authorisation in Liechtenstein may market shares and units of non-EEA AIFs under its management and of EEA feeder AIFs, where the master AIF is not an EEA AIF, to professional investors within the EEA, if:

1 The Government shall establish the date of entry into force of Art. 126 in consideration of Art. 67 of Directive 2011/61/EU by ordinance. See Art. 190 (2).

a) it complies with all the provisions of Directive 2011/61/EU, with the exception of the provisions of Chapter VI of Directive 2011/61/EU for cross-border operations of EEA AIFMs with reference to EEA AIFs within the EEA;

b) the following requirements are met in the relationship between the home Member State and the third country:

   1. 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. 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).

   3. The third country has signed an agreement with the home Member State of the AIFM and each EEA marketing state that fully complies with Art. 26 of the OECD Model Tax Convention for the avoidance of double taxation in taxes on income and assets and ensures an effective exchange of information in tax matters, including if applicable, multilateral agreements on taxation; and

c) the procedure referred to in (2) has been accomplished.

2) The following provisions shall apply accordingly to the marketing of shares and units to professional investors:

a) in Liechtenstein, the provisions of Chapter II;

b) in other EEA Member States, Art. 113 to 116.

3) The FMA shall inform the ESMA that the AIFM may commence marketing the shares and units in the states of marketing.

### Art. 127[1]

*Marketing of non-EEA AIFs to professional investors in Liechtenstein by EEA AIFMs with EEA passport*

An AIFM with authorisation in an EEA Member State may market the units of a non-EEA AIF under its management in Liechtenstein, if the notice referred to in Art. 117 has been received by the FMA as the authority in the state of marketing.

1 The Government shall establish the date of entry into force of Art. 127 in consideration of Art. 67 of Directive 2011/61/EU by ordinance. See Art. 190 (2).

### 3. Cross-border marketing of a non-EEA AIF by an EEA AIFM on the basis of authorisation from the FMA

Art. 128

*Basic principle*

1) The FMA shall grant an AIFM with authorisation in Liechtenstein or another EEA Member State permission to market shares and units of non-EEA AIFs under its management and EEA feeder AIFs of which the master AIF is in Liechtenstein, if the following conditions have been met as a minimum:

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 Chapter II shall apply accordingly. Provided the marketing to private investors does not involve private placements, the provisions of Art. 129 to 132 shall also apply.

3) An AIFM with registered office in Liechtenstein shall comply with the relevant law of the state of marketing for cross-border marketing of non-EEA AIFs to private investors in other EEA member states.

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;
b) the particulars and documents required as evidence that the conditions referred to in (1) have been met.

## F. Consequential obligations in the event of marketing AIFs to private investors in Liechtenstein

Art. 129

*Scope of application*

AIFMs that market shares and units in AIFs to private investors shall comply with Art. 130 to 132. This does not apply if marketing takes place through private placement as referred to in Art. 17 (4) and (5) b) or Art. 22 (4) and (5) c).

Art. 130

*Paying agents, information and right of complaint*

1) The AIFM shall ensure that:

a) the investors in Liechtenstein receive payments, can arrange buyback and redemption of units and receive information provided by the AIFM for the AIF; investor complaints are to be accepted in German as a minimum and dealt with properly;
b) the investors' rights are in no way impaired by the fact that only the AIFM, but not the AIF is authorised in Liechtenstein; and
c) information will be made available to the investors or the home Member State authority of the AIF in Liechtenstein at the request of the FMA.

2) The Government may establish more specific regulations by ordinance.

Art. 131

*Investor information, choice of language*

1) In accordance with the provisions of this Law, the AIFM shall provide investors in Liechtenstein with all information and documents that it provides or is obliged to provide to investors in the home Member State, or another state in which the AIF is marketed.

2) In order to meet the obligation set out in (1):

a) the "Key information" for investors shall be translated into German;

b) other information or documents shall, at the option of AIFM, be translated into German, a language accepted by the FMA in individual cases or into English.

3) The translations of information and/or documents in accordance with (2) are to be accomplished at the responsibility of the AIFM and shall faithfully reproduce the content of the original information.

4) (1) to (3) shall apply to amendments mutatis mutandis.

5) The frequency of publication of the issue, sale, resale or redemption prices of the shares and units of an AIF shall be determined according to the law of the home Member State of the AIF.

Art. 132

*Designation of legal form*

If shares and units of an AIF are marketed in Liechtenstein on a cross-border basis, AIFs may use the same indication of their legal form as in their home Member State.

## XII. Cross-border business operations of non-EEA AIFMs

### A. General

Art. 133[1]

*Scope of application*

1) The following provisions shall apply if a non-EEA AIFM:

a) with Liechtenstein as EEA reference state markets an EEA AIF with registered office in Liechtenstein:
   1. on the basis of the EEA passport to professional investors:
      - in Liechtenstein: Art. 144 and the provisions of Chapter II;
      - in other EEA Members States: Art. 145 (1) in connection with Art. 113 to 116;

1 The Government shall establish the date of entry into force of Art. 133 in consideration of Art. 67 of Directive 2011/61/EU by ordinance. See Art. 190 (2).

