Investment Funds in Luxembourg

A TECHNICAL GUIDE
Investment Funds in Luxembourg
A Technical Guide - September 2007
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Since our last edition in September 2006, the Luxembourg fund industry has grown by over 22% with assets now exceeding Euro 2 trillion. Over half of the total increase of around Euro 367 billion came from new net sales. The growth has come from all sub-sectors – traditional, alternative (hedge funds, private equity and real estate) and the so-called sophisticated UCITS. The sophisticated UCITS in particular have created a lot of interest with all the global players creating such products for their clientele.

Luxembourg has further consolidated its position as an international investment fund distribution hub. Luxembourg continues to enter new markets and expand its market share within its existing markets. In fact over 75% of all funds with “true” cross border distribution are domiciled in Luxembourg. This leading position is not an accident of fate - it truly reflects the unique pool of critical competencies that Luxembourg has established over the last 20 odd years to serve the investment fund industry. This is reflected in practical terms by the depth of experience among its service providers, by the speed the regulator transmits investment fund EU directives into domestic legislation and its ability to create innovative legal frameworks to serve the investment fund industry and by the proactive and leading role of the Luxembourg Investment Fund Association (“ALFI”) in shaping European investment fund regulations as well as its continuous dialogue with the key actors of the global investment fund industry.

What does the future hold? – there are several key macro developments that will directly impact the Luxembourg fund industry. These include the convergence of traditional and alternative asset classes – in future many of the existing alternative strategies may be created as sophisticated UCITS products, and, given the current sub-prime loan issue, there may be a closer look at the level of regulation for certain fund products with certain of these being subject to a greater level of regulation.

New products, especially those within Sophisticated UCITS, will continue to evolve in particular for the institutional and high net worth investors where investment banks, global asset managers and independent boutique asset managers see new opportunities to create products for their clientele. It will be important that the related risk management processes keep pace with the evolution of such products. As regards new markets, there will continue to be interesting opportunities across the globe especially in Asia (with China opening up its market) and the Americas. Here in Europe there will be a continued shift away from in-house distribution models to open (at a minimum guided) architecture where clients and their advisers will chase “best in breed”.

Given the wave of new regulations and legislation over the last few years such as UCITS III directives and MiFId (and with more to come), there will be a renewed and increased focus on interpretation and implementation.

As regards future asset flows, again given the current sub-prime issue and related market volatility we are likely to experience a period of consolidation over the coming months. The Traditional Asset Managers are also likely to benefit from a shift “back to basics” as far as investment strategies are concerned.

We hope that you find this 2007 edition useful. Please do not hesitate to contact us with any queries.

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Figures as of 31 May 2007 and the previous 12 month period.
About Luxembourg

The Grand Duchy of Luxembourg is a sovereign state of over 2,500 square kilometers (1,000 square miles), bordered by Belgium, France and Germany.

It has a population of over 476,000 of which 42% are foreigners. The city of Luxembourg has a population of nearly 84,000. Each working day over 130,000 cross-border workers travel to the Grand Duchy from neighboring Belgium, France and Germany, making up 44% of the workforce.

Luxembourg was a founding member of the European Union (EU) and belongs to other major international organizations including the UN, NATO and the OECD. Several of the EU’s important institutions are located in Luxembourg City, such as the European Investment Bank and the European Court of Justice. The Euro has been the official currency of Luxembourg since 1 January 1999.

The official languages of Luxembourg are French, German and Luxembourgish. However, because of the success of Luxembourg in attracting foreign business and personnel, and the language skills of the local population, English is now widely used in the financial services sector.

Luxembourg’s economy used to be based on agriculture and steel. Since the 1970’s, Luxembourg City has developed as a major financial centre with a favorable environment for international banks and investment funds. Luxembourg also has an internationally recognized stock exchange.

About the Investment Fund Industry in Luxembourg

Luxembourg has become one of the leading locations for investment funds (also referred to as undertakings for collective investment or UCIs). The first fund was established in 1959 and there are now 2,302 fund vehicles, comprising 9,900 funds (sub-funds and single funds), with net assets of €2.024 billion (as at 31 May 2007), analyzed as follows:

<table>
<thead>
<tr>
<th></th>
<th>Number of UCIs</th>
<th>Net assets in € bn</th>
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<tr>
<td></td>
<td>FCP</td>
<td>SICAV</td>
</tr>
<tr>
<td>2002 Law</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Part I (UCITS* - EU passport)</td>
<td>912</td>
<td>556</td>
</tr>
<tr>
<td>- Part II</td>
<td>198</td>
<td>371</td>
</tr>
<tr>
<td>SIF Law</td>
<td>150</td>
<td>103</td>
</tr>
<tr>
<td>Total</td>
<td>1,260</td>
<td>1,030</td>
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*Undertakings for Collective Investment in Transferable Securities

The success of Luxembourg in attracting investment funds, and becoming a major financial centre, may be attributed to political stability, the authorities’ encouraging attitude to foreign capital and investment, favorable and well defined legislation, an appropriate tax regime, the existence of the required professional expertise and the availability of multi-lingual staff.

Luxembourg investment funds are authorized and supervised by the Commission for the Supervision of the Financial Sector (Commission de Surveillance du Secteur Financier – CSSF).

The Luxembourg fund industry has, since 1988, been successfully represented and promoted by the Luxembourg Investment Fund Association (Association Luxembourgeoise des Fonds d’Investissement - ALFI).
The Purpose of this Technical Guide

The purpose of this technical guide is to provide, in a clear and concise format, an introduction to Luxembourg as a centre for funds, the types of funds available and a summary of the regulations applicable to the formation and operation of funds. It also covers the regulations applicable to management companies based in Luxembourg.
Overview of the Guide

1. Regulations Applicable to Investment Funds

Chapter 1 provides an overview of the legislation applicable to investment funds, outlines the choices of structure, and the key characteristics of funds under each of two fund laws - the 2002 Law (the principal law) and the SIF Law (relating to informed investor funds). It also provides a list of the current primary regulations.

2. Investment and Borrowing Rules

Chapter 2 outlines the investment and borrowing rules for UCITS funds and the general rules for other funds under the 2002 Law. For UCITS funds, clarifications are also provided on risk management.

3. Specialized UCIs

Chapter 3 outlines the investment rules for SIF Law funds and specific rules for the following types of specialized non-UCITS funds under the 2002 Law:
- Hedge funds
- Venture capital funds
- Funds investing in futures and options
- Real estate funds

4. Formation Procedures and Supervision

Chapter 4 describes the procedures to be followed when setting up an investment fund in Luxembourg and the roles of the various investment fund service providers. It provides details of the content to be included in the prospectus (for all 2002 Law funds) and simplified prospectus (for UCITS funds). Ongoing supervisory requirements for funds and the conditions for listing them on the Luxembourg stock exchange are also outlined.

5. Administration

Chapter 5 describes the roles and responsibilities of the Luxembourg central administration.

6. Issue and Repurchase of Shares and Payment of Dividends

Chapter 6 outlines the requirements regarding the issue and purchase of shares or units, and the payments of dividends.

7. Custodian

Chapter 7 describes the roles and responsibilities of the Luxembourg custodian.

8. Reporting and Audit Requirements

Chapter 8 details the annual and semi-annual reporting requirements, monthly and annual financial information to be sent to the central agency responsible for the collection of such information, and audit requirements.

9. Errors, Materiality and Compensation to Investors

Chapter 9 covers the treatment of NAV computation errors and compensation of losses arising from non-compliance with investment restrictions.
10. Taxation of UCIs

Chapter 10 outlines taxes applied to Luxembourg funds, including capital duty, subscription tax, taxation of directors’ fees, withholding taxes on dividends and revenues, taxation on dissolution and the application of the EU Savings Directive.

11. Value Added Tax (VAT)

Chapter 11 describes the VAT regime for services provided to Luxembourg investment funds.

12. Expenses

Chapter 12 lists the formation and annual running expenses of Luxembourg investment funds.

13. Marketing

Chapter 13 outlines the requirements and procedure for marketing the shares of a Luxembourg UCITS in other EU Member States, requirements for marketing the shares of a UCITS from another EU Member State in Luxembourg and Luxembourg marketing regulations.

14. Management Companies

Chapter 14 outlines the rules applicable to management companies of Luxembourg investment funds. These are divided into management companies which manage UCITS funds and other funds, and other management companies.

15. Current and Future Developments in Investment Fund Legislation

Chapter 15 outlines regulatory developments over the last year relevant to Luxembourg investment funds, expected future regulatory developments in Luxembourg, EU clarifications regarding eligible assets for UCITS and the proposals for updating of the UCITS regime at EU level.
1. Regulations Applicable to Investment Funds

1.1. Introduction

Overview

The principal regulations applicable to Luxembourg investment funds (Undertakings for Collective Investment or UCIs) comprise laws, circulars issued by the supervisory authority, the CSSF, and also certain Grand-Ducal regulations.


The other law on UCIs is the Specialized Investment Fund Law of 13 February 2007 (the SIF Law). Funds under the SIF Law may be distributed to “informed investors”. This new law replaced the law of 19 July 1991 applicable to Institutional UCIs whose shares are not offered to the public (the 1991 Law). The SIF Law provides continuity for such funds by, for example, continuing to implement previously available fund structures and not adding any additional restrictions.

Implementation of the European UCITS Directive


The UCITS Directive legislation enables UCIs to have a European passport which means that they are freely marketable throughout the EU (providing local marketing requirements are met).

Recent clarifications of the UCITS regime – eligible assets and marketing in host Member States

In March 2007, the European Commission finalized its implementing Directive (Directive 2007/16/EC) which sets out criteria for assessing whether different types of financial instruments are eligible assets for inclusion in UCITS funds. The Directive closely follows the advice of the Committee of European Securities Regulators (CESR), which itself went through an industry consultation process. The Directive is complemented by CESR guidance (dated March 2007) on the application of these criteria. The clarifications provided by the Directive and CESR are contained in Section 15.3.

The European Commission also issued clarifications regarding the marketing of investment funds in other Member States in March 2007. For further details, see Chapter 13.

Proposals to overcome shortcomings of the UCITS regime

The European Commission’s Green Paper in July 2005 highlighted the following shortcomings of the UCITS regime:

- Bottlenecks and failures of the product passport
- Sub-standard investor disclosures
- Proliferation of small and inefficient funds
- Obstacles to functional and geographic specialization.

Following extensive consultations with the investment fund industry and stakeholders in an attempt to address these shortcomings, the European Commission issued its long awaited White Paper on *Enhancing the Single Market Framework for Investment Funds* in November 2006.

In March 2007, the European Commission published, its *Initial Orientations of Possible Adjustments to UCITS Directive (85/611/EC)*, for public consultation. The key amendments proposed cover the following areas:

- Simplification of the notification procedure
- Simplified Prospectus/Key Investor Information
- Facilitating fund mergers
- Implementing master-feeder structures
- Management company passport
- Supervisory cooperation.

The Initial Orientations and the White Paper are further discussed in Section 15.4.

### 1.2. Types of Structures of UCIs

UCIs may be established under different structures.

In addition, such structures may take the form of a single fund or an umbrella fund.

#### 1.2.1. Basic Structures

**a) Common Fund**

A common fund (*Fonds Commun de Placement*, frequently referred to as an FCP) is similar to the unit trust in the UK or the mutual fund in the USA. It is a co-proprietorship whose joint owners are only liable up to the amount they have contributed. It has no legal personality and must be managed by a Luxembourg management company.

**b) Investment Company**

(*eg investment company with variable capital – société d’investissement à capital variable (SICAV) - investment company with fixed capital - société d’investissement à capital fixe (SICAF)*)

An investment company with variable capital, (frequently referred to as a SICAV) is a limited company whose capital is always equal to its net assets. No formalities are required for increases and decreases in capital.

UCIs established as SICAVs (and SICAFs under Part I of the 2002 Law – UCITS SICAFs) are also subject to the Luxembourg commercial company law (in particular the Law of 10 August 1915 on commercial companies, as amended – the 1915 Law) insofar as the law the UCI is under (the 2002 Law or the SIF Law) does not derogate from it.

Although it is a legal entity and does not require a management company, a UCITS investment company, subject to the 2002 Law, must either appoint an approved management company or designate itself as a self-managed investment company and comply with the requirements relating to capital, management and infrastructure.

Fixed capital investment companies (frequently referred to as SICAFs) may be either open-ended or closed-ended. Changes to a SICAF’s capital, which may be made within the limits of its authorized capital, require notarization and publication. The authorized capital may be increased by a general meeting of shareholders.

As in the case of a SICAV, other investment vehicles which are UCITS subject to the 2002 Law must either appoint an approved management company or designate itself as a self-managed investment company and comply with the requirements relating to capital, management and infrastructure.

While a 2002 Law SICAV must be set up as an public limited company (*société anonyme* - S.A.), a SIF Law SICAV can also take other legal forms (see Section 1.3.2.).
1.2.2. Umbrella Funds

Umbrella funds (otherwise known as multiple compartment UCIs) are single legal entities comprising two or more compartments (sub-funds). They are now the most favored vehicle for the larger promoters of UCIs.

Multiple compartment UCIs are recognized under Article 133 of the 2002 Law and Article 71 of the SIF Law. Multiple compartment UCIs may be constituted provided the constitutional documents expressly permit it and the prospectus or issuing document specifies the investment policy of each compartment. A multiple compartment UCI is a single legal entity. However, by way of derogation from the Luxembourg Civil Code, the assets of a compartment are only subject to the liabilities of that compartment (i.e. segregation of assets and liabilities on a compartment by compartment basis), unless the constitutional documents stipulate the contrary.

Investors may purchase shares (or units in the case of an FCP) in compartments which have different investment policies and segregated assets and accounting records. Investors have the opportunity to “switch” all or part of their investment from compartment to compartment with, in principle, no charge. Promoters may consequently retain those investors who wish to change their investment strategy.

Chapter J of Circular 91/75 stipulates the following conditions for multiple compartment common funds (FCPs) and multiple compartment investment companies (SICAVs or SICAFs):

a) All multiple compartment UCIs

- The constitution of a multiple compartment UCI must ensure that each compartment is treated as a separate entity having its own funding, capital gains and losses, expenses, etc.
- The opening of a new compartment requires CSSF approval and a prospectus update (for example by means of an insert)
- A compartment may not invest in another compartment of the same UCI
- Have a single name
- Have a single custodian (which may use correspondents)
- Have a single independent auditor
- Unit/shareholders may, in principle, be able to move from one compartment to another without charge
- Issue and repurchase of units of each compartment must be executed at a price obtained by dividing the net asset value (NAV) of each compartment by the number of units in circulation
- Investment and borrowing restrictions specified by the Law must be complied with by each compartment, except those restrictions relating to significant influence over an issuer which also apply to all compartments taken together

b) Multiple Compartment FCPs

- Have a single management company and a single board of directors of the management company
- Have a single set of management regulations which (subject to any exceptions approved by the CSSF) define for each compartment the same general rules of valuation, supervision, repurchase and investment restriction
- Management regulations must state the currency in which the combined financial statements of the UCI is expressed, obtained by aggregating the various compartments
- Certificates or other documents evidencing the rights of unitholders may only differ in respect of the designation of the particular compartment for which they are issued

c) Multiple Compartment SICAVs and SICAFs

- NAV of a share is calculated by reference to the net assets of the compartment for which that share has been issued. The value of shares in respect of the same company consequently differs from one compartment to the next
- Despite this inequality, each share still gives the right to one vote. The CSSF recommends that the equality of voting rights is emphasized in the statutes. In addition, the statutes should distinguish between decisions in which all shareholders have an interest and which are taken at the company’s general meeting of shareholders and those concerning the particular shareholders of one compartment which are taken at the general meeting of shareholders of that compartment
• Every company must have a capital represented by shares, which consequently implies that:
  - There is a single share capital expressed in a single currency
  - The nominal or par value is expressed in that same currency
  - The annual accounts are also expressed in that same currency

Consequently, while the NAV of each compartment is expressed in the currency of the compartment, the share capital of the company is expressed in a single currency. The CSSF recommends that this be stated in the statutes.

• The statutes must, as for a single portfolio company, list the conditions for suspension of the NAV calculation and the issue and repurchase of shares. They must also provide for the conditions of suspension relating to an individual compartment.

### 1.2.3. Co-management and pooling of assets

To ensure efficient portfolio management, and providing the investment policies so permit, management may decide to co-manage, or pool, certain assets within a fund (intra-pooling) or between two or more Luxembourg fund vehicles (extra-pooling). Cross-border pooling between different national jurisdictions may also be permitted. The assets being co-managed are commonly referred to as a “pool”. Pooling enables different compartments of a fund or funds to invest in a pool or several pools of assets. This arrangement is an administrative process that can reduce investment management, administration and custody costs without changing the legal rights and obligations of shareholders.

The pools are not legal entities and are not directly accessible to investors. Each of the co-managed funds remains entitled to its specific assets. Where the assets of one of more fund are pooled the assets of the pool attributable to each fund will initially be based on the value of the assets contributed to the pool. Subsequently, each fund’s share of the pool will vary according to withdrawals from and additional allocations to the pool.

Each line item held within the pool, as well as all gain and losses made by the pool, must be allocated to each fund investing in the pool in accordance with the ratio of the pool each fund is entitled to.

### 1.3. Establishing New UCIs

#### 2002 Law or SIF Law

New UCIs can either be established under the 2002 Law on UCIs or under the SIF Law of 13 February 2007.

#### FCP or Investment Company

The choice as to whether to create a fund as an investment company or an FCP is primarily based on tax, operational and marketing considerations.
Structure Choice in Schematic Form

Investment Funds created under the 2002 Law

Part I
UCITS Investment Funds (qualify for European Distribution Passport – may be sold to retail and institutional investors with minimum formalities).

Part II
Investment Funds (do not qualify for European Distribution Passport - includes hedge, private equity, real estate and derivative investment funds – may be sold to both retail and institutional investors but subject to each country’s local distribution rules).

FCP or SICAV or Other (SICAF)
Investment Funds may take the form of an open ended legal entity (SICAV), a closed ended legal entity (SICAF), or a contractual form which must have a management company (FCP). These different entities may create sub-funds, each with a different investment policy. The rights of investors and of creditors concerning a sub-fund or which have arisen in connection with the creation, operation or liquidation of a sub-fund are limited to the assets of that sub-fund (i.e. protected cell concept), unless a clause included in the constitutional documents provides otherwise.

SICAVs under the 2002 Law must be set up as public limited companies (S.A.s).
SICAVs/SICAFs created under Part I of the 2002 Law need to be either self-managed or appoint a management company. This entails meeting certain substance and capital requirements.
All FCPs must have a management company. Management companies of Part I FCPs must fulfil the substance and capital requirements referred to above.

Investment Funds created under the SIF Law
(may be sold to informed investors but subject to each country’s local distribution rules)

FCP or SICAV or Other (SICAF)
Investment Funds may take the form of an open ended legal entity (SICAV), a closed ended legal entity (SICAF), or a contractual form which must have a management company (FCP). These different entities may create sub-funds, each with a different investment policy. The rights of investors and of creditors concerning a sub-fund or which have arisen in connection with the creation, operation or liquidation of a sub-fund are limited to the assets of that sub-fund (i.e. protected cell concept), unless a clause included in the constitutional documents provides otherwise.

SICAV / SICAF
May be set up as a:
- public limited company (S.A.)
- partnership limited by shares (S.C.A.)
- private limited liability company (S.à r.l.)
- co-operative organized as an S.A.

FCP
All FCPs must have a management company established under Luxembourg Law and which complies with the provisions for management companies of funds under 2002 Law.
1.3.1. UCIs Established under the 2002 Law

a) Definition of a UCI under the 2002 Law

The following conditions must be complied with in order to fall under the 2002 Law:

**Collective Investment of Funds**

There must be collective investment of funds which is understood to be the mutual investment of capital raised from individual investors. Such investment may be made in transferable securities or other assets. The objective of this investment is to derive a yield or obtain capital appreciation. Consequently a UCI may normally not hold participations as this implies having a position of influence or even control and an intention to hold long-term. As an exception, however, UCIs which invest in venture capital (see Section 2.2.) may hold participations as this is indicative of the nature of such investment policy rather than a desire for control.

**Raised from the Public**

The funds applied in collective investment must have been raised from the public. The public is approached when the raising of funds is not confined to a restricted circle of investors.

**Diversification of Risk**

The investments arising from the collective investment of funds must be made according to the principle of diversification of risk, in order to prevent the risk attached to an excessive concentration of investments.

b) Distinction between Part I and Part II UCIs

The 2002 Law distinguishes between UCIs set up under Part I (UCITS with the European passport) and UCIs set up under Part II. UCITS are freely marketable throughout the EU countries with a minimum of formalities while Part II UCIs may only market in other EU countries after complying with the specific conditions stipulated by the authorities in the country concerned. Part II UCIs may also be sold to retail and institutional investors, but are subject to each country’s local distribution rules.

c) Requirements of a Part I UCITS

In addition to complying with the definition of a UCI in Section 1.3.1.a), a UCITS must:

- Invest in transferable securities and/or other liquid financial assets (money market instruments, cash deposits, other UCIs and financial derivatives)
- Comply with specific investment rules (see Section 2.2.)
- Be open-ended (investors are able to sell their shares back to the UCI, either directly or indirectly)
- Have an approved UCITS’ management company (under Chapter 13 of the 2002 Law), or alternatively in the case of an investment company (SICAV/SICAF), it is self-managed and complies with the requirements similar to those of such an approved management company (see d)).

In accordance with Circular 03/88, specifically excluded from Part I are UCITS:

- Which are closed-ended
- Which raise capital without promoting the sale of their shares to the public within the EU
- The shares of which, under their constitutional documents, may only be sold outside the EU (even though they may be quoted on the LSE)
- For which the rules laid down in Chapter 5 of the 2002 Law (see Section 2.2.) are inappropriate in view of their investment and borrowing policies and when such policies:
  - Permit investment of 20% or more of net assets in assets other than those permitted under Part I
  - Permit investment of 20% or more of net assets in venture capital
  - Permit borrowing on a permanent basis and for investment purposes up to at least 25% of net assets
- Which are multiple compartment UCIs with at least one compartment which does not fall under Part I due to its investment and borrowing policy.
d) Requirements of a Self-Managed Part I UCITS

As stated in Section 1.3.1.c), a UCITS investment company (SICAV/SICAF) must either appoint a management company (which complies with Chapter 13 of the 2002 Law – see Chapter 14) or designate itself as “self-managed” (FCPs have to appoint a management company). The requirements of a self-managed investment company as stated in Articles 27 and 40 of the 2002 Law and in Circulars 03/108 and 05/185 may be summarized as follows:

- Prior authorization from the CSSF must be obtained.
- Minimum capital at date of authorization is €300,000. (The minimum capital for all UCIs of €1,250,000 has to be attained within six months).
- The application must be accompanied by a business plan (program of activity), setting out, inter alia, the organizational structure of the UCITS.
- The directors are of sufficiently good repute and have appropriate experience. The names of the directors and of every person succeeding them must be communicated to the CSSF. The conduct of the business must be decided by at least two persons meeting such conditions.
- Where close links exist between the UCITS and other parties, the CSSF will only grant authorization if they do not prevent the effective exercise of its supervisory functions. Nor will authorization be granted if the regulations of a non-member state governing such linked parties prevent effective exercise of the CSSF’s supervisory functions.
- It may delegate its own functions to third parties with the same conditions applicable to Chapter 13 management companies (Article 85 of the 2002 Law – see Section 14.2.(22)), where the term management company shall be construed as SICAV/SICAF.
- It must comply with the rules of conduct applicable to Chapter 13 management companies (Article 86 of the 2002 Law – see Section 14.2.(23)), where reference to the management company shall be construed as SICAV/SICAF.
- It may only manage assets of its own portfolio and may not, under any circumstances, manage assets on behalf of a third party.
- It must have sound administrative and accounting procedures, control and safeguard arrangements for electronic data processing and adequate internal control mechanisms.
- In accordance with Circular 03/108 of 30 July 2003, financial information has to be sent to the CSSF on a quarterly basis. The report formats are included as appendices to this Circular. Reports are to be received by the CSSF by the 20th of the following month.

1.3.2. UCIs Established under the SIF Law

The 1991 Law relating to Institutional UCIs was replaced by the Specialized Investment Fund Law of 13 February 2007 (SIF Law) which provides a complete stand-alone text. Funds created under the 1991 Law became subject to the SIF Law on 13 February 2007. The SIF Law provides continuity for such funds by, for example, continuing to implement previously available fund structures and not adding any additional restrictions.

a) Definition of a UCI under the SIF Law

As under the 1991 Law, the primary objective of a SIF must be the collective investment of the funds raised from its investors while applying the principle of risk diversification.

Collective Investment of Funds

There must be collective investment of funds which is understood to be the mutual investment of capital raised from individual investors.

Raised from Informed Investors

As stated in Section 1.3.1., the 2002 Law only permits UCIs whose funds are raised from the public. The SIF Law introduces a qualified investor/professional investor scheme. Funds under the 1991 Law could only be sold to ‘institutional investors’ such as banks, insurance companies, pension funds, large companies and other investment funds.

SIFs must be reserved for informed investors who are able to understand and assess the risk associated with investment in such a fund. An informed investor is:

- An institutional investor
• A professional investor
• Any other type of investor who has declared in writing that he is an informed investor, and either
  - Invests a minimum of €125,000 or
  - Has an appraisal from a bank, an investment firm or a management company (all of these with a European passport)\(^3\) certifying that he has the appropriate expertise, experience and knowledge to adequately understand the investment made in the fund.

**Diversification of Risk**

The investments arising from the collective investment of funds must be made according to the principle of diversification of risk.

**b) Structuring a SIF**

The SIF may be structured as an open-ended legal entity (SICAV), a closed-ended legal entity (SICAF) or a contractual form which must have a management company (FCP).

These different entities may create sub-funds each with a different investment policy. The rights of investors and of creditors concerning a sub-fund or which have arisen in connection with the creation, operation or liquidation of a sub-fund are limited to the assets of that sub-fund (i.e. segregation of assets and liabilities on a compartment by compartment basis), unless a clause included in the constitutional documents provides otherwise.

An FCP must be managed by a management company established under Luxembourg law (see Chapter 14).

A SICAV or a SICAF can be set up as a public limited company (SA), a partnership limited by shares (SCA), a private limited liability company (S.à r.l.) or a cooperative organized as an SA.

While the shares or units of a SIF Law SICAV or SICAF must be fully subscribed, only 5\% of the amount of the subscription per share or unit must be paid up in cash or by means of a contribution other than cash.

### 1.4. Summary of Current Primary Regulations

<table>
<thead>
<tr>
<th>Regulation</th>
<th>Description</th>
</tr>
</thead>
</table>
| Law of 20 December 2002 on UCIs (the 2002 Law) | General law on UCIs, which also incorporated the UCITS III amended Directive. It is structured as follows:  
• Part I UCITS (European passport)  
• Part II Other UCIs  
• Part III Foreign UCIs  
• Part IV Management companies  
• Part V General provisions |
| Law of 13 February 2007 on Specialized Investment Funds (SIFs) the securities of which are not intended to be placed with the public (the SIF Law) | This law replaced the 1991 Law with a complete stand-alone text. Funds created under the 1991 Law became subject to the SIF Law on 13 February 2007. |
| Law of 10 August 1915 on commercial companies, as amended | This is the basic law on commercial companies. It is applicable to SICAVs where the law they are under does not derogate from it, and 2002 Law Part I SICAFs (UCITS SICAFs). |

\(^3\) A credit institution as defined in Directive 2006/48/EC, an investment firm as defined in Directive 2004/39/EC or a management company as defined in Directive 2001/107/EC.
<table>
<thead>
<tr>
<th>Regulation</th>
<th>Brief description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Law of 5 April 1993 on the Financial Sector, as amended (the 1993 Law)</td>
<td>General law on the financial sector structured as follows:</td>
</tr>
<tr>
<td></td>
<td>• Part I: Access to professional activities in the financial sector</td>
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<tr>
<td></td>
<td>• Part II: Professional obligations, prudential rules and rules of conduct in the financial sector</td>
</tr>
<tr>
<td></td>
<td>• Part III: Prudential supervision of the financial sector</td>
</tr>
<tr>
<td></td>
<td>• Part IV: Reorganization and winding up of certain professionals of the financial sector</td>
</tr>
<tr>
<td></td>
<td>• Part V: Penalties</td>
</tr>
<tr>
<td></td>
<td>• Part VI: Amendments, repeals and transitional provisions</td>
</tr>
<tr>
<td>Law of 20 June 2005 on the EU Savings Directive</td>
<td>This law implements the directive on the taxation of savings income in the form of interest payments from debt claims.</td>
</tr>
<tr>
<td>Circular 91/75 of 21 January 1991 on UCIs</td>
<td>This substantial Circular (16 chapters) complemented the 1988 Law.</td>
</tr>
<tr>
<td>Circular 02/77 of 27 November 2002 on NAV errors and active breaches of investment restrictions</td>
<td>This Circular establishes rules to be followed in the case of material net asset value (NAV) calculation errors and active breaches of investment restrictions.</td>
</tr>
<tr>
<td>Circular 02/80 of 5 December 2002 on UCIs with alternative investment strategies (hedge funds)</td>
<td>This Circular sets out a framework and specifies rules applicable to UCIs (not UCITS) which have alternative investment strategies.</td>
</tr>
<tr>
<td>Circular 02/81 of 6 December 2002 on the external audit and specifically the requirement of a long form report</td>
<td>This Circular introduced the requirement of a long form report for each UCI (institutional UCIs are exempted) and specifies the topics to be addressed.</td>
</tr>
<tr>
<td>Circular 03/87 of 21 January 2003 on the coming into force of the 2002 Law</td>
<td>This Circular gives an overview of the impact of the 2002 Law and in particular the transitional provisions. It also announced that there would be further circulars issued on the following topics:</td>
</tr>
<tr>
<td></td>
<td>• Rules regarding Luxembourg management companies (see Circular 03/108)</td>
</tr>
<tr>
<td></td>
<td>• Rules of conduct for Luxembourg collective investment professionals</td>
</tr>
<tr>
<td></td>
<td>• Risk management and valuation techniques for derivative transactions</td>
</tr>
<tr>
<td></td>
<td>It further confirms that Circular 91/75 will be realigned to the 2002 Law by means of a future circular.</td>
</tr>
<tr>
<td>Circular 03/88 of 22 January 2003 on the classification (Part I or Part II) of UCIs governed by the 2002 Law</td>
<td>This Circular clarifies the distinction between UCIs falling under Part I or Part II of the 2002 Law.</td>
</tr>
<tr>
<td>Circular 03/97 of 28 February 2003 on simplified and full prospectuses and annual and semi-annual reports</td>
<td>This Circular clarifies the procedure for the publication of simplified and full prospectuses and annual and semi-annual reports under the 2002 Law. Such documents will be made available electronically to funds professionals and investors alike by means of a funds registry set up by Centrale de Communications Luxembourg S.A. (CCLux).</td>
</tr>
</tbody>
</table>