2. on the basis of an authorisation in accordance with Art. 128 to professional investors in Liechtenstein: Art. 150;
3. to private investors in Liechtenstein: Art. 151;

b) with Liechtenstein as EEA reference state markets an EEA AIF with its registered office in another EEA member state;
1. on the basis of an EEA passport to professional investors:
   - in Liechtenstein: Art. 144 and the provisions of Chapter II;
   - in other EEA member states: Art. 145 (1) in connection with Art. 113 to 116;
2. on the basis of an authorisation in accordance with Art. 128 to professional investors in Liechtenstein: Art. 150;
3. to private investors in Liechtenstein: Art. 151;
4. or manages an EEA AIF with its registered office in another EEA member state on a cross-border basis: Art. 146 (1) in connection with Art. 120 to 123;

c) with an EEA reference state other than Liechtenstein markets an EEA AIF with registered office in Liechtenstein:
1. on the basis of the EEA passport to professional investors in Liechtenstein: Art. 115 (2) in connection with Art. 117;
2. on the basis of an authorisation in accordance with Art. 128 in Liechtenstein: Art. 150;
3. to private investors in Liechtenstein: Art. 151;
4. or manages an EEA AIF with registered office in Liechtenstein on a cross-border basis: Art. 146 (2) in connection with Art. 124;

d) with an EEA reference state other than Liechtenstein markets an EEA AIF with its registered office in another EEA Member State:
1. on the basis of the EEA passport to professional investors in Liechtenstein: Art. 145 in connection with Art. 117;
2. on the basis of an authorisation in accordance with Art. 128 to professional investors in Liechtenstein: Art. 150;
3. to private investors in Liechtenstein: Art. 151;

e) with Liechtenstein as EEA reference state markets a non-EEA AIF:
1. on the basis of the EEA passport to professional investors:
   - in Liechtenstein: Art. 147 and 148;
   - in other EEA Member States: Art. 147 and 149 (1);
2. on the basis of an authorisation in accordance with Art. 128 to professional investors in Liechtenstein: Art. 150;

3. to private investors in Liechtenstein: Art. 151;
4. or manages a non-EEA AIF on a cross-border basis: the law of the non-EEA Member State shall apply;

f) with an EEA reference state other than Liechtenstein markets a non-EEA AIF:
1. on the basis of the EEA passport to professional investors in Liechtenstein: Art. 147 and 149 (2);
2. on the basis of an authorisation in accordance with Art. 128 in Liechtenstein: Art. 150;
3. to private investors in Liechtenstein: Art. 151.

## B. Selection of the EEA reference state and authorisation of the non-EEA AIFM

Art. 134[1]

*Obligation of non-EEA AIFMs to obtain authorisation in the EEA reference state*

1) Non-EEA AIFMs intending to manage EEA AIFs and/or market AIFs managed by them in accordance with Art. 144, 145 and 147 to 149 within the EEA need to acquire authorisation in an EEA reference state. After the authorisation only the authority in the EEA reference state shall be responsible for oversight of the AIF, for non-EEA AIFMs with Liechtenstein as reference state, the FMA.

2) The non-EEA AIFM shall comply with all the provisions of Directive 2011/61/EU, with the exception of the provisions of Chapter VI of Directive 2011/61/EU on cross-border operations of EEA AIFMs. The following shall apply in this connection:

a)The competent authority of the home Member State of the non-EEA AIFM is replaced by the authority of the EEA reference state, in Liechtenstein the FMA.

b) A derogation from the provisions of Directive 2011/61/EU is permissible in the event of incompatibility with the law of the domicile state of the non-EEA AIFM and/or AIF, if the non-EEA AIFM can demonstrate that:

1 The Government shall establish the date of entry into force of Art. 134 in consideration of Art. 67 of Directive 2011/61/EU by ordinance. See Art. 190 (2).

1. the directive provision in question cannot be combined with the mandatory legal provision of the domicile state;
2. an equivalent provision applies in the domicile state with reference to the regulatory purpose and level of protection for investors;
3. the non-EEA AIFM and/or AIF complies with this equivalent provision.

3) The non-EEA AIFM must have a legal representative with registered office in the EEA reference state. The legal representative shall be the contact point of the AIFM within the EEA, through which all correspondence between the competent authorities and EEA investors, on the one hand and the AIFM, on the other shall be directed. The legal representative shall perform the compliance function with reference to the management and marketing activities, together with the AIFM.

4) The Government may establish more specific regulations by ordinance, in particular the requirements concerning the legal representative.

Art. 135[1]

*Selection criteria for the EEA reference state if marketing is intended*

The EEA reference state of a non-EEA AIFM is determined as follows:

a) If the non-EEA AIFM only manages one or more EEA AIFs registered in the same EEA Member State and does not intend to market an AIF within the EEA in accordance with Art. 134 to 138, the EEA reference state shall be the home Member State of the AIF.
b) If the non-EEA AIFM manages several EEA AIFs registered in different EEA Member States and does not intend to market an AIF within the EEA in accordance with Art. 134 to 138, the EEA reference state shall be either:
   1. the EEA Member State in which the majority of the EEA AIFs under its management are registered; or
   2. the EEA Member State where the largest amount of assets are being managed.
c) If the non-EEA AIFM intends only to market one EEA AIF in only one EEA Member State, the EEA reference state is:

1 The Government shall establish the date of entry into force of Art. 135 in consideration of Art. 67 of Directive 2011/61/EU by ordinance. See Art. 190 (2).

1. if the AIF is authorised or registered in an EEA Member State: the home Member State of the AIF or the EEA state where marketing is intended;
2. if the AIF is not authorised or registered in an EEA Member State: the EEA state where the AIF will be marketed.

d) If the non-EEA AIFM is only interested in marketing one non-EEA AIF in only one EEA Member State, this EEA Member State shall be the EEA reference state.

e) If the non-EEA AIFM is only interested in marketing one EEA AIF in different EEA Members States, the EEA reference state is:

1. if the AIF is authorised or registered in an EEA Member State: the home Member State of the AIF or one of the EEA Member States, in which the development of effective marketing is planned; or
2. if the AIF is not authorised or registered in an EEA Member State: one of the EEA Member States, in which the development of effective marketing is planned.

f) If the non-EEA AIFM is only interested in marketing one non-EEA AIF in different EEA Member States, the EEA reference state shall be one of these EEA Member States.

g) If the AIFM is interested in marketing several EEA AIFs within the EEA, the EEA reference state is:

1. if all the AIFs are registered or authorised in one EEA Member State: the home Member State of the AIFs or the EEA Member State, in which the effective marketing of most of the AIFs involved is planned to take place;
2. if the AIFs in question are not all registered or authorised in the same EEA Member State: the EEA Member State in which the effective marketing of most of the AIFs in question is planned.

h) If the non-EEA AIFM is interested in marketing several EEA and non-EEA AIFs or several non-EEA AIFs within the EEA, the EEA reference state is the EEA Member State in which the development of effective marketing of most of the AIFs in question is planned.

Art. 136[1]

*Selection between several possible EEA reference states*

1) If according to the criteria set out in Art. 135 more than one EEA reference state is possible, the non-EEA AIFM shall apply to the competent authorities of all EEA Member States that can be considered as EEA reference states in order to determine the EEA reference state.

2) The FMA shall endeavour to ensure that the reference state is determined within one month from receipt of an application as referred to in (1). If the FMA is appointed EEA reference state authority by this process, it shall immediately inform the non-EEA AIFM of the decision in respect of the EEA reference state authority.

3) If the authorities fail to decide within a period of one month or the notification is not duly received within seven working days, the non-EEA AIFM shall determine its EEA reference state itself in accordance with the criteria set out in Art. 135, and immediately inform all competent authorities originally approached and the ESMA of the choice of EEA reference state, in writing.[2]

3a) If the competent authorities appoint another EEA reference state than that selected by the non-EEA AIFM, they shall inform the non-EEA AIFM as speedily as possible of their decision, but no later than two working days after they were informed of the choice of the non-EEA AIFM in accordance with (3). In such a case the decision of the competent authorities shall prevail.[3]

4) The intention to develop effective marketing in an EEA Member State shall be effectively demonstrated by disclosure of the marketing strategy to the authorities of the EEA reference state determined.

5) In other respects the procedure for determining the reference member state shall be governed by Commission Implementing Regulation (EU) No. 448/2013.[4]

1 The Government shall establish the date of entry into force of Art. 136 in consideration of Art. 67 of Directive 2011/61/EU by ordinance. See Art. 190 (2).
2 Art. 136 (3) amended by LGBl. 2016 No. 46.
3 Art. 136 (3a) inserted by LGBl. 2016 No. 46.
4 Art. 136 (5) inserted by LGBl. 2016 No. 46.

Art. 137[1]

*Authorisation of a non-EEA AIFM in the EEA reference state*

1) Non-EEA AIFMs that manage EEA-AIFs pursuant to Art. 146 without marketing and/or are interested in marketing AIFs under their management within the EEA, with an EEA passport, in accordance with Art. 144, 145 or 147 to 149, shall present an application for authorisation to the FMA, as the body that is, in their view, the competent authority of their EEA reference state.

2) If the conditions set out in Art. 135 are not met the FMA shall reject the application, as competent authority of the EEA reference state, stating the reasons for rejection.

3) If the conditions set out in Art. 135 are met the FMA shall inform the ESMA of this fact, asking it to give a recommendation on its assessment; in its notification to the ESMA the FMA shall convey the AIFM's justification for its assessment with respect to the EEA reference state and information on the marketing strategy.

4) The time limit for the examination of the authorisation referred to in Art. 31 (5) and (6) is suspended for the duration of the assessment by the ESMA pursuant to (3).

5) If the FMA decides to grant the authorisation contrary to the recommendation of the ESMA it shall inform the following, stating its reasons:

a) the ESMA;
b) the competent authorities of the state of marketing, if AIF units are to be marketed in EEA Member States other than the EEA reference state;
c) the home Member State authority of the EEA AIFs, if the registered office of individual EEA AIFs is neither in the EEA reference state nor the state of marketing.

1 The Government shall establish the date of entry into force of Art. 137 in consideration of Art. 67 of Directive 2011/61/EU by ordinance. See Art. 190 (2).