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4  *Circular 91/75 refers to the 1988 Law, the precursor to the 2002 Law. The CSSF is currently reviewing this circular with regard to issuing a circular which complements and is compatible with the 2002 Law (see Circular 03/87). Certain provisions of Circular 91/75 may still be relevant to funds created under the 2002 Law; some of these provisions may also be relevant to funds created under the SIF Law.*
<table>
<thead>
<tr>
<th>Regulation</th>
<th>Brief description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Circular 03/108 of 30 July 2003 on management companies falling under Chapter 13 of the 2002 Law (management companies with European passport which can manage UCITS) and self-managed investment companies UCITS falling under Article 27 or 40 of the 2002 Law</td>
<td>This Circular details the manner in which certain articles of Chapter 13 of the 2002 Law are to be applied in practice and specifies the quarterly financial information which Chapter 13 management companies and self-managed investment companies are required to report to the CSSF. It also announces that there will be a further circular on conflicts of interest.</td>
</tr>
<tr>
<td>Circular 03/122 of 19 December 2003 on simplified prospectuses</td>
<td>This Circular, which complements schedule C of Annex I to the 2002 Law, provides for more detailed information and also clarifies certain elements of information comprised in schedule C.</td>
</tr>
<tr>
<td>Circular 04/146 of 17 June 2004 on the protection of UCIs and their investors against Late Trading and Market Timing practices</td>
<td>This Circular clarifies the protective measures to be adopted by UCIs and certain of their service providers, fixes more general rules of conduct for all professionals subject to CSSF supervision and extends the role of the auditor (réviseur d’entreprises) regarding Late Trading and Market Timing.</td>
</tr>
<tr>
<td>Circular 04/151 of 13 July 2004 on the content of listing particulars</td>
<td>This Circular details the required contents of the Luxembourg Stock Exchange (Bourse de Luxembourg - LSE) listing particulars in respect of</td>
</tr>
<tr>
<td></td>
<td>• shares/units issued by foreign UCIs not offered for sale to the public in or from Luxembourg</td>
</tr>
<tr>
<td></td>
<td>• transferable securities redeemable in/exchangeable for shares/units of UCIs or the income/redemption of which is/are linked to shares/units of UCIs.</td>
</tr>
<tr>
<td>Circular 05/177 of 6 April 2005 on the abolition of any prior control by the CSSF of advertising material used by persons and companies supervised by the CSSF</td>
<td>This Circular removes the obligation to communicate to the CSSF the content of advertising messages intended for distribution to clients and to the public.</td>
</tr>
<tr>
<td>Circular 05/185 of 24 May 2005 on Luxembourg management companies subject to the provisions of Chapter 13 of the 2002 Law as well as self-managed investment companies subject to the provisions of Article 27 or Article 40 of the 2002 Law relating to UCIs</td>
<td>This Circular completes Circular 03/108 as regards the conditions for obtaining and maintaining authorization for management companies which do not engage in activities other than collective portfolio management.</td>
</tr>
<tr>
<td>Circular 05/186 of 25 May 2005 on the guidelines of the Committee of European Securities Regulators (CESR) regarding the application of transitional measures resulting from directives 2001/107/EC and 2001/108/EC (UCITS III) amending directive 85/611/EEC (UCITS I)</td>
<td>This Circular details the guidelines of CESR that aim to put an end to the divergent interpretations of the transitional provisions by the supervisory authorities of the Member States of the European Union. The guidelines fix new deadlines for certain UCITS and certain management companies.</td>
</tr>
<tr>
<td>Circular 05/211 of 13 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and the financing of terrorism</td>
<td>This Circular provides a combined text bringing together all professional obligations in relation to the fight against money laundering and terrorist financing.</td>
</tr>
<tr>
<td>Circular 05/226 of 16 December 2005 on the law on prospectuses for securities</td>
<td>This Circular provides a general overview of the law on prospectuses for securities and technical specifications regarding communications to the CSSF of documents for the approval or for filing and of notices for offers to the public and admissions to trading on a regulated market, in relation to the law relating to prospectuses for securities.</td>
</tr>
<tr>
<td>Regulation</td>
<td>Brief description</td>
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<tr>
<td>Circular 06/257 of 17 August 2006 on the implementation rules of the law of 9 May 2006 on market abuse</td>
<td>This Circular describes the main provisions contained in the law of 9 May 2006.</td>
</tr>
<tr>
<td>Circular 06/267 of 22 November 2006 addresses Luxembourg closed-end UCIs whose units/shares are being offered to the public or admitted to trading on a regulated market within the meaning of the law of 10 July 2005 on prospectuses for securities</td>
<td>This Circular provides technical specifications regarding the communication to the CSSF, under the law on prospectuses for securities, of documents for the approval or for filing and of notices for offers to the public of units/shares of Luxembourg closed-end UCIs and admissions of units/shares of Luxembourg closed-end UCIs to trading on a regulated market.</td>
</tr>
<tr>
<td>Circular 07/277 of 9 January 2007 on the new notification procedure in line with the guidelines of the CESR regarding the simplification of the UCITS notification procedure</td>
<td>This Circular draws attention to the new notification procedures and sets out the approach adopted by the CSSF as regards European passports for UCITS following the adoption of the new CESR guidelines.</td>
</tr>
<tr>
<td>Circular 07/280 of 5 February 2007 on the implementation rules of the law of 9 May 2006 on market abuse</td>
<td>This Circular is a follow-up to Circular 06/257 and provides explanations and guidelines concerning (i) the elements that could be indications of market manipulation, (ii) the arrangements and format for suspicious transaction reports, (iii) the lists to be drawn up by issuers, or persons acting on their behalf or for their account, including those persons having regular or occasional access to inside information, and (iv) the notifications relating to transactions conducted by persons discharging managerial responsibilities within an issuer and persons closely associated with them, as well as the modalities for public disclosure of such transactions. This Circular also details buy-back and stabilization activities falling under safe harbour exemptions and clarifies certain elements relating to obligations imposed by the law on UCIs in their role as issuers, or as the case may be, on their management.</td>
</tr>
<tr>
<td>Circular 07/283 of 28 February 2007 on the entry into force of the law of 13 February 2007 relating to specialized investment funds</td>
<td>This Circular presents a summary of the main elements of the legal framework introduced by the SIF Law.</td>
</tr>
<tr>
<td>Circular 07/307 of 31 July 2007 on MiFID: Rules of conduct in the financial sector</td>
<td>This Circular provides clarification regarding certain provisions of the Law and Grand-Ducal Regulation, both of 13 July 2007, implementing MiFID.</td>
</tr>
<tr>
<td>Circular 07/308 of 2 August 2007 providing guidelines for undertakings for collective investment in transferable securities concerning the use of a risk management method, as well as the use of derivative instruments</td>
<td>This Circular provides guidelines to be followed by UCITS (i.e. funds subject to Part I of the 2002 Law) in the context of the implementation of a risk management process, the risk limits applicable, the use of financial derivative instruments and information to be communicated to the CSSF. It replaces Circular 05/176.</td>
</tr>
<tr>
<td>Circular 07/309 of 3 August 2007 on risk spreading in the context of specialized investment funds.</td>
<td>This Circular clarifies the definition of risk diversification in the context of funds under the SIF Law.</td>
</tr>
<tr>
<td>Circular 07/310 of 3 August 2007 on the financial information to be provided by specialized investment funds</td>
<td>This Circular sets out the financial information that funds under the SIF Law must provide to the CSSF on a monthly and annual basis.</td>
</tr>
<tr>
<td>Grand-Ducal Regulation of 21 January 2002 on the fees charged by the CSSF</td>
<td>This regulation fixes the fees payable to the CSSF by authorized entities in the financial sector, including UCIs, distributors of shares of UCIs and domiciliary agents.</td>
</tr>
<tr>
<td>Regulation</td>
<td>Brief description</td>
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<tr>
<td>---------------------------------------------------------------------------</td>
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</tr>
<tr>
<td>Grand-Ducal Regulation of 14 April 2003 establishing the fixed capital duty for UCIs under the 2002 Law</td>
<td>Duty fixed at €1,250</td>
</tr>
<tr>
<td>Grand-Ducal Regulation of 14 April 2003 on UCIs eligible for the reduced rate of subscription tax (taxe d’abonnement) under the 2002 Law</td>
<td>This regulation clarifies conditions and procedures for UCIs (subject to the 2002 Law) to obtain the reduced subscription tax.</td>
</tr>
<tr>
<td>Grand-Ducal Regulation of 27 February 2007 on the terms and amount of the fixed capital duty payable by SIFs</td>
<td>Duty fixed at €1,250</td>
</tr>
<tr>
<td>Grand-Ducal Regulation of 27 February 2007 on SIFs eligible for the reduced rate of subscription tax (taxe d’abonnement) under the SIF Law</td>
<td>This regulation determines the conditions and criteria for SIFs to obtain the exemption from the subscription tax.</td>
</tr>
<tr>
<td>Grand-Ducal Regulation of 27 February 2007 on the taxes to be levied by the CSSF (as amended)</td>
<td>Annual fixed fees for a SIF with multiple compartments is set at €2,650. Fixed filing fee for a SIF with multiple compartments is set at €2,650.</td>
</tr>
<tr>
<td>VAT Circular No 723 on 29 December 2006</td>
<td>This Circular confirms that investment vehicles whose management is VAT exempt by virtue of article 44, §1, d) of the Luxembourg VAT Law have the status of “taxable persons“ for VAT purposes. This Circular entered into force on 1 April 2007.</td>
</tr>
</tbody>
</table>
2. Investment and Borrowing Rules

2.1. Introduction

This section outlines investment and borrowing rules for investment funds under the 2002 Law. Chapter 3 outlines the rules for Specialised UCIs.

Part I and Part II UCIs

The investment and borrowing rules for Part I UCITS under the 2002 Law are set out in Section 2.2, which covers:

- 2.2.1. 2002 Law
- 2.2.2. Circular 07/08 - Guidelines for UCITS concerning the use of a risk management method as well as the use of derivative instruments. This latter Circular, issued by the CSSF on 2 August 2007, outlines the implementation of a risk management process, the risk limits applicable, the use of financial derivative instruments and information to be communicated to the CSSF. It replaces Circular 05/176.

The investment and borrowing rules for other (Part II) UCIs are set out in Section 2.3.

Definitions of Transferable Securities, Money Market Instruments and Regulated Market

a) Definitions in Article 1 of the 2002 Law:

“Transferable securities”

Transferable securities means:

- Shares and other securities equivalent to shares ("shares")
- Bonds and other forms of securitized debt ("debt securities")
- Any other negotiable securities which carry the right to acquire such transferable securities by subscription or exchange, excluding techniques and instruments (see Section 2.2.1(7)).

“Money market instruments”

Money market instruments (MMIs) are instruments normally negotiated on a money market, which are liquid and whose value can be determined with precision at any time.

“Regulated market”

In the context of EU regulated markets, the definition in Article 1 refers to Article 1, Item 13 of Directive 93/22/EEC and means a market which appears on the list provided by each Member State, functions regularly, has regulations issued or approved by the competent authorities and requires compliance with EU reporting and transparency requirements.

b) Circular 91/75 definition of “Regulated market operating regularly recognized and open to the public”:

- “Regulated”: the essential characteristic of a regulated market is the clearing which presupposes the existence of a central market organization for the processing of orders. Such a market may also be distinguished by multilateral order matching (general matching of bid and offers enabling the setting of a single price), transparency (maximum information distribution amongst buyers and sellers giving them the possibility to follow the evolution of the market so that they may ensure that their orders have been carried out at current conditions) and the neutrality of its organizer (the organizer’s role must be limited to recording and supervision)
- “Recognized”: the market must be recognized by a state or by a public authority which has been delegated by that state or by another entity which is recognized by the state or by that public authority, such as a professional association
- “Operating regularly”: securities admitted to this market must be dealt in at a certain fixed frequency (no sporadic dealings)
- “Open to the public”: the securities dealt in thereon must be accessible to the public.
c) Multiple Compartment UCIs

In the case of multiple compartment UCIs, the investment and borrowing restrictions must be complied with by all compartments, except those relating to a significant influence over an issuer, which also apply to all compartments taken together (Chapter J of Circular 91/75).

2.2. Part I UCITS under the 2002 Law

The main investment and borrowing rules contained within the 2002 Law are outlined in Section 2.2.1. below. However, to further clarify the definition of eligible investments ("eligible assets") for a UCITS in compliance with the UCITS Directives, to ensure consistent interpretation and implementation of the UCITS Directives across all EU Member States, and further to CESR’s advice of 26 January 2006, the European Commission issued a Directive on 19 March 2007 clarifying certain definitions concerning eligible assets. Member States have until 2 March 2008 to adopt and publish the laws, regulations and administrative provisions necessary to comply with the Directive. Member States must apply these provisions from 23 July 2008. CESR issued guidelines in March 2007 to complement this Directive. For more information, see section 15.

2.2.1. 2002 Law

Transferable Securities and Money Market Instruments

(1) Transferable securities and money market instruments which are admitted to an official listing on a stock exchange or dealt in on another regulated market which operates regularly and is recognized and open to the public are permitted. Stock exchanges or other regulated markets used which are outside the EU should be specified in the constitutional documents.

Recently Issued Transferable Securities and Money Market Instruments

(2) Recently issued transferable securities and money market instruments not yet listed or dealt in on a regulated market are permitted provided that the terms of issue include an undertaking that application will be made for admission to a stock exchange or another regulated market and that such admission is secured within one year of issue.

Units of other UCITS and UCIs

(3) Units of UCITS and other UCIs are permitted provided that:

- Such other UCIs are considered by the CSSF to be subject to equivalent supervision and that cooperation between authorities is assured
- The level of protection for unit-holders in the other UCIs is equivalent to UCITS’ rules on asset segregation, borrowing, lending, uncovered sales of transferable securities and money market instruments
- The other UCIs prepare semi-annual and annual reports
- No more than 10% of the UCITS’ or the other UCIs’ assets, whose acquisition is contemplated, can, according to their constitutional documents, be invested in aggregate in units of other UCITS or other UCIs.

Deposits with Credit Institution

(4) Deposits with credit institutions which are repayable on demand or mature in no more than 12 months are permitted. Credit institutions used which are outside the EU must be subject to prudential rules considered by the CSSF to be equivalent to those in the EU.
Financial Derivative Instruments

(5) Financial derivative instruments which are dealt in on a regulated market or over-the-counter (OTC) are permitted provided that:

- The underlying consists of instruments permitted for a UCITS, financial indices, interest rates, foreign exchange rates or currencies, in which the UCITS may invest according to its constitutional documents
- The counterparties to OTC derivatives are institutions subject to prudential supervision, approved by the CSSF
- The OTC derivatives are subject to reliable and verifiable valuation on a daily basis and can be sold at any time.

(6) A risk-management process must be employed which enables the UCITS to monitor and measure at any time the risk of its positions. It must employ a process for accurate and independent valuations of OTC derivative instruments (see Section 14.2.(10)iv).

(7) Techniques and instruments relating to transferable securities and to money market instruments may be employed provided they are used for the purpose of efficient portfolio management. Under no circumstances shall such operations cause the UCITS to diverge from its investment objectives. (The CSSF has provided for rules regarding the use of techniques and instruments in Chapter H of Circular 91/75, in particular for options, futures, securities lending, repos and currency hedging to complement the 1988 Law. It is currently reviewing this Circular in order to realign it to the 2002 Law).

(8) The global exposure relating to derivative instruments must not exceed the total net value of its portfolio.

(9) The prospectus must prominently indicate its policy relating to derivative instruments.

Money Market Instruments Not Dealt in on a Regulated Market

(10) Money market instruments not dealt in on a regulated market are permitted if the issue or issuer is regulated and one of the following criteria is met:

- They are issued or guaranteed by a central, regional or local authority or central bank of an EU Member State, or a non-EU Member State, or a federation/international public body to which at least one EU Member State is a member
- They are issued by an undertaking any securities of which are dealt in on regulated markets
- They are issued or guaranteed by an establishment subject to prudential supervision in accordance with criteria defined by EU law or by an establishment which is subject to and complies with prudential rules considered by the CSSF to be at least as stringent as those of EU law
- They are issued by other bodies belonging to categories approved by the CSSF under various specific conditions.

Transferable Securities and Money Market Instruments Not Listed or Dealt in on another Regulated Market

(11) No more than 10% of net assets may be invested in transferable securities and money market instruments which are not listed on a stock exchange or dealt in on another regulated market.
Movable and Immovable Property

(12) Movable and immovable property may be acquired by an investment company (SICAV/ SICAF) if it is essential for its business.

Precious Metals

(13) Precious metals or certificates representing them may not be acquired.

Ancillary Liquid Assets

(14) Ancillary liquid assets may be held.

Investment in any one Body and other Related Rules

(15) Companies which are included in the same group for the purposes of consolidated accounts, as defined in Directive 83/349/EEC or in accordance with recognized international accounting rules are regarded as a single body for the purpose of calculating the limits.

(16) No more than 10% of net assets may be invested in transferable securities or money market instruments issued by the same body.

(17) No more than 20% of net assets may be invested in deposits with the same body.

(18) The risk exposure to a counter party in an OTC derivative transaction may not exceed 10% of net assets in the case of a credit institution and 5% in other cases.

(19) The total value of transferable securities and money market instruments held in issuing bodies in each of which is invested more than 5% of net assets must not exceed 40% of net assets. This limit does not apply to:
   • Deposits and OTC derivatives made with financial institutions subject to prudential supervision
   • Transferable securities and money market instruments referred to in (21) and (22)
   • Investments in other UCITS or UCIs.

(20) No more than 20% of net assets may be invested in any combination of the following with a single body:
   • Transferable securities or money market instruments
   • Deposits
   • OTC derivatives.

(21) The limit of 10% in (16) is increased to 35% if the transferable securities are issued or guaranteed by an EU Member State or its local authorities, by a non-Member State of the EU or by public international bodies of which one or more EU Member States are members.

(22) The limit of 10% in (16) is increased to 25% for certain debt securities if they are issued by a credit institution whose registered office is situated in an EU Member State and which is subject to public supervision. In addition, the total value of such debt securities held in such issuing bodies in each of which is invested more than 5% of net assets must not exceed 80% of net assets.
(23) The limits set out in points (18) – (22) above may not be combined; thus investments in transferable securities or money market instruments issued by the same body, in deposits or derivative instruments made with this body shall under no circumstances exceed in total 35% of the net assets.

(24) The limit of 10% mentioned in points (18) – (22) is raised to 20% (or, if justified, 35%) for investment in either shares or debt securities, or both, issued by the same body where the investment policy is to replicate an index which is recognized by the CSSF. The CSSF bases its recognition on the following criteria:

- Composition of the index is sufficiently diversified
- Index represents an adequate benchmark for the particular market
- Index is published in an appropriate manner.

(25) The CSSF may authorize investment of 100% of net assets in at least six different transferable securities, issued or guaranteed by an EU Member State, its local authorities, a non-Member State of the EU or public international bodies of which one or more EU Member States are members, of which one issue may not account for more than 30% of the total (such authorization would only be given if it was expressly stated in the articles of incorporation and prospectus that more than 35% of net assets is intended to be so invested).

(26) No more than 20% of net assets may be invested in a single UCITS or other UCI, referred to in (3) (for the purposes of applying this limit, each compartment of a multiple compartment UCI is considered as a separate issuer).

(27) No more than 30% of net assets may be invested in aggregate in units of other UCIs (excluding other UCITS).

(28) Where investments are made in other UCIs which are linked to the investing UCITS, subscription or redemption fees may not be charged to the investing UCITS.

(29) Where a substantial proportion of net assets are invested in other UCIs, the prospectus shall disclose the maximum level of management fees that may be charged both to the UCITS itself and to the other UCIs in which it intends to invest. In its annual report it shall indicate the maximum percentage of management fees charged both to the UCITS itself and to the other UCIs in which it invests.

**Significant Influence over an Issuer**

(30) An investment company or a management company acting in connection with all of the common funds which it manages and which fall within the scope of Part I of this Law, may not acquire any shares carrying voting rights which would enable it to exercise significant influence over the management of an issuing body.

(31) A UCITS may acquire no more than:

- 10% of the non-voting shares of the same issuer
- 10% of the debt securities of the same issuer
- 25% of the units of the same UCI
- 10% of the money market instruments issued by the same issuer.
The restrictions of (30) & (31) are not applicable to:

- Transferable securities and money market instruments issued or guaranteed by an EU Member State or its local authorities or by a non-Member state of the EU
- Transferable securities and money market instruments issued by public international bodies of which one or more EU Member States are members
- Shares held in an intermediary incorporated in a non-Member State of the EU which invests mainly in securities issued by that State and where such holding is the only way in which the UCITS can hold these securities
- Shares held by an investment company in the capital of subsidiaries carrying on only the business of management, advice or marketing in the country where the subsidiary is located, in regard to the repurchase of units at unit-holders’ request exclusively on its behalf.

In the case of a multiple compartment UCITS, the restrictions in (31) limiting the holding of securities of one issuer also apply to all compartments taken together.

**Provisional Derogations from Investment Restrictions**

The afore-mentioned investment restrictions need not be complied with when exercising subscription rights; however the UCITS must remedy the situation as a priority objective. In addition, recently formed UCITS may derogate from (16) to (29) during the first six months.

**Investment in other Compartments**

A compartment of a multiple compartment UCI may not invest in another compartment of that same UCI.

**Borrowings**

Basically, neither an investment company nor the management company nor custodian acting on behalf of an FCP may borrow. However, there are three exceptions to this rule:

- Up to 10% of net assets borrowed on a temporary basis only
- Up to 10% of net assets in the case of an investment company may be borrowed to acquire property essential for the business.

The combined amount of such borrowings may not in total exceed 15% of net assets.

Back-to-back loans may be acquired and are not considered as borrowings for the purposes of these limits.

**Granting of Loans and Guarantees**

Granting of loans or acting as guarantor on behalf of third parties is not permitted (acquiring transferable securities which are not fully paid is allowed).

**Short Sales**

Selling securities short is not permitted. However, it may be possible to use derivative instruments to create synthetic short positions.
2.2.2. Circular CSSF 07/308: Guidelines for UCITS concerning the use of a risk management method, as well as the use of derivative instruments (superseding Circular 05/176)

I. Introduction

The overall objective of this circular is to provide guidelines for the implementation of a risk management framework. It covers organizational requirements, the scope of risk management relating to each type of risk identified and details of risk limits. The Circular focuses on financial risks, namely global risk, counterparty risk and concentration risk.

The Circular also provides clarifications of the requirements regarding financial derivatives cover as well as of the valuation of OTC derivatives on a daily basis.

The Circular replaces Circular CSSF 05/176. The main changes relate to:

- Limitation of global risk exposure to market risk
- Clarification of non-sophisticated versus sophisticated funds
- Introduction of the concept of relative VaR complementing that of absolute VaR
- Clarification of counterparty risk mitigation
- Definition of concentration risk
- Clarification of the valuation of OTC financial derivatives
- Communication process to the CSSF

II. Risk Management Process

1. Organization

For the purpose of risk management process, a UCITS must “self-assess” itself as “sophisticated” or “non-sophisticated”. While a “sophisticated” UCITS makes significant use of financial derivative instruments or more complex strategies or instruments, a “non-sophisticated” UCITS will make limited use of less complex derivatives or use derivatives only for hedging purposes. The assessment process must be approved by the board of directors of the fund and must be documented.

In case of a change of classification, the CSSF must be informed; the prospectus may need to be updated. Risk management must be independent of the unit responsible for making portfolio management decisions.

The risk management of a sophisticated UCITS must be a unit which meets with the following criteria:

- A sufficient number of qualified and knowledgeable persons
- Appropriate technical and other resources
- Active involvement of the conducting persons (“dirigeants”)
- Appropriate reporting and follow-up
- Appropriate oversight by the board

If the risk management is delegated, the management company (or the self managed investment company) remains responsible for ensuring the implementation of adequate risk management that meets the above-mentioned criteria.

The risk management structure for a non-sophisticated UCITS may be less well developed than that for a sophisticated UCITS.

Risks of sophisticated UCITS should be measured on a daily basis and those of non-sophisticated UCITS at least on a bi-monthly basis; the CSSF may grant exceptions.

2. Scope of Risk Management

Risk management is responsible for monitoring the financial risks of a UCITS, focusing particular attention on derivative financial instruments and the risks associated therewith.

5 As well as non-sophisticated UCITS that adopt an internal model.
The following procedures must be carried out and documented by the Risk Management unit:

- Assessment and monitoring of the global risk
- Assessment and monitoring of the counterparty risk associated with OTC financial derivative instruments
- Checking and monitoring of the requirements related to global risk and counterparty risk
- Assessment and/or monitoring of the concentration limits
- Monitoring and verification of the cover rules
- Assessment and/or control of the valuation of OTC financial derivative instruments
- Risk reporting

III. Risk Limits

According to the 2002 Law, the global risk linked to financial derivative instruments must not exceed 100% of the Net Asset Value (NAV). The Circular limits global risk to market risk, unlike under Circular 05/176 in which global risk included counterparty risk.

Market Risk

a. A non-sophisticated UCITS should, in principle, use the commitment approach (unless it adopts an internal model, in which case it must meet requirements relating to sophisticated UCITS, or adopts a different approach, with prior approval of the CSSF). The total commitment is considered to be the sum of the absolute value of the individual positions, after taking into account netting and cover. The Circular provides the method of calculation to be adopted for the most common financial derivative instruments.

b. A sophisticated UCITS must use an internal model taking into consideration general market risk as well as specific market risk. The most commonly accepted internal model is the VaR model supplemented by stress tests. Other models can be used provided they receive CSSF approval. Models must be back-tested.

The Circular introduces two concepts of VaR with different limits:

- If a reference portfolio (or ‘benchmark’) can be determined, the CSSF allows the use of a relative VaR where the portfolio VaR cannot be more than twice the reference portfolio VaR. The choice of the reference portfolio needs to be duly documented.
- Where there is no reference portfolio, an absolute VaR figure must be calculated; absolute VAR limit cannot exceed 20% of the NAV.

The VaR model parameters to be used are the following:

- confidence interval: 99%
- holding period: 1 month (20 days)
- observation period: 1 year (250 days), unless a shorter period is justified by a significant increase of volatility
- quarterly update of the data
- calculation frequency: daily

A different confidence interval or holding period may be used with prior approval of the CSSF provided a conversion is made to bring the VaR to an equivalent value.

Counterparty Risk

The 2002 Law limits the OTC counterparty risk exposure to 5 or 10% of the NAV depending on the quality of the counterparty. The Circular describes a 3 step approach for determining the counterparty risk.

Netting is authorized.

Financial assets provided as guarantees can be used to reduce counterparty risk exposure by having the counterparty post collateral (in the form of cash deposits, investment grade debt securities and equities or convertible bonds included in public and well recognized indices). The collateral must meet certain conditions including low risk, liquidity, diversification, low correlation with the credit rating of the counterparty, mark-to-market valuation with a frequency at least equal to the NAV calculation frequency; it must be appropriately safeguarded and available to the fund at any time.

Appropriate haircuts must be applied depending on the type of collateral.
Concentration Risk

Concentration risk exposure is limited to 20% by entity or group. The Circular extends the limitation to shares of UCITS.

The Circular further details the cover rules applicable to financial derivative instruments. Risk management is responsible for regularly checking that the cover available, either in underlying financial instruments or in liquid assets, is sufficient to meet future obligations.

IV. Valuation of OTC Financial Derivative Instruments

OTC financial derivative instruments must be accurately and independently valued. Such valuation should also be able to be verified on a daily basis. The UCITS must be able to determine with reasonable precision the fair value of OTC financial derivative instruments throughout their lives. A reliable and verifiable valuation must meet the following criteria:

- The valuation must be based on a current market value. If such a market value is not available, then the valuation should be based on a valuation model that uses a recognized and accepted methodology
- A check of the valuation must be performed either by:
  - An independent third party who performs a check on a sufficiently frequent basis and following a process that can be monitored by the UCITS, or
  - An unit independent of the portfolio management of the UCITS. The UCITS may use a third party valuation system or market data but must verify their adequacy. Models used by a party linked to the UCITS (such as a trading room that executes the UCITS transactions) are expressly prohibited if they have not been reviewed by the UCITS.

If the UCITS cannot value its OTC derivatives financial instruments using the methods described above, it cannot use the financial derivative instrument even if its investment policy permits its use.

UCITS that use financial derivative instruments for purposes other than hedging should include in their prospectus a description of the risks (including, if appropriate, an indication of the leverage and market risk).

V. Information to be communicated to the CSSF

Management companies (or self-managed investment companies) must communicate to the CSSF a description of their risk management procedure implemented as a result of the Circular. This description must include:

- The implementation of the risk management process
  - The organization of the risk management function
  - A list of the sophisticated and non-sophisticated UCITS to which the procedures apply, as well as the market risk calculation method and reference data
- The assessment and monitoring of global risk
  - Commitment approach
    - List of financial derivative instruments for which the commitment approach is used (including details of the methodology for each type of instrument and practical examples)
    - Details of the implementation of the requirements of the Circular
    - Details of the netting and cover policies
  - Internal Model approach
    - List of financial derivative instruments for which the internal model approach is used
    - Description of the internal model used (type of methodology, third party vendor model, agreed model, …) as well as details of the implementation of the requirements of the Circular (e.g. definition of the reference portfolio in case of relative VaR, set up of limit in case of absolute VaR, …)
  - For both approaches:
    - Global risk monitoring procedure and escalation procedures
    - Risk indicators used (duration, beta, rating, …)
    - Details of the risk reporting used (frequency, audience, etc.) including an example of the main report
2.3. Other (Part II) UCIs

a) Introduction

Part II of the 2002 Law contains no provisions regarding investment or borrowing rules for such UCIs. Such rules are specified in CSSF circulars or determined on a case-by-case basis by the CSSF.

The CSSF has to date issued rules or guidelines for Part II UCIs investing in the following activities:

- Transferable securities: See b)
- Alternative investments (i.e. Hedge Funds): See Section 3.2.1
- Venture capital: See Section 3.2.2.
- Futures contracts and options: See Section 3.2.3.
- Real estate: See Section 3.2.4.

b) Part II UCIs Investing in Transferable Securities

The following summarizes investment and borrowing restrictions are set out in Chapter G of Circular 91/75. Certain of these limits will not apply if they are not compatible with the investment policy.

The techniques and instruments restrictions set out in Chapter H of Circular 91/75 are also applicable.

Unlisted Securities

(1) No more than 10% of net assets may be invested in securities not quoted on a stock exchange or dealt in on another regulated market (see, however, (5)).

Investment in any One Security or Issuer

(2) No more than 10% of net assets may be invested in securities issued by any one issuer (see, however, (5)).

Significant Influence over an Issuer

(3) No more than 10% of securities issued by any one issuer may be acquired (see, however, (5)).

(4) In the case of a multiple compartment UCITS, the restriction in (3) limiting the holding of securities of one issuer also applies to all compartments taken together.
Derogation

(5) Restrictions in (1) to (3) are not applicable to securities issued or guaranteed by Member States of the OECD or their local authorities or public international bodies with EU, regional or worldwide scope.

Investment in other UCIs

(6) Restrictions in (1) to (3) are applicable to the investment in other UCIs of the open-ended type where those UCIs are not subject to risk diversification requirements comparable to those in (1) to (5). Investment in closed-ended UCIs is permitted and, subject to the same restrictions above, applicable to transferable securities. If investment is to be made in other UCIs (fund of funds), this must be expressly stated in the prospectus and, if such investment is to be in other UCIs of the same promoter, the prospectus must specify the nature of fees and expenses arising.

Borrowings

(7) Borrowings of up to 25% of net assets without any restriction are allowed. Leveraged UCIs (referred to in Circular 03/88 – see Section 1.3.1.) are not subject to this restriction.
3. Specialized UCIs and Pension Fund Pooling Vehicles

Specialized UCIs include hedge funds, venture capital funds, futures contracts and options funds, real estate funds and pension fund pooling vehicles. They may be set up under the SIF Law or under Part II of the 2002 Law.

In addition, the Law of 15 June 2004 introduced a new vehicle, the SICAR, an investment company in risk capital. Such vehicles, however, are not UCIs and are not covered in this publication.

3.1. Specialized Investment Funds

The SIF Law may be used to create a variety of different types of funds – i.e. hedge funds, private equity funds and real estate funds, or even funds combining different investment strategies or asset classes. Specialized investment funds set up under the SIF Law are not required to comply with any detailed investment restrictions or leverage rules. The SIF Law simply states that a SIF should apply the principle of risk diversification.

Investment Restrictions

CSSF Circular 07/309 on risk spreading in the context of specialized investment funds, dated 3 August 2007, complemented the SIF Law and provided clarification on the investment restrictions that must be adhered to in order to ensure adequate risk diversification:

(1) A SIF cannot, in principle, invest more than 30% of its assets or its commitments to subscribe to securities of the same nature issued by the same issuer. This restriction is not, however, applicable to investments in:

(i) securities issued, or guaranteed, by an OECD Member State or by its local authorities or by supranational bodies or organizations of an EU, regional or worldwide nature.

(ii) target UCIs which are subject to risk diversification principles that are at least comparable to those relevant to SIFs. Each compartment of a target multiple compartment UCI may be considered as a distinct issuer providing that the segregation of assets and liabilities on a compartment by compartment basis is implemented.

(2) Short selling cannot, in principle, result in the SIF holding uncovered securities of the same nature issued by the same issuer representing more than 30% of its assets.

(3) When using financial derivative instruments, the SIF must ensure comparable risk diversification through appropriate diversification of the underlying assets. Counterparty risk of OTC operations must be limited according to the quality and qualification of the counterparty.

The CSSF may provide exemptions from the restrictions laid out in Circular 07/309 on a case-by-case basis. However, the CSSF may also request that additional restrictions are adhered to, in cases of funds with specific investment policies.

Sufficient information and documentation must be provided to the CSSF to enable it to determine compliance with the investment restrictions.

Subscription and Payment

The shares or units of a SIF Law SICAV or SICAF must be fully subscribed, only 5% of the amount of the subscription per share or unit of a must be paid up in cash or by means of a contribution other than cash. This will facilitate structures such as private equity funds to make capital calls over a period of time.

Issuing Document

Details of how the principle of risk diversification will be implemented, including quantifiable investment limits, must be disclosed in the issuing document.

6 Law of 15 June 2004 regarding investment in venture capital (Société d’investissement en capital à risque - SICAR)
3.2. 2002 Law Part II UCIs

Part II of the 2002 Law contains no provisions regarding investment or borrowing rules for such UCIs; such rules specified in CSSF circulars or determined on a case-by-case basis by the CSSF.

The CSSF has to date issued rules or guidelines for Part II UCIs investing in the following specialized activities:

- Hedge Funds: Circular 02/80
- Venture capital: Circular 91/75 Chapter I.I.
- Futures contracts and options: Circular 91/75 Chapter I.II.
- Real estate: Circular 91/75 Chapter I.III.

The rules applicable to these specialized funds are set out in Sections 3.2.1 to 3.2.4. below.

3.2.1. Hedge Funds

**Introduction**

As well as under the SIF Law, alternative investment funds may be set up under guidelines provided by CSSF Circular 02/80.

CSSF Circular 02/80 concerns UCIs whose investment objective is to adopt so-called alternative investment strategies (i.e. hedge funds).

The overall objective of Circular 02/80 was to clarify the legal and regulatory framework applicable to such products.

The Circular’s purpose is to provide a formal framework for establishing regulated hedge fund products which had previously been approved on a case-by-case basis.

It emphasizes the importance the CSSF attaches to the reputation, experience and financial standing of promoters, the professional status and experience of the executive management and, where applicable, of the investment managers and advisers.

The CSSF may allow departures from the provisions set out in the Circular, where justified, or impose additional investment restrictions, where appropriate.

**Short Selling**

Short selling may be carried out subject to the following rules:

- Aggregate commitment (i.e. unrealized losses) in terms of short selling may not exceed 50% of assets.
- Counterparty risk (i.e. the difference between the value of the securities pledged and the value of the securities borrowed) per lender may not exceed 20% of assets.
- Up to 10% of assets may be invested in short positions of unlisted securities, provided such securities are liquid.
- Not more than 10% of the same type of securities issued by the same issuer may be sold short.
- Short positions on securities issued by the same body may not exceed 10% of assets and/or the commitment on such securities may not exceed 5% of assets.

**Borrowing**

Borrowing for investment purposes on a permanent basis from first class credit institutions who specialize in this type of transaction is permitted subject to the following:

- Borrowings may not exceed 200% of the net assets. Consequently the value of the total assets may not exceed 300% of the value of net assets.
- In cases where there is a high degree of correlation between long and short positions borrowings may rise to 400% of net assets.

Counterparty risk, defined as the difference between the value of assets given as guarantee and the amount borrowed, cannot represent more than 20% of the UCI’s assets per lender.
Investments in other UCIs (Fund of Funds)

Investments in other UCIs are subject to the following provisions:

- Up to 20% of net assets may be invested in the securities of the same UCI. However, in applying this limit each compartment of an umbrella structure will be considered as a separate UCI provided that no cross-liability exists between the compartments.
- Up to 100% of the shares issued by a single umbrella structure may be held, provided that the total investment in such a structure does not exceed 50% of the UCI’s net assets.

The above limits are not applicable to investments in open-ended regulated UCIs which apply a diversified investment policy.

Long Positions

Long positions must meet the following criteria:

- Not more than 10% of its assets may be invested in unlisted securities.
- Not more than 10% of the same type of securities issued by the same entity may be acquired.
- Exposure to a single issuer may not exceed 20% of assets.

The above restrictions do not apply to investments in other UCIs and to securities issued or guaranteed by an OECD Member State or by its local authorities or by supranational bodies or organizations of an EU, regional or worldwide nature.

Securities Lending

In general, such UCIs may lend through a standard system organized by a recognized clearing institution or through a first class financial institution subject to the following provisions:

- Collateral (in the case of a first class institution only) received must be at least equal to the value of securities lent.
- Securities lent may not exceed 50% of the value of the UCI’s portfolio unless the UCI has the right to cancel the contract at any time.
- Lending contracts may not exceed 30 days unless the UCI has the right to cancel the contract at any time.