## Art. 138[1]

*General conditions of authorisation*

Notwithstanding the conditions set out in Art. 139 authorisation may only be granted if:

a) the AIFM indicates the EEA reference state, confirms the disclosure of the marketing strategy and the competent authority has carried out the procedure set out in Art. 135 to 137;

b) the AIFM has appointed a legal representative in its EEA reference state;

c) in addition to the AIFM, the legal representative is the contact person for the investors of the AIFs in question, for the ESMA and for the competent authorities with regard to the activities for which the AIFM is authorised within the EEA; it must at the very least be sufficiently equipped to perform the compliance function according to the provisions of this Law and Directive 2011/61/EU;

d) appropriate agreements are in place concerning the cooperation and exchange of information between the competent authorities of the EEA reference state, the competent authorities for the relevant EEA AIFs and the competent authorities of the third country, in which non-EEA AIFs are registered, that enable the FMA to perform its duties in accordance with Directive 2011/61/EU;

e) 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);

f) the third country has signed an agreement with the EEA reference state 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;

g) the legal and administrative provisions of a third country governing the AIFM or the restrictions of the supervisory and investigatory powers of the third country's competent authorities do not impede the FMA in the effective performance of its supervisory duties.

1 The Government shall establish the date of entry into force of Art. 138 in consideration of Art. 67 of Directive 2011/61/EU by ordinance. See Art. 190 (2).

Art. 139[1]

*Authorisation procedure*

1) The provisions concerning the authorisation of AIFMs set out in Chapter III shall apply accordingly to the authorisation of non-EEA AIFMs, unless specified otherwise below.

2) In addition to the information referred to in Art. 31 the AIFM shall submit the following documents:

a) the AIFM's justification for the assessment it has undertaken concerning the EEA reference state in accordance with the criteria set out in Art. 135 and information on the marketing strategy;
b) a list of the provisions of Directive 2011/61/EU, for which compliance by the AIFM is impossible, since compliance by the AIFM in accordance with Art. 134 (2) b) cannot be combined with compliance with a legal provision to which the non-EEA AIFM or the non-EEA AIF is subject;
c) written evidence based on the technical regulatory standards developed by the ESMA and a legal opinion with a description of the regulatory purpose and the investor protection features, according to which:
    1. the legal provisions of the third country contain a provision that is equivalent to the provisions that cannot be complied with, that has the same regulatory purpose and offers the investors of the relevant AIF the same degree of protection;
    2. the AIFM complies with this equivalent provision;
d) name and address of the AIFM's legal representative.

3) The withdrawal of marketing rights referred to in Art. 53 may be restricted to EEA AIFs managed or marketed on the basis of the EEA passport.

4) In derogation of Art. 30 (1) e) the head office and registered office under the statutes do not have to be in the same in EEA Member State.

1 The Government shall establish the date of entry into force of Art. 139 in consideration of Art. 67 of Directive 2011/61/EU by ordinance. See Art. 190 (2).

### Art. 140[1]

*Exemption from provisions of the Directive*

1) The FMA as EEA reference state authority shall inform the ESMA immediately if, in its view, the AIFM may be exempted from compliance with certain provisions of Directive 2011/61/EU due to incompatibility as described in Art. 134 (2). The notification shall include the details referred to in Art. 139 (2) b) and c).

2) If the ESMA examines the notification referred to in (1) in order to make a recommendation, the time limit for consideration of the authorisation application pursuant to Art. 31 (5) and (6) shall be suspended until the ESMA has made its recommendation.

3) If, notwithstanding the ESMA's recommendation, the FMA wishes to grant the authorisation, it shall inform the following, stating its reasons:

a) the ESMA;
b) the authorities of the marketing state, if AIF units are to be marketed in EEA Member States other than the EEA reference state;
c) the home Member State authority of the EEA AIFs, if the registered office of individual EEA AIFs is not in the EEA reference state or the state of marketing.

### Art. 141[2]

*Notification to the ESMA concerning authorisation*

1) The FMA as EEA reference state authority shall inform the ESMA:

a) immediately of the result of the authorisation process, a change in or withdrawal of an AIFM's authorisation;
b) of the rejection of authorisation applications; in this case it shall communicate details about the applicants and reasons for the refusal.

2) If the FMA is provided with a central list of the details referred to in (1) by the ESMA, the FMA shall be obliged to treat such information as confidential.

1 The Government shall establish the date of entry into force of Art. 140 in consideration of Art. 67 of Directive 2011/61/EU by ordinance. See Art. 190 (2).

2 The Government shall establish the date of entry into force of Art. 141 in consideration of Art. 67 of Directive 2011/61/EU by ordinance. See Art. 190 (2).

Art. 142[1]

*Change in the EEA reference state after commencing business*

1) The AIFM shall change the EEA reference state after commencing business:

a) if there is a change in marketing strategy within two years from authorisation of the AIFM, in the event that the changed marketing strategy, if it had been the original marketing strategy, would have led to a different EEA reference state being established. The AIFM shall inform the EEA reference state authority of this change before it is implemented;

b) where it appears from the actual course of the business development of the AIFM within two years from its authorisation, that the marketing strategy presented at the time of authorisation did not reflect the facts, or that the AIFM made false statements in relation thereto or if the AIFM amends its marketing strategy without complying with the provisions referred to in (2). In such a case the EEA reference state authority shall ask the AIFM to indicate the correct EEA reference state based on the actual marketing strategy. If the AIFM does not comply with the request, the EEA reference state authority shall withdraw the authorisation;

c) at the request of the AIFM, at the end of the two year period, if it changes its marketing strategy and wishes to re-determine its EEA reference state based on its new marketing strategy.

2) In the cases referred to in (1) the following procedure shall be adopted:

a) The AIFM shall announce the change of EEA reference state. The announcement shall contain:
   1. an indication of the state that is now the EEA reference state based on the new strategy in accordance with the criteria set out in Art. 135;
   2. the new marketing strategy;
   3. the name and address of the legal representative in the new EEA reference state.

b) The FMA as EEA reference state shall assess whether the new determination by the AIFM is correct and shall inform the ESMA of its

1 The Government shall establish the date of entry into force of Art. 142 in consideration of Art. 67 of Directive 2011/61/EU by ordinance. See Art. 190 (2).

assessment together with the justification and information from the AIFM regarding the new marketing strategy.

c) The FMA shall check its decision in the light of the ESMA's recommendation. It shall then inform the AIFM, its original legal representative and the ESMA of its decision.

d) If the decision agrees with the assessment of the AIFM, the FMA shall inform the competent authority of the new EEA reference state and shall immediately send it a copy of the AIFM's authorisation and supervisory documents. The authority of the new EEA reference state shall take responsibility for oversight from the time of transmission of the authorisation and supervisory documents.

e) If the FMA wishes to grant the authorisation contrary to the ESMA's recommendation, it shall inform the following, stating its reasons:
   1. the ESMA;
   2. the authorities of the marketing state, if AIF units are to be marketed in EEA Member States other than the EEA reference state;
   3. the home Member State authorities of the EEA AIFs, if the registered office of individual EEA AIFs is not in the EEA reference state or the state of marketing.

Art. 143[1]

*Place of jurisdiction*

1) All disputes arising between the FMA as EEA reference state authority and the AIFM shall be subject to the Law and jurisdiction of the Principality of Liechtenstein.

2) In derogation from (1) all disputes arising between the AIFM or the AIF and investors from the EEA may be governed by the Law and jurisdiction of another EEA Member State.

1 The Government shall establish the date of entry into force of Art. 143 in consideration of Art. 67 of Directive 2011/61/EU by ordinance. See Art. 190 (2).

## C. Marketing and management of EEA AIFs with EEA passport

Art. 144[1]

*Marketing of an EEA AIF with EEA passport in Liechtenstein as EEA reference state*

The provisions of Chapter II shall apply accordingly to the marketing of EEA AIFs managed by a non-EEA AIFM authorised in Liechtenstein, as EEA reference state, to professional investors in Liechtenstein.

Art. 145[2]

*Cross-border marketing of EEA AIFs with EEA passport in other in EEA Member States*

1) Art. 113 to 116 shall apply accordingly to the marketing of EEA AIFs managed by a non-EEA AIFM authorised in Liechtenstein, as EEA reference state, to professional investors in other EEA Member States. The FMA shall inform the ESMA and the home Member State authority of the EEA AIF that the non-EEA AIFM is authorised to perform marketing functions.

2) A non-AIFM whose EEA state of reference is another EEA Member State may market the shares and units of an EEA AIF under its management to professional investors in Liechtenstein, if the FMA as competent authority of the state of marketing has been sent the notification in accordance with Art. 117 by the competent authority of the EEA state of reference.

1 The Government shall establish the date of entry into force of Art. 144 in consideration of Art. 67 of Directive 2011/61/EU by ordinance. See Art. 190 (2).

2 The Government shall establish the date of entry into force of Art. 145 in consideration of Art. 67 of Directive 2011/61/EU by ordinance. See Art. 190 (2).

Art. 146[1]

*Cross-border management of EEA AIFs by non-EEA AIFMs*

1) When an EEA AIF having its registered office in another EEA Member State is managed by a non-EEA AIFM authorised in Liechtenstein, with Liechtenstein as EEA state of reference, by means of establishing a branch or cross-border activities, Art. 120 to 123 shall apply accordingly. In addition the non-EEA AIFM must be authorised for the management of this type of AIF by the FMA in accordance with Art. 29 (6). The FMA shall inform the ESMA of the types of AIF for which the AIFM has received authorisation.

2) An AIFM that has been authorised by its EEA reference state may perform the activities for which it has received authorisation in Liechtenstein, as host Member State, by establishing a branch or by means of cross-border activities. Art. 124 shall apply accordingly.

## D. Marketing of non-EEA AIFs with EEA passport

Art. 147[2]

*Authorisation*

1) The FMA as EEA reference state authority shall grant authorisation to a non-EEA AIFM if:

a) it complies with all provisions of Directive 2011/61/EU;
b) the following requirements in the relationship between the home Member State and third country have been met:
   1. Appropriate agreements exist governing the cooperation and exchange of information between the FMA and the third country authorities at the registered office of the non-EEA AIF, that enable the competent authorities to perform their duties in accordance with Directive 2011/61/EU.

1 The Government shall establish the date of entry into force of Art. 146 in consideration of Art. 67 of Directive 2011/61/EU by ordinance. See Art. 190 (2).

2 The Government shall establish the date of entry into force of Art. 147 in consideration of Art. 67 of Directive 2011/61/EU by ordinance. See Art. 190 (2).

2. 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).
3. The third country in which the non-EEA AIF is registered shall sign an agreement with the EEA reference state and each EEA state of marketing that fully complies with 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.