Financial Derivatives

Such UCIs are authorized to use all types of exchange traded/OTC derivative financial instruments such as options, forward or futures contracts as well as swap contracts, provided that the following conditions are met:

- The UCI’s total commitments arising from such instruments (exchange traded and OTC) and short selling cannot exceed the value of the assets.
- Total margin deposits (exchange traded) and commitments arising from derivative financial instruments (i.e. unrealized losses for OTC instruments) may not exceed 50% of the assets.
- Sufficient liquid assets (for example, term deposits, treasury bills, treasury bonds and money market instruments) to finance margin calls must be maintained.
- Borrowings may not be used to finance margin deposits.
- The margin requirements or commitment on a single contract may not exceed 5% of the assets.
- Premiums paid on options with identical characteristics may not exceed 5% of the assets.
- May not invest directly in commodities, although it may hold commodities futures and hold precious metals dealt in on an organized spot market.
- The UCI margin requirements/commitments in respect of a single commodity/class of financial futures may not exceed 20% of the assets.

UCIs which use such techniques and instruments must include in their prospectus the maximum total leverage effect in force and a description of the risks inherent in such transactions.
Repurchase and Reverse Repurchase Agreements

Such UCIs may enter into repurchase (repo) and reverse repurchase (reverse repo) agreements as a buyer or a seller provided that the following conditions are met:

- Repo transactions must be carried out with first class institutions.
- Securities acquired under a repo contract may not be sold unless the UCI has other means of coverage at its disposal.
- Where the UCI acts as the seller, it must maintain sufficient liquid assets to repurchase the securities on maturity of the repo contract.

Minimum Entry Investment

There is no minimum level of initial investment by investors.

Breach of Investment Limits

Where an investment limit is breached due to passive reasons (market movements, redemptions), the UCI must take corrective action in the best interests of the shareholders.

Prime Broker

There is no limitation on the use of a prime broker other than counterparty risk limitation mentioned under the heading ‘Borrowing’ above.

Prospectus

The prospectus must contain a description of the investment strategy and the inherent risks and make reference to the fact that:

- Potential losses from short selling differ from those where securities are acquired for cash.
- The leverage effect creates an opportunity for increased yield, but at the same time increases volatility and the risk of capital loss. Borrowings involve an interest cost which may exceed income or gains.
- Low liquidity may mean investors’ redemption requests cannot be met.

The prospectus must indicate that investing in the UCI in question entails a higher than average risk and is only suitable for investors prepared to lose the total value of their investment.

Where applicable the prospectus must contain a description of the dealing strategy as regards futures and options, making reference to their volatility.

3.2.2. Venture Capital UCIs

Investment in venture capital is defined as “investment in securities of unlisted companies because either these companies are recently formed, or they are still in the course of development and therefore have not yet obtained the stage of maturity required to have access to stock markets”. Venture capital UCIs invest in these higher risk companies with the intention of achieving a higher rate of return.

The principal regulations applicable to venture capital UCIs are stated in Chapter I.I. of Circular 91/75 and are as follows:

Management

(1) Managers and investment advisers must be able to demonstrate their specific experience in venture capital.

(2) If the remuneration of the investment management and advisory bodies is higher than that usually applicable to UCITS, the prospectus must state whether the additional remuneration is also payable on assets not invested in venture capital.

Investment Limitations

(3) Investment must be diversified in order to spread the risk and, in particular, no more than 20% of net assets may be invested in any one company.
**Issue and Repurchase of Shares**

(4) Where investors have the right to present their shares for repurchase, the UCI may provide for certain restrictions to this right. Any such restrictions must be stated in the prospectus.

(5) The shares, which may be registered or bearer, must have a minimum value of €12,395 at the time of issue.

**Financial Statements**

(6) The annual and semi-annual reports must contain information on the development of the companies in which the UCI has invested, and disclose separately the profit or loss on investments sold.

(7) Specific instances where potential conflicts of interest could arise between the interests of a director of the investment management or advisory bodies and the interests of the UCI must be indicated in the financial statements.

**Prospectus**

(8) The prospectus must contain a detailed description of investment risk inherent to the policy of the UCI and of the type of conflict of interest which could arise between the interests of a director of the investment management and advisory bodies and the interests of the UCI.

(9) The prospectus must contain a statement indicating that an investment in such a UCI represents an above average risk, is only suitable for persons who can afford to take such a risk, and that average investors are advised to invest only a part of the funds they have set aside for long-term investment.

**3.2.3. Futures Contracts and Options UCIs**

The principal regulations applicable to UCIs investing in one or more of commodity futures, financial futures and options are stated in Chapter I.II. of Circular 91/75 and are as follows:

**Management**

(1) Managers and investment advisers must be able to demonstrate their expertise in this field.

(2) If the remuneration of the investment management and advisory bodies is higher than that usually applicable to UCITS, the prospectus must state whether the additional remuneration is also payable on assets not invested in futures contracts and options.

**Investment Limitations**

(3) Margin deposits related to commitments on purchase and sale of futures contracts and call and put options may not exceed 70% of net assets, the balance of 30% representing a liquidity reserve.

(4) Futures contracts, including those underlying options, must be dealt in on an organized market.

(5) Contracts concerning commodities, other than commodity futures contracts, are not allowed. The acquisition of precious metals for cash, negotiable on an organized market, is permitted.

(6) Only call and put options dealt in on an organized market are permitted. Premiums paid for such options are included in the 70% limit in (3).

(7) Investments must be sufficiently diversified in order to spread risk.

(8) An open forward position may not be held in any one contract for which the margin requirement represents 5% or more of net assets. This also applies to open positions resulting from the sale of options.

(9) Premiums paid to acquire options having identical characteristics may not exceed 5% of net assets.

(10) Open positions in futures contracts concerning a single commodity or a single category of financial futures must be less than 20% of net assets. This also applies to open positions resulting from the sale of options.
**Borrowings**

(11) Borrowings of up to 10% of net assets are permitted but not for investment purposes.

**Shares**

(12) The shares, which may be registered or bearer, must have a minimum value of €12,395 at the time of issue.

**Financial Statements**

(13) The annual and semi-annual reports must disclose the profit or loss for each category of closed contract.

(14) Commissions paid to brokers and fees paid to the investment management and advisory bodies must be quantified in the financial statements.

**Prospectus**

(15) The prospectus must contain a detailed description of the trading strategy with regard to futures contracts and options, as well as the inherent investment risk and the high risk of loss.

(16) The prospectus must include a statement indicating that the UCI is only suitable for persons who can afford to take such a risk.

### 3.2.4. Real Estate UCIs

The CSSF defines real estate for the purposes of Circular 91/75 as being:

- real estate registered in the name of the UCI
- participations in real estate companies (as well as loans to such companies) the exclusive purpose and objects of which are the acquisition, development and sale together with the letting and tenanting of real estate, assuming that such participations are at least as realizable as those real estate interests held directly by the UCI
- various long-term real estate related interests such as rights to ground rents, long-term leases and option rights over real estate investments.

The principal regulations applicable to real estate UCIs are stated in Chapter I.III. of Circular 91/75 and are as follows:

**Management**

(1) Managers and investment advisers must have experience in real estate investment.

(2) If the remuneration of the investment and advisory bodies is higher than that usually applicable to UCITS, the prospectus must state whether the additional remuneration is also payable on assets not invested in real estate.

**Investment Limitations**

(3) Investment in property must be sufficiently diversified in order to spread risk, and in any case no more than 20% of net assets may be invested in any one property. Property which has an economic life dependent on another property is not considered as a separate property. This 20% rule does not apply during a start up period not exceeding four years.

**Borrowings**

(4) Total borrowings may not exceed 50% of the value of all properties.

**Valuations of Properties**

(5) One or more experienced independent property valuers must be appointed.

(6) At the year end, all properties owned by the UCI or its affiliated real estate companies must be valued by the property valuers.

(7) Properties may not be acquired or sold without a valuation by the property valuers, although a new valuation is not required if the sale of a property occurs within six months of the last valuation.

(8) The purchase or sale price may not be appreciably higher or lower respectively than the valuation, except under justifiable circumstances which must be explained in the next financial report.
Issue and Repurchase of Shares

(9) The NAV must be calculated at the year end, and on each day when the UCI’s shares are issued or repurchased.

(10) Property valuations at the year end may be used in the determination of NAV during the following year, unless a change of circumstances renders such valuation inappropriate.

(11) Where investors have the right to present their shares for repurchase, the UCI may provide for certain restrictions to that right. Any such restrictions must be stated in the prospectus.

Financial Statements

(12) The auditor of the UCI and its affiliated real estate companies, which are 50% or more funded by the UCI, must be the same.

(13) The accounts of the UCI and its affiliated companies, which should in principle be drawn up at the same date, must be consolidated half-yearly, disclosing the accounting principles applied for the consolidation.

(14) Minority unlisted shareholdings in real estate must be either partially consolidated at the year end or valued based on the probable realizable value. The value of minority listed shareholdings in real estate companies should be based on the stock exchange or market value.

(15) The portfolio of properties in the year end and half-yearly reports must show for each class of properties the cost, insured value and valuation. Properties must be shown at valuation in the financial statements.

Prospectus

(16) The prospectus must include a description of the inherent risks.

(17) It must also provide details of the type of commissions, expenses and charges to be borne by the UCI, together with the method of calculation and accounting treatment.

3.3. Pension Fund Pooling Vehicles (PFPVs)

PFPVs are collective investment schemes (e.g. FCPs) created by international groups in order to pool the assets of different pension funds that they manage in various jurisdictions where they have operations.

Pooling assets of multiple pension funds, often in different jurisdictions, offers benefits such as reduced operational fees and costs, efficient management of assets, access to a wider range of potential investments, a centralised governance structure and consistency between pension funds. However, to offer these advantages to investors, the PFPV must allow investors the same fiscal treatment as if they had invested in their home jurisdiction.

PFPVs can be set up as Luxembourg FCPs, which are tax transparent. PFPVs are also exempt from subscription tax (See Chapters 10 and 11 for more information on taxation issues related to Luxembourg funds.)

Thus, Luxembourg offers an attractive regime that allows the pooling of pension fund investments in a way that is both tax and cost efficient, in the interest of the beneficiaries.
4. Formation Procedures and Supervision

4.1. Authorization

Under the 2002 Law

All UCIs to be set up in Luxembourg under the 2002 Law must obtain prior authorization from the CSSF.

The draft documents and information to be submitted to the CSSF for their approval are set out in Articles 93-96 and 109-112 of the 2002 Law and Chapter K of Circular 91/75 and are as follows:

- Articles of incorporation or management regulations for FCPs
- Full prospectus
- Simplified prospectus (applicable to Part I UCITS subject to the 2002 Law)
- Other information or advertising documents intended for investors
- Agreements:
  - Custodian
  - Paying agency
  - Registrar and transfer agent
  - Domiciliation agent
  - Investment management or advisory
  - Any other
- Name of custodian
- Name of independent auditor
- Information to demonstrate that central administration will be in Luxembourg (see Section 5.1.)
- Information on the promoter (recent financial statements)
- Name and curriculum vitae of directors and managers, who must be of good repute and have required experience (shareholders of the management company of an FCP are also considered as directors)
- Marketing strategy (method, countries of marketing and targeted investors).

The above-mentioned documents and information are generally compiled and submitted to the CSSF with the assistance of a firm of lawyers/accountants and/or a bank in Luxembourg. For practical reasons, where possible, the documents submitted by the applying UCI should be standard copies of documents previously accepted by the CSSF for other UCIs, adapted where applicable.

Authorized UCIs are entered by the CSSF on a list which is published in the Official Gazette (the Mémorial).

Under the SIF Law

No prior authorization from the CSSF is required to set up a SIF. However, constitutional documents, choice of custodian and information regarding the directors and officers must be submitted to the CSSF within one month of the formation of the fund.

The SIF (or its management company in the case of an FCP) is required to draw up an issuing document which must include the information necessary for investors to be able to make an informed judgment about the investment proposed to them’ (for more information, see Section 3.2). The issuing document and any modifications thereto must be communicated to the CSSF.

Under the SIF Law, the CSSF does not require a promoter, nor will it perform checks on the status or financial position of the portfolio manager, this being left to the due diligence of the investors. Thus, SIFs may be created both by and for institutional and non-institutional investors (e.g. family offices, high net-worth individuals, etc).

7 The obligation to publish an issuing document is not applicable to closed-ended investment funds where they are required to publish a prospectus under the Law of 10 July 2005 relating to prospectuses for securities.
An FCP must be managed by a management company established under Luxembourg law and which complies with the provisions for management companies of funds under the 2002 Law (i.e. it must be a management company of UCITS or of other Luxembourg funds).

Directors of the SIF must be of good repute and have sufficient experience in relation to the type of SIF being created. To this end, the names of the directors, and of every person succeeding them in office, must be communicated to the CSSF.

### 4.2. Investment Fund Service Providers

As part of the formation procedures of a fund, several service providers must be appointed. The principal duties of these service providers are as follows:

**Administrator**

In general, the administrator is responsible for keeping the accounting records of the fund, calculating the NAV of the fund, assisting in preparing the annual and semi-annual reports of the fund, and acting as a contact with the CSSF and the auditor. The administration function is further discussed in Chapter 5.

**Registrar and Transfer Agent**

The registrar and transfer agent is responsible for keeping the principal register of shareholders of the fund, and for arranging for the issue, transfer, allotment, conversion, redemption and/or purchase of shares of the fund.

**Domiciliation Agent**

The domiciliation agent provides the registered office of the UCI. It is responsible for providing office accommodation and other facilities to the fund, keeps all correspondence sent to the fund, and arranges payment of bills on behalf of the fund.

**Custodian**

The custodian is responsible for supervision of the assets of the UCI, and for the day to day administration of the assets (receipts, sales, dividends, etc.), based on instructions received from the asset managers (unless they conflict with the management regulations). The custodian must be a Luxembourg credit institution. It may delegate the actual holding of the assets. The duties of the custodian are the subject of Chapter 7.

**Distributor**

The distributor is the intermediary appointed to distribute the shares or units of the fund.

**Paying Agent**

The paying agent arranges for payment of distributions made by the UCI. A paying agent is required in each country where the fund is distributed. Paying agent is a term used differently in the context of the EU Savings Directive (see Section 10.8.).

**Investment Manager/Advisor**

The investment manager/advisor manages and advises the fund with respect to the investment and reinvestment of cash, securities and other assets comprising the assets of the fund.
Management Company

A management company is a company, the regular business of which is the management of UCIs. Not all UCIs are required to have a management company (see Section 1.3.).

4.3. Full Prospectus

The contents of the full prospectus are set out in Schedule A of Annex I to the 2002 Law and in Chapter L of Circular 91/75. The information required may be summarized as follows:

a) Information Concerning the UCI and its Management Company

<table>
<thead>
<tr>
<th>Information Provided by</th>
<th>FCP</th>
<th>Management company of FCP</th>
<th>SICAV/ SICAF</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Legal form</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Registered and head office (if different).</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Date of establishment</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Other FCPs managed by management company</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Place where constitutional documents or management regulations (FCP) may be obtained</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Brief description of tax system</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Accounting and distribution dates</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Name of independent auditor</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Names and positions of management and their outside activities</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Capital</td>
<td>X</td>
<td>X (SICAF)</td>
<td></td>
</tr>
<tr>
<td>Details of types and characteristics of shares or units</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Stock exchange on which shares or units are listed</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Procedures and conditions for issuing shares or units</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Procedures and conditions for repurchasing shares or units</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Circumstances for suspending issues and repurchases</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Rules for determining and applying income</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Investment objectives (capital growth or income policy, limitations, borrowings, instruments)</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Rules for valuing assets</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Determination of issue and repurchase price (method and frequency of calculation, charges, places and frequency of publication)</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Information on remuneration paid by UCI to management company, custodian or third parties</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>

b) Information Concerning Custodian

- Name, legal form, registered and head office (if different)
- Main activity
c) **Information Concerning Investment Advisers**

- Name of the firm or name of the adviser
- Material provisions of the contract, excluding remuneration
- Other significant activities

**d) Information Available to Investors**

Information concerning arrangements for making payments to shareholders or unitholders and repurchasing shares or units and making available information on the UCI: such information is to be given in Luxembourg and other countries where the prospectus is to be circulated.

**e) Other Information (to be provided for all compartments in the case of multiple compartment UCIs)**

- Historical performance of the UCI
- Profile of the typical investor

**f) Economic Information**

Possible expenses or fees, other than the charges mentioned in a), distinguishing between those to be paid by the unit-holder and those to be borne by the UCI.

**g) Date**

The prospectus must be dated and may only be used as long as the information in it is accurate. The essential elements of the prospectus must be kept up-to-date (Article 112 of the 2002 Law).

### 4.4. Simplified Prospectus

The contents of the simplified prospectus are set out in Schedule C of Annex I to the 2002 Law and in Circular 03/122 of 19 December 2003 which provides for more detailed information and also an interpretation of certain information comprised in Schedule C.

UCIs which publish a simplified prospectus must previously transmit it to the CSSF (together, where applicable, with the sheet annexed to the simplified prospectus) as well as any amendments thereto (and/or to the sheet annexed to the simplified prospectus). Once the simplified prospectuses have obtained the nihil obstat of the CSSF, they are provided with the CSSF’s visa stamp and are remitted to the person who has introduced the file. To that effect, the CSSF must receive five samples of each simplified prospectus in its final form and presentation. The visa stamp may in no circumstances be used for commercial purposes.

In accordance with Article 112 of the 2002 Law, the essential elements of the simplified prospectus must be kept up-to-date.

A distinction must be made between:

- The sporadic updates which must be made upon change of any essential elements of the complete prospectus and/or the management regulations/articles
- The periodical updates which must be made at least once a year and which concern in particular the following elements – historical performance, total expense ratio (TER) and the portfolio turnover rate.

The remainder of this Section summarizes information required in the simplified prospectus. In the case of a multiple compartment UCITS, investment information as well as economic and commercial information has to be given for each compartment.
a) Brief Presentation of the UCI

- When the UCI was created and indication of the Member State where it has been registered/incorporated
- In the case of the UCI having different investment compartments, the indication of this circumstance
- Management company (where applicable)
- Expected period of existence (where applicable)
- Custodian
- Auditors
- Financial group (e.g. a bank) promoting the UCI

b) Investment Information

- Short definition of the UCI objectives
  There must be a description of the objective the UCI seeks to achieve. If applicable, it must mention the guarantees received from any third parties as well as the limitations to such guarantees.
  UCI's whose objective is to track an index must identify the index and specify the degree of tracking sought.
- Investment policy and a brief assessment of the risk profile
  The investment policy section is to comprise, if relevant, the following:
  - Main categories of eligible financial assets
  - Information on whether the investment policy concentrates on certain markets (sectorial, geographical or other) or on certain types of assets (shares, bonds or other)
  If financial derivative instruments are used the investment policy section must state whether this type of instrument is used for investment policy purposes or for hedging purposes only.
  If an index is tracked, the investment policy section must state the strategy which is pursued to achieve this objective.
  The description of the risk profile is qualitative. In addition to the general risks, this section must describe the specific risks incurred by reason of the specific investment policy or strategies pursued.
  In all cases the simplified prospectus must contain the following provisions:
  - The investments of the UCI are subject to market fluctuations and there is a risk for the investor to eventually recover an amount lower than that invested
  - A reference to the full prospectus for a detailed description of the risks mentioned in the simplified prospectus.
- Historical performance (where applicable) and a warning that this is not an indicator of future performance
  The historical performance of the UCI must be represented in a chart form and show the performance for the three last accounting periods. If the UCI exists for less than three years, the chart must present the information for the full past years.
  If the UCI is managed by reference to an index (benchmark) or if the fee structure includes a performance fee depending on a reference index, the historic performance of the UCI must be compared to the historic performance of the index by reference to which the UCI is managed or on the basis of which the performance fee is calculated.
- Profile of the typical investor the UCI is designed for

c) Economic Information

- Tax regime
- Entry and exit commissions
- Other possible expenses or fees (also TER and Portfolio Turnover Rate)

  The UCI must indicate the management fee and, where applicable, the performance fee as well as other possible expenses and fees, distinguishing between those to be paid by the investor and those to be borne by the UCI.
In addition, the UCI may calculate a TER. The TER is the ratio of the gross amount of expenses to the average net assets of the UCI. If a UCI calculates a TER, the following rules must be complied with:

- The average net assets must be calculated on the basis of the net assets of the UCI each time when the NAV is calculated.
- The TER must be calculated at least once a year on an ex-post basis, in principle by reference to the fiscal year of the UCI.
- The TER includes all the expenses levied on the assets of the UCI such as management charges, performance fees, administration charges, custodian charges, distribution charges, professional charges of the auditor, professional charges of the legal advisers, registration charges and duties. The TER does not include subscription and redemption fees paid directly by the investor, interest payable or costs incurred by the fund in the purchase or sale of investments.
- If a UCI invests more than 20% of its assets in other investment funds which publish a TER in accordance with this Circular, a synthetic TER corresponding to such investment must be indicated.
- If the target funds do not publish a TER in accordance with this Circular, the impossibility to calculate a synthetic TER for such portion of investments must be mentioned.
- The simplified prospectus must indicate if transaction costs are or are not included in the TER.
- If the UCI has adopted the form of a UCI with multiple compartments or issues multiple classes of shares/units, the TER is calculated per compartment and, if applicable, per class of shares/units.

The simplified prospectus may indicate the turnover rate of the portfolio on an annual basis (portfolio turnover rate). The portfolio turnover rate of a UCI or, if applicable, of a compartment must be calculated as follows:

\[ \text{Turnover} = \frac{[(\text{Total } 1 - \text{Total } 2)/M] \times 100}{\text{M}} \]

with:

- Total 1 = total of securities transactions during the relevant period = X + Y
  - where X = purchases of securities and Y = sale of securities
- Total 2 = total of transactions in units/shares of the UCI during the relevant period = S + T
  - where S = subscriptions of units/shares of the UCI and T = redemptions of units/shares of the UCI
- M = average monthly assets of the UCI

The information relating to the TER, the portfolio turnover rate and the historic performances can be reflected in the simplified prospectus or on a sheet annexed to the simplified prospectus.

d) Commercial Information

- Procedures to buy the units
- Procedures to sell the units
- In the case of a multiple compartment UCI, indication of the procedures to pass from one compartment into another and the charges applicable
- Frequency and procedures relating to the distribution of dividends on units or shares (if applicable)
- Frequency and where/how prices are published or made available

e) Additional Information

- Statement that, on request, the full prospectus, the annual and half-yearly reports may be obtained
- Competent authority
- Indication of a contact point (person/department, timing, etc.) where additional explanations may be obtained, if needed
- Publication date of the prospectus
4.5. Stock Exchange Quotation

4.5.1. Listing Luxembourg Funds on LSE

Application for a quotation on the LSE may be made at the same time as the application for approval by the CSSF, submitting the same documents and information. The admission of securities to the official stock exchange price list is decided on by the committee for admission. To obtain the admission of a security to the official stock exchange listing, an application in writing signed by the applicants (one at least shall be a member of the Stock Exchange) has to be submitted to the LSE.

The LSE regulations also outline the conditions to be fulfilled for the listing of securities redeemable in/exchangeable for shares/units of UCIs or the income/redemption of which is/are linked to underlying shares/units of UCIs.

4.5.2. Listing of Foreign Funds on LSE

European institutional investors such as pension funds are continuing to allocate a larger percentage of the assets to alternative products such as hedge funds. In many cases, the institutional investors will only allocate assets to hedge funds and funds of hedge funds which have a listing on a recognized or regulated stock exchange. As a result, a listing on a recognized exchange will often be a key tool for marketing hedge funds and funds of hedge funds.

In June 2004, the LSE issued new regulations allowing for foreign funds (including hedge funds and funds of hedge funds) domiciled in jurisdictions, such as the Cayman Islands, to obtain a listing on the LSE.

In order for a foreign fund to obtain a listing on the LSE, the following conditions must be fulfilled:

- The fund promoter must be of good repute, have adequate professional experience and appropriate financial standing.
- The service providers of the fund (investment manager, management company, custodian, administrative agent, transfer agent, etc.) must have adequate professional experience.
- The service providers must be subject to prudential supervision in their home country or be part of a group subject to prudential supervision.
- The functions of investment manager, management company, custodian and transfer agent must be carried out by a separate entity.
- The fund and its service providers must be established in jurisdictions which apply the standards laid down by the Financial Action Task Force (FATF) on anti-money laundering and shall not be established in non-cooperative countries and territories.
- The fund must publish annual and semi-annual financial statements. The annual financial statements must be audited by a qualified auditor approved in the fund’s country of origin and have adequate professional experience.
- Financial and corporate information (i.e. NAVs, financial statements and prospectus) must be made available in Luxembourg via CCLux.

The fund must submit a file containing certain information to the LSE to obtain a listing. This file should include the following information:

- A prospectus (written in English, French or German) disclosing all the critical information relating to the operations of the fund such as investment policy, classes of shares issued and related rights of such shares, subscription and redemption procedures, tax status, valuation rules, accounting period, name of auditor, information regarding depository bank/investment advisers and other service providers, historical performance of the fund, profile of typical investor, details of expenses and fees, etc. The prospectus should also make it clear that the fund is not available for public distribution in Luxembourg. A prospectus approved by an EU supervisory authority would normally meet all the requirements outlined above.
- Names and functions of the persons/entities responsible for the prospectus along with a certificate from such persons/entities confirming their responsibility for the prospectus, that the information contained in the prospectus is correct and that no important facts have been omitted.
- Latest annual report (and semi-annual report if more recent than the annual report).

The LSE regulations also outline the conditions to be fulfilled for the listing of securities redeemable in/exchangeable for shares/units of UCIs or the income/redemption of which is/are linked to underlying shares/units of UCIs.
4.6. Supervision

The CSSF supervises UCIs on a continuous basis. Changes to the documents and information which are submitted on application for authorization are to be submitted to the CSSF.

Two copies of the UCI’s annual and semi-annual reports (annual reports only in the case of SIFs) are to be forwarded to the CSSF, in addition to monthly and annual financial information (see Chapter 8).

The CSSF also has the right, either directly or through an intermediary, to examine the books and records of a UCI.

If the management company or custodian is replaced, or the constitutional documents are amended, this must be approved to the CSSF.

When the directors of the UCI and the custodian are replaced, the names of the new directors must be communicated to the CSSF.
5. Administration

5.1. Central Administration

The central administration of a UCI, set up under either the 2002 Law or the SIF Law, must be in Luxembourg, although it should be noted that the CSSF may permit, on a case-by-case basis, the performance of certain ‘preparatory tasks’ outside Luxembourg subject to the overall responsibility of the appointed Luxembourg central administrator. The principle objective of this requirement is to facilitate the duties of the CSSF, custodian bank and the independent auditor.

The activities of central administration which are to be carried out in Luxembourg comprise accounting and administrative functions only and are specified in Chapter D of Circular 91/75 as follows:

(i) The accounts must be kept and the accounting documents must be available in Luxembourg.
(ii) Issues and repurchases of shares or units must be carried out in Luxembourg.
(iii) The register of shareholders or unitholders must be kept in Luxembourg.
(iv) The prospectus, financial reports and all other documents intended for investors must be established in cooperation with the central administration in Luxembourg.
(v) Correspondence and the dispatch of financial reports and other documents intended for the shareholders must be carried out from Luxembourg and in any case under the responsibility of the central administration in Luxembourg.
(vi) The calculation of the NAV must be carried out in Luxembourg.

The Circular specifies that the following are permitted abroad:

- Appointment of investment advisers established
- Investment decisions may be made and executed.

Neither the UCI nor the management company of an FCP is required to carry out the central administration. It may be delegated to one or more Luxembourg companies provided that the UCI is in a position to coordinate and supervise the various functions. The UCI may appoint a qualified agent to carry out or supervise the tasks. These are generally banks. In such cases the agent will then become the official contact for the CSSF.

Chapter D of Circular 91/75 elaborates on certain aspects of the requirements outlined in i) to v), as summarized in Sections 5.2. to 5.6.

5.2. Accounting Records, Calculation of NAV and Supporting Documentation

Processing by Computer

The computer unit which processes the accounting records and the calculation of the NAV may be located abroad subject to the following conditions:

a) Central administration in Luxembourg must have the means to input and extract information, such access being immediate and unrestricted.

b) Central administration must have knowledge of the operation of the processing unit and authorize any program modifications.

c) Central administration must have the ability to intervene directly in the processing of information stored in the processing unit.

d) Information stored in the processing unit must be transferred and downloaded to Luxembourg on each valuation of assets and at least weekly.
e) Promoters must have the means to allow central administration to continue normal operations in the event of an emergency, such as a breakdown in communications with the processing unit.

f) Where other parties use the computer unit, adequate protection must exist to prevent access to the UCI data.

Conditions a), b), c) and f) also apply where the processing unit is situated in Luxembourg.

Investment advisers or other agents abroad may have immediate access to the network and may instigate accounting operations within the scope of their duties, provided that:

- Controls exist to ensure they only have access to the data applicable to their duties
- The UCI has established management control procedures to ensure that the operations initiated by the portfolio managers comply with its regulations.

**Procedures and Documents which must be in Luxembourg**

As central administration in Luxembourg has the ultimate responsibility for the accuracy of the financial information, it alone must carry out the process of allocating provisions and accruals necessary to finalize the NAV calculation.

Central administration must have at its disposal in Luxembourg all accounting and other documentation of the UCI required for:

- The preparation of accounts and portfolio valuations
- The drawing up of certificates of title and indebtedness
- The allotment of shares or units in circulation
- The general protection of the interests of the UCI, including all agreements.

The above requirements imply that all documents relating to transactions initiated from abroad should be immediately forwarded to Luxembourg.

**5.3. Issue and Repurchase of Shares or Units**

a) **Procedures Carried out by Luxembourg and Foreign Intermediaries**

The requirement for issues and repurchases to take place in Luxembourg implies that the following tasks should be carried out by central administration:

a) Processing of issues and repurchases
b) Determination of prices
c) Preparation of contract notes
d) Preparation of share or unit certificates
e) Dispatch of contract notes and share or unit certificates.

The above requirements do not prohibit the appointment of Luxembourg or foreign intermediaries as authorized agents for the placing and repurchase of shares or units.

Luxembourg or foreign intermediaries may participate in issue and repurchase operations as:

- Distributors
- Nominees
- Market makers

provided that this in no way restricts the ability of investors to deal directly with the UCI, and that this is clearly stated in the prospectus.
b) **Distributors**

Distributors are intermediaries who are part of the distribution system set up by the promoters to perform one of the following:

- Actively market the shares or units
- Receive subscription and repurchase orders as appointed agents of the UCI.

The following conditions are applicable to distributors:

a) For the purposes of processing the subscription and redemption orders, distributors must immediately forward the necessary data to central administration (see, however, d)).

b) For orders concerning registered shares or units, distributors will provide central administration with the registration data necessary to accomplish the related tasks on an individual basis.

c) The requirement of b) does not apply in the case of orders concerning bearer shares or units. In such cases, distributors act as subscribers in relation to central administration in Luxembourg. They may therefore aggregate individual subscription or repurchase orders and transmit them in the form of a combined order to the central administration in Luxembourg.

d) It is not necessary for distributors to forward to central administration the documentation relating to subscription and repurchase orders from investors. However, the administration must be allowed access to such documentation in case of need.

e) Payments and receipts in respect of subscription and repurchase orders may be aggregated by distributors in order to deal with central administration on a net basis.

f) Stocks of unissued share or unit certificates may be held by distributors.

c) **Nominees**

Nominees act as intermediaries between investors and the UCI of their choice.

The use of nominees is only authorized if the following conditions are met:

a) The relationship between the UCI, the nominee, central administration and the investors is determined by contract.

b) The promoters ensure that the nominee can adequately guarantee to execute properly its obligations towards investors.

c) The role of the nominee is adequately described in the prospectus.

d) Investors have the right to directly invest in the UCI without using a nominee and this right is expressly stated in the prospectus.

e) Agreements between the nominee and the investors include a termination clause giving the investor the right to claim title to the shares or units subscribed through the nominee.

The conditions of d) and e) are not applicable where the use of a nominee is either compulsory or indispensable.

d) **Market Makers**

Market makers are intermediaries participating on their own account and at their own risk in subscription and repurchase transactions on UCI shares or units.

The use of market makers is only authorized if the following conditions are met:

a) The relationship between the UCI, central administration and the market makers is determined by contract.

b) The role of the market maker is adequately described in the prospectus.

c) Market makers may not act as counterparts to subscription and repurchase transactions without specific approval of the investors.
d) Market makers may not price subscription and repurchase orders addressed to them on less favorable terms than would be applied by the UCI directly.

e) Market makers must regularly notify central administration of orders executed by them which relate to registered shares or units in order that the register of shareholders or unitholders is updated and that registered certificates or confirmations of investment may be sent out from Luxembourg.

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e) **Prevention of Money Laundering**

The Law of 7 July 1989 introduced the concept of laundering proceeds of an illegal activity (drug trafficking) as a criminal offence. The Law of 11 August 1998 (supplemented by Circulars 98/153 and 00/21) extended the categories of illegal activities to also include crimes or offences committed within the context of or in conjunction with a criminal association or a criminal organization, abductions of minors, crimes of procuring, crimes of corruption, infringements of the law governing arms and munitions and bribery of public officials.

The Law of 5 April 1993 on the Financial Sector as amended (1993 Law), defined rules of professional conduct that must be observed concerning, *inter alia*, money laundering. CSSF Circular 94/112 *Measures to combat money laundering and prevention of the use of the financial sector for the purpose of money laundering* provided guidance to financial professionals on how to observe the 1993 Law.


These various legal developments led to the CSSF publishing Circular 05/211 on 13 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and the financing of terrorism. The new Circular provides a combined text bringing together all professional obligations in relation to the fight against money laundering and terrorist financing, and details how such obligations should be executed.

The following is a brief summary of the updated provisions:

- There must be a person designated specifically in charge of anti-money laundering and the prevention of financing for terrorism. This will normally be the Compliance Officer.
- This person must ensure implementation of internal policies and procedures relating to customer acceptance, identification and monitoring, risk management. The Circular sets out his/her responsibilities.
- In order to combat money laundering and terrorist financing, the Circular states that professionals of the financial sector should adopt a risk-based approach in relation to customer identification and transaction monitoring.
- Funds and management companies have to meet the professional obligations where they sell units directly to the public.
- Where branches and subsidiaries of financial institutions are not already covered by equivalent requirements in their place of establishment, they must meet the requirements of the Luxembourg regulation as a minimum. The requirements of the EU, European Economic Area (EEA) and the Financial Action Task Force on Money Laundering (FATF) member countries are automatically considered equivalent.
- Know Your Customer (KYC) protocols have to be performed on occasional clients for all transactions over €15,000, or where there is suspicion of money laundering or financing of terrorism.
- Identification is not required where the client is a Luxembourg financial institution or a foreign financial institution subject to equivalent identification obligations.
- Potentially suspicious transactions must be examined in detail. Criteria for identifying such transactions are given in the Circular. Considering the number of clients and risky transactions, it is recommended to use IT systems to detect suspicious transactions.
- The obligation to co-operate with authorities has been clarified.

New professional Practices and Recommendations aimed at reducing the risk of money laundering and terrorist financing in the Luxembourg Fund Industry were published in December 2006. They were endorsed by the Association of the Luxembourg Fund Industry (ALFI), the Luxembourg Bankers’ Association (ABBL) and the Association of Luxembourg Compliance Officers (ALCO).

The practices and recommendations are to be considered as guidance on best practice for the Luxembourg fund industry in the light of the requirements of the Law of 12 November 2004 on combating money laundering and the financing of terrorism as well as the subsequent CSSF circular, Circular 05/211. They suggest a risk-based approach in relation to customer identification and transaction monitoring, in line with international standards. They also provide a methodology...
for assessing the equivalence of legal and regulatory Know-Your-Customer requirements of foreign jurisdictions by comparing them to Financial Action Task Force (FATF) standards.

In order to update European legislation, bring it in line with international recommendations, and to ensure their coherent application in Member States, the EU adopted the Third Anti-Money Laundering Directive, which must be transposed into national legislation by 15 December 2007. For more information, see Chapter 15.

5.4. Register of Shareholders

The register of shareholders or unitholders must be permanently available in Luxembourg and central administration must perform the registrations, alterations or deletions in Luxembourg.

Where central administration uses a remote-access computer unit to carry out this function, it must apply the same security and protection measures described in Section 5.2.

Distributors who are connected to the remote-access computer unit may use it to transmit information relating to issue and repurchase orders to central administration in order to initiate the necessary operations.

5.5. Prospectus, Financial Reports and Other Documents Intended for Investors

The requirement for prospectuses, financial reports and other documents intended for investors to be drawn up in cooperation with central administration only relates to the intellectual as opposed to the physical effort. This requirement does not exclude the limited use of experts abroad.

As this requirement does not extend to technical or physical aspects, central administration may use printers or other providers of services established abroad in connection with the physical production of the documents.

5.6. Correspondence and Dispatch of Financial Reports and Other Documents

The requirement that correspondence and the dispatch of financial reports and other documents intended for shareholders be carried out from Luxembourg is aimed at safeguarding confidentiality of data relating to investors. This requirement applies to documents printed abroad. As an exception, dispatches to the relevant investors may be carried out from abroad (e.g. printers) provided that it is carried out under the supervision of central administration in Luxembourg with adequate security measures.
6. Issue and Repurchase of Shares and Payment of Dividends

6.1. Minimum Capital

All UCIs require a minimum capital/net assets of €1,250,000 which must be achieved within six months of authorization in the case of 2002 Law funds and twelve months in the case of SIFs. In the case of a multiple compartment UCI, this capital requirement applies to the UCI as a whole, not to the individual compartments.

In the case of an FCP, if the net assets fall below two-thirds of the legal minimum of €1,250,000, the management company must immediately inform the CSSF which may compel the FCP to be put into liquidation.

In the case of a UCI set up as an investment company (SICAVs and SICAFs), if the capital falls below two-thirds of the minimum capital of €1,250,000, the directors must submit the question of dissolution to a general meeting. No quorum is required; the question is decided by a simple majority. If the capital falls below one-fourth of the minimum capital of €1,250,000, the dissolution may be resolved by shareholders holding one-quarter of the shares at the meeting. The meeting must be convened within 40 days from the date of ascertainment that the net assets have fallen below two-thirds or one-fourth of the minimum capital, as the case may be.

The shares or units of a SICAV/SICAF must be fully subscribed. Those of a 2002 Law SICAV must be fully paid up; however, in the case of a SIF, only 5% of the amount of the subscription per share or unit must be paid up in cash or by means of a contribution other than cash. This is also applicable to SIF Law SICAFs. This will facilitate structures such as private equity funds to make capital calls over a period of time.

6.2. Issues and Repurchases

The roles of the administration, distributors, nominees and market makers in the issue and repurchase of shares or units are discussed in Section 5.3.

6.2.1. Issues (Subscriptions)

Shares or units are represented by certificates in registered or bearer form or by a confirmation of registration. Fractions of shares or units are permitted. Shares or units are to be issued in accordance with the conditions laid down in the articles of incorporation (SICAV/SICAF) or management regulations (FCP). They may be denominated in any currency.

6.2.2. Repurchases (Redemptions)

Repurchases of shares or units are to take place in accordance with the conditions laid down in the articles of incorporation (SICAV/SICAF) or management regulations (FCP).

UCITS are required to repurchase their shares or units at the request of investors. However, a UCITS may, if it can be justified, provide in its constitutional documents that management is able, in specific circumstances (e.g. temporary liquidity shortage) or when requests in a single dealing day exceed a certain set level in relation to the number of shares in circulation, to arrange for a delay in settlement of repurchase requests for a specific time or for a proportional reduction of all repurchase requests so that the set level is not exceeded.

Repurchases may be suspended under the conditions specified in the articles of incorporation (SICAV/SICAF) or management regulations (FCP) or, in certain circumstances, at the request of the CSSF.

6.2.3. Issue and Repurchase Price

For 2002 Law funds, the issue and repurchase price is the NAV per share or unit, arrived at by dividing the NAV by the number of shares or units outstanding. Such price may be increased, in the case of issues and reduced, in the case of repurchases, by a specified percentage to cover commissions and expenses.
The 2002 Law prescribes the following general bases for calculating the NAV:

- Quoted securities are valued at the last known stock exchange quotation.
- Unquoted securities (or quoted securities for which the last known quotation is not considered representative) are valued with prudence at the estimated probable realization price.

See also Section 6.3. which deals with Protection Against Late Trading and Market Timing Practices. These protective measures may include the valuation of securities at “fair value”.

The frequency of the determination of the issue and repurchase price is specified in the articles of incorporation (SICAV/SICAF) or management regulations (FCP). The price must be determined and made public each time the shares are issued or repurchased and, in principle, at least twice a month for a UCITS and at least monthly for other UCIs.

Under the SIF Law, there is significant flexibility regarding issue and redemption of units or shares. The issue and redemption of units or shares must be carried out in accordance with the rules laid down in the management regulations (FCP) or articles of incorporation (SICAV). These rules could provide, for example, for units or shares to be transferred at a price other than the NAV.

### 6.3. Protection Against Late Trading and Market Timing practices

**Introduction**

On 17 June 2004, the CSSF issued Circular 04/146 on the Protection of UCIs and their investors against Late Trading and Market Timing practices. The Circular:

- clarifies the protective measures to be adopted by UCIs and certain of their service providers
- fixes more general rules of conduct to be complied with by all professionals subject to the supervision of the CSSF
- extends the role of the auditor of the UCI, as described in CSSF Circular 02/81 (see Section 8.1.5.), regarding the verification of the procedures and controls established by the UCI to protect it against late trading and market timing practices.

Following the Circular, ALFI issued its report entitled *Fair Value Pricing & Arbitrage Protection*. The report aims to provide a reference document collating the reports and recommendations that emerged following accusations of Late Trading and Market Timing in the international mutual fund industry. This includes the Guidelines issued by ALFI to its members and the complete Report of the ALFI Working Group on Fair Value Pricing and Arbitrage Protection.

**Definitions**

**Late Trading**

Late trading is the acceptance of a subscription, conversion or redemption order after the time limit fixed for accepting orders (cut-off time) on the relevant day and the execution of such order at the price based on the NAV applicable to such same day.

Through late trading, an investor may take advantage of knowledge of events or information published after the cut-off time which are not yet reflected in the price which will be applied to such investor. This investor is therefore privileged compared to the other investors who have complied with the official cut-off time. The advantage of this practice to the investor is increased even more if he is able to combine late trading with market timing.

The late trading practice is not acceptable as it violates the provisions of the prospectuses of the UCIs which provide that an order received after the cut-off time is dealt with at a price based on the next applicable NAV.

The acceptance of an order is not to be considered as a late trading transaction, where the intermediary in charge of the marketing of the UCI transmits to the transfer agent of the UCI after the official cut-off time to still be dealt with at the NAV applicable on such day, if such order has effectively been issued by the investor before the cut-off time. To limit the risk of abuse, the transfer agent of the UCI must ensure that such order is transmitted to him within a reasonable timeframe.

The acceptance of an order dealt with or corrected after the cut-off time by applying the NAV applicable on such day is also not to be considered as a late trading transaction, if such order has effectively been issued by the investor before the cut-off time.
**Market Timing**

Market timing is an arbitrage method through which an investor systematically subscribes and redeems or converts units or shares of the same UCI within a short time period, by taking advantage of time differences and/or imperfections or deficiencies in the method of determination of the NAV of the UCI.

Opportunities arise for the market timer either if the NAV of the UCI is calculated on the basis of market prices which are no longer up to date (“stale prices”) or if the UCI is already calculating the NAV when it is still possible to issue orders.

The market timing practice is not acceptable as it may affect the performance of the UCI through an increase of the costs and/or entail a dilution of the profit.

**Prevention of Late Trading and Market Timing Practices**

As late trading and market timing practices are likely to affect the performance of the UCI and are likely to harm investors, the preventive measures recommended hereafter have to be applied with great care.

a) **Protective Measures to be Adopted by the UCI and by Certain of its Service Providers**

The investor must, in principle, subscribe, redeem or convert the units or shares of a UCI at an unknown NAV. This implies that the cut-off time must be fixed in a manner to precede or to be simultaneous to the moment when the NAV, on which the applicable price is based (“forward pricing”), is calculated. A non-precise cut-off time such as, for example, “until the close of business” is to be avoided. The prospectus must specifically mention that subscriptions, redemptions and conversions are dealt with at an unknown NAV and must indicate the cut-off time.

The transfer agent of the UCI shall ensure that subscription, redemption and conversion orders are received before the cut-off time as set forth in the UCI’s prospectus in order to process them at the price based on the NAV applicable on that day. In respect of orders received after such cut-off time, the transfer agent applies the price based on the next applicable NAV. The transfer agent shall ensure that he receives within a reasonable time period the orders which have effectively been issued by investors before the cut-off time but which have been forwarded to the transfer agent by intermediaries in charge of the marketing of the UCI after such time limit only.

In order to be able to ensure the compliance with the cut-off time, the transfer agent of the UCI must adopt appropriate procedures and undertake to perform the necessary controls. The transfer agent undertakes either to provide the UCI on an annual basis with a confirmation from its auditor on its compliance with the cut-off time or to authorize the auditor of the UCI to perform its own controls on the compliance of the cut-off time.

If intermediaries in charge of the marketing of the UCI have been appointed by the UCI to ensure the collection of orders and the control of the cut-off time with regard to the acceptance of the orders, the UCI shall ensure that it obtains from each intermediary concerned a contractual undertaking pursuant to which the intermediaries undertake towards the UCI to transmit to the transfer agent of the UCI, for the processing at the NAV applicable on such day, only such orders which it has received before such cut-off time.

The cut-off time, the time at which the prices of securities are taken into account for the calculation of the NAV and the time at which the NAV is calculated must be combined in a manner so as to minimize any arbitrage possibilities arising from time differences and/or imperfections/deficiencies in the method of determination of the NAV of the UCI.

UCIs which, due to their structure, are exposed to market timing practices must put in place adequate measures of protection and/or control to prevent and avoid such practices. The introduction of appropriate subscription, redemption and conversion charges, an increased monitoring of dealing transactions and the valuation of the portfolio securities at “fair value” may constitute possible solutions for such UCIs.

The board of directors should analyze such solutions with care and is responsible for implementing them or making certain that they are implemented.

The UCI shall ensure not to permit transactions which it knows to be, or it has reasons to believe to be, related to market timing and uses its best available means to avoid such practices.

If there exist formal contractual relationships between the UCI and intermediaries in charge of its marketing, the UCI shall ensure it obtains a contractual undertaking from each intermediary not to permit transactions which the intermediary knows to be, or has reasons to believe to be, related to market timing.
The prospectus of the UCIs concerned must include a statement indicating that the UCI does not permit practices related to market timing and that the UCI reserves the right to reject subscription and conversion orders from an investor who the UCI suspects of using such practices and to take, if appropriate, the necessary measures to protect the other investors of the UCI.

Particular attention has to be paid to subscription, conversion or redemption orders from employees of the service providers to the UCI or from any person who holds or is likely to hold privileged information (e.g. knowledge on the exact composition of the portfolio of the UCI, etc). Accordingly, adequate measures have to be taken by the service providers of the UCIs to avoid the risk that any such person take advantage of his privileged situation either directly or through another person.

b) Rules of Conduct to be Followed by all Professionals Subject to the Supervision of the CSSF

The CSSF prohibits any express or tacit agreement which permits certain investors to undertake late trading or market timing practices.

The CSSF requires that any professional subject to its supervision refrains from using late trading or market timing practices when investing in a UCI or from processing a subscription or conversion order of units or shares of a UCI which he knows to be, or he has reasons to believe to be, related to late trading or market timing.

The CSSF requires that any professional subject to its supervision that detects or is aware of a case of late trading or market timing, informs as soon as possible, the CSSF by providing to the latter the necessary information to enable it to make a judgment on the situation.

Compensation and Sanctions

Any person who is guilty of knowingly undertaking or supporting late trading or market timing practices as defined by this Circular exposes himself to sanctions or, in addition, to the obligation of repairing the damage caused to the UCI.

Role of Auditor

Circular 04/146 included provisions on the role of the auditor regarding late trading and market timing. For further information, see Section 8.1.5.

6.4. Payment of Dividends

There are no restrictions on the amount which may be distributed by FCPs or SICAVs except that the net assets after distribution must exceed the minimum €1,250,000.

SICAVs and FCPs are not subject to the procedures required for public limited companies to pay an interim dividend. SICAVs and FCPs are also exempt from the requirement to create a legal reserve.

A SICAF, however, is subject to the normal authorization procedures for paying interim dividends and is also required to create a legal reserve. The interim dividend authorization procedures include specific authorization in the articles of association and the preparation of interim financial statements, under the control of the auditor. SICAFs are also subject to the legal reserve requirement, which is 5% of net profit until the accumulated reserve equals 10% of subscribed capital.
7. Custodian

7.1. UCIs under the 2002 Law

7.1.1. Qualifications

General
Luxembourg UCIs must appoint a credit institution as custodian (depositary). This appointment must be approved by the CSSF. Under certain stringent conditions, a UCI may be exempt, but in practice this will be rare. If the custodian is replaced, this must be communicated to the CSSF.

Custodian of a UCITS
The custodian bank of a UCITS must be registered in Luxembourg or be established in Luxembourg if its registered office is in another EU country. A Luxembourg branch of a non-EU bank may not therefore act as custodian of a UCITS.

Custodian of other UCIs
The custodian bank of other UCIs must be established in Luxembourg. A Luxembourg branch of any foreign bank may consequently act as custodian.

7.1.2. Responsibilities

General
The responsibilities of the custodian are:
• Custody of the UCI’s assets (may delegate this task to a correspondent but it retains overall responsibility to the UCI). Custody in this context is supervision rather than safekeeping
• Ensuring that the sale, issue, repurchase and cancellation of shares or units are effected in accordance with the regulations
• Ensuring that settlements are made on a timely basis
• Ensuring that the UCI’s income is applied in accordance with the regulations.

Additional Responsibility with Regard to an FCP
• Carrying out all operations concerning the day-to-day administration of the assets of an FCP (responsible for the collection of dividends, interest and proceeds of matured securities, the exercise of options, etc.)
• Carrying out the instructions of the management company, unless they conflict with the regulations.

Additional Responsibility with Regard to a UCITS Formed as an FCP
• Ensuring that the NAV is calculated in accordance with the regulations.
7.2. UCIs under the SIF Law

A SIF must appoint a Luxembourg custodian (i.e. it must have its registered office in Luxembourg or be the Luxembourg branch of a bank with its registered office in another Member State of the EU).

The concept of custodian, under the SIF Law, may be viewed as the role of a supervisor - the local Luxembourg custodian should know at all times where the assets are and how they are invested. It does not mean that the local Luxembourg custodian must have physical possession of the assets. This facilitates the appointment of sub-custodians and prime brokers.

In contrast with the precursor to the SIF Law, the 1991 Law, the custodian is not required to control the regularity of certain operations, such as ensuring that the sale, issue, redemption and cancellation of units/shares effected are carried out in accordance with the law and the management regulations or the articles of incorporation and ensuring that the income of the SIF is applied in accordance with the management regulations or the articles.

If the custodian is replaced, this must be communicated to the CSSF.

In the case of hedge funds, the SIF Law does not impose any restrictions on the appointment of a prime broker. The custodian’s responsibility in relation to the appointment of a prime broker would include performance of certain due diligence procedures to ensure high reputation, appropriate experience and sufficient financial resources.

The custodian would also have to ensure that there was appropriate reporting in place to enable it to monitor how and where all assets deposited are held. A CSSF Circular is expected on the role of the custodian of SIFs.
8. Reporting and Audit Requirements

8.1. Under the 2002 Law

8.1.1. Annual Report

An audited annual report (often now referred to as the short form report) is to be published (and sent to the CSSF) within four months of the financial year end. The annual report must also be available 15 days prior to the annual general meeting of shareholders. The annual report must include a report on the UCI’s activities, a statement of assets and liabilities, a detailed income and expenditure account and the information specified in Schedule B of Annex I to the 2002 Law which is set out below.

I. Statement of assets and liabilities:
   - Transferable securities and money market instruments
   - Bank balances
   - Other assets
   - Total assets
   - Liabilities
   - NAV

II. Number of shares or units in circulation

III. NAV per share or unit

IV. Portfolio, distinguishing between:
   a) Transferable securities and money market instruments admitted to official exchange listing
   b) Transferable securities and money market instruments dealt in on another regulated market
   c) Recently issued transferable securities and money market instruments of the type referred to in Article 41(1)d)
   d) other transferable securities of the type referred to in Article 41(2)a)

and analyzed in accordance with the most appropriate criteria in the light of the investment policy of the UCI (e.g. in accordance with economic, geographical or currency criteria) as a percentage of net assets; for each investment, the proportion it represents of the total net assets of the UCI should be stated.

Statement of changes in the composition of the portfolio during the reference period. The CSSF may permit this statement to be omitted from the annual report, provided that it is made available free of charge to shareholders, and that this is clearly stated in the annual report.

V. Statement of the developments concerning the assets of the UCI during the reference period including the following:
   - Income from investments
   - Other income
   - Management charges
   - Custodian’s charges
   - Other charges and taxes
   - Net income
   - Distributions and income reinvested
   - Changes in capital account
   - Appreciation or depreciation of investments
   - Any other changes affecting the net assets and liabilities of the UCI
VI. A comparative table covering the last three years and including, for each financial year, at the end of the financial year:
- the total NAV
- the NAV per share or unit

VII. Details, by category of money market transactions within the meaning of Article 42 carried out by the UCI during the reference period, of the resulting amount of commitments

The 2002 Law (see Section 2.2.1.) requires certain disclosure regarding management fees where a UCITS invests a substantial proportion of its assets in other UCIs. The maximum level of management fees charged both to the UCITS itself and to other UCIs in which it invests must be disclosed. In addition, Chapter H of Circular 91/75 requires certain disclosures for techniques and instruments. This Circular is currently being amended to realign it with the 2002 Law.

The requirements of V are generally disclosed in the statement of income and expenditure and statement of changes in net assets. A statement of changes in the number of shares outstanding is also normally included. It is not required to disclose individual and total cost of the investments. Comparative figures are also not in practice disclosed.

The annual report is to be sent to the shareholders or unitholders. However, an abridged annual report (comprising report on activities, auditor’s report, statements of net assets, operations and changes in net assets) may be sent to shareholders or unitholders, provided this is so stated in the prospectus and provided the full annual report is available free of charge to shareholders or unitholders on request.

The annual report of a UCI company (SICAV or SICAF but not FCP) has to be registered at the Trade Register (Registre de Commerce et des Sociétés Luxembourg - RCSL) in one of the official languages (being French, German and Luxembourgish) or English.

8.1.2. Semi-Annual Report

An unaudited semi-annual report is to be published (and sent to the CSSF) within two months of the period end, disclosing the information specified in Section 8.1.1. I – IV. A statement of income and expenditure is not obligatory. However, where an interim dividend is paid or proposed, the results after tax for the half-year and the amount of such dividend must be disclosed.

The semi-annual report is to be supplied free of charge to shareholders or unitholders on request.

8.1.3. Umbrella Funds

In the case of multiple compartment UCIs, all the annual and semi-annual information outlined in Sections 8.1.1. and 8.1.2. is required for each compartment. Each compartment may have different denominated currencies. Aggregated figures of the financial statements are required to be shown in the UCI’s denominated currency.

In addition to the full report, multiple compartment UCIs may provide for the publication of separate financial reports for each of their compartments. Such reports must include either the auditor’s general report or a separate audit report for each compartment.

8.1.4. Monthly and Annual Financial Information to be sent to the CSSF and to STATEC via CCLux

The roles of CCLux are the collection, management and dissemination of financial information related to the Luxembourg registered investment funds.

Monthly and annual financial information is to be sent, via CCLux, to:
- the CSSF, for statistical and supervisory purposes
- the Central Service for Statistics and Economic Studies (Service Central de la Statistique et des Etudes Economiques – STATEC) for the preparation of the national accounts and the Luxembourg balance of payments figures.

CCLux has been contracted to collect the financial information in electronic format and transmit it to the CSSF and STATEC.
The contents of the monthly and annual financial information are set out in the Circular 97/136 of 13 June 1997 which replaces Chapter M of Circular 91/75 (and the table appended to that chapter). The information must be prepared separately for each sub-fund. Consolidated information is not required. The monthly and annual information is to be submitted within 20 days and four months of the reference date, respectively.

Monthly information includes details of:

I. Information on the month-end net asset value
II. Percentage value of the investment fund portfolio in relation to total net assets at month-end
III. Information on the number of shares or units issued or redeemed in the course of the month of reference
IV. Information on investment income in the course of the month of reference
V. Information on distributions made in the course of the month of reference

Annual information includes details of:

I. Statement of net assets
   - Total assets
   - Total liabilities
   - Net assets at the end of the year
II. Statement of operations
   - Total income
   - Total charges
   - Net investment income
   - Profit or loss on operations
III. Statement of changes in net assets
   - Net assets at the beginning of the year
   - Net assets at the end of the year
IV. Changes in the investment portfolio
   - Total purchases of transferable securities and other investments
   - Total sales of transferable securities and other investments
V. Analysis of the securities portfolio and of liquid assets other than cash at bank
VI. Countries in which the UCIs are marketed

Forward transactions and options

I. Commitments at the year end arising in respect of transactions entered into for purposes other than hedging
II. Premiums received and paid in respect of options contracts in the course of the financial year

8.1.5. Audit

General Rules

The audit requirements and auditors’ responsibilities are covered in Article 113 of the 2002 Law and Circulars 02/77 (on errors and breaches) and 02/81 (on the long form report). Auditors are bound by the obligation of professional secrecy.

The annual report is to be audited by a Luxembourg authorized independent auditor, a member of the Luxembourg Institute of Auditors (Institut des Réviseurs d’Entreprises – IRE), who shall also be suitably qualified in terms of relevant experience. The audit is conducted in accordance with International Standards on Auditing (ISAs) issued by the International Federation of Accountants (IFAC), as adapted or supplemented by the CSSF. The audit report is to be reproduced in full in each annual report.

The auditor must report promptly to the CSSF where information provided to investors or the CSSF does not truly describe the financial situation and any fact or decision of which he has become aware during the audit of a UCI which is liable to:

- Constitute a material breach of the Law or regulations
- Affect the continuous functioning of the UCI
- Lead to a refusal to certify the accounts or to the qualification of his report.
The CSSF may determine rules regarding the scope of the audit and the auditor’s report and may request auditors to carry out special audits.

UCIs must immediately send to the CSSF, without being specifically requested to do so, the certificates, reports and written commentaries (in particular the “management letter”) issued by the independent auditor, in accordance with Chapter P of Circular 91/75.

The auditor must also intervene and has certain reporting requirements in the case of errors and breaches of investment restrictions (see Section 9.2.(d) and 9.3.).

**Circular 02/81 on Long Form Reports**

This Circular, which was published on 6 December 2002 and contains external audit guidelines, introduced the requirement (with effect from 1 December 2003 year ends) for the auditor to submit a long form report to the directors and CSSF for each UCI (Institutional UCIs are exempted).

The topics to be covered in the long form report are as follows:

1. Organizational structure
   1.1. Central administration
       1.1.1. Reliance by fund’s auditor on a report issued by the auditor of the central administration
       1.1.2. Audit tests and procedures conducted by fund’s auditor
           1.1.2.1. Assessment of procedures
           1.1.2.2. Computer systems
   1.2. Custodian bank
       1.2.1. Reliance by fund’s auditor on a report issued by the auditor of the custodian bank
       1.2.2. Audit tests and procedures conducted by fund’s auditor
           1.2.2.1. Assessment of procedures
           1.2.2.2. Computer systems
           1.2.2.3. Results of reconciliations
   1.3. Relationship with management company
   1.4. Relationships with other intermediaries

2. Tests of transactions and procedures
   2.1. Anti-money laundering procedures
   2.2. Valuation methods
   2.3. Risk management system
   2.4. Specific tests
   2.5. Statement of assets & liabilities and income & expenditure account
   2.6. NAV publication
   2.7. Late Trading and Market Timing

3. Internet

4. Investor complaints

5. Follow-up of issues raised in previous long form fund audit reports

6. Overall conclusion

**Additional Provisions Regarding Late Trading and Market Timing**

Circular 04/146 included provisions on the role of the auditor regarding late trading and market timing (see Section 6.3.) which are additional to those of Circular 02/81.

The auditor of the UCI checks the procedures and controls put in place by the UCI so as to protect itself from late trading practices and describes these in its long form report. For UCIs which, due to their structure, are likely to be subject to market timing practices, the auditor checks the measures and/or controls put in place by the UCI to protect itself by the best possible means against such practices and describes such measures and/or controls in its long form report.
If the auditor of the UCI, during the performance of its duties, becomes aware of a case of late trading or market timing, it must be indicated in the long form report.

In case of indemnification of investors harmed by late trading or market timing practices during the accounting year, the auditor must give, in the long form report, an opinion as to whether investors have been adequately indemnified.

8.2. Under the SIF Law

SIFs are required to produce an annual report which must be made available to investors within six months of the end of the financial year. It must also be communicated to the CSSF. It is not necessary to disclose details of the portfolio, though enough quantitative and/or qualitative information for investors to make an informed judgment about the evolution of the activity and results of the fund should be provided.

The annual report is to be audited by a Luxembourg authorized independent auditor, a member of IRE, who shall also be suitably qualified in terms of relevant experience. No long-form report is required.

There is no requirement to produce a semi-annual report. Nor is there any requirement to publish the net asset value (NAV) per share.

In a similar manner to funds under the 2002 Law, SIFs are required to submit, electronically via CCLux, monthly and annual information to the CSSF, for statistical and supervisory purposes.

The contents of the monthly and annual financial information are set out in the Circular 07/310 and is the same as that required to be sent by funds under the 2002 Law, as noted in section 8.1.4. The information must be prepared separately for each sub-fund. Consolidated information is not required. The monthly and annual information is to be submitted within 20 days and six months of the reference date, respectively.

In general, the month end date should be the reference date on which the CSSF reporting is based. However, in the case of funds whose NAV is calculated on a weekly basis, the last NAV calculated before the end of the month may be used for CSSF reporting purposes.

Similarly, if, in the case of monthly valued funds, the date of calculation of the NAV falls during the week prior to the month end or subsequent to the month end, the information sent to the CSSF should be that relating to the NAV closest to the month end date.

In case of SIFs whose NAV is not calculated on a monthly basis, the monthly information sent to the CSSF should be that of the last available NAV.
9. Errors, Materiality and Compensation to Investors

9.1. Introduction

Circular 02/77, entitled Protection of investors in UCIs in case of NAV computation error and compensation for losses arising from non-compliance with applicable investment restrictions, establishes guidelines for the Luxembourg fund industry when dealing with errors. It introduced a simplified reporting procedure for material errors and active breaches where the total compensation does not exceed €25,000 and the amount payable to a single investor does not exceed €2,500.

Errors generally relate to NAV errors or instances of breaches of the investment policy on investment or borrowing limits as specified in either the prospectus or the Law.

It is the responsibility of the promoters of a UCI to ensure that any errors are properly dealt with in accordance with the Circular.

The Circular distinguishes the procedures to be followed between NAV computation errors and breaches of investment restrictions, as outlined in Sections 9.2. and 9.3.

9.2. Treatment of NAV Computation Errors

Definition of a NAV Computation Error

A NAV computation error occurs where there are one or more factors or circumstances which lead to the computation process producing an inaccurate result. As a general rule, such factors or circumstances may be put down to inadequate internal control procedures, management deficiencies, failings or shortcomings in computer systems, accounting systems or communication systems, or indeed to non-compliance with the valuation rules laid down in the UCI’s constitutional documents or prospectus.

Concept of Materiality in the Context of NAV Computation Errors

It is generally acknowledged that the NAV computation process is not an exact science and that the result of the process is the closest possible approximation of the actual market value of a UCI’s assets. It is accepted practice in the majority of leading fund administration centers to recognize only those computation errors with a material impact on the NAV.

The Circular introduces the concept of materiality to Luxembourg UCIs and sets the acceptable tolerance limits for the different types of funds. This differentiated approach is warranted by the fact that the degree of inaccuracy inherent in a given NAV computation may vary from one type of UCI to another due to external factors, such as market volatility.

The acceptable tolerance limits for the different types of UCIs are as follows:

<table>
<thead>
<tr>
<th>Type of Fund</th>
<th>% of NAV</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash funds</td>
<td>0.25%</td>
</tr>
<tr>
<td>Bond funds</td>
<td>0.50%</td>
</tr>
<tr>
<td>Equity and other funds</td>
<td>1.00%</td>
</tr>
<tr>
<td>Mixed funds</td>
<td>0.50%</td>
</tr>
</tbody>
</table>

Promoters are of course free to set tolerance levels below those listed above or even to adopt a policy of zero tolerance. The procedures to be followed in the Circular, however, are only obligatory for material errors using the tolerance levels above. It is a matter for the board of directors of a UCI (or its management company in the case of an FCP) to ensure that where the UCI’s shares/units are distributed in a foreign jurisdiction, the proposed tolerance levels do not conflict with local requirements.
A material error may not just be an isolated error but also several errors which in aggregate exceed the materiality limit. The obligation to compensate losses applies only to those valuation days affected by a material NAV computation error.

**Corrective Action for Material NAV Computation Errors**

**a) Reporting to the Promoter, Custodian, CSSF and External Auditor**

Immediately upon discovery of a material error the UCI’s central administration must notify the promoter, custodian, the CSSF and the external auditor and submit to the promoter and supervisory authority a remedial action plan dealing with the corrective action proposed or already taken to resolve the problems which caused the error and make appropriate improvements to existing administrative and control structures to avoid a recurrence of the failure. The remedial action plan shall further detail the action proposed or already taken in order to:

- Determine categories of investors affected by the error
- Re-compute NAVs used for subscriptions and redemptions during the period the error become material and the date of correction (“error period”)
- Determine on the basis of the re-computed NAVs the amounts to be paid into the UCI and to the investors as compensation
- Notify the supervisory authorities in those foreign jurisdictions where the shares/units are sold, where so required by such authorities
- Advise injured investors of the error and the arrangements for compensation.

**b) Quantifying the Financial Impact of a Computation Error**

The central administration must remedy the error as swiftly as possible. For the purpose of quantifying the financial impact of a computation error, the UCI’s central administration shall make a distinction between:

- Existing investors prior to the error period who redeemed during the error period
- New investors during the error period who held their shares/units beyond the end of the error period.

The following gives an overview of the position of a UCI and its investors where the NAV is understated or overstated:

**NAV Understated**

- Existing investors before the error period who redeemed their shares/units during the error period must be compensated for the difference between the re-computed NAV and the original understated NAV used as the basis for their redemption transaction
- The UCI must be compensated for the difference between the re-computed NAV and the original understated NAV as applied to subscriptions during the error period for shares/units held beyond the end of the error period

**NAV Overstated**

- The UCI must be compensated for the difference between the original overstated NAV as applied to redemptions during the error period of shares/units held prior to the error period and the re-computed NAV
- New investors during the error period who held their shares/units beyond the end of the error period must be compensated for the difference between the original overstated NAV as applied to such subscriptions and the re-computed NAV

Investors incurring a loss as a result of an error may be compensated out of the assets of the UCI where such payments represent the refund of excess receipts by the UCI. Alternatively the UCI's promoter or central administration may, as appropriate, elect to bear the cost of such compensation.

The question arises as to whether a UCI which has sustained a loss as a result of a computation error has the right to look to investors who have unknowingly benefited from the error to make good after the fact any underpayment for a subscription based on an understated NAV or any excess receipt from a redemption based on an overstated NAV. As this is a somewhat controversial issue to which no clear answer may be given in the absence of a judicial ruling on the matter, the Circular does not advocate recourse to investors for compensation of losses sustained by the UCI, except where institutional or other expert investors are concerned, and where such investors have explicitly and knowingly agreed to indemnify the UCI for such losses.
It is in principle for the central administration, or, as appropriate, the promoter to make good any loss to the UCI.

As soon as the misstated NAVs have been re-computed the appropriate accounting entries must be entered in the UCI to record the compensation payments receivable and/or payable.

c) Payment of Compensation for Losses Incurred

The obligation to compensate losses incurred by the UCI and/or its investors applies only to those valuation days affected by a material NAV computation error.

The UCI’s central administration must expedite the compensation payments to the UCI and/or the injured investors subject to completion of the external auditor’s review (see d)). In order to speed up the correction process the UCI’s central administration may begin work on the various steps involved without prior authorization of the CSSF who may be informed of action taken after the event.

Where, as a result of a NAV computation error the amount of compensation does not exceed €25,000 and the amount payable to an investor does not exceed €2,500, the central administration must expedite the release of the amounts of compensation due to the fund and/or injured investors as soon as such amounts of compensation have been quantified.

The CSSF may, however, intervene if it deems it appropriate.