2) Marketing of non-EEA AIFs requires authorisation or admission. The following provisions shall apply accordingly to the authorisation or admission of the AIFs:

a) for marketing of units to investors in Liechtenstein, the provisions of Chapter II;
b) for marketing of units to professional investors in other EEA Member States, Art. 113 to 116.

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

a) the further requirements for authorisation in accordance with (1) for the protection of investors and the public interest;
b) the information and documents required as evidence of meeting the requirements under (1).

### Art. 148[1]

*Marketing of non-EEA AIFs in Liechtenstein as EEA state of reference*

The provisions of Chapter II shall apply accordingly to the marketing of non-EEA AIFs to professional investors in Liechtenstein by a non-EEA AIFM authorised pursuant to Art. 147.

1 The Government shall establish the date of entry into force of Art. 148 in consideration of Art. 67 of Directive 2011/61/EU by ordinance. See Art. 190 (2).

Art. 149[1]

*Cross-border marketing of non-EEA AIFs in other EEA Member States*

1) Art. 113 to 116 shall apply accordingly to the marketing of non-EEA AIFs by a non-EEA AIFM authorised under Art. 147; in derogation of Art. 114 the AIFM only has to comply with Directive 2011/61/EU in general terms, but this notwithstanding the management of the non-EEA AIF by the non-EEA AIFM must comply with the provisions of Directive 2011/61/EU. The FMA shall inform the following of the marketing authority granted to the non-EEA AIFM:

a) the ESMA;
b) the authorities of the marketing state, if AIF units are to be marketed in EEA Member States other than the EEA state of reference.

2) A non-EEA AIFM, whose EEA reference state is a different EEA Member State may market the units of a non-EEA AIF under its management to professional investors in Liechtenstein if the FMA, as competent authority in the state of marketing, has been sent the notification in compliance with Art. 117 by the competent authority of the EEA reference state.

3) The Government may establish more specific regulations by ordinance. It may in particular stipulate the requirements for meeting the condition under which the AIFM complies with 2011/61/EU in general terms.

## E. Marketing of EEA AIFs and non-EEA AIFs to professional investors on the strength of an authorisation

Art. 150

*Authorisation of an AIF managed by a non-EEA AIFM in Liechtenstein*

1) Notwithstanding Art. 134 to 149 the FMA may grant a non-EEA AIFM authorisation to market units of AIFs under its management in Liechtenstein, if the following conditions have been met:[2]

1 The Government shall establish the date of entry into force of Art. 149 in consideration of Art. 67 of Directive 2011/61/EU by ordinance. See Art. 190 (2).
2 Art. 150 (1) Introductory clause amended by LGBl. 2016 no. 46.

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, 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 Law 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) Otherwise the provisions of Chapter II shall apply accordingly.

3a) The marketing of units of a third country AIF does not require authorisation under (1) and (3), if:[1]

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

1 Art. 150 (3a) inserted by LGBl. 2016 no. 46.

a) additional requirements for authorisation in accordance with (1) for the protection of investors and the public interest;
b) the documents and particulars required as evidence that the requirements of (1) are met.

## F. Consequential obligations in the marketing of AIFs to private investors in Liechtenstein by non-EEA AIFMs

Art. 151

*Basic principle*

1) The provisions of Art. 119 and Art. 129 to 132 shall apply accordingly to the marketing of AIFs to private investors in Liechtenstein by non-EEA AIFMs.

2) If a non-EEA AIFM is authorised in an EEA state of reference, the authorisation must extend beyond (1) to the type of AIF marketed in Liechtenstein.

3) If the non-EEA AIFM is not authorised in any EEA Member State, in addition to (1) the requirements set out in Art. 150 must be met in particular.

4) The Government may establish more specific regulations by ordinance, it may in particular, insofar as this is necessary for the protection of investors or the public interest:
a) declare that individual or all requirements of Directive 2011/61/EU shall be binding for the non-EEA AIFM;
b) declare that the requirements placed on the depositary in accordance with Chapter IV shall be binding.

# XIII. Supervision

## A. General

Art. 152

*Basic principle*

Responsibility for the implementation of this Law is conferred on:

a) the Financial Market Authority (FMA);
b) the Princely Court of Justice;
c) the Conciliation Board.

Art. 153

*Data processing and disclosure*

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

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

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 be identi-

fied. 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 Law. 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.[1]

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.[2]

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;

1 Art. 154 (4) amended by LGBl. 2016 no. 46.
2 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 the implementation of this Law and the ordinance issued in association therewith. It shall take the appropriate action directly, in collaboration with other supervisory bodies or report matters to the Public Prosecution Service.

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

a) granting, amendment and withdrawal of authorisation and admission;[1]
b) approval of the constitutive documents and specimen documents;
c) scrutiny of the reports by the auditors;
d) the appointment of administrative agents and determination of their remuneration;
e) working to facilitate oversight with the competent authorities of other EEA Member States;
f) impose penalties for infringements as referred to in Art. 176.

1 Art. 156 (2) a) amended by LGBl. 2016 no. 46.

Art. 157

*Powers*

1) If the FMA becomes aware of contraventions of this Law or other abuses, it shall take the action required to restore the legal status and remedy the abuses.