In the majority of leading collective investment centers, fund managers are permitted by the supervisory authority to apply de minimis (minimum amount) rules to compensation amounts due to individual investors. This procedure avoids the situation of investors who are entitled to relatively modest amounts of compensation seeing the payment effectively nullified by bank and other expenses incurred by them. Luxembourg UCIs are permitted to apply de minimis rules. The CSSF has not set a fixed de minimis as the appropriate amount may vary from UCI to UCI depending upon where its shares/units are sold. It is for each UCI to set, with the consent of the CSSF, its proposed de minimis. The de minimis rule may not be used to refuse compensation to investors who have specifically requested compensation.

In the case of investors who still hold shares/units in the UCI, the UCI may elect to credit them (without charge) with new shares/units rather than by payment.

Where injured investors subscribed via a nominee, the investor compensation, will be remitted to the nominee, who shall give an undertaking to the UCI’s central administration to forward the amounts to the beneficial owner.

d) The Role of the External Auditor in Reviewing the Correction Process

As stated in a), when notifying the UCI’s promoter and custodian and the CSSF of the occurrence of a material computation error, the UCI’s central administration shall also advise the UCI’s external auditor and commission a special report (first report) on the appropriateness of the methods intended to be used in order to:

• determine in the most appropriate manner which categories of investors are affected by the error
• re-compute the NAVs used as the basis for subscription and redemption orders received during the period between the date at which the error became material and the date at which it was corrected
• determine on the basis of the re-computed NAVs the amounts to be paid into the UCI and to be paid to investors by way of compensation for losses sustained as a result of the error.

The audit report containing conclusions on the proposed methods shall be attached to the compensation arrangements document referred to in a).

Where the calculation error is detected by the external auditor, it shall be reported to the UCI’s central administration immediately together with a request that the promoter, custodian and the CSSF be notified forthwith. Where the external auditor finds that the central administration has failed to comply with this request, the CSSF shall be advised accordingly.

Once the UCI’s central administration has completed the correction process to the extent of making the appropriate entries in the UCI’s accounting records, the external auditor shall undertake a special review and produce a (second) report stating whether, in his opinion, the correction process is appropriate and reasonable in the circumstances. The report shall deal with:

• The methods referred to above
• The re-computed NAVs as originally misstated
• The loss sustained by the UCI and/or its investors.
The central administration shall forward a copy of the special audit report to the CSSF, together with the supervisory authorities of those jurisdictions in which the UCI’s shares/units are registered for distribution, where requested by them.

The external auditor shall finally issue an attestation (third report), to the effect that amounts of compensation due to the UCI and/or injured investors have been effectively paid.

A copy of this attestation shall also be forwarded to the CSSF and, where applicable to the authorities of foreign jurisdictions where the shares/units are sold.

e) Communicating with Injured Investors Entitled to Compensation

Material computation errors must be reported to investors entitled to compensation.

This may be either by individual notification or announcement in the press, giving particulars of the computation error and the action taken to correct the error and compensate the UCI and/or investors affected.

Draft versions of the proposed communications must be submitted to the CSSF, together with the supervisory authorities of those jurisdictions in which the UCI’s shares/units are registered for distribution, where requested by them.

f) Liability for Expenses Incurred in Remedying a Computation Error

Expenses incurred as a result of remedial action taken to correct a computation error, including the cost of the special audit report, shall not be borne by the UCI. They shall therefore be borne in full by the UCI’s central administration or by the UCI’s promoter.

It is the duty of the external auditor to ensure, as part of his statutory review of the accounting information contained in the UCI’s annual report, that such expenses have not been met out of the assets of the UCI.

9.3. Compensation for Losses Arising from Non-Compliance with Investment Restrictions

Rectification of Non-Compliance

Immediately upon discovery of an instance of non-compliance with applicable investment restrictions, the management of the UCI shall take all appropriate measures to rectify the situation in which the UCI finds itself as a consequence of the non-compliance. In particular:

- Where the nature of the non-compliance is the making of investments in contravention of the investment policy stated in the UCI’s prospectus, the UCI shall arrange to dispose of such investments.
- Where the investment limits stipulated by Law or by the UCI’s prospectus have been breached in circumstances other than those provided for by Article 46 of the 2002 Law, the UCI shall arrange to dispose of the excess positions.
- Where the borrowing limits stipulated by the law or by the UCI’s prospectus have been breached, the UCI shall arrange to reduce the excess borrowing within the applicable limit.

Calculation of Compensation

In the three cases referred to above, the UCI shall seek compensation for any loss sustained by it.

In the first two cases, the amount of such loss shall be determined in principle by reference to the loss on disposal of the unauthorized investment. In the third case, the UCI shall in principle seek compensation for the amount of interest payable and other costs attributable to the unauthorized portion of the borrowing.

Where multiple investment restriction compliance failures occur, compensation shall be sought for any aggregate net loss arising as a result of the rectifications as a whole.

Where such rectifying transactions produce an aggregate net profit to the UCI, the UCI shall be entitled to recognize and retain such profit. In these circumstances, the UCI’s central administration need simply notify the CSSF and the external auditor.
By way of exception, where warranted in all the circumstances, alternative methods other than those outlined above may be adopted to determine the amount of the loss, including, in particular, the method whereby the loss is quantifiable in terms of the performance differential had the unauthorized investments sustained the same movements as the authorized portfolio invested in accordance with the investment policy and investment limits stipulated by the law or by the prospectus.

**Application of Materiality Levels**

In July 2004, the CSSF clarified the applicability of the materiality levels (see Section 9.2.) in the case of non-compliance with investment restrictions, as follows:

- The UCI must always be compensated for losses resulting from selling the unauthorized investment or the excess position of this investment or the expenses attributable to the unauthorized portion of the borrowing, whatever the impact of the breach; no materiality levels may be applied to these situations.
- If the realized loss shows that the impact on the NAV exceeds the materiality levels (see Section 9.2.), the NAV must be re-computed for the breach period and the UCI and its investors which have suffered a loss must be compensated. If, however, the realized loss shows that the impact on the NAV does not exceed the materiality levels, the NAV need not be re-computed for the breach period and the UCI and its investors which have suffered a loss need not be compensated.

**Responsibility for Compensation**

It is the responsibility of the party which caused the breach through a failure to fulfill its obligations to make good the loss. In all other circumstances, the promoter shall be responsible for rectifying the loss.

**Remedial Action Procedures**

The same procedure for determining what remedial action is required in cases of NAV computation error together with that required where as a result of a NAV computation error the amount of compensation does not exceed €25,000 and the amount payable to an investor does not exceed €2,500, shall apply as is appropriate in the circumstances to cases of non-compliance with investment restrictions. Specific reference is made in this context to the mandatory procedures which deal with:

- Reporting to the promoter and the custodian of the UCI and to the CSSF
- Determining which categories of investor have been injured by the loss sustained by the UCI
- Quantifying the financial impact of the loss for individual investors and making arrangements for their compensation
- The role of the external auditor in reviewing the correction process
- Communicating with injured investors entitled to compensation.

With respect to investor compensation arrangements, the procedure set out in 9.2.c) shall apply.
10. Taxation of UCIs

10.1. General

Luxembourg UCIs do not pay Luxembourg profit and capital taxes with the exception of the initial capital duty on incorporation and annual subscription tax. There is no stamp duty in Luxembourg on share issues or transfers.

10.2. Capital Duty on Incorporation

A fixed capital duty of €1,250 is payable by UCIs on incorporation. The capital duty is fixed and does not vary with the number of sub-funds. No further capital duty is payable on subsequent capital increases or on the issuance of new units.

As FCPs are co-proprietorships without legal personality, they are in principle not subject to capital duty. The capital duty is due from the management company, but it may be charged to the FCP. The specific tax regime of a management company is dealt with in Chapter 14.

10.3. Subscription Tax

General Tax Rate – 0.05% of Net Assets

UCIs are subject to an annual subscription tax of 0.05%. This tax is payable and calculated quarterly, based on the total NAV of the UCI on the last day of every calendar quarter.

On incorporation of the UCI, this tax is calculated in proportion to the duration, in days, between incorporation and the end of the following quarter. For each additional compartment incorporated thereafter, the tax base remains the total NAV on the last day of each quarter.

On the dissolution of the UCI, the subscription tax is calculated in proportion to the number of days between the beginning of the last quarter and the dissolution (appointment of liquidator in the case of an investment company).

Reduced Tax Rate – 0.01% of Net Assets

a) UCIs investing in money market instruments and deposits

The rate is reduced to 0.01% for UCIs and UCI compartments whose exclusive policy is the investment in money market instruments or deposits with credit institutions.

As clarified in the Grand Ducal Regulation of 14 April 2003, such money market instruments are deemed to include any notes and instruments representing claims, whether or not they may be characterized as securities, including bonds, certificates of deposit, treasury bills and any other similar instruments provided that at the time of their acquisition their residual maturity does not exceed twelve months, taking account of any related hedging financial instruments. In addition, floating rate notes with a residual maturity exceeding twelve months are permitted provided the interest rate is adjusted to market conditions at least annually. In certain cases, a UCI whose portfolio has an average remaining maturity not exceeding twelve months may also qualify for the reduced rate.

It should be noted that the criteria for “money market instruments” for the purpose of subscription tax is different to the criteria for the purposes of UCITS (Part I funds under the 2002 Law)\(^8\). Part I UCITS may therefore qualify for the reduced subscription tax even though they are not money market funds under the 2002 Law definition.

\(^8\) Money market funds under the definition of the 2002 Law cannot be UCITS but can be Part II UCIs.
b) SIFs

The rate is reduced to 0.01% for UCIs which are subject to the SIF Law.

c) Institutional Investor Compartments or Share Classes

The reduced rate of subscription tax of 0.01% also applies to individual compartments of multiple compartment UCIs subject to the 2002 Law, as well as to individual share classes of a UCI or of a compartment of a multiple compartment UCI, if the shares of these compartments or classes are restricted to one or several institutional investors.

The CSSF maintains a list of those UCI compartments which meet the requirement for the reduced rate of subscription tax (except institutional compartments/share classes of UCIs which are subject to the 2002 Law – see Section 1.3.1.). Registration on such list is made at the request of the applicant. The prospectus must specifically indicate the required investment policy. The reduced rate of subscription tax for institutional compartments/share classes of UCIs subject to the 2002 Law may be applied without prior approval of the CSSF.

**Exemption**

a) Investment in other Luxembourg UCIs

In order to avoid double taxation, the value of assets represented by investments in other Luxembourg UCIs, which have already been subject to subscription tax, is exempt.

b) Institutional Cash UCIs

UCIs, compartments of multiple compartment UCIs and share classes are exempt from the subscription tax provided all of the following conditions are met:

(i) The shares are reserved for institutional investors

(ii) The exclusive policy is the investment in money market instruments or deposits with credit institutions

(iii) The weighted residual portfolio maturity does not exceed 90 days (floating rate notes with a maturity exceeding 90 days but whose interest rate is adjusted at least every 90 days are also permitted)

(iv) The UCI benefits from the highest possible ranking by a recognized ranking agency.

c) Pension Fund Pooling Vehicles (PFPVs)

PFPVs are exempt from subscription tax.

See section 3.3. for further information on PFPVs.

**10.4. Directors’ Fees**

A withholding tax of 20% is levied on the gross amount of the fees (equivalent to 25% of the net amount of the fees) at the time of distribution.

The withholding tax will be final for non-resident directors provided that this is their only Luxembourg source income and provided this income does not exceed €100,000.

The withholding tax must be paid to the relevant tax authority within eight days as from the distribution. A register of the withholding taxes must be kept up to date, recording the name and address of the beneficiary, the amount of the tax withheld and the date when the tax was paid.

**10.5. Withholding Taxes on Dividends Paid by Luxembourg UCIs**

There are no withholding taxes on dividends paid by Luxembourg UCIs, except possibly, in application of the EU Savings Directive. Please refer to Section 10.8. for clarification of the application of EU Savings Directive.
10.6. Withholding Taxes on Revenue Received by Luxembourg UCIs

Luxembourg UCIs may be subject to withholding tax on dividends and interest and to tax on capital gains in the country of origin of their investments.

Only certain double taxation treaties signed by Luxembourg are applicable to Luxembourg funds. Treaties with the following 26 countries should be applicable to SICAVs and SICAFs:

- Austria
- China
- Denmark
- Finland
- Germany
- Indonesia
- Ireland
- Israel
- Korea
- Malaysia
- Malta
- Mongolia
- Morocco
- Portugal
- Romania
- Singapore
- Slovak Republic
- Slovenia
- Spain
- Thailand
- Trinidad and Tobago
- Tunisia
- Turkey
- Uzbekistan
- Vietnam

The applicability of such double taxation treaties, however, is not always clear. In principle FCPs will not benefit (with, in practice, certain exceptions) unless the unitholders themselves are able to claim the reduced rate under the double taxation treaty, which, in practice, may be very difficult.

A UCI may establish a subsidiary in order to benefit from a double taxation treaty; this is now the practice for investing in certain countries.

A table of withholding tax rates applicable to Luxembourg UCIs, prepared in spring 2007, is shown in Appendix I.

10.7. Tax on Dissolution

Mergers, demergers and dissolutions of a Luxembourg UCI generally do not give rise to the levying of a Luxembourg tax.

Since the implementation of the EU Savings Directive into Luxembourg law, mergers of funds, sub-funds and share classes of Luxembourg UCIs may under certain conditions trigger the application of the regulations of the EU Savings Directive and hence a withholding tax deduction. Please refer to Section 10.8. for more information.

The transformation of a SICAV into an FCP and similarly of an FCP into a SICAV has no impact for Luxembourg tax purposes. One should however pay attention to a possible impact of the EU Savings Directive.

Please refer to Section 10.3. on the subscription tax applied on the dissolution of a UCI.

10.8. EU Savings Directive

Content of the Law on the Taxation of Savings Income

On 1 July 2005, the EU Directive on the taxation of savings income in the form of interest payments (the EU Savings Directive) and the bilateral agreements with certain dependent or associated territories and with certain third countries introducing measures identical or equivalent to those of the EU Savings Directive (the “Bilateral Agreements”), came into effect.

The Luxembourg law implementing the EU Savings Directive and the law implementing the Bilateral Agreements also came into force on 1 July 2005.

The aim of the EU Savings Directive is to enable savings income in the form of interest payments made in one Member State of the EU to beneficial owners who are individuals resident in another Member State to be made subject to effective taxation in accordance with the laws of the latter Member State.
The main aim of the Bilateral Agreements is to ensure that measures equivalent or identical to those of the EU Savings Directive apply to interest payments made in one of the signatory dependent territories or third countries to beneficial owners who are individuals resident in an EU Member State.

To bring about effective taxation of interest payments in the beneficial owner’s Member State of residence for tax purposes, all Member States and signatory dependent territories and third countries agreed they would ultimately apply automatic exchange of information concerning interest payments between Member States.

However, in view of certain structural differences, whereas 22 Member States applied exchange of information with effect on 1 July 2005, and the two new Member States, Romania and Bulgaria, have done so since joining the EU in January 2007, Austria, Belgium and Luxembourg will instead apply withholding to “in scope” interest payments during a transitional period, at a rate of 15% until 30 June 2008, 20% from 1 July 2008 to 30 June 2011, and 35% thereafter.

Third countries and associated or dependent territories that have signed Bilateral Agreements have either:
- applied exchange of information with effect on 1 July 2005 or
- are applying withholding tax at rates at least as high as Austria, Belgium and Luxembourg until such time as they switch to the exchange of information (see tables below).

Austria, Belgium and Luxembourg will be obliged to apply the exchange of information on “in scope” interest payments, after all of the third countries and associated or dependent territories that have signed Bilateral Agreements have switched to the exchange of information.

Moreover, based on the Bilateral Agreements concluded with certain associated and dependent territories, the measures introduced by the EU Savings Directive also apply to payments of interest to individuals resident in Jersey, Guernsey, the Isle of Man, the British Virgin Islands, Montserrat, the Netherlands Antilles and Aruba where a paying agent established in a Member State pays or secures the payment of interest to these individuals.

### Exchange of information jurisdictions

<table>
<thead>
<tr>
<th>Anguilla</th>
<th>Aruba</th>
<th>Bulgaria</th>
<th>Cayman Islands</th>
<th>Cyprus</th>
<th>Czech Republic</th>
<th>Denmark</th>
<th>Estonia</th>
</tr>
</thead>
<tbody>
<tr>
<td>Finland</td>
<td>France</td>
<td>Germany</td>
<td>Gibraltar</td>
<td>Greece</td>
<td>Hungary</td>
<td>Ireland</td>
<td>Italy</td>
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<tr>
<td>Latvia</td>
<td>Lithuania</td>
<td>Malta</td>
<td>Montserrat</td>
<td>The Netherlands</td>
<td>Poland</td>
<td>Portugal</td>
<td>Romania</td>
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<td>Slovakia</td>
<td>Slovenia</td>
<td>Spain</td>
<td>Sweden</td>
<td>United Kingdom</td>
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</tbody>
</table>

### Withholding tax jurisdictions

<table>
<thead>
<tr>
<th>Andorra</th>
<th>Austria</th>
<th>Belgium</th>
<th>British Virgin Islands</th>
</tr>
</thead>
<tbody>
<tr>
<td>Guernsey</td>
<td>Isle of Man</td>
<td>Jersey</td>
<td>Liechtenstein</td>
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<tr>
<td>Luxembourg</td>
<td>Monaco</td>
<td>Netherlands Antilles</td>
<td>San Marino</td>
</tr>
<tr>
<td>Switzerland</td>
<td>Turks and Caicos Islands</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
**Investments Potentially in Scope**

The EU Savings Directive and Bilateral Agreements apply to “interest” payments. However, for these purposes “interest” is defined in a broad way.

Income distributed by - or income realized upon the redemption, sale or refund of shares or units of any of the following may potentially be qualified as interest in the meaning of the EU Savings Directive:

- UCITS recognized in accordance with the UCITS Directive (i.e. for Luxembourg, SICAVs or FCPs established under Part I of the 2002 Law)
- UCIs established in dependent or associated territories or third countries that have signed Bilateral Agreements, where the UCI is considered equivalent to a UCITS in accordance with such Bilateral Agreement (note: these funds are not the subject of this guide)
- UCIs established outside the EU and the jurisdictions that have signed Bilateral Agreements (note: these are not the subject of this guide)
- “Residual entities” having opted to be treated as a UCITS (including, for Luxembourg, FCPs established under the SIF Law or Part II of the 2002 Law – see explanation below).

A “residual entity” is an entity established in a Member State or in certain associated or dependent territories which does not have legal personality, is not subject to general rules of business taxation, is not a UCITS and has not opted to be treated as a UCITS for the purpose of the EU Savings Directive. The Luxembourg law implementing the EU Savings Directive states that all entities established in Luxembourg that would otherwise have qualified as residual entities must be considered as having opted for being treated as UCITS. Therefore, no Luxembourg FCPs are residual entities according to the Luxembourg law implementing the EU Savings Directive and income distributed by, or income realized upon the redemption, sale or refund of shares or units of such FCPs is always potentially in scope.

For Luxembourg investment funds potentially in scope, a distinction has to be made according to the type of income realized by the beneficial owner. The following rules apply:

- For distributions, Luxembourg has opted for the “de minimis rule”, i.e. distributions of UCITS which hold directly or indirectly no more than 15% of their assets in the form of in-scope debt claims are out of scope of the EU Savings Directive.  
  The “de minimis rule” is only applicable if the Member State where the UCI is established has included this rule in its national laws (option for each Member State). The “de minimis rule” also applies to certain dependent or associated territories or third states. The exercise of the option is binding on the other Member States.

- For redemptions, the sale or refund of shares of Luxembourg funds investing directly or indirectly more than 40% (25% as of 1 January 2011) of their assets in in-scope debt claims are in scope.

Note that only the part of the distribution/sales or redemption proceeds which relates to interest income in the meaning of the EU Savings Directive earned by the Luxembourg fund is subject to the Directive. Furthermore, upon sale or redemption of units or shares by the beneficial owner, only if a gain is realized is the beneficial owner deemed to derive “income” from the sale. If the information on the part of the distribution that derives from interest (taxable income distributed – TID) is not available, the whole distribution will be considered as being derived from interest income from the fund. If the information on the part of the sales or redemption price – in effect, of the NAV per share - that derives from interest (taxable income per share – TIS) is not available, the entire gain realized by the beneficial owner upon sale/redemption, if known, or the entire redemption proceeds will be considered as being derived from interest income from the fund.

Whether a withholding tax is levied or the exchange of information regime applies depends on the country of establishment of the paying agent (refer to the tables).
Paying Agent

The paying agent is the economic operator who pays interest to or secures the payment of interest for the immediate benefit of the beneficial owner.

In the payment chain, the paying agent should be the last intermediary that actively initiates the payment to the beneficial owner.

When an economic operator intervenes in a payment process but has a passive role because it executes instructions given by somebody else, this economic operator is, from a Luxembourg perspective, not necessarily a paying agent (e.g. when a bank holds cash accounts and simply executes a transfer instruction given by a transfer agent or by a debtor).

The Luxembourg paying agent has to levy a withholding tax by default. However, the paying agent has to give the possibility to the beneficial owner not to be subject to withholding tax but, instead, to be subject to the exchange of information regime (where the beneficial owner expressly authorizes the paying agent to report information) or to provide a certificate of exemption issued by the Tax Authorities of the Member State (or, where applicable, of the dependent or associated territory) of residence of the beneficial owner of the income, confirming the authority’s knowledge of the source of the interest income.

Withholding tax paid in Luxembourg pursuant to the EU Savings Directive must give rise to a tax credit; this is taken into consideration in the country of residence of the beneficial owner. If the withholding tax deducted exceeds the total amount of income tax due in the country of residence, the excess must be reimbursed by the beneficial owner’s country of residence.

In this guide, only Luxembourg investment funds are covered. Note, however, that a Luxembourg paying agent may have to withhold tax on income distributed by a UCITS or UCIs registered in countries other than Luxembourg, in cases where such income falls within the scope of the EU Savings Directive.

9 The Member States should transfer the greater part of their revenue of the withholding tax to the Member State or dependent or associated territory of residence of the beneficial owner, i.e. the revenue sharing will be as follows:
- 25% for the Member State or dependent or associated territory that has levied the withholding tax
- 75% for the Member State or dependent or associated territory of residence of the beneficial owner.
11. Value Added Tax (VAT)

11.1. Introduction

In order to determine the VAT rate applicable to services rendered to UCIs and related entities, the following questions need to be answered:

- Are the supplier and the purchaser of services considered as VATable persons?
- In which country is the service deemed to take place?
- If the place of supply is in Luxembourg, what is the applicable VAT regime?

11.2. Status of UCIs and Management/Advisory Companies

a) General – Supplier/Purchaser

An entity performing an economic activity has to be considered as a VATable person. Whether or not the supplier of services is a VATable person will be one of the criteria to determine whether the service rendered is within the VAT scope.

Whether the purchaser of services is a VATable person is crucial to determine the place of supply of international transactions.

b) FCPs and their Management Companies

As an FCP has no legal personality, the management company and the FCP are considered to be a single entity for VAT purposes.

Consequently, services provided to an FCP are deemed to be provided to the management company. The combined legal entity represented by the management company and its FCP is deemed to be a VATable person.

c) SICAVs and SICAFs

Unlike FCPs, investment companies (SICAVs and SICAFs) have a legal personality. Following a decision of the European Court of Justice\textsuperscript{10}, SICAVs are to be considered as taxable persons for VAT purposes. In view of this, VAT Circular No 723 of 29 December 2006 confirmed that investment vehicles whose management is VAT exempt by virtue of article 44, §1, d) of the Luxembourg VAT Law have the status of “taxable persons” for VAT purposes.

d) Management Companies

In Luxembourg, management companies are considered to perform an economic activity, and are consequently regarded as VATable persons.

\textsuperscript{10} Until recently, the Luxembourg VAT administration considered that SICAVs do not perform economic activities in the sense of the European and Luxembourg VAT legislation, since their activities consist of the collective investment in securities. As a consequence, SICAVs were not considered as taxable persons for VAT purposes.

However, in the BBL case (C-8/03, 21/10/2004), the European Court of Justice (ECJ) highlighted the fact that the activities performed by investment funds investing in transferable securities surpass the scope of the simple acquisition and sale of securities and consist of the exploitation of an asset for the purpose of obtaining income on a continuous basis.

Therefore, the activities carried out by SICAVs qualify as economic activities from a VAT point of view. Hence, SICAVs are now to be considered as taxable persons for VAT purposes.

Further to this ECJ decision, the Luxembourg VAT administration finally released VAT Circular No 723 on 29 December 2006. This Circular confirms the status of taxable person for VAT purposes of investment vehicles whose management is VAT exempt by virtue of article 44, §1, d) of the Luxembourg VAT law. This Circular entered into force on 1 April 2007.
**e) Advisory Companies**

From a Luxembourg perspective, advisory companies of investment companies are considered to perform an economic activity, and are consequently regarded as VATable persons.

However, if they still benefit from the 1929 Holding Company status, advisory companies of investment companies are not regarded as VATable persons.

**11.3. Place of Supply**

**a) General Rule**

In order to determine the VAT regime applicable to a service, it is necessary to establish the country in which the service is deemed to be rendered.

For services rendered by Luxembourg suppliers to a Luxembourg purchaser, the service is deemed to be rendered in Luxembourg.

*Example:* An advisory service provided by a Luxembourg bank to a Luxembourg UCI is deemed to have been rendered in Luxembourg.

For services rendered by foreign suppliers to a Luxembourg purchaser, the place of service is, as a general rule, considered to be the place where the supplier has its registered office.

**b) “Intellectual” or “Intangible” Services**

The so-called “intellectual” or “intangible” services are the services provided for instance by lawyers, advisers, accountants, auditors, consultants and services in connection with banking, finance, insurance and reinsurance.

Where intellectual or intangible services are rendered by a foreign supplier to a Luxembourg purchaser considered as a VATable person, the place of supply of these services is deemed to be the place where the purchaser has its registered office, i.e. in Luxembourg. Moreover, the VAT will be due from the purchaser (and not the supplier) under the “reverse charge mechanism”.

As the management company established in Luxembourg is considered to be a VATable person, intellectual or intangible services rendered to it by foreign suppliers fall within the scope of Luxembourg VAT.

*Example:* An advisory service provided by a foreign company to a Luxembourg management company is deemed to take place in Luxembourg. The Luxembourg management company is liable to pay VAT relating to this supply of services (reverse charge mechanism), unless an exemption applies.

As investment companies are now considered as taxable persons, the place of supply of services provided by a foreign supplier to such Luxembourg entities is deemed to be within the scope of Luxembourg VAT.

*Example:* An advisory service provided by a foreign company to a SICAV, from a Luxembourg point of view, deemed to take place in the country of establishment of the SICAV (i.e. in Luxembourg).

As advisory 1929 Holding Companies are not considered as VATable persons, the place of supply of services provided by a foreign supplier to these Luxembourg entities is deemed to be outside the scope of Luxembourg VAT.
11.4. Nature of Service and Applicable Rate

a) General Rule

Once the place of supply has been established, it is important to determine the applicable VAT rate, unless an exemption applies.

Intellectual services are generally subject to the standard 15% VAT rate if they are located in Luxembourg.

Example: Lawyers’ and tax advisors’ services rendered to Luxembourg UCIs are, in principle, subject to 15% VAT.

Services not considered to constitute intellectual services, are, in principle, subject to the standard 15% VAT rate.

b) Domiciliary Services

Domiciliary services provided to UCIs are considered to be part of the management services, which are, in principle, exempt from VAT under Luxembourg law.

c) Management Service Based on a Direct Contractual Link

Management services provided directly to UCIs supervised by the CSSF are exempt from VAT in accordance with Article 44(1)(d) of the Luxembourg VAT Law.

The Luxembourg legislator does not expressly define the notion of management of UCIs.

Portfolio management services as well as UCI administration services come within the VAT exemption provision. The following services fall within the VAT exemption (non-exhaustive list), as confirmed by the Luxembourg VAT administration in its VAT Circular No 723:

- Investment management
- Administration:
  - Legal and fund management accounting services
  - Customer inquiries
  - Valuation of portfolio and pricing of the units (including tax returns)
  - Regulatory compliance monitoring
  - Maintenance of unit-holder register
  - Distribution of income
  - Unit issues and redemptions
  - Contract settlements (including certificate dispatch)
  - Record keeping

Further to the release of VAT Circular No 723 by the Luxembourg VAT administration, the VAT treatment of custody services, the aim of which is to ensure that the management is performed in compliance with the law, has been confirmed. While most of the services rendered by custodian banks are exempt, the control and supervisory activities, as defined in articles 7 §1 and 3, and 14 §1 and 3 of the UCITS Directive, are henceforth taxable at the VAT rate of 12%.

d) Management Services Classified as “Complete Services”

The application of the exemption of Article 44(1)(d) of the Luxembourg VAT Law has been extended to outsourced services when certain conditions are met.

11 The Luxembourg Bankers’ Association (Association des Banques et Banquiers, Luxembourg – ABBL) together with the VAT Administration had laid down a non-exhaustive list of the services falling under the scope of the exemption. However, more recently, the ECJ, in the Abbey National case (C169/04, 4/5/2006) confirmed that portfolio management services as well as UCI administration services fall within the VAT exemption provision. The ECJ, as well as the Luxembourg VAT administration in its VAT Circular No 723, referred to Annex II of the UCITS Directive and provided a non-exhaustive list of services falling within the VAT exemption.
In this respect, outsourced services fall under the exemption provided the principal limits its activity to strictly re-charging the services received from the sub-contractor to the UCIs and that, in the case of administrative and management services of the fund, these services form a distinct whole, fulfilling in effect the specific and essential functions of the exempt management services. Consequently, mere material or technical supplies, for instance, are not VAT exempt.\(^\text{12}\)

### 11.5. Summary Tables

The summary tables hereafter have been prepared based on the Luxembourg legislation and doctrine, as well as the ECJ case law and Luxembourg VAT Circular No 723. Indeed, it is important to note that the interpretation of the legislation could be different in countries other than Luxembourg, notably concerning the VAT status of UCIs and their management companies, which might have an impact on the localization of the supply of services.

**a) “Intellectual” Services Provided to a Luxembourg SICAV or SICAF**

<table>
<thead>
<tr>
<th>Supplier</th>
<th>Service</th>
<th>Place of supply</th>
<th>VAT treatment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Luxembourg company</td>
<td>Management services</td>
<td>Luxembourg</td>
<td>Exempt</td>
</tr>
<tr>
<td>EU company (except Luxembourg)</td>
<td>Management services</td>
<td>Luxembourg</td>
<td>Exempt</td>
</tr>
<tr>
<td>US advisory company</td>
<td>Legal advice</td>
<td>Luxembourg</td>
<td>15% VAT (reverse charge mechanism)</td>
</tr>
<tr>
<td>Luxembourg central administration</td>
<td>Administration services</td>
<td>Luxembourg</td>
<td>Exempt</td>
</tr>
<tr>
<td>Luxembourg custodian bank</td>
<td>Control and supervisory services</td>
<td>Luxembourg</td>
<td>12% VAT</td>
</tr>
<tr>
<td>Luxembourg auditor/lawyer/tax advisor</td>
<td>Audit/legal advice/tax advice</td>
<td>Luxembourg</td>
<td>15% VAT (reverse charge mechanism)</td>
</tr>
<tr>
<td>EU lawyer (except Luxembourg)</td>
<td>Legal advice</td>
<td>Luxembourg</td>
<td>15% VAT (reverse charge mechanism)</td>
</tr>
</tbody>
</table>

**b) “Intellectual” Services Provided to a Luxembourg FCP and to Management Companies**

<table>
<thead>
<tr>
<th>Supplier</th>
<th>Service</th>
<th>Place of supply</th>
<th>VAT treatment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Luxembourg company</td>
<td>Management services</td>
<td>Luxembourg</td>
<td>Exempt</td>
</tr>
<tr>
<td>EU company (except Luxembourg)</td>
<td>Management services</td>
<td>Luxembourg</td>
<td>Exempt</td>
</tr>
<tr>
<td>US advisory company</td>
<td>Legal advice</td>
<td>Luxembourg</td>
<td>15% VAT (reverse charge mechanism)</td>
</tr>
<tr>
<td>Luxembourg central administration</td>
<td>Administration services</td>
<td>Luxembourg</td>
<td>Exempt</td>
</tr>
<tr>
<td>Luxembourg custodian bank</td>
<td>Control and supervisory services</td>
<td>Luxembourg</td>
<td>12% VAT</td>
</tr>
<tr>
<td>Luxembourg auditor/lawyer/tax advisor</td>
<td>Audit/legal advice/tax advice</td>
<td>Luxembourg</td>
<td>15% VAT</td>
</tr>
<tr>
<td>EU lawyer (except Luxembourg)</td>
<td>Legal advice</td>
<td>Luxembourg</td>
<td>15% VAT (reverse charge mechanism)</td>
</tr>
</tbody>
</table>

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\(^{12}\) This is in accordance with the ECJ decision in the Abbey National case and has been reconfirmed by the Luxembourg VAT administration in Circular N° 723.
c) “Intellectual” Services Provided to a Luxembourg Advisory 1929 Holding Company

<table>
<thead>
<tr>
<th>Supplier</th>
<th>Service</th>
<th>Place of supply</th>
<th>VAT treatment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Luxembourg company</td>
<td>Management services</td>
<td>Luxembourg</td>
<td>Exempt, if the “complete services” scheme can be applied</td>
</tr>
<tr>
<td>EU company (except Luxembourg)</td>
<td>Management services</td>
<td>EU country of establishment of supplier</td>
<td>VAT regime of supplier’s country of establishment</td>
</tr>
<tr>
<td>US advisory company</td>
<td>Legal advice</td>
<td>US</td>
<td>No VAT in the US</td>
</tr>
<tr>
<td>Luxembourg central administration</td>
<td>Administration services</td>
<td>Luxembourg</td>
<td>Exempt if the “complete services” scheme can be applied and if the services are specific and essential to the UCI management</td>
</tr>
<tr>
<td>Luxembourg auditor/ lawyer/ tax advisor</td>
<td>Audit/legal advice/tax advice</td>
<td>Luxembourg</td>
<td>15% VAT</td>
</tr>
<tr>
<td>EU lawyer (except Luxembourg)</td>
<td>Legal advice</td>
<td>EU country of establishment of supplier</td>
<td>VAT regime of supplier’s country of establishment</td>
</tr>
</tbody>
</table>
12. Expenses

The following are the types of formation expenses and annual running expenses of Luxembourg UCIs:

**Formation Expenses**

- Capital duty (fixed at €1,250)
- Notary fees
- Legal fees
- CSSF filing duty
  - 2002 Law UCIs: fixed at €2,650 for a single compartment UCI and €5,000 for a multiple compartment UCI
  - SIF Law UCIs: fixed at €1,500 for a single compartment UCI and €2,650 for a multiple compartment UCI
- Stock exchange
  - Admission fee (fixed at €1,250)
  - Bank’s fee for listing
- Printing of prospectus
- Printing of bearer certificates

**Annual Running Expenses**

- CSSF fee
  - 2002 Law UCIs: fixed at €2,650 for a single compartment UCI and €5,000 for a multiple compartment UCI
  - SIF Law UCIs: fixed at €1,500 for a single compartment UCI and €2,650 for a multiple compartment UCI
- Stock Exchange maintenance fee (fixed as follows)
  - 1st quotation line €1,875
  - 2nd quotation line €1,250
  - 3rd quotation line €875
  - 4th and subsequent quotation lines €500 per quotation line
- Audit fee
- Annual and semi-annual reports printing costs
- Publication in newspapers
- Annual subscription tax of 0.05% of net assets (unless reduced rate of 0.01% applies – see Section 10.3.)
- Custodian, administration, domiciliation
- Management/advisory fee
13. Marketing

This Chapter outlines the requirements and procedure for marketing the shares of a Luxembourg UCITS in other EU Member States, requirements for marketing the shares of a UCITS from another EU Member State in Luxembourg and Luxembourg marketing regulations.

Marketing of non-UCITS funds is subject to each country’s local distribution rules.

The UCITS Directive provides for a harmonized “EU passport” for UCITS funds – the idea being that a UCITS fund authorized in one Member State (the “home Member State”) may be marketed in any other Member State (the “host Member State”) following notification to the host Member State authorities.

Under the notification procedure foreseen in the UCITS Directive, certain procedures must be complied with to enable cross-border marketing:

13.1 A Luxembourg UCITS wishing to market its shares in other Member States must comply with the following procedures:

- Inform the supervisory authorities of the host Member States in a notification letter
- Send the following documents to the supervisory authorities of the host Member States:
  - Attestation letter from the CSSF that it complies with Part I of the 2002 Law
  - Constitutional documents (articles of incorporation or management regulations)
  - Full and simplified prospectus
  - Latest annual and subsequent semi-annual report, if appropriate
  - Details of arrangements to market its shares or units in the host Member State
- Comply with the regulations and administrative and marketing provisions of the host Member State which are not covered by the UCITS Directive.

With the exception of the attestation letter, the documents and information must be provided in their original language and in at least one of the languages accepted by the host Member State. The host Member State may allow the use of language which is not the official language. The original attestation letter and, if relevant, an English version should be provided.

The UCITS may begin to market its shares in a host Member State two months after the above-mentioned documents have been submitted to the supervisory authority of the host Member State, unless it is advised to the contrary. Details regarding the implementation of the notification procedure are provided in section 13.3.

With a view to facilitating the implementation of the notification procedure, and following CESR’s guidelines, the CSSF has announced the following measures:

- A standard model of the notification letter has been made available on the website of the CSSF.
- An attestation letter to market units of UCITS in an EEA Member State will automatically be provided by the CSSF in English, French and German when a UCITS is included on the CSSF list of approved UCITS.
- Regarding prospectuses, three copies of both the simplified and complete prospectus should be submitted to the CSSF with the application for approval; one copy of each will be returned with a visa, which the UCITS can copy, certify itself, and include with applications for marketing in the host Member State.
13.2. A UCITS situated in another Member State which wishes to market its shares in Luxembourg must comply with the following procedures:

- Inform the CSSF in a notification letter
- Send the following documents to the CSSF:
  - Attestation letter from the supervisory authority in the home Member State that it fulfils the UCITS Directive requirements
  - Constitutional documents
  - Full and simplified prospectus
  - Latest annual and subsequent semi-annual report, if appropriate
  - Details of arrangements to market its shares in Luxembourg
- Comply with the regulations and administrative and marketing provisions of Luxembourg which are not covered by the UCITS Directive, including:
  - Fill out the form providing specific information for the marketing in Luxembourg of units/shares of a UCITS established in another Member State of the European Union
  - Have a prospectus which includes required additional information regarding the paying agent, where subscription, redemption and conversion requests can be made and where to obtain information to be made available to investors
  - Draft paying agency agreement
  - Appoint a credit institution to ensure facilities are available in Luxembourg for paying shareholders and repurchasing shares
  - Make available in Luxembourg the documents which it is obliged to publish in its home Member State. Such documents must be either in Luxembourgish, French, German or English.

The above-mentioned documents must be submitted to the CSSF in French, German or English.

The CSSF will inform the UCITS within one week if the application is incomplete. After a further week, the UCITS will receive approval for marketing in Luxembourg. The CSSF is thus going well beyond the present EU requirements, described in Section 13.3.

13.3. Clarification and Simplification of the Notification Procedure

Divergent implementations in some Member States of the notification procedures described in Section 13.1. have given rise to significant gaps between the “idea” and the practice, resulting in uncertainty, costs and delays. This was the subject of an Interpretative Communication from the European Commission and CESR Guidelines.

The European Commission issued, in March 2007, an Interpretative Communication clarifying the respective powers of the home and host Member States where a UCITS is to be marketed in a host Member State. The home Member State’s responsibilities under the UCITS Directive concern fund authorization, fund structure, management and investment policies and compulsory information to be supplied to the unit holders. The host Member State retains its responsibility outside this field, notably regarding marketing arrangements.

In an attempt to attain a consistent approach throughout the EU, CESR issued guidelines in June 2006 in relation to the implementation of the notification requirements.
CESR members agreed that a host Member State may not call in question the judgment of the home Member State regarding the compliance of the fund with the UCITS Directive. A host Member State may only refuse the marketing in its territory of a UCITS authorized in its home Member State under one of the following conditions:

- The marketing arrangements fail to comply with the laws, regulations and administrative provisions in force in the host Member State
- Necessary measures have not been taken to ensure that facilities are available in the host Member State for transactions relating to fund units and making available the information which UCITS are obliged to provide.

CESR is to develop a proposal for a “mediation mechanism” to resolve disputes between home and host Member State authorities regarding the implementation and application of the Directive and CESR’s guidelines.

In relation to the procedures to be performed as part of the notification process, CESR’s guidelines cover four main areas:

**a) Two Month Period**

Under the guidelines, a UCITS may begin marketing in the host Member State following the two month waiting period after completion of the notification, unless the host Member State authority informs the UCITS before the expiry of the two month period that, in its view, the marketing arrangements do not comply with the Directive.

CESR has clarified that the two-month period begins when the host Member State has received the complete notification. If the notification is not complete, the two-month period does not begin.

If the notification is incomplete, the host Member State shall inform the UCITS about the incompleteness and the missing information and documents as soon as possible and in any case within one month from the date of the receipt of the incomplete notification.

If the home Member State does not receive any communication from the host Member State within two months of submitting the complete notification, the UCITS may begin to market its shares in the host Member State upon expiry of the two month period.

**b) Certification of Documents**

UCITS may provide the host Member State with self-certified copies of original documents approved by or filed with the home Member State authority (together with translations, if required). The certification must contain narrative stating that the versions of the documents that have been attached to the notification letter are the latest ones which have been approved or filed with the home Member State. The certification may be done by the UCITS or a third person having written authority to act on behalf of the UCITS.

**c) Translation of Documents**

CESR’s guidelines provide that for the notification procedure, a standardized notification letter should be used and submitted in a language “common in the sphere of international finance or in the, or one of the, official languages of the host Member State if it is not contrary to the domestic legislation or regulations of the host Member State”. The host Member State can approve the use of a language other than the official language. The original UCITS attestation should include an English version provided by the UCITS except where the home Member State authority and the host Member State authority have the same official language(s).

To facilitate this process, CESR members have agreed to publish information on the documents that must be translated and on the accepted languages on their websites, and also to facilitate electronic filing of documents.


**d) Umbrella Funds**

In relation to umbrella funds, only those sub-funds proposed to be marketed in the host Member State have to be notified. New multiple sub-funds which are added to an umbrella fund may be included in one single notification and the two month period should apply. Some host Member States do not consider it necessary to apply the two month period in this latter case. To facilitate the transparency of the requirements to the UCITS, the jurisdictions that will apply the two month period should indicate the requirement on their websites among the requirements on national marketing rules.

In addition, in order to simplify the processing by the host Member State of the notification of umbrella funds with a large number of sub-funds, CESR recommends having one full prospectus. If the UCITS provides a separate full prospectus for each sub-fund, the UCITS’ authorized directors or a third person having written authority to act on behalf of the UCITS must self-certify that the information on the marketing arrangements in the host Member State are the same in each prospectus or indicate why they are different.

### 13.4. Marketing Regulations in Luxembourg

The marketing laws which UCIs must comply with in Luxembourg are as follows:

- The Law of 25 August 1983 on consumer protection
14. Management Companies

14.1. Introduction

The 2002 Law distinguishes between two categories of management companies:

a) Management companies which can manage UCITS and other UCIs. Such management companies also have a European passport. These management companies come under Chapter 13 of the 2002 Law.

b) All other management companies. These management companies, which do not have a European passport, come under Chapter 14 of the 2002 Law.

The 2002 Law introduced the requirement of a UCITS investment company (SICAV/SICAF) subject to the 2002 Law to appoint either an approved management company, or, designate itself as a self-managed investment company (see Section 1.3.1.).

14.2. Management Companies with European Passport

Management companies with European passport (“Chapter 13 management companies”) can manage UCITS and other UCIs. They must comply with the provisions of Chapter 13 of the 2002 Law and also Circular 03/108 which was issued on 30 July 2003. This Circular details the manner in which certain articles of Chapter 13 are to be applied in practice and also specifies the financial information which Chapter 13 management companies and self-managed investment companies are required to report to the CSSF.

The implementation of the MiFID Directives in Luxembourg legislation in July 2007 has involved, inter alia, amendments to the 1993 Law and its completion with a Grand-Ducal Regulation on the organizational requirements and operating conditions for investment firms. This implies modified and additional requirements for Chapter 13 management companies offering additional services (see Permitted Activities - (6) below).

The rules applicable are summarized as follows:

Reference to article in the 2002 Law or Circulars 03/108 & 05/185

Authorization

(1) Prior authorization from the CSSF must be obtained before commencing business. The same applies to the opening of branch operations in Luxembourg or abroad. An authorized management company wishing to carry on business in another Member State must also notify the CSSF. 77 (1) & 78 (4) 03/108-I.1.

(2) Such authorization is valid for all Member States of the EU. 77 (1) & 78 (4) 03/108-I.1.

(3) Management companies authorized in another Member State may carry out its activity in Luxembourg. The establishment of a branch does not require authorization. 87 (1) & (2)
Legal Form

(4) They may be set up under any of the following forms:
- Public limited company (société anonyme – S.A.)
- Private limited company (société à responsabilité limitée – S.à r.l.)
- Cooperative company (société coopérative)
- Cooperative company organized as a public limited company (société coopérative organisée sous forme de société anonyme)
- Partnership limited by shares (société en commandite par actions)

The capital shall be represented by registered shares.

Permitted Activities

(5) May only manage UCITS which are under the 2002 Law and other UCIs for which it is subject to supervision. The management activity includes the following functions, as listed in Annex II to the 2002 Law:
- Investment management
- Administration
  - Legal and fund management accounting services
  - Customer inquiries
  - Valuation and pricing (including tax returns)
  - Regulatory compliance monitoring
  - Maintenance of unit-holder register
  - Distribution of income- unit issues and redemptions
  - Contract settlements (including certificate dispatch)
  - Registration and preservation of operations
- Marketing

(6) As a derogation to (5), they may also provide the following services:

a) Management of portfolios of investments, including those owned by pension funds, on a discretionary client-by-client basis, where such portfolios include one or more of the instruments listed in Section B of Annex II to the 1993 Law on the Financial Sector (i.e.: securities; holdings in UCIs; monetary instruments; futures; forward rate agreements; swaps on interest rates, currencies, or equity/index-related swaps; options to buy or sell a permitted instrument)

b) As non-core services:
  - investment advice concerning one or more of the instruments listed in Section B of Annex II to the 1993 Law
  - safekeeping and administration in relation to units of UCIs.

They will not, however, be authorized to provide only the services in a) and b), or to provide non-core services in b) without being authorized for the service in a).

Management companies authorized to provide discretionary portfolio management services may not invest the investor’s portfolio in units of UCIs it manages without prior general approval of the client.

For the purposes of the above, ‘investment advice’ consists of the provision of personal recommendations to a client, either on the initiative of the client or the initiative of the management company, concerning one or more transactions relating to the instruments listed in Section B of Annex II to the 1993 Law.
A personal recommendation is a recommendation that is made to a person in his capacity as an investor or potential investor, or in his capacity as an agent for an investor or potential investor.

That recommendation must be presented as suitable for that person, or must be based on a consideration of the circumstances of that person, and must constitute a recommendation of an operation of one of the following categories:

(a) to buy, sell, subscribe for, exchange, redeem, hold or underwrite a particular financial instrument;

(b) to exercise or not to exercise any right conferred by a particular financial instrument to buy, sell, subscribe for, exchange, or redeem a financial instrument.

A recommendation is not a personal recommendation if it is issued exclusively through distribution channels or to the public.

**Capital Requirements**

(7) Minimum capital requirements are:

<table>
<thead>
<tr>
<th>Initial capital:</th>
<th>€125,000</th>
</tr>
</thead>
</table>

When value of portfolios exceeds €250 million

- Additional capital of 0.02% of the amount of the portfolios which exceeds €250 million.
- Maximum total required capital, however, is €10 million.
- Up to 50% of the additional capital may be provided by means of a guarantee given by a credit institution or an insurance undertaking.

For capital requirements purposes, portfolios are deemed to be:

- FCPs including portfolios for which it has delegated the management function, but excluding portfolios that it is managing under delegation
- SICAVs or SICAFs where the management company is the designated management company
- Other UCIs including portfolios for which it has delegated the management function, but excluding portfolios that it is managing under delegation.

Where a management company is also engaged in the management of portfolios of investments (see Permitted Activities - (6)a) above), it must furthermore respect the Luxembourg regulations implementing Directive 2006/49/EC on the capital adequacy of investment firms and credit institutions. However, if it only provides non-core services (see Permitted Activities - (6)b) above), it will not be subject to capital adequacy requirements.
Management

(8) The persons who effectively conduct the business of the management company (management) must be of sufficiently good repute and be sufficiently experienced. The names of these persons and of every person succeeding them must be communicated to the CSSF. The conduct of the business must be decided by at least two persons meeting such conditions. The CSSF must be able to contact such persons directly and in principle (see comments on Circular 05/185 below) one of these persons must be based in Luxembourg.

Circular 05/185 issued on 24 May 2005 amends Circular 200/108 in that the CSSF may also authorize a management company subject to Chapter 1 of the amended 2002 Law when particular elements of the application allow the CSSF to conclude that the management company does not only have its registered or statutory office in Luxembourg. These elements may be numerous and should, inter alia, be inspired by a concern for compliance with corporate governance and risk management controls. Luxembourg resident directors, board meetings held in Luxembourg or the performance of certain activities in Luxembourg are examples of such elements which, individually are not necessarily sufficient or, in the presence of other elements, not necessarily required. Each file will be considered by the CSSF on a case-by-case basis. In all cases the managers must have at their disposal all technical and IT equipment necessary to enable them to assume all the responsibilities and to perform the functions which are imposed on them by the 2002 Law.

(9) Consistent with the principle of independence between the management company and the custodian, it is not appropriate for such managers to be employed by the custodian of a UCITS under their management.

Business Plan

(10) The application must be accompanied by a business plan (program of activity) setting out, inter alia:

(i) The organizational structure of the management company

(ii) The scope of services planned for the next three years as regards collective portfolio management (number of UCITS managed directly and delegated, the law under which the UCITS in question were formed, their net assets as well as the number and net assets of UCITS, managed directly and by delegation, formed on the initiative of a company not belonging to the same group as the management company)

(iii) The investment policies of the UCITS under management, together with the financial instruments and markets concerned

(iv) The risk-management process (Article 42(1) – see Section 2.2.1.(6)).

(11) Management companies engaged in both collective and discretionary portfolio management (see (6)) shall also include the following information in the scope of services planned for the next three years (referred to in (10)(b)):

- Management of investment portfolios on a client-by-client basis (number of private, institutional and pension fund clients and assets under management for each client type)
- Where applicable, any non-core services to be offered

In addition, where such services fall within the scope of private portfolio managers (gérants de fortunes) under the 1993 Law, those rules will apply (e.g. two managers must be based in Luxembourg).
Head office and Registered Office

(12) Both the head office and registered office must be in Luxembourg.

Effective Supervision

(13) Where close links exist between the management company and other parties, the CSSF will only grant authorization if such links do not prevent the effective exercise of its supervisory functions. Nor will authorization be granted if the regulations of a non-Member State governing such linked parties prevent effective exercise of the CSSF’s supervisory functions.

Identity of Shareholders or Members

(14) The CSSF must be informed of the identity of the shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings and the amounts of those holdings. The CSSF will need to be satisfied as to the suitability of such shareholders or members. Qualifying holdings are deemed to be holdings of 10% or more, whether direct or indirect, or where it is possible to exercise significant influence. The CSSF must be notified immediately of any changes.

Consultation with other Member States

(15) The authorities of other Member States will be consulted prior to authorization where the management company is:
- A subsidiary of an entity authorized in another Member State
- A subsidiary of the parent undertaking of another entity authorized in another Member State
- Controlled by the same persons/entity which control other entities authorized in another Member State

Audit

(16) Its annual accounts must be audited by an independent auditor.

Central Administration in Luxembourg

(17) The central administration of a management company must be located in Luxembourg. This concept should be taken in the broadest sense and includes, *inter alia*, the areas of infrastructure and accounting and information systems.
Human Resources

(18) The personnel must be permanent and appropriately qualified. 03/108-I.3. a)

(19) The CSSF may, however, grant a derogation from this point and allow some or all of the personnel to be seconded or temporarily assigned from an entity belonging to the same group or from a third party entity. In such cases, the agreement covering such arrangement must be submitted to the CSSF. In addition this agreement must deal with the conflicts of interest between the personnel concerned and the entity, if it belongs to the same group.

Administrative and Accounting Procedures and Technical Resources

(20) The CSSF must receive a description of computer hardware, software and data sources in use. 03/108-I.3. b)

(21) Having regard to the nature of the UCITS managed by a management company it must be able to demonstrate that it:

- Has sound administrative and accounting procedures, control and safeguard arrangements for electronic data processing and adequate internal control mechanisms
- Is structured and organized in such a way as to minimize the risk of UCITS’ or clients’ interests being prejudiced by conflicts of interest between the management company and its clients, between one of its clients and another, between one of its clients and a UCITS or between two UCITS

Delegation of Functions

(22) Management companies may delegate their own functions. The delegation in no way affects the responsibilities of the management company or the custodian. The following preconditions must be complied with:

- General
  - The management company must inform the CSSF and submit, for each UCITS it manages, a detailed description of the duties it is proposing to delegate, the entities to which the duties are to be delegated and the procedures in place to monitor the activities of the mandated entities.
  - The mandate must not prevent effective supervision over the management company or prevent it from acting, or the UCITS from being managed, in the best interests of its investors.
  - Measures must exist which enable management of the management company to monitor effectively at any time the activity of the mandated entity. This requires the implementation of a monitoring infrastructure which allows management access to data evidencing the work performed on behalf of the management company and the UCITS under its delegated management. Management shall receive regularly, in respect of each UCITS under its delegated management, detailed reports which enable it to determine whether, in particular:
    - the assets of the UCITS are invested in accordance with the rules
    - risk management techniques are in place and are being applied so that position risks and their individual impact on the overall risk profile of the UCITS can be monitored and measured at all times
    - the marketing policy of the UCITS is being followed

Reference to article in the 2002 Law or Circulars 03/108 & 05/185
Management must be able to access, whether on-line or by request, the accounting data for the UCITS.

- The mandate shall not prevent management from issuing at any time additional instructions or withdrawing the mandate with immediate effect when this is in the interest of investors.
- The mandated entity must be qualified and capable of undertaking the delegated functions. It must also be able to produce evidence that it has the appropriate human and technical resources.
- The UCITS’ prospectuses shall list the functions which the management company has been permitted to delegate.

* Specific to the investment management function
  - Where the delegation concerns investment management, the mandate may only be given to authorized and supervised undertakings.
  - The identity of entities to which the investment management function has been delegated must in principle be disclosed in the prospectus of the UCITS concerned.
  - The terms of the delegation of duties must comply with the investment allocation criteria set from time to time by the management company. As a result, the terms of the mandate will include the investment policy and limits in force for the UCITS (and sub-funds). These provisions may be incorporated within the mandate by means of a cross-reference to the relevant section of the prospectus.
  - Where the investment management related mandate is given to a third-country undertaking, there must be appropriate cooperation arrangements in place between the CSSF and the supervisory authority of such country.
  - A mandate with regard to the core function of investment management may not be given to the custodian bank or to any other undertaking which may have interests which conflict with those of the management company or the investors. This provision shall not prohibit the delegation of an investment management mandate to a company belonging to the same group as the custodian. In such circumstances, the CSSF will only authorize the delegation of duties where it has evidence of the safeguards for protecting the interests of the management company and the investors.

**Rules of Conduct and Organizational Requirements**

(23) They must at all times:

- act honestly and fairly in the best interests of its clients
- act with due skill, care and diligence in the best interests of its clients
- have and employ effectively the necessary resources and procedures
- try to avoid conflicts of interest and where they cannot be avoided, ensure its clients are fairly treated
- comply with all regulatory requirements so as to promote the best interests of its clients.

The provision of management of portfolios of investments services and non-core services by management companies (see Permitted Activities - (6) above) is also subject to:

- The conduct of business obligations when providing investment services to clients of Article 37-3 of the 1993 Law
- The organizational requirements of Article 37-1 of the 1993 Law.
The provision of such services is also subject to most of the implementing measures laid down in the Grand-Ducal Regulation of 13 July 2007 on the organizational requirements and operating conditions for investment firms and the relevant MiFID rules of conduct in the financial sector laid down in CSSF Circular 07/307.

Financial Information Reporting to the CSSF on a Quarterly Basis

(24) In accordance with Circular 03/108 of 30 July 2003, financial information has to be sent to the CSSF on a quarterly basis. The report formats are included as appendices to this Circular. Reports are to be submitted for the first time as at 31 December 2003 and are to be received by the CSSF by the 20th of the following month.
14.3. Other (Chapter 14) Management Companies of Luxembourg UCIs

The rules applicable are summarized as follows:

Reference to article in the 2002 Law

Authorization

(1) Prior authorization from the CSSF must be obtained before commencing business. 91(1) & (4)

Legal form

(2) It may be set up as either a
• Public limited company (société anonyme – S.A.)
• Private limited company (société à responsabilité limitée – S.à r.l.)
• Cooperative company (société cooperative)
• Cooperative company organized as a public limited company (société coopérative organisée sous forme de société anonyme)
• Partnership limited by shares (société en commandite par actions)

The capital shall be represented by registered shares.

Permitted Activities

(3) May only manage UCIs, the administration of its own assets being only an ancillary activity, provided that it must manage at least one UCI regulated by Luxembourg law. It may not use the assets of the UCIs it manages for its own needs. 91(1)

Central Administration and Registered Office

(4) Both its central administration and registered office must be in Luxembourg. 91(1)

Capital

(5) Must have adequate capital and a minimum of €125,000. 91(2)a)

Management

(6) The persons who effectively conduct the business must prove their good repute and required professional experience. 91(2)b)

Identity of Shareholders or Members

(7) Names of shareholders or members must be communicated to the CSSF. 91(2)c)

Organizational Structure

(8) The application for authorization must set out the organizational structure. 91(2)d)

Audit

(9) Its annual accounts must be audited by an independent auditor. 92
14.4. Taxation of management companies

a) Introduction

Management companies are subject to normal commercial company taxes in Luxembourg, with the exception of management companies of a single FCP, which do not pay tax.

Advisory companies are also covered in this section. An advisory company may benefit from the privileged 1929 Holding Company tax status¹³ (Advisory 1929 holding companies), provided it advises one UCI only. Such advisory holding companies require a minimum capital of €75,000 and must invest at least 5% of their capital, with a minimum of €50,000, in the shares of the UCI which they advise.

The taxation of these 3 types of company is discussed below.

b) Capital duty on incorporation

(i) General

The capital contribution duty rate is fixed at 1% of paid-up capital and share premium. The concentration of capital in commercial and non-commercial undertakings (sociétés civils) gives rise to a capital contribution duty. The capital duty is paid upon incorporation and subsequent capital increases.

(ii) Management companies of a single FCP

Management companies of a single FCP are subject, together with the FCP, to a fixed capital duty amounting to €1,250 irrespective of the amount contributed.

Although the capital duty is payable by the management company, it may be charged to the FCP, and this is the normal practice.

(iii) Advisory 1929 holding companies

Advisory 1929 holding companies are subject to capital duty at a rate of 1%, as described above.

c) Annual taxation

(i) General

Commercial companies are subject to income tax at a rate of 29.63% as well as to Luxembourg net worth tax at a rate of 0.5% (this net worth tax can however under certain conditions be credited against the corporate tax).

(ii) Management companies of a single FCP

Due to their privileged tax status, management companies of a single FCP are exempt from any taxes, be it income taxes, capital taxes or net worth taxes.

(iii) Advisory 1929 holding companies

Advisory 1929 holding companies of one single UCI are exempt from any income taxes. However, an annual subscription tax of 0.2% is payable on the value of their shares. In practice, such a tax applies to the paid-up capital and to the share premium.

Where the dividends distributed exceed 10% of the paid-up capital and the share premium, however, the subscription tax for the distributing year will amount to 0.2% of 10 times the dividend paid.

¹³ The law of 21 June 2005 amended the Luxembourg 1929 Holding Company (H29) taxation scheme with effect from 1 July 2005. The new provisions exclude from the benefit of the H29 regime any holding company that receives at least 5% of its dividends from a foreign company that is not fully subject to tax corresponding to Luxembourg corporate income tax. However, note that H29s existing before 1 July 2005 benefit from a grandfathering clause until 1 January 2011.

Following the investigation for illegal state aid by the European Commission, Luxembourg withdrew the H29 Regime. A transitional period is available until the end of 2010.

A law approved by the Luxembourg Parliament on the 13 December 2006, prohibits, with specific exceptions, the transfer of shares in existing H29s during the transitional period.
d) **Dividends and interest**

(i) **General**

For commercial companies, withholding tax on dividends amounts to 15%, although this rate may be reduced according to double tax treaties or in accordance with the EU Parent-Subsidiary Directive.

Management or advisory companies are subject to the normal authorization procedures for paying interim dividends and are also required to create a legal reserve. The interim dividend authorization procedures include specific authorization in the articles of association and the preparation of interim financial statements, under the control of the auditor. The legal reserve requirement is 5% of net profit until the accumulated reserve equals 10% of subscribed capital.

(ii) **Management companies of a single FCP**

Management companies of a single FCP are exempt from withholding tax on dividends distributed.

(iii) **Advisory 1929 holding companies**

Advisory 1929 holding companies are exempt from withholding tax on dividends distributed. However, as stated in 14.4. c)(iii) above, where the dividends distributed exceed 10% of the paid-up capital and the share premium, the subscription tax for the distributing year will amount to 0.2% of 10 times the dividend paid.

e) **Tax on dissolution**

(i) **General**

Liquidation proceeds distributed by normal taxable companies are not subject to withholding tax in Luxembourg. Nevertheless, the liquidation triggers the realization of all the assets of the company; consequently the liquidation profit will include all unrealized capital gains and will be subject to corporate income tax.

(ii) **Management companies of a single FCP**

Liquidation proceeds of management companies of single FCPs are not subject to withholding tax. Liquidation impacts neither income tax, nor capital tax nor net worth tax.

(iii) **Advisory 1929 holding companies**

Liquidation proceeds of advisory 1929 holding companies are not subject to withholding tax. However, the annual subscription tax will be due in proportion to the duration in days passed between the beginning of the last accounting year and the date of the liquidation of the company.
15. Current and Future Developments in Investment Fund Legislation

This chapter outlines regulatory developments over the last year relevant to Luxembourg investment funds, expected future regulatory developments in Luxembourg, clarifications regarding eligible assets yet to be implemented, and the proposals for updating of the UCITS regime at EU level.

15.1. Recent Developments

The following are recent developments in European and Luxembourg investment fund related legislation:

**Eligible Assets**

To further clarify the definition of eligible investments (“eligible assets”) for a UCITS in compliance with the UCITS Directives, to ensure consistent interpretation and implementation of the UCITS Directives across all EU Member States, and further to CESR’s advice of 26 January 2006, the European Commission issued a Directive on 19 March 2007 clarifying certain definitions concerning eligible assets of UCITS. Member States have until 2 March 2008 to adopt and publish the laws, regulations and administrative provisions necessary to comply with the Directive. Member States must apply these provisions from 2 July 2008. CESR issued guidelines in March 2007 to complement this Directive. Details can be found in Section 15.3.

**UCITS risk management method and the use of derivative instruments**

Circular 07/08 of 2 August 2007 provides guidelines concerning the use of a risk management method, as well as the use of derivative instruments for UCITS. It outlines the implementation of a risk management process, the risk limits applicable, the use of financial derivative instruments and information to be communicated to the CSSF. It replaces Circular 05/176. Details can be found in Section 2.2.2.

**Respective powers of home and host Member States**

The European Commission issued an Interpretative Communication clarifying the respective powers of the home and host Member States where a UCITS is to be marketed in a host Member State in March 2007. For further information, please see Section 13.3.

**The SIF Law**

The Specialized Investment Fund Law of 13 February 2007 (the SIF Law) covers investment funds to be distributed to “informed investors”. The SIF Law significantly simplifies the rules for setting up fund structures such as hedge funds, real estate funds and private equity funds, greatly enhancing Luxembourg as a “domicile of choice” for such products. The new law replaced the 1991 Law. It provides continuity for 1991 Law funds by, for example, continuing to implement previously available fund structures and not adding any additional restrictions.

The SIF Law is covered in particular in Chapters 1 and 4 and Sections 3.1., 7.2. and 8.2.

The CSSF has issued the following Circulars clarifying the SIF Law:

- Risk spreading in the context of specialized investment funds
  CSSF Circular 07/309 on risk spreading in the context of specialized investment funds, dated 3 August 2007, complemented the SIF Law and provided clarification on the investment restrictions that must be adhered to in order to ensure adequate risk diversification. Details can be found in Section 3.1.

- Financial information to be provided to the CSSF by specialized investment funds
  In a similar manner to funds under the 2002 Law, SIFs are required to submit, electronically via CCLux, monthly and annual information to the CSSF, for statistical and supervisory purposes. The contents of the monthly and annual financial information, as well the related rules, are set out in the Circular 07/310. Details can be found in Sections 8.1.4. and 8.2.
Anti-money laundering and terrorist financing

New professional Practices and Recommendations aimed at reducing the risk of money laundering and terrorist financing in the Luxembourg Fund Industry were published in December 2006. For more information, see Section 5.3.e).

On 6 March 2007, the Financial Intelligence Unit (Cellule de Renseignement Financier - CRF) of the Luxembourg State Prosecutor issued Circular 04/07. The Circular is addressed to professionals who are subject to the legal obligation to inform the Luxembourg State Prosecutor when confronted with a suspicious situation or person, as required by Article 5(1) of the Law of 12 November 2004 on combating money laundering and the financing of terrorism. The Circular provides a standard template to be used for communicating with the State Prosecutor.

Following on from the First and Second Anti-Money Laundering Directives, in order to update European legislation, bring it in line with international recommendations, and to ensure their coherent application in Member States, the EU adopted the Third Anti-Money Laundering Directive in 2005 (2005/60/EC of 26 October 2005).

This new Directive widens the scope, updates the regulatory approach and for the first time, makes specific reference to financing of terrorism and associates measures regarding the fight against terrorism with the enlarged money laundering provisions. This was a direct consequence of the adoption of the 8+1 Recommendations on Terrorist Financing in the wake of 11 September 2001 terrorist attacks on the United States and the subsequent crackdown on international terrorist networks.

In particular, the Third Directive, and the implementing measures subsequently adopted by the European Commission (Directive 2006/70/EC of 1 August 2006):

• Significantly broadens the definition of the offence of money laundering, with a much longer list of predicate offences: offences now include criminal offences punishable by a term of imprisonment in excess of one year
• Extends the range of professionals subject to anti-money laundering requirements to lawyers, notaries, accountants, real estate agents, casino operators and trust and company service providers
• Defines the concepts of “politically exposed persons”, their “immediate family members” and “persons known to be close associates”. Regarding “politically exposed persons”, the definition provided is similar to the examples provided in the Luxembourg combined text on anti-money laundering and the prevention of terrorist financing, CSSF Circular 2005/211
• Clarifies criteria for the application of “simplified customer due diligence” and the meaning of “financial activity on an occasional or very limited basis”. The latter sets the maximum amount for a single transaction, or series of transactions which appear to be linked, at less than €1,000; the present legal limit in Luxembourg is €15,000.

Member States have until 15 December 2007 to bring into force the national legislation required to comply with these Directives.

Distance marketing of consumer financial services

The law of 18 December 2006 on the distance marketing of consumer financial services transposes EU Directive 2002/65/EC. The key elements are outlined in CSSF Circular 07/281 of 27 February 2007.

The final law covers all types of distance communication such as post, fax, telephone and electronic means. It sets out the information to be provided by the professional to the consumer before an offer is made or a contract is concluded, as well as any withdrawal period, where applicable.

If the contract is concluded electronically, the provisions of the modified law of 14 August 2000 relating to e-commerce also apply.

Introduction of European Company and modernization of company law

On 25 August 2006, Luxembourg implemented Council Regulation (EC) 2157/2001 on the Statute for a European Company into law. This law introduces the concept of the European Company (Societas Europaea - SE) and modernizes the 1915 Law.

The new law allows, for the first time, the cross-border merger of two or more SICAVs established in at least two Member States via incorporation as an SE. It also amends the 2002 Law to permit SICAVs to be incorporated as SEs. No similar provision is available, however, for FCPs.
The updates to the 1915 Law relate to the following:

(i) Two-tier structure of governance - the new law introduces the option of implementing the two-tier structure of a management board and supervisory board; previously, the only governance structure available was a single board of directors. Until now, the boards of directors of both SICAV and FCP management companies have typically carried out a supervisory function; they have comprised representatives from the promoter.