2) The FMA is empowered in particular:

a) to demand all reports, information and documents required for the implementation of this Law from all parties subject to this Law and its supervision, the depositary, any person connected with the activities of the AIFM or the AIF and such persons who are under suspicion of conducting activities in contravention of the obligations of admission, authorisation and registration under this Law;

b) to issue decisions and orders; it may publish these after prior warning, if the AIFM or the manager of a qualified venture capital fund or a fund for corporate social responsibility continues to defy such decisions and orders and/or refuses to restore the legal status;[1]

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

d) to request the Public Prosecution Service to apply for measures to safeguard against the decline of assets in accordance with the Code of Criminal Procedure;[2]

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 contravention of this Law or the ordinances issued in association therewith.

3) The FMA is empowered to demand a quarterly report from the holders of authorisation in accordance with this Law, with reference to themselves and the depositary and from the AIFM for each AIF or sub-fund under its management. The Government may establish more detailed regulations by ordinance.

1 Art. 157 (2) b) amended by LGBl. 2016 no. 46.
2 Art. 157 (2) d) amended by LGBl. 2016 no. 161.

4) The Government may stipulate by ordinance that only qualified auditors are authorised to conduct the inspections and reports required under this Law 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 completion of applications, notices, reports and notifications required under this Law the applicants and those obliged to submit notice, reports and notifications must use them. Otherwise the FMA shall have the right to take the view that the application has not been submitted and the reporting and notification obligations have not been met.

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 Law, 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;
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. withdraw authorisation;

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);

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 or admission subject to conditions. Conditions may be of a formal, temporal or objective nature. The authorisation comes into effect upon fulfilment of the conditions. The FMA shall confirm the coming into effect of the admission or authorisation on request.

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 and publish specimens of constitutive documents, for which approval is considered to be granted if they are used in the authorisation procedure set out in Art. 21, unless this is contrary to the public interest.[1]

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

*Prospectus inspection*

1) The inspection by the FMA of prospectuses and investor information submitted in accordance with Art. 17 (4) b) and Art. 22 (4) b) is confined to verifying that:

1 Art. 159 (3) amended by LGBl. 2016 no. 46.

a) the constitutive documents or a reference address for them are enclosed;
b) the content is compatible with the minimum requirements pursuant to Annex XV of EU Regulation No. 809/2004 for AIFs of the closed-end type in which the units are securities, or in other cases with the minimum requirements with regard to form established by the Government by ordinance;
c) an assurance on the part of the management of the AIFM is included, according to which the information of significance is correct and up-to-date;
d) insofar as they are included, the annual reports have been certified by the auditor;
e) the prospectus and the information is made available to the investors in accordance with the requirements of this Law.

2) If the sequence of the presentation differs from the order specified in the Regulation or lists other bullet points, the AIFM shall submit a summary, showing compliance with the requirements of Annex XV of EU Regulation no. 809/2004 or the minimum requirements established by the Government by ordinance.

3) The FMA is under no obligation to check the accuracy of the contents.

### 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.

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.

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.

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 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) In other respects EEA Law shall apply in accordance with the EEA Agreement.

### 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) In other respects EEA Law shall apply in accordance with the EEA Agreement.

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 Law, 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 Law 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, bankruptcy or similar proceedings in respect of an AIF and undertakings that contribute to its business activity;
c) are charged with the supervision of persons responsible for inspection of the accounting of insurance undertakings, banks, credit institutions, investment firms or other financial institutions.

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

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

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 the instruction of the competent

domestic authorities referred to in (1) and (2) inform the communicating authorities of the name and exact function of the persons to whom the information in question is to be sent.

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 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.[1]

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.

1 Art. 168 (2) amended by LGBl. 2016 no. 46.

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) The Government may establish more specific regulations by ordinance in accordance with EEA Law, in particular concerning the content of the information to be exchanged under (1).

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.

## 2. Cooperation with competent authorities of third countries

Art. 171

*Basic principle*

The FMA may exchange information with the competent authorities of third countries, provided that the disclosure of information is necessary for the protection of investors and the public interest. Art. 167 and 168 shall apply mutatis mutandis.

## 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.

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 assessment of the application of Art. 147 (2)a) and b) by the competent authority of the EEA reference state;

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 full application for authorisation of an AIFM or a self-managed AIF within three months from receipt, an appeal may be lodged with the FMA Complaints Commission.

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 Law are applied.

5) Unless specified otherwise in this Law 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, depositaries, administrators and selling agents.

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.

## 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 or an AIFM, or a person acting as auditor who knowingly violates the obligation of confidentiality or induces or seeks to induce such violation;

b) any person who manages an AIF or markets its units or shares in Liechtenstein or accepts or holds assets of third parties for that purpose without the authorisation or admission required under Art. 16;

c) any person operating as an AIFM without authorisation pursuant to Chapter III Section A;

d) any person who knowingly makes false statements or withholds essential information in the prospectuses, periodic reports 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;

e) any person who markets the units and shares of an AIF that may only be marketed to professional investors, to private investors without the required authorisation or admission;

f) any person operating as a small AIFM without being registered as required in accordance with Art. 3 (4);

g) any person operating without the authorisation as an administrator, risk manager or selling agent as required under Art. 65 and 69.

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) any person who uses designations contrary to Art. 27 (4);

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 set out in Art. 22 (3) to prevent marketing of AIFs to private investors and failing to monitor marketing activities adequately in the event of indirect marketing;

i) any person in breach of the obligation to make an application for authorisation within the time allowed pursuant to Art. 3 (8) b);

k) a depositary in breach of the obligations set out in Art. 59 (1).

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 makes inadmissible, false or misleading statements in the publicity for an AIF or an AIFM;

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;

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) any person who presents key information for investors referred to in Art. 17 (4) c) or 22 (4) c) or other brief information specifically intended for private investors concerning AIFs, in a form that is in all probability incomprehensible to private investors;

q) any person who makes statements in the key information for investors in accordance with Art. 17 (4) c) or 22 (4) c) that are inaccurate, incomplete, incomprehensible or late, or fails to make such statements;

r) an auditor who is in breach of his obligations under this Law, in particular under Art. 109 (3), Art. 110 (1) and (3) or Art. 111 (1) and (2);

s) any person who, contrary to Art. 20 (1) and Art. 25 (1) does not apply for approval for changes to the constitutive documents, or contrary to Art. 25 (2) for approval for a change of AIFM, depositary, administrator or risk manager or contrary to Art. 25 (3) notifies a change in the auditor or a manager of the depositary incorrectly or late or fails to notify at all;

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, contrary to Art. 3 (6) fails to comply with the reporting obligation to the FMA concerning the conclusion, the revocation and the transfer of the organisation contract.

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. 27 (1) or a designation of legal form or abbreviation other than those per-

mitted under Art. 27 (2) or if the AIF with variable capital contrary to Art. 9 (9) dispenses with a designation of legal form or abbreviation permissible under Art. 27 (2), 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 the legal status has been restored.

### 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.

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[1]

### Art. 178

*Responsibility*

If infringements are committed in the business operation of a legal person, a collective partnership, a limited partnership or a 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.

1 Art. 177 (5) amended by LGBl. 2016 no. 177.

Art. 179

*Publication of sanctions; Binding force of convictions*

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 is proportionate.

2) A conviction under this Law is not binding for the civil court judges with reference to the assessment of guilt and illegality and the determination of the loss.

Art. 180

*Reporting obligations*[1]

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.[2]

## XVI. Transitional and final provisions

Art. 181

*Implementation ordinances*

The Government shall enact the required ordinances for the implementation of this Law.

1 Art. 180 Subject heading amended by LGBl. 2016 no. 46.
2 Art. 180 (2) inserted by LGBl. 2016 no. 46.

Art. 182

*Electronic provision of legal provisions*

The FMA shall make this Law 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[1]

*Transitional provisions for the legislative amendment of 2 December 2015*

1) Notwithstanding Art. 28 et seq. the following do not require authorisation as an AIFM under this Law:

a) persons who, before the coming into effect of the legislative amendment of 2 December 2015, exclusively manage AIFs of the closed-end type and do not initiate additional investments after the coming into effect of the legislative amendment of 2 December 2015; authorisation is however required for the issue of new units or shares or the acquisition of new investments;

b) persons who, before the coming into effect of the legislative amendment of 2 December 2015, manage closed-end AIFs, whose subscription period for investors expires before the coming into effect of the legislative amendment of 2 December 2015 and which were launched for a period of up to three years after the coming into effect of the legislative amendment of 2 December 2015; in such a case only the provisions concerning the annual report under Art. 104 of this Law and/or Art. 22 of Directive 2011/61/EU and concerning the taking over of non-listed companies under Art. 96 to 101 of this Law and/or Art. 26 to 30 of Directive 2011/61/EU have to be complied with.

2) The provisions concerning cross-border marketing and cross-border management by EEA AIFMs pursuant to Chapter XI of this Law shall not apply to the marketing of AIFs that are the subject of a regular public offering through a prospectus, issued and published in accordance with Directive 2003/71/EC before the coming into effect of the legislative amendment of 2 December 2015, as long as this prospectus is valid.

1 Art. 183 amended by LGBl. 2016 no. 46.

Art. 184[1]

Repealed

Art. 185[2]

Repealed

Art. 186[3]

Repealed

Art. 187[4]

Repealed

Art. 188[5]

Repealed

Art. 189

*Premature applications for authorisation of an AIFM and authorisation or admission of an AIF*

Applications for authorisation of AIFMs and applications for authorisation or admission of the AIFs under their management may be submitted as from 1 April 2013; such applications are to be handled in accordance with the provisions of Chapter II and III. The authorisation or admission shall take effect from the coming into force of this Law at the earliest.

1 Art. 184 repealed by LGBl. 2016 No. 46.
2 Art. 185 repealed by LGBl. 2016 No. 46.
3 Art. 186 repealed by LGBl. 2016 No. 46.
4 Art. 187 repealed by LGBl. 2015 No. 196.
5 Art. 188 repealed by LGBl. 2016 No. 46.

Art. 190

*Coming into effect*

1) Subject to Art. 189 and (2) this Law 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.[1]

By proxy for the Prince of Liechtenstein:
signed *Alois*
Hereditary Prince

signed *Dr. Klaus Tschütscher*
Head of the Princely Government

1 Art. 190 (2) amended by LGBl. 2013 no. 242.

## 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 Law[1] 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 Law, 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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1 Came into effect: 1 February 2015.