(ii) Single-shareholder S.A.s - the new law introduces the possibility to create a single-shareholder SA, while previously a minimum of two shareholders was required. As a Luxembourg management company is usually wholly owned by the promoter, the availability of single-shareholder SA will facilitate their incorporation. In addition, it allows SICAVs to be created for a single investor.

(iii) Shareholders’ meetings – the new law provides that the statutory auditor as well as, under a two-tier structure, the management board and the supervisory board may request a shareholders’ meeting. Secondly, shareholders are permitted to participate in meetings other than in person, e.g. via video conference or vote prior to the meeting. Thirdly, the new law facilitates the decision-making by shareholders by excluding abstentions and nil votes in the computation of the two-thirds majority required to carry a decision. Lastly, the new law permits initial financial periods exceeding 12 months, providing that the annual general meeting of shareholders to approve the accounts is held within 18 months of the date of incorporation of the company.

(iv) Composition of the board - the new law allows a legal entity to act as a member of the supervisory or management board, providing that the legal entity appoints a physical person as its permanent representative.

MiFID


The implementation of the MiFID Directives in Luxembourg legislation implies, *inter alia*, modified and additional requirements for Chapter 13 management companies offering additional services.

Further guidance on certain aspects of MiFID relevant to the fund industry can be found in the CESR Recommendations on *Inducements under MiFID* and *The passport under MiFID*.

ALFI report on swing pricing

In November 2006, ALFI issued its report on *Swing Pricing*. The report was inspired by the CSSF Circular 04/146 on Market Timing and Late Trading and ALFI’s guidance paper on market timing and late trading in which swing pricing was identified as a possible means of compensating the fund for the dilution effect of frequent trading. It provides an overview of swing pricing, and discusses its advantages and disadvantages, implementation issues and audit and legal considerations.

VAT Circular No 723

VAT Circular No 723 of 29 December 2006 confirmed that investment vehicles whose management is VAT exempt by virtue of article 44, §1, d) of the Luxembourg VAT Law have the status of “taxable persons” for VAT purposes. Details can be found in Chapter 11.
15.2. Future Developments in Luxembourg

The following future developments in Luxembourg investment fund legislation (CSSF Circulars) are expected:

- A circular on eligible assets of UCITS: further to the Directive clarifying eligible assets and CESR’s guidelines, a new CSSF circular is likely before the end of March 2008
- Updated legislation on money laundering: Luxembourg legislation must be amended to implement the Third Anti-Money Laundering Directive and its implementing measures by mid-December 2007
- A circular adapting Circular 91/75 to the 2002 Law: in Circular 03/87, the CSSF clarified that Circular 91/75 will be realigned to the 2002 Law by means of a future circular
- A circular on the role of the custodian of SIFs.

15.3. Clarifications regarding Eligible Assets

The Directive on eligible assets and the CESR guidelines provide the following clarifications:

(i) Transferable securities

Transferable securities should meet the following criteria:

(a) The potential loss that the UCITS may incur as a result of holding the securities should not be more than the amount paid

   CESR clarification: a partly paid security must not expose the UCITS to a loss beyond the amount to be paid for it.

(b) The liquidity of the securities does not compromise the ability of the UCITS to repurchase or redeem its units at the request of the unitholder.

   CESR clarification: in determining liquidity, the following may need to be taken into account:
   • volume and turnover in the security
   • if the price is determined by supply and demand in the market, the issue size, and the portion of the issue that the asset manager plans to buy; and evaluation of the opportunity and timeframe to buy or sell
   • where necessary, an independent analysis of bid and offer prices over a period of time may indicate the relative liquidity and marketability of the instrument, as may the comparability of the available prices
   • in assessing the quality of secondary market activity in a transferable security, analysis of the quality and number of intermediaries and market makers dealing in the transferable security concerned should be considered.

The CSSF clarified that, in determining liquidity, the entire portfolio must be taken into consideration and not only transferable securities, considered individually.

(c) A reliable valuation is available for them
(d) Appropriate information is available for them
(e) They are negotiable
(f) Their acquisition is consistent with the investment objectives or the investment policy, or both
(g) Their risks are adequately captured by the risk management process of the UCITS.

   CESR clarification: the security’s risk and its contribution to the overall risk profile of the portfolio must be assessed on an ongoing basis.

Financial instruments which are admitted or dealt in on a regulated market are presumed not to compromise the ability of the UCITS to repurchase or redeem its units at the request of the unitholder and are also presumed to be negotiable.
Closed-end funds and financial instruments backed by or linked to the performance of other assets are included within the definition of transferable securities. Closed end funds must however, be subject to certain corporate governance mechanisms. In addition, where the asset management activity is carried out by another entity on behalf of the closed-end fund, that entity must be subject to national regulation for the purpose of investor protection.

The CSSF clarified that it is not necessary to analyze the eligibility of the underlying assets of the closed-end fund providing that the latter meet the transferable securities criteria and as long as they do not contain embedded derivatives.

Closed-end funds of hedge funds would not, however, be considered eligible assets.

(ii) **Money market instruments**

Money market instruments should be understood to mean those which:

(a) Are admitted to trading or dealt in on a regulated market or are not admitted to trading

CESR is of the view that:

- Gaining exposure to precious metals through investment in money market instruments is forbidden
- Short selling of money market instruments is prohibited

Money market instruments normally dealt in on the money market should be understood to mean those which:

(b) Have a maturity at issuance of not exceeding 397 days;

(c) Have a residual maturity of not exceeding 397 days

(d) Undergo regular yield adjustments at least every 397 days

(e) Have a risk profile that corresponds to that of financial instruments which have a maturity of not exceeding 397 days and are subject to a yield adjustment at least every 397 days.

CESR clarification: treasury and local authority bills, certificates of deposit, commercial papers and banker’s acceptances will usually be considered as money market instruments.

(iii) **Liquid instruments with a value which can be accurately determined at any time**

(a) Money market instruments (MMIs) which are liquid are those that can be sold at limited cost in an adequately short timeframe, taking into account the UCITS’ obligations to repurchase or redeem its units at the request of the unitholder.

CESR advises that when assessing the liquidity of MMIs, the following should be taken into account:

- Frequency of trades and quotes for the MMI
- Number of dealers willing to buy and sell the MMI, time needed to sell the MMI, method of soliciting offers and method of transfer
- Size of the issuance/program
- Possibility to repurchase, redeem or sell the MMI in a short period, at limited cost, and with short settlement delay.

When assessing the liquidity of the fund, CESR advises that the following factors be taken into consideration to ensure that any single MMI does not affect the liquidity of the fund:

- Unitholder structure and concentration of unitholders of the UCITS
- Purpose of funding of unitholders
- Quality of information on the fund’s cashflow
- Prospectus guidelines on limiting withdrawals.
(b) MMIs which have a value which can be accurately determined at any time means:

- They allow the fund to calculate its net asset value in accordance with the value at which the financial instrument held in the portfolio could be exchanged between knowledgeable willing parties in an arm’s length transaction.
- They are based either on market data or on valuation models including systems based on amortized cost.

CESR is of the view that if an amortization method is used to assess the value of an MMI, the fund must ensure that this will not result in a material discrepancy between the value of the MMI and the value calculated according to the amortization method. CESR provides examples of instruments which would normally comply with this condition.

MMIs normally dealt in on the money market or admitted to, or dealt in on, a regulated market are presumed to be liquid and to have a value which can be accurately determined at any time.

(iv) Instruments of which the issue or issuer is regulated for the purpose of protecting investors and savings

(a) For money market instruments which are themselves not dealt in on a regulated market but the issuer is regulated, the following criteria must be met:

- Fulfil one of the criteria set out in (ii) c) – f) above and all of the criteria set out in (iii) b) above
- Appropriate information must be available for them, including information which allows an appropriate assessment of the credit risks related to the investment in such instruments
- Freely transferable.

(b) For MMIs described in (iv) a) above, and are issued by an undertaking the securities of which are dealt in on a regulated market or issued by other bodies belonging to the categories approved by the UCITS’ competent authorities, appropriate information as mentioned in (iv) a) above, should consist of:

- Information on both the issue or the issuance programme and the legal and financial situation of the issuer prior to the issuance of the MMI
- Updates of this information on a regular basis and whenever a significant event occurs
- Verification of this information by qualified third parties not subject to instructions from the issuer
- Available and reliable statistics on the issue or the issuance programme.

**CESR’s view is that regular updates should normally occur on an annual basis and that third parties should specialize in the verification of legal or financial documentation and be composed of persons meeting professional standards of integrity.**

(c) For MMIs described in (iv) a) above and issued or guaranteed by an establishment subject to prudential supervision, appropriate information as mentioned in (iv) a) above, should consist of:

- Information on the issue or the issuance programme or on the legal and financial situation of the issuer prior to the issue of the money market instrument
- Updates of this information on a regular basis and whenever a significant event occurs
- Available and reliable statistics on the issue or the issuance programme or other data enabling an appropriate assessment of the credit risks related to the investment in such instruments.

(d) For MMIs issued or guaranteed by a central, regional, or local authority or central bank of a Member State, the European Central Bank, the EU or the European Investment Bank, a non-Member State or, in the case of a Federal State, by one of the members making up the federation, or by a public international body to which one or more Member States belong, appropriate information as mentioned in (iv) a) above, should consist of information on the issue or the issuance programme or on the legal and financial situation of the issuer prior to the issue of the MMI.
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(v) Liquid financial assets with respect to financial derivative instruments

(a) Such instruments must fulfil the following criteria:
   - Their underlying consists of one or more of the following:
     - Assets listed in Article 41(1) of the 2002 Law (see section 2.2.1.)
     - Interest rates
     - Foreign exchange rates or currencies
     - Financial indices
   - In the case of OTC derivatives, the counterparties are institutions subject to prudential supervision and belonging to the categories approved by the UCITS’ competent authorities and the OTC derivatives are subject to reliable and verifiable valuation on a daily basis and can be sold, liquidated or closed by an offsetting transaction at any time at their fair value at the UCITS’ initiative

(b) Financial derivative instruments should meet the following criteria:
   - They allow the transfer of the credit risk of an asset independently from the other risks associated with that asset
   - They do not result in the delivery or in the transfer of assets other than those referred to in Articles 41(1) and 41(2) of the 2002 Law (see section 2.2.1.)
   - They comply with the criteria for OTC derivatives
   - Their risks are adequately captured by the risk management process of the UCITS.

(c) A reliable and verifiable valuation is understood to refer to a valuation by the UCITS, corresponding to the fair value. Fair value is understood to refer to the amount for which an asset could be exchanged, or a liability settled, between knowledgeable, willing parties in an arm’s length transaction. It should not rely only on the market quotations by the counterparty and should fulfil the following criteria:
   - The basis for the valuation is either a reliable up-to-date market value of the instrument, or, if such a value is not available, a pricing model using an adequate recognized methodology
   - Verification of the valuation is carried out by an independent third party or a unit of the UCITS independent from that in charge of managing the assets and which is adequately equipped for such purpose.

   CESR is of the view that a process must be developed which enables the UCITS, throughout the life of the derivative, to value the investment concerned with reasonable accuracy at its fair value on a reliable basis reflecting an up-to-date market value. This process must include organization and means allowing for a risk analysis realized by a department independent from commercial or operational units and from the counterparty or, if these conditions cannot be fulfilled, by an independent third party.

   In the latter case, the UCITS remains responsible for the correct valuation of the OTC derivatives and must, inter alia, check that the independent third party can adequately value the types of OTC derivatives it wishes to conclude.

   Lastly, this organization of the UCITS implies that risk limits are to be defined.

   CESR believes that ‘independent’ and ‘adequately equipped’ means a unit which has the adequate means to perform the valuation. This implies that the UCITS uses its own valuation systems, which can however be provided by an independent third party - excluding the use of valuation models provided by a third party related to the UCITS (such as a dealing room with which OTC derivatives are concluded) which have not been reviewed by the UCITS, and excluding the use of data (such as volatility or correlations) produced by a process which has not been qualified by the UCITS.

(d) Liquid financial assets excludes derivatives on commodities.

   CESR is of the view that eligible assets exclude non-financial indices.
(vi) Financial indices

Financial indices are defined as those meeting the following criteria:

(a) They are sufficiently diversified
(b) They represent an adequate benchmark for the market to which they refer
(c) They are published in an appropriate manner

CESR’s guidelines state that indices based on financial derivatives on commodities or indices on property may be eligible provided they comply with the criteria set down for financial indices.

If derivatives on the index are used for risk-diversification purposes, provided that the exposure of the UCITS to the individual indices complies with the 5/10/40% ratios, there is no need to look at the underlying components of the individual indices to ensure that they are sufficiently diversified.

In its guidelines dated July 2007 entitled The classification of hedge fund indices as financial indices, CESR clarified that a hedge fund index may be considered to be a ‘financial index’ as long as it complies with vi a) – c) above. However, a hedge fund index will not be classified as a financial index:

(i) unless the methodology of the index provides for the selection and the re-balancing of components on the basis of pre-determined rules and objective criteria
(ii) if the index provider accepts payments from potential index components for the purpose of being included in the index, or
(iii) if the methodology of the index allows retrospective changes to previously published index values.

CESR also stated that when gaining exposure to a hedge fund index by means of an OTC derivative, a UCITS must comply with the relevant UCITS provisions, including:

- Counterparty requirements
- Requirements about valuation and the ability to close a position
- Requirements about risk management and valuation processes
- Requirements about risk exposure.

In addition, when gaining exposure to a hedge fund index, a UCITS must carry out appropriate due diligence, including consideration by the UCITS of the quality of the index.

(vii) Transferable securities and money market instruments embedding derivatives

a) Such financial instruments must contain a component which fulfils the following criteria:

- Some or all of the cash flows that otherwise would be required by the transferable security which functions as a host contract can be modified according to a specific interest rate, financial instrument price, foreign exchange rate, index of prices or rates, credit rating or credit index, or other variable, and therefore vary in a way similar to a stand-alone derivative
- Its economic characteristics and risks are not closely related to the economic characteristics and risks of the host contract
- It has significant impact on the risk profile and pricing of the transferable security.
b) A transferable security or money market instrument shall not be regarded as embedding a derivative where it contains a component which is contractually transferable independently of the transferable security or the money market instrument.

CESR states that collateralized debt obligations (CDOs) or asset backed securities using derivatives will generally not qualify as structured financial instruments (SFIs) embedding derivatives.

Where a product is structured as an alternative to an OTC derivative, its treatment should be similar to that of an OTC derivative instrument.

CESR believes that the following instruments could embed derivatives:

- credit linked notes
- convertible bonds
- exchangeable bonds
- SFIs whose performance is linked to the performance of a bond index
- SFIs whose performance is linked to a basket of shares
- SFIs with a nominal fully guaranteed whose performance is linked to the performance of a basket of shares.

(viii) Techniques and instruments for the purpose of efficient portfolio management

Such techniques and instruments must meet the following criteria:
- Be economically appropriate in that they are realised in a cost-effective way
- Be entered into in order to reduce costs, reduce risk or generate additional capital or income for the fund with a level of risk which is consistent with the risk profile of the fund and its risk diversification rules
- Their risks are adequately captured by the risk management process of the fund.

(ix) Index replicating UCITS

a) Index replicating UCITS are those which replicate the composition of the underlying assets of the index, including the use of derivatives and other techniques and instruments

b) An index whose composition is sufficiently diversified is an index which complies with the risk diversification rules

c) An index which represents an adequate benchmark is an index whose provider uses a recognized methodology which generally does not result in the exclusion of a major issuer to the market to which it refers

d) An index which is published in an appropriate manner is an index that is accessible to the public and the provider of which is independent from the index-replicating UCITS.

15.4. Future Developments in EU Legislation - Updating the UCITS Directive

The remainder of this chapter focuses in particular on the future development of the EU UCITS legislation.

Proposals to overcome shortcomings of the UCITS regime

The European Commission’s Green Paper in July 2005 highlighted the following shortcomings of the UCITS regime:
- Bottlenecks and failures of the product passport
- Sub-standard investor disclosures
- Proliferation of small and inefficient funds
- Obstacles to functional and geographic specialization.

Following extensive consultations with the investment fund industry and stakeholders in an attempt to address these shortcomings, the European Commission issued its long awaited White Paper on Enhancing the Single Market Framework for Investment Funds in November 2006. The White Paper intended to give the investment fund industry the means to stay competitive and to take full advantage of the single market. The White Paper is summarized in Section 15.4.1.

In March 2007, the European Commission published, its Initial Orientations of Possible Adjustments to UCITS Directive (85/611/EC), for public consultation. The key amendments proposed are outlined in Section 15.4.2.
15.4.1. The White Paper – November 2006

The White Paper proposed the following changes:

**Simplification of the notification procedures**

The European Commission agreed to propose amendments to the relevant articles of the UCITS Directive and stated that documentation and other exchanges would take place on a regulator-to-regulator basis and that supervisory cooperation mechanisms would be introduced. Host supervisors should focus on compliance with local marketing and advertising rules by the intermediaries responsible for those activities in the host country.

The White Paper, on the other hand, stated that the authorization procedure would not be amended. However, the Commission urged national authorities to expedite fund approvals and to introduce a strict deadline for authorization in the home country. It is confident that authorities with an interest in a successful domestic fund business will implement efficient and reliable authorization procedures.

**Creation of a framework for the cross-border mergers of funds and asset pooling**

More than half of European funds manage less than €50 million in assets. In addition, the total expense ratio of a typical cross-border European equity fund is double that of a comparable American fund.

In order to exploit economies of scale, the European Commission agreed to propose additions to the UCITS Directive to create the appropriate legal and regulatory conditions for the merger of funds. Such a framework would relate to the merger mechanism itself (i.e. advance disclosure, possibility of redemption free of charge), rather than to the tax implications.

The Commission stated that it will take non-legislative action, via a communication to clarify that national tax-neutral arrangements should be extended to mergers involving funds domiciled in another Member State.

Another potential way of exploiting economies of scale is asset pooling; be it entity pooling (i.e. the aggregation of the assets of participating funds in a separate legal entity, such as master-feeder funds) or virtual pooling (i.e. the aggregation of assets of participating funds by using information technology).

Current UCITS diversification requirements rule out entity pooling, whereas virtual pooling raises supervisory concerns, as it is technically a more challenging technique.

As a result the European Commission agreed to propose amendments to the diversification rules and other provisions of the Directive in order to allow an expansive approach to entity pooling. The Commission was also to explore the soundness of virtual pooling techniques and the need for Directive amendments to provide legal certainty and underpin management and supervision of such structures; it has since opted against making any related proposal.

**Enabling the management company passport**

The 2001 amendments to the UCITS Directive regarding the management company passport have not proved effective as a management company still needs to be established in each Member State where funds are domiciled.

The Commission agreed to propose amendments to the Directive to improve the organizational flexibility of management groups and allow an authorized management company to manage funds in other Member States. Such amendments should also address the concerns that supervisors expressed regarding splitting responsibilities for supervision.

The amendments to the Directive will not cover the depositary passport.

**Message routing and fund order processing/settlement**

The treatment of subscription and redemption orders still lacks automation and standardization, which results in increased costs, delays and risks. Since, the inefficiencies are not of legislative or regulatory nature the Commission has called upon the European industry to develop a strategy to phase in the necessary improvements in this area.

**Strengthening of supervisory co-operation**

The proposed amendments to the Directive will result in increased cross-border operations. Effective supervision of such operations will only work if there is full and timely cooperation between authorities.

As a result the Commission agreed to propose amendments to strengthen the provisions of the Directive relating to competent authorities and supervisory cooperation. Such amendments will be modeled on provisions of recent securities legislation. (i.e. MiFID and the Prospectus Directive)
**15.4.2. Proposed modifications to the UCITS regime**

The key amendments proposed by the European Commission in its *Initial Orientations of Possible Adjustments to the UCITS Directive (85/611/EC)* are as follows:

(i) **Simplification of the notification procedure**

To market the units of a UCITS in another Member State (a host Member State), a UCITS should submit a set of relevant documentation to its home Member State authorities. Only Key Investor Information (see ii) must be translated into the local language of the host Member State. Details of facilities available for transactions relating to fund units and distribution should be included. The authorities of the home Member State should verify that no document is missing before transmitting it to the host authorities. Marketing of UCITS may begin in the host Member State three days after transmission of the notification by the home Member State.

(ii) **Simplified Prospectus/Key Investor Information**

The Simplified Prospectus was meant to provide investors with concise and understandable information about the investment policy, risks and associated charges of a fund. It has suffered from divergent implementation and lengthy documents that have been of limited use to the investors.

The initial orientations foresee a new document entitled ‘Key Investor Information’ which contains fair and clear information that is not misleading. It should also be consistent with the full prospectus and liability issues should be made clear.

The information contained therein would be as follows:

- Product information, including costs relating to the purchase of units, risks and other essential characteristics which would have an important bearing on the investment. Such information would be confined to those disclosures which are meaningful and useful to the potential investor.
- Practical information that should be conveyed to investors to enable them to adequately exercise their rights. Some information points could differ according to the domicile of the investor in certain well-defined cases.

The detailed content and form of the investor disclosures would not be specified. Legislation would, however, expand on the guiding principles.

Product information would remain consistent between countries and only translations into the local language of the host Member State would be allowed.

The distributors and intermediaries would be responsible for disclosing costs and fees relating to the sales and advisory process.

(iii) **Facilitating fund mergers**

The orientations foresee a flexible regime for cross-border mergers of UCITS as well as domestic mergers. The new regime would require Member States to provide for the possibility to merge/amalgamate two UCITS funds (or compartments thereof) through three typical methods: (i) merger by absorption; (ii) by creating a new fund; or (iii) merger by way of a scheme of amalgamation. Both the merging/dissolving and receiving fund should be authorized as UCITS before the merger can proceed. In addition, the receiving fund must be notified for marketing in each Member State where the merging/dissolving fund was notified. There would be no requirement to merge funds with similar investment policies. The powers of the competent authorities of the merging fund are limited to ensuring that the envisaged procedure has been followed; the receiving fund authorities would have no say. National law would determine whether investors vote on the merger. Investors in the merging fund would have the right to exit free of redemption fees. The fund would not bear merger costs.

(iv) **Implementing master-feeder structures**

A special regime should be created for master-feeder structures – including situations where the master or one or more of the feeders is located in another Member State. The feeder should invest at least 85% of its assets into a single master fund – both funds should therefore have similar investment policies and be UCITS funds. The feeder, however, would have limited possibility to invest in derivative financial instruments either to modify its performance or to hedge currency risks.

Implications of investing into the master via the feeder should be clearly disclosed both regarding investment policy and fees. Neither feeders investing into several masters nor virtual pooling are envisaged at this stage.
(v) Management company passport

The right of a management company with an EU passport to manage UCITS funds domiciled in another Member State will be enabled. There must, however, be ‘substance’ in the domicile of the fund. The management company would be allowed to undertake the full range of collective portfolio management services; however it will not be permitted to maintain the shareholder register and perform reporting of valuations remotely; these activities could be performed by branches or by delegates. The custodian will also remain in the domicile of the fund.

(vi) Supervisory cooperation

The orientations highlight the need to strengthen the current provisions to (i) enhance equivalence powers for competent authorities; (ii) develop existing mechanisms relating to exchange of information; and (iii) create arrangements which allow competent authorities of a Member State to carry out spontaneous verification of information and investigation in another Member State, or have them carried out by the authorities of another Member State or third party.
Appendices
APPENDIX I
Withholding Tax Rates Applicable to Luxembourg UCIs

General remarks

The information given below is a simplified summary prepared in spring 2007 and is subject to continuous changes and exceptions. It is essential that promoters contact their tax advisers in order to obtain complete and up to date information before making investment decisions.

Only certain double taxation treaties signed by Luxembourg are applicable to Luxembourg funds. Treaties with the following 26 countries should be applicable:

- Austria
- China
- Denmark
- Finland
- Germany
- Indonesia
- Ireland
- Israel
- Korea
- Malaysia
- Malta
- Mongolia
- Morocco
- Poland
- Portugal
- Romania
- Singapore
- Slovak Republic
- Slovenia
- Spain
- Trinidad and Tobago
- Tunisia
- Turkey
- Uzbekistan
- Vietnam

The applicability of such double taxation treaties, however, is not always clear. In principle FCPs will not benefit (with, in practice, certain exceptions) unless the unitholders themselves are able to claim the reduced rate under the double taxation treaty, which, in practice, may be very difficult.

A UCI may have a subsidiary to benefit from a double taxation treaty; this is now the practice for investing in certain countries.

Ernst & Young’s Global Withholding Tax Reporter (GWTR) is a subscription-based service that provides detailed technical information regarding Withholding Taxes on portfolio dividends, portfolio interest and capital gains in 34 countries. The GWTR, which is tailored to the needs of the global financial institutions, contains valuable information such as statutory withholding rates, treaty withholding rates and tax relief procedures. The GWTR, a web-based tool, provides monthly updates that are based on quarterly reviews of information. Important tax alerts are e-mailed to licensees between updates. Please visit our sample website, www.globaltaxreporter.com, for more information regarding the GWTR.
### Withholding Tax Rates

**Applicable to Luxembourg UCIs**

<table>
<thead>
<tr>
<th>Country of investment</th>
<th>Type of income</th>
<th>Interest</th>
<th>Capital gains on sale of securities %</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Dividends %</td>
<td>Corporate bonds %</td>
<td>Government bonds %</td>
</tr>
<tr>
<td>Angola</td>
<td>10 (1)</td>
<td>10 (2)</td>
<td>0</td>
</tr>
<tr>
<td>Argentina</td>
<td>0 (1)</td>
<td>0 (2)</td>
<td>0</td>
</tr>
<tr>
<td>Aruba</td>
<td>0-10 (1)</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Australia</td>
<td>0 (1)</td>
<td>10 (2)</td>
<td>10 (2)</td>
</tr>
<tr>
<td>Austria</td>
<td>15 (1)</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Azerbaijan</td>
<td>10</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Bahamas</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Bahrain</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

See footnotes ( ) opposite.
### Footnotes

<table>
<thead>
<tr>
<th>Country</th>
<th>Note</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Angola</strong></td>
<td>(1)</td>
<td>A temporary exemption of withholding tax on dividends may be available as a result of tax incentives granted to entities operating in Angola in accordance with private investment regulations.</td>
</tr>
<tr>
<td></td>
<td>(2)</td>
<td>Interest on treasury bonds and public debentures issued under specific legislation are exempt from withholding tax.</td>
</tr>
<tr>
<td><strong>Argentina</strong></td>
<td>(1)</td>
<td>The general withholding tax rate for dividends is 0%. However, in case of dividend payments in excess of the taxable income of the distributing company (with certain adjustments), such excess will be subject to a 35% withholding tax.</td>
</tr>
<tr>
<td></td>
<td>(2)</td>
<td>A 0% withholding tax rate applies to interest on corporate bonds provided certain requirements are met (e.g., public offering). Otherwise, 15.05% withholding tax will be applied when interest derives from bonds registered in countries with which Argentina has signed Mutual Treaties for Investment Protection, provided registration in Argentina, pursuant to Law 2576, is made within two years following issuance. Luxembourg and Argentina have signed a Treaty for Investment Protection. 35% withholding tax will apply on corporate bonds not included in any of these latter two categories.</td>
</tr>
<tr>
<td></td>
<td>(3)</td>
<td>Regarding the sale of shares, there is an exemption for foreign beneficiaries established by Decree 2284/91. Although there was a former rule taxing “off-shore entities” on the sale of shares, an opinion issued by the Argentine General Attorney has stated that such rule is no longer in force. Consequently, the Argentine market – following the Argentine General Attorney’s criterion – is currently not applying withholding tax at source on such type of capital gains.</td>
</tr>
<tr>
<td><strong>Aruba</strong></td>
<td>(1)</td>
<td>A 10% dividend withholding tax has been introduced. It is reduced to 5% if more than 50% of shares (also representing 50% of the voting rights) of the distributing company are listed on an acknowledged stock exchange or the shares of its parent company are listed. The rate of 0% is applicable to domestic distributions on which the participation exemption is applicable. Aruba Exempt Companies (AVVs) performing exempt activities and Aruba Limited Liability Companies (NVs) under the offshore regime are exempt from dividend withholding tax. AVVs and NVs that have opted for a tax transparent treatment are not subject to dividend withholding tax.</td>
</tr>
<tr>
<td><strong>Australia</strong></td>
<td>(1)</td>
<td>A 0% withholding tax rate applies on franked dividends (paid out of profits on which corporate tax has been paid). Otherwise the rate is 30%.</td>
</tr>
<tr>
<td></td>
<td>(2)</td>
<td>Where an Australian State or Federal Government (or government authority) or resident company raises funds, by the issue of bonds which satisfies a public offer test and certain other conditions, an exemption is available which will reduce the interest withholding tax to nil.</td>
</tr>
<tr>
<td></td>
<td>(3)</td>
<td>Disposals by foreign residents of non-portfolio (10% or more) interests in Australian or foreign entities are subject to Australian capital gains tax if the entity’s assets are principally derived from Australian real estate property.</td>
</tr>
<tr>
<td><strong>Austria</strong></td>
<td>(1)</td>
<td>Luxembourg SICAVs and SICAFs qualify for the application of the Double Taxation Treaty and the withholding tax rate is reduced from 25% to 15% (reduction or refund forms are to be submitted). In principle the 25% rate applies to FCPs unless the unitholders themselves are able to claim the reduced rate under the Double Taxation Treaty.</td>
</tr>
<tr>
<td>Country of investment</td>
<td>Dividends %</td>
<td>Corporate bonds %</td>
</tr>
<tr>
<td>-----------------------</td>
<td>-------------</td>
<td>-------------------</td>
</tr>
<tr>
<td>Bangladesh</td>
<td>15 (1)</td>
<td>10 (2)</td>
</tr>
<tr>
<td>Barbados</td>
<td>0/15 (1) (2)</td>
<td>15 (2)</td>
</tr>
<tr>
<td>Belarus</td>
<td>15</td>
<td>40 (1)</td>
</tr>
</tbody>
</table>

See footnotes ( ) opposite.
## Footnotes

<table>
<thead>
<tr>
<th>Country</th>
<th>Note</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Bangladesh</strong></td>
<td>(1)</td>
<td>Dividends received from mutual funds or unit funds are exempt from withholding tax up to Taka 25,000.</td>
</tr>
<tr>
<td></td>
<td>(2)</td>
<td>The withholding tax rate on interest on any security of the Government or any security approved by the Government has been fixed at 10%.</td>
</tr>
<tr>
<td></td>
<td>(3)</td>
<td>A 0% withholding tax rate applies to capital gains from the sale of shares of public companies and on a reciprocal basis. Capital gains on sale of Government securities, stocks and shares of public and listed companies are exempt from tax. Capital gains arising from transfer of shares of a company registered under Companies Act 1994 as well as of those not listed with a stock exchange in Bangladesh are taxed at a rate of 10%.</td>
</tr>
<tr>
<td><strong>Barbados</strong></td>
<td>(1)</td>
<td>It is proposed that from 1 April 2007 dividends paid by a resident company to non-resident shareholders are exempt from withholding tax where such dividends are paid out of foreign source income earned by the company. However, dividends paid out of Barbados sourced income will be subject to withholding tax at the rate of 15%.</td>
</tr>
<tr>
<td></td>
<td>(2)</td>
<td>Income paid by companies in the International Business and Financial Services Sector is exempt.</td>
</tr>
<tr>
<td><strong>Belarus</strong></td>
<td>(1)</td>
<td>Under Belarussian tax law, interest on bonds is considered to be income from operations with securities and is subject to withholding tax at an increased rate of 40%, while interest on ordinary loans would be subject to withholding tax at 10%.</td>
</tr>
<tr>
<td></td>
<td>(2)</td>
<td>40% capital gains tax is charged on the sale of corporate bonds and 0% on Government bonds.</td>
</tr>
<tr>
<td>Country of investment</td>
<td>Type of income</td>
<td></td>
</tr>
<tr>
<td>-----------------------</td>
<td>----------------</td>
<td>---</td>
</tr>
<tr>
<td></td>
<td>Dividends %</td>
<td>Corporate bonds %</td>
</tr>
<tr>
<td>Belgium</td>
<td>0/15/25 (1)</td>
<td>15 (2)</td>
</tr>
<tr>
<td>Bermuda</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Bolivia</td>
<td>0 (1)</td>
<td>0 (1)</td>
</tr>
<tr>
<td>Botswana</td>
<td>15</td>
<td>15</td>
</tr>
</tbody>
</table>

See footnotes ( ) opposite.
Footnotes

Belgium

(1) The rates of withholding tax on dividends from Belgian companies are as follows:

<table>
<thead>
<tr>
<th>Type of Belgian company</th>
<th>Type of share</th>
<th>SICAV/SICAF</th>
<th>FCP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belgian company (see exceptions below)</td>
<td>Ordinary</td>
<td>25%</td>
<td>25%</td>
</tr>
<tr>
<td>Real estate investment company (VBEVAK/ SICAFI)</td>
<td>VVPR*</td>
<td>15%</td>
<td>15%</td>
</tr>
<tr>
<td>Public private equity investment company (Private PRIVAK/ PRICAV Privé)</td>
<td>All</td>
<td>0/15%**</td>
<td>0/15%**</td>
</tr>
<tr>
<td>Private equity investment company (PRIVAK/ PRICAV)</td>
<td>All</td>
<td>0***/15%/25%</td>
<td>0***/15%/25%</td>
</tr>
<tr>
<td>Other investment companies (BEVEK/SICAV, BEV AK/SICAF, VBS/SIC)</td>
<td>All</td>
<td>15%</td>
<td>15%</td>
</tr>
<tr>
<td>All other dividends</td>
<td>0%</td>
<td>15%</td>
<td></td>
</tr>
</tbody>
</table>

* VVPR shares (Verlaagde Voorheffing/Précompte Réduit) are
  - non-preferential shares issued on or after 1 January 1994 pursuant to a public offering, or
  - non-preferential shares issued on or after 1 January 1994 pursuant to a capital contribution in cash provided the shares are either (i) issued and maintained in registered form, or (ii) have been held in open deposit (i.e. in a securities account) with a bank, public credit institution or a broker, that is subject to prudential supervision control by the Belgian Banking and Finance Commission since their date of issuance.
  Please note that VVPR shares listed on Euronext that are issued by companies having issued both ordinary and VVPR shares require simultaneous presentation of VVPR and ordinary coupon strip to benefit from reduced VVPR rate.

** 0% rate applies to real estate investment companies that have invested at least 60% of their assets in residential property located in Belgium.

*** Dividends from capital gains on shares realized by the investment company are exempt from withholding tax.

**** 15% rates applies, because in practice shares in private equity investment company will usually constitute VVPR shares.

(2) An exemption from withholding tax is available to a Luxembourg investment company (that is not an FCP) under domestic law in respect of interest paid on a registered bond provided the company has not allocated the bond to a Belgian establishment and is registered in the bondholder’s register during the entire coupon period as owner or usufructuary of the bond. If withholding tax has been applied at source, the non-resident investor may claim a refund of the withholding tax relating to the interest accrued during the period he owned the registered bond.

An exemption from withholding tax is equally available to a Luxembourg investment company (including FCPs the units of which are not tradable in Belgium and have not been issued pursuant to a public offering in Belgium) in respect of debt securities held in the X/N system (dematerialized government debt securities, certificates of deposit, treasury certificates, private bonds in global bearer form).

Bolivia

(1) In Bolivia, the “font principle” is applied to income tax. Therefore, foreign income is not subject to taxes.

Botswana

(1) Capital gains tax on securities not listed on the Botswana stock exchange is 18.75%.
## Withholding Tax Rates Applicable to Luxembourg UCIs

### Appendix I

<table>
<thead>
<tr>
<th>Country of investment</th>
<th>Interest</th>
<th>Type of income</th>
<th>Corporate bonds %</th>
<th>Government bonds %</th>
<th>Capital gains on sale of securities %</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Dividends %</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Brazil</td>
<td>0</td>
<td>15</td>
<td>15 (1)</td>
<td>0 (2)</td>
<td></td>
</tr>
<tr>
<td>British Virgin Islands</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>Bulgaria</td>
<td>7</td>
<td>10 (1) (2)</td>
<td>10 (1) (2)</td>
<td>10 (1)</td>
<td></td>
</tr>
<tr>
<td>Cameroon</td>
<td>15 (1)</td>
<td>15 (1) (2)</td>
<td>15 (1) (2) (3)</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>Canada</td>
<td>25</td>
<td>25 (1)</td>
<td>0</td>
<td>0 (2)</td>
<td></td>
</tr>
<tr>
<td>Cayman Islands</td>
<td>0</td>
<td>0</td>
<td>0</td>
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</tbody>
</table>

See footnotes ( ) opposite.
## Footnotes

<table>
<thead>
<tr>
<th>Country</th>
<th>Footnote 1</th>
<th>Footnote 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brazil</td>
<td>State Government bonds are taxed at 15%. However, most Federal Government bonds acquired after 16 February 2006, are taxed at 0% (the exemption is not applicable for residents of low tax jurisdictions).</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Gains realized by investors, investing in Brazil in accordance with Resolution of Central Bank of Brazil 2.689/00, upon sale or exchange transactions carried out in Brazil stock, futures or commodities exchanges are currently exempt from income tax. Residents of low tax jurisdictions and non-residents not located in a low tax jurisdiction but investing in the Brazilian capital market without complying with Resolution 2.689/00 are subject to the same tax treatment as Brazilian residents (i.e., Brazilian residents are generally subject to withholding tax rates varying from 15% to 22.5% on the income/gain derived from listed securities).</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Please note that gains of unlisted securities are subject to a 15% capital gains tax (residents of low tax jurisdictions are subject to a 25% capital gains tax on the sale of unlisted securities).</td>
<td></td>
</tr>
<tr>
<td>Bulgaria</td>
<td>The Bulgarian withholding tax rate on interest and capital gains has been reduced from 15% to 10% since 1 January 2007. It applies to interest and capital gains paid in favour of foreign individuals and foreign entities by Bulgarian entities.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Interest on bonds, which are tradable on a regulated market of shares and securities in Bulgaria or in a EU-member state is not subject to withholding tax in Bulgaria.</td>
<td></td>
</tr>
<tr>
<td>Cameroon</td>
<td>Due to the absence of a Double Taxation Treaty between Cameroon and Luxembourg, it is possible that the tax authorities apply consular taxes amounting to 10%, which would give a global rate of 16.5%.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>This taxation applies in principle. A decree dated 19 February 1976 suspended the withholding at source of income tax on movable capital relating to the interest and assimilated revenues among which should be corporate bonds. However, based on information from the tax department’s legislation division, this decree is no longer applicable.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>The tax reform accidentally repealed the exemption from withholding tax income applicable to government bonds. However, the tax administration may still consider that this exemption is applicable.</td>
<td></td>
</tr>
<tr>
<td>Canada</td>
<td>Interest on certain long term debt bonds is exempt.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Tax is applicable on the capital gain from the sale of “taxable Canadian property” (e.g. land, shares of Canadian private corporations).</td>
<td></td>
</tr>
<tr>
<td>Country of investment</td>
<td>Type of income</td>
<td></td>
</tr>
<tr>
<td>-----------------------</td>
<td>---------------</td>
<td>---</td>
</tr>
<tr>
<td></td>
<td>Dividends %</td>
<td>Corporate bonds %</td>
</tr>
<tr>
<td>Chile</td>
<td>21.69 (1) (5)</td>
<td>4 (5)</td>
</tr>
</tbody>
</table>

See footnotes ( ) opposite.
<table>
<thead>
<tr>
<th>Country</th>
<th>Footnotes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chile</td>
<td>(1) The rate on dividends paid to non-residents is 35% less the imputation credit for the corporate income tax paid at source (credit may vary between 0% and 17%). Assuming a corporate tax credit equivalent to the current corporate tax rate (17%), effective withholding on the net dividend is equivalent to 21.69%.</td>
</tr>
<tr>
<td></td>
<td>(2) Capital gains derived from the sale of shares (not bonds) issued by a listed corporation with a stock market presence in either a) a Chilean stock market or b) a stock market authorized by the Chilean Securities Commission or c) in a tender offer regulated by Title XXV of the Chilean Securities Law, will be tax exempt. This is provided the stock was acquired at a) a stock market or b) a tender offer regulated by Title XXV of the Chilean Securities Law or c) an initial offering of stock issued upon incorporation or capital increase or d) a convertible bond exchange.</td>
</tr>
<tr>
<td></td>
<td>(3) Capital gains obtained by foreign funds that qualify as a “Foreign Institutional Investor”, derived from the sale of stock in listed corporations that have a stock market presence or bonds or other debt securities issued by either Chilean corporations, the Chilean Central Bank or the Government, executed in the stock market or in a tender offer regulated by Title XXV of the Chilean Securities Law or any other system authorized by the Chilean Securities Commission, will be exempt from capital gain taxes. However, such Foreign Institutional Investors have to comply with a number of requirements in order to benefit from this exemption.</td>
</tr>
<tr>
<td></td>
<td>(4) All other capital gains derived from the sale of securities are subject to a 17% income tax provided all of the following requirements are met: a) the seller has held the shares for at least one year; b) seller must not be habitually engaged in the sale and purchase of shares; c) the sale is made to an unrelated party. A 35% income tax on the gain would apply if any of these requirements are not satisfied.</td>
</tr>
<tr>
<td></td>
<td>(5) Foreign investment funds and foreign institutional investors may elect to be taxed on the basis of the net results derived from their investments activities in Chile at a 10% rate upon remittance. Special requirements have to be met to opt for this regime. In addition, a local management company or local representative is required. The capital gains tax exemption discussed in note (3) above applies without regard to this special regime. This regime applies not only to dividends and interest derived from investments in shares or securities, but also on any gain obtained by the fund from its authorized investments.</td>
</tr>
</tbody>
</table>
### Withholding Tax Rates Applicable to Luxembourg UCIs

<table>
<thead>
<tr>
<th>Country of investment</th>
<th>Type of income</th>
<th>Interest</th>
<th>Capital gains on sale of securities %</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Dividends %</td>
<td>Corporate bonds %</td>
</tr>
<tr>
<td>China</td>
<td></td>
<td>10 (1) (2) (3)</td>
<td>10 (1)</td>
</tr>
<tr>
<td>Colombia</td>
<td></td>
<td>0 (1)</td>
<td>35</td>
</tr>
</tbody>
</table>

See footnotes ( ) opposite.
### Footnotes

**China, People’s Republic of (PRC)**

1. Luxembourg SICAVs and SICAFs qualify for the application of the Double Taxation Treaty concluded between Luxembourg and the PRC. The treaty rate on dividends is 10% (5% if the holding is at least 25%). The treaty rate and normal rate on interest from corporate bonds is 10%. Interest from bonds which are guaranteed, insured or indirectly financed by the Luxembourg Government are exempt from PRC withholding tax.

2. Dividends received from a foreign investment enterprise (“FIE”) will be exempt from PRC withholding tax. A PRC company will generally be regarded as an FIE if it is not less than 25% owned by foreign investors. However, dividend withholding tax at 20% has been re-introduced under the new PRC corporate income tax (CIT) Law with possible reduction to 10%. The new CIT Law will come into effect from 1 January 2008.

3. Dividends received by foreign investors from a PRC company’s “B shares” listed on a recognized stock exchange in China or from the PRC company’s “overseas” shares listed on an overseas recognized exchange will be exempt from PRC withholding tax. This exemption will no longer be valid from 1 January 2008 with the coming into effect of the new CIT Law.

4. Gains on sale of a PRC company’s “B shares” listed on a recognized stock exchange in China and gains on sale of a PRC company’s overseas shares listed on an overseas recognized stock exchange are exempt from PRC withholding tax. This exemption will no longer be valid from 1 January 2008 with the coming into effect of the new CIT Law.

5. According to the Double Taxation Treaty between PRC and Luxembourg, gains on equity disposal of a PRC company, the property of which principally consists directly or indirectly of immovable property will be subject to PRC withholding tax. The withholding tax rate is 10% under the existing CIT Law. However, the rate will be 20% under the new CIT Law with a possible reduction to 10%.

6. According to the Double Taxation Treaty between PRC and Luxembourg, gains on equity disposal of a PRC company will be subject to PRC withholding tax given the disposed equity constitutes more than 25% of the company’s total equity. The withholding tax rate is 10% under the existing CIT Law. However, the rate will be 20% under the new CIT Law with a possible reduction to 10%.

**Colombia**

1. A rate of 34% for 2007 or 33% for 2008 and further years applies if the company paying the dividend has not paid income tax at the corporate level.

2. Generally, interest on Government bonds is not subject to withholding tax. However, each case should be reviewed separately. For some types of debt notes, the withholding tax rate is 7%; this withholding is applied once interest is paid. This withholding tax may be discounted against the 34% general income tax applicable for foreign investment funds.

3. No taxable gain shall be recognized if shares, listed on Colombian stock exchanges, are transferred by one shareholder (real beneficiary) and the shares transferred do not represent more than 10% of the total company’s shares in the same fiscal year. Gains derived from the sale of bonds in a secondary market are considered as interest (see note (2)).
## Withholding Tax Rates Applicable to Luxembourg UCIs

### Appendix I

<table>
<thead>
<tr>
<th>Country of investment</th>
<th>Type of income</th>
<th>Capital gains on sale of securities %</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Dividends %</td>
<td>Corporate bonds %</td>
</tr>
<tr>
<td><strong>Interest</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Costa Rica</td>
<td>15 (1) (4)</td>
<td>15 (4) (5)</td>
</tr>
<tr>
<td>Croatia</td>
<td>0 (1)</td>
<td>0</td>
</tr>
<tr>
<td>Cyprus</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

See footnotes ( ) opposite.
### Footnotes

| Costa Rica |  
|---|---|
| (1) | The general withholding tax rate on dividends paid to non-residents is 15%. The Costa Rican Income Tax Law (ITL) provides a 5% withholding tax on dividends derived from stock dealt in on a local stock exchange. |
| (2) | The general withholding tax rate on interest payments to non-residents is 15%. The Costa Rican ITL provides a reduced 8% withholding tax on government bonds registered on a local stock exchange and no withholding tax on government bonds issued in foreign currency. However, the 8% reduced rate only applies to domiciled entities or persons resident in Costa Rica. Therefore, interest payments to non-residents derived from government bonds should be subject to the general 15% withholding tax, except for bonds issued by the government in foreign currency, which are not subject to tax. |
| (3) | Capital gains are taxable if they are originated from the transfer of depreciable assets, for a higher amount than that stated in the accounting records, according to the rules of depreciation; or from the sale of non-depreciable assets in the ordinary course of a trade or business. Accordingly, if an entity’s main trade or business is selling securities, any income derived therefrom, would be subject to income tax. |
| (4) | A tax reform is currently being discussed in the Costa Rican Congress; however currently there is no certainty as to whether the tax treatment for dividends, interests, or any other type of passive income is going to be amended by the proposed tax reform. |
| (5) | The general withholding tax rate on interest payments to non-residents is 15%. However, the Costa Rican ITL provides a reduced 8% withholding tax on interest payments derived from corporate bonds dealt on a local stock exchange or if the bonds were issued by a qualified financial institution. However, this reduced rate only applies to domiciled entities or persons. Therefore, interest payments to non-residents derived from corporate bonds dealt in on a local stock exchange should be subject to the general 15% withholding tax. |

<p>| Croatia |<br />
|---|---|
| (1) | Withholding tax on dividends is no longer payable in Croatia since 1 January 2005. Although the first interpretation was that the exemption does not relate to dividends paid out of profits realized in the period from 2001 to 2004, the corporate income tax legislation was amended in August 2005 so that the exemption relates to all dividends paid after 1 January 2005 regardless of the period in which they were earned (e.g. the dividend paid in 2005 out of profits earned in 2002 is also not taxable in line with the amended corporate income tax legislation). |
| (2) | There is no separate capital gains tax in Croatia. Capital gains earned by Croatian corporate income taxpayers from sale of securities are subject to 20% corporate income tax. However, in case an entity realising capital gains in Croatia does not have a taxable presence in Croatia (i.e. is not registered as corporate income tax payer in Croatia), such capital gains would not be taxed in Croatia. |</p>
<table>
<thead>
<tr>
<th>Country of investment</th>
<th>Type of income</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Dividends %</td>
<td>Corporate bonds %</td>
<td>Government bonds %</td>
<td>Capital gains on sale of securities %</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>15</td>
<td>25/15/0 (1)</td>
<td>25/15/0 (2)</td>
<td>0 (3)</td>
</tr>
<tr>
<td>Denmark</td>
<td>28 (1)</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Dominican Republic</td>
<td>29 (1)</td>
<td>29 or 10 (3)</td>
<td>29 or 0 (4)</td>
<td>29 or 0 (2)</td>
</tr>
<tr>
<td>Ecuador</td>
<td>0</td>
<td>25</td>
<td>0</td>
<td>25 (1)</td>
</tr>
<tr>
<td>Egypt</td>
<td>0</td>
<td>20 (1)</td>
<td>20 (1)</td>
<td>0</td>
</tr>
</tbody>
</table>

See footnotes () opposite.
<table>
<thead>
<tr>
<th>Country</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Czech Republic</strong></td>
<td>(1) A withholding tax rate of 15% applies to corporate bonds issued on or after 1 January 1998, a rate of 25% applies to corporate bonds issued before 1 January 1998. Interest from mortgage bonds issued after 1 January 1995 is exempt from withholding tax. Interest from mortgage bonds issued as of 1 January 2006 is exempt only when proceeds from mortgage bonds are used solely for providing loans for housing purposes (the prospectus must include obligation of the issuer to comply with this rule).&lt;br&gt;<em>(2)</em> A withholding tax rate of 15% applies to government bonds issued on or after 1 January 1998, a rate of 25% applies to government bonds issued from 1 January 1997 to 31 December 1997 and a 0% rate applies to government bonds issued before 1 January 1997.&lt;br&gt;<em>(3)</em> Capital gain arising from the sale of shares, participation in a Czech legal entity other than a joint stock company (“participation”) or bonds is subject to taxation in the Czech Republic provided that the investment instruments are sold to Czech tax resident or to the Czech permanent establishment of a Czech tax non-resident. If the capital gain is subject to taxation in the Czech Republic, the purchaser is obliged to withhold a tax security at the rate of 10% in the case of participation and of 1% in other cases. Nevertheless, as of 1 January 2004 such security is not required towards EU tax residents. Since this term is not defined in the Czech legislation, it might be arguable whether this applies to investment companies and mutual funds as well. Based on the EC treaty, it can be argued that the exemption from the tax security withholding obligation shall be applicable in these cases, however, the practical approach of the Czech Financial Authorities is not yet known.</td>
</tr>
<tr>
<td><strong>Denmark</strong></td>
<td>(1) By exchange of letters on 30 December 2005 and 15 February 2006 the Danish and Luxembourg tax authorities have agreed that Luxembourg SICAVs and SICAFs are covered by the Double Taxation Treaty (DTT) between Denmark and Luxembourg. The local tax authorities will in the future issue a certificate of residence for proof.  The general withholding tax rate is still 28% on dividends, but as the rate according to the DTT is 15%, SICAVs and SICAFs may reclaim 13%.&lt;br&gt;FCPs are considered transparent and they can as a result not obtain treaty benefits.</td>
</tr>
<tr>
<td><strong>Dominican Republic</strong></td>
<td>(1) The payer can use the 29% withholding tax as a credit to offset against its own corporate income tax.&lt;br&gt;<em>(2)</em> Capital gains derived from the transfer of Government bonds issued under Section 11 of Law No. 104-99 and Section 9 of Law 172-03 should not be subject to taxation. Capital gains derived from other securities should be subject to 29% tax.&lt;br&gt;<em>(3)</em> The ordinary withholding tax rate on interest paid to non-residents is 29%; however, if the interest is paid to a foreign bank or financial institution, a reduced 10% withholding tax rate may apply.&lt;br&gt;<em>(4)</em> Interest derived from Government bonds issued under Section 11 of Law No. 104-99 and Section 9 of Law 172-03 should not be subject to withholding tax. Interest paid abroad derived from other government bonds should be subject to the general 29% withholding rate.</td>
</tr>
<tr>
<td><strong>Ecuador</strong></td>
<td>(1) The occasional sale of securities is not subject to tax.</td>
</tr>
<tr>
<td><strong>Egypt</strong></td>
<td>(1) The following Government bonds tax are exempted from withholding tax:&lt;br&gt;• Treasury bills&lt;br&gt;• Government bonds specifically exempted.</td>
</tr>
<tr>
<td>Country of investment</td>
<td>Dividends %</td>
</tr>
<tr>
<td>-----------------------</td>
<td>-------------</td>
</tr>
<tr>
<td>Estonia</td>
<td>22/0 (1)</td>
</tr>
<tr>
<td>Ethiopia</td>
<td>10</td>
</tr>
<tr>
<td>Fiji</td>
<td>0 (1)</td>
</tr>
<tr>
<td>Finland</td>
<td>15 (1)</td>
</tr>
<tr>
<td>France</td>
<td>25</td>
</tr>
</tbody>
</table>

See footnotes ( ) opposite.
Footnotes

Estonia

(1) A withholding tax rate of 0% on dividends applies in case the fund [or the fund manager (i.e. a legal person administering the fund) in case of a mutual fund] owns at least 15% of the shares in the Estonian company. 22% withholding tax applies in all other cases (the tax rate has been reduced from 23% to 22% since January 2007).

(2) Since 1 May 2004 there is no income tax on interest payments to non-residents if the paid interest does not significantly exceed the amount of interest payable according to market conditions on the similar debt obligations. Since January 2007 the withholding tax rate applied on interest amounts exceeding the fair market interest has been decreased from 23% to 22%.

(3) Since 1 January 2007 there have been some changes in taxation of gains derived by a non-resident from transfer of securities in Estonia. Income tax is charged if the transferred holding is a holding in a company, contractual investment fund or other pool of assets of whose property, at the time of the transfer or during a period within two years before transfer, more than 50% was directly or indirectly made up of immovables or structures as movables located in Estonia and in which the non-resident had a holding of at least 10% at the time of transfer. Please note that 22% corporate income tax is applicable as from 1 January 2007 (further reductions are foreseen as follows: 21% in 2008 and 20% in 2009).

Ethiopia

(1) There is no separate provision for corporate bonds. Assuming it will be considered as an investment return and hence as a dividend, it will most likely be taxed at a rate of 10%.

Fiji

(1) A withholding tax rate of 15% on dividends applies where the entire dividend or part thereof is paid out of income upon which no tax has been paid; otherwise dividends paid out of capital gains and/or income which has been charged to tax are exempt.

Finland

(1) Luxembourg SICAVs and SICAFs should qualify for the Double Taxation Treaty (DTT) concluded between Finland and Luxembourg. The withholding tax rate is then reduced from 28% (applicable from 1 January 2005) to 15% (reduction or refund forms are to be submitted). In principle, the 28% withholding tax rate applies to FCPs unless the unitholders themselves are able to claim the reduced rate under the DTT.

The Finnish Supreme Administrative Court has confirmed in ruling (KHO 22.11.2004 T 3345) that SICAVs (Société d’Investissement à Capital Variable) are entitled to treaty benefits and in ruling (KHO 22.11.2004 T 3359) that FCPs (Fonds Commun de Placement) are treated as flow through entities. Thus, according to this ruling, the unit holders themselves are able to claim the reduced rate under the DTT between the source country and Finland.

Please note, that if the unit holder of an FCP is a resident of Finland and Finland is also the source state, dividends, interest and capital gains will be taxed in Finland according to the Finnish domestic legislation.

France

(1) Where the recipient is a non-French resident, a 0% withholding tax rate applies to interest on corporate bonds issued on or after 1 January 1987 to the extent the beneficial owner of the interest income provides the French paying agent with a certificate of residence at the time of the payments.

(2) Where the recipient is a non-French resident, a 0% withholding tax rate applies to interest from French government bonds issued on or after 1 January 1987 to the extent the beneficial owner of the interest income provides the French paying agent with a certificate of residence at the time of the payments.

(3) Capital gains realized upon the disposal of shares in a French company, where the Luxembourg fund holds directly or indirectly more than 25% of the rights to the profits, are subject to a 16% withholding tax.
<table>
<thead>
<tr>
<th>Country of investment</th>
<th>Type of income</th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Dividends %</td>
<td>Corporate bonds %</td>
<td>Government bonds %</td>
<td>Capital gains on sale of securities %</td>
</tr>
<tr>
<td>Gabon</td>
<td>20</td>
<td>20 (1)</td>
<td>20 (1)</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>Germany</td>
<td>15 (1)</td>
<td>0</td>
<td>0</td>
<td>0</td>
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</tr>
<tr>
<td>Ghana</td>
<td>8</td>
<td>10</td>
<td>10</td>
<td>0 (1)</td>
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</tr>
<tr>
<td>Greece</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0 (1)</td>
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<tr>
<td>Guam</td>
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<td>30 (1)</td>
<td>30</td>
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</tr>
<tr>
<td>Guatemala</td>
<td>0 (1)</td>
<td>10</td>
<td>10 (2)</td>
<td>10/31 (3)</td>
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<tr>
<td>Guernsey</td>
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<td>N/A</td>
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<td>Guinea</td>
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<td>15</td>
<td>15</td>
<td>35</td>
<td></td>
</tr>
<tr>
<td>Hong Kong</td>
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<td>0</td>
<td>0</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>Hungary</td>
<td>0 (1) (2)</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>Iceland</td>
<td>15</td>
<td>0 (1)</td>
<td>0 (1)</td>
<td>0</td>
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</tbody>
</table>

See footnotes ( ) opposite.
<table>
<thead>
<tr>
<th>Country</th>
<th>Footnote(s)</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gabon</td>
<td>(1)</td>
<td>The withholding tax rate is 30% for “lots”.</td>
</tr>
<tr>
<td>Germany</td>
<td>(1)</td>
<td>Luxembourg SICAVs and SICAFs should qualify for the Double Taxation Treaty concluded between Germany and Luxembourg. The withholding tax rate is reduced from 21.1% to 15% (reduction or refund forms are to be submitted). In principle the 21.1% rate applies to FCPs unless the unitholders themselves are able to claim the reduced rate under the Double Taxation Treaty.</td>
</tr>
<tr>
<td>Ghana</td>
<td>(1)</td>
<td>A 0% withholding tax rate applies to securities sold on the Ghana Stock Exchange. Otherwise the withholding tax rate is 5%.</td>
</tr>
<tr>
<td>Greece</td>
<td>(1)</td>
<td>A 0% withholding tax rate applies if securities are listed on the stock exchange, although there is a 0.15% (i.e. half of the previous 0.3%) tax on the total sale value. The aforementioned reduced rate applies to sales effected after 1 January 2005. Otherwise there is a tax of 5% on the real value of the shares.</td>
</tr>
<tr>
<td>Guam</td>
<td>(1)</td>
<td>Interest on certain portfolio debt bonds issued after 18 July 1984 is exempt.</td>
</tr>
<tr>
<td>Guatemala</td>
<td>(1)</td>
<td>A 10% withholding tax rate applies if the company paying the dividend has not paid income tax.</td>
</tr>
<tr>
<td></td>
<td>(2)</td>
<td>This taxation applies in principle. However, the Government is used to expressly issue bonds exempt from applicable taxes.</td>
</tr>
<tr>
<td></td>
<td>(3)</td>
<td>The rate depends on the tax regimes elected by the taxpayer.</td>
</tr>
<tr>
<td>Hungary</td>
<td>(1)</td>
<td>As of 1 January 2006, Hungary does not levy withholding tax on any kind of payments made to foreign entities (except payments to individuals). Consequently, there is no withholding tax liability on dividends paid to a Luxembourg fund.</td>
</tr>
<tr>
<td></td>
<td>(2)</td>
<td>Hungarian dividend withholding tax on payments to non-individual share-holders was abolished from 1 January 2006. For funds operating as a partnership (or in any other non-corporate form), further analysis should be carried out to confirm that from a Hungarian tax perspective the fund is not viewed as transparent and the dividend is not regarded as paid to the individual shareholders of the funds.</td>
</tr>
<tr>
<td>Iceland</td>
<td>(1)</td>
<td>Interest paid to non-residents is not subject to withholding tax. However, non-residents must apply to the local tax commissioner to benefit from this tax exemption.</td>
</tr>
</tbody>
</table>
### Withholding Tax Rates Applicable to Luxembourg UCIs

#### Country of investment

<table>
<thead>
<tr>
<th>Country of investment</th>
<th>Interest</th>
<th>Capital gains on sale of securities %</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Dividends %</td>
<td>Corporate bonds %</td>
</tr>
<tr>
<td>India</td>
<td>0 (1) (2) (3)</td>
<td>(1) (4) (6) (7)</td>
</tr>
</tbody>
</table>

See footnotes ( ) opposite and next page.
India

(1) Foreign investment funds usually invest in India under the portfolio investment scheme as Foreign Institutional Investors (“FII”). However, investments may also be made under the Foreign Direct Investment route subject to the regulations prescribed in this regard.

(2) In respect of financial year 2006-2007, dividends declared, distributed or paid are exempt from tax in the hands of the shareholder recipient. However, a tax of 14.025% (base rate of 12.5% plus surcharge of 10% and education cess of 2%) is payable by the domestic company on distributed profits. In respect of financial year 2007-2008, the Finance Bill, 2007 proposes to increase this tax to 16.995% (base rate of 15% plus surcharge of 10% and education cess of 3%) on such distributed profits.

(3) Similar to dividends, income received in respect of units of Indian mutual funds or the Unit Trust of India is exempt from tax in the hands of the recipient. However, in respect of schemes other than open ended equity oriented schemes (i.e. such funds that invest more than 65% of their investible funds in equity shares of domestic companies), the mutual fund is liable to pay tax on income distributions as follows:

(i) For the financial year 2006-2007, in respect of income distribution made to individuals or a Hindu undivided family, the mutual fund is liable to pay tax of 14.025% (base rate of 12.5% plus surcharge of 10% and education cess of 2%). In respect of financial year 2007-2008, the Finance Bill 2007 proposes to increase this tax to 16.995% (base rate of 15% plus surcharge of 10% and education cess of 3%).

(ii) For the financial year 2006-2007, in respect of income distribution made to any other person, the mutual fund is liable to pay tax of 22.44% (base rate of 20% plus surcharge of 10% and education cess of 2%). In respect of financial year 2007-2008, the Finance Bill 2007 proposes to increase this tax to 22.66% (base rate of 20% plus surcharge of 10% and education cess of 3%).

Also, the Finance Bill 2007 proposes to increase the tax rate to 28.325% (base rate of 25% plus surcharge of 10% and education cess of 3%) from the existing 22.44% (applicable for financial year 2006-2007) on income distribution made by a money market mutual fund or a liquid fund applicable for financial year 2007-2008.

However, open ended equity oriented funds are exempted from payment of tax on income distributions.

(4) For the financial year 2006-2007, interest on corporate bonds issued in accordance with a scheme notified by the Central Government is taxable at 10.455% in respect of corporate investors (base rate of 10% including surcharge of 2.5% and education cess of 2%) and at 11.22% in respect of non-corporate investors (base rate of 10% plus surcharge of 10% and education cess of 2%). In respect of financial year 2007-2008, the Finance Bill 2007 proposes to revise this tax rate to 10.5575% in respect of corporate investors and to 11.33% in respect of non-corporate investors. At present the scheme notified by the Central Government for this purpose is the Foreign Currency Convertible Bonds and Ordinary Shares (through Depository Receipt Mechanism) Scheme. Interest received on corporate bonds other than those mentioned above is taxed at 20.91% (proposed to be increased to 21.115% by Finance Bill 2007) in respect of corporate investors and at 22.44% (proposed to be increased to 22.66% by Finance Bill 2007) in respect of non-corporate investors. The rates mentioned are inclusive of surcharge and education cess.
<table>
<thead>
<tr>
<th>Country of investment</th>
<th>Type of income</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Dividends %</td>
<td>Corporate bonds %</td>
<td>Government bonds %</td>
<td>Capital gains on sale of securities %</td>
</tr>
<tr>
<td>India</td>
<td>0 (1) (2) (3)</td>
<td>(1) (4) (6) (7)</td>
<td>(1) (4) (6) (7)</td>
<td>(1) (5) (6) (7)</td>
</tr>
</tbody>
</table>

See footnotes ( ) opposite and previous page.
(5) The following tax rates are applicable for capital gains earned on sale of securities:

<table>
<thead>
<tr>
<th>Nature of security and period of holding</th>
<th>FII</th>
<th>NON-FII</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>CORPORATE / NON-CORPORATE</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>CORPORATE / NON-CORPORATE</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**A) Securities sold on a recognized stock exchange**

1. Capital gains earned on sale of securities held for more than 12 months before sale
   - Prescribed listed securities acquired on or after 1 March 2003 but prior to 1 March 2004
     - Seller: 0%; 0%
     - Buyer: 0%; 0%
   - Shares underlying GDR
     - Seller: 0%; 0%
     - Buyer: 0%; 0%

2. Capital gains earned on sale of securities held for less than 12 months before sale
   - Seller and Buyer:
     - 10.455%; 11.22%
     - 10.5575%; 11.33%

**B) Securities sold otherwise than on a recognized stock exchange**

1. Capital gains earned on sale of securities held for more than 12 months before sale
   - Seller and Buyer:
     - 10.455%; 11.22%
     - 10.5575%; 11.33%

2. Capital gains earned on sale of securities held for less than 12 months before sale
   - Seller and Buyer:
     - 31.365%; 33.66%
     - 31.6725%; 33.99%

Note: The above rates are inclusive of surcharge of 2.5% and education cess of 2% in case of corporate investor and surcharge of 10% and education cess of 2% in case of non-corporate investor in respect of financial year 2006-07. In addition to the above, the rates for the financial year 2007-08 include an additional Secondary & Higher education cess of 1% (a cumulative education cess of 3%) proposed by Finance Bill 2007.

The Finance Act 2004 introduced the levy of a Securities Transaction Tax (STT) on the value of transactions in respect of specified securities. The existing rates of STT as increased by the Finance Act, 2006 are as follows:

<table>
<thead>
<tr>
<th>Particulars</th>
<th>STT to be collected from</th>
<th>STT (%) 1 June 2006 onwards</th>
</tr>
</thead>
<tbody>
<tr>
<td>Units of Equity Oriented Mutual Funds</td>
<td>Seller</td>
<td>0.25</td>
</tr>
<tr>
<td>Delivery based transaction in equity shares or units of equity oriented fund (Buyer and Seller each to pay 0.125 % STT)</td>
<td>Seller and Buyer</td>
<td>0.125</td>
</tr>
<tr>
<td>Non delivery based transaction in equity shares or units of equity oriented fund</td>
<td>Seller</td>
<td>0.025</td>
</tr>
<tr>
<td>Derivatives (including futures &amp; options)</td>
<td>Seller</td>
<td>0.017</td>
</tr>
</tbody>
</table>

(6) Surcharge in respect of non-corporate investors is applicable only if the total taxable income for a particular year exceeds Rs 1,000,000.

(7) In respect of financial year 2007-2008, the Finance Bill, 2007 has proposed to make the surcharge for companies applicable only if total taxable income for a particular year exceeds Rs 10,000,000.
<table>
<thead>
<tr>
<th>Country of investment</th>
<th>Type of income</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Dividends %</td>
<td>Corporate bonds %</td>
<td>Government bonds %</td>
</tr>
<tr>
<td>Indonesia</td>
<td>15/10 (1)</td>
<td>10 (1)</td>
<td>10 (1)</td>
</tr>
</tbody>
</table>

See footnotes () opposite and next page.
Footnotes

| Indonesia (1) | Luxembourg SICAVs and SICAFs should qualify for the Double Taxation Treaty concluded between Indonesia and Luxembourg. The withholding tax rate on dividends and interest on bonds is reduced from 20% to 15% and 10% respectively, provided they submit the original tax residency certificate issued by the Luxembourg tax authorities confirming their tax residency in Luxembourg and they qualify as the beneficial owner of the income.

With respect to the beneficial owner, the Indonesian tax authorities issued a ruling in July 2005 that provides an interpretation of the term beneficial owner as “the real owner of the income in the form of dividend, interest and or royalty, whether such owner is an individual or a company, who is fully entitled to directly enjoy the benefits of such income”. Consequently, the ruling indicates that special purpose vehicles in the form of “conduit company”, “paper box company”, “pass through company” and other similar types of companies are not included within the meaning of “beneficial owner”. The ruling has stated that payments of dividends, interest or royalties to an offshore entity which resides in a country that has a double tax treaty with Indonesia (i.e. treaty country) will not be eligible for the reduced treaty withholding tax rate if the recipient of such income is not the beneficial owner thereof. If this is the case, the 20% withholding tax rate from gross income paid will apply for any payment of dividends, interest, and royalties by Indonesian taxpayers to offshore parties, since such offshore parties cannot be considered as the “beneficial owners”.

Whilst the legitimacy of the ruling itself remains unclear and due to the fact that Indonesian Tax Laws were not established on a beneficial owner concept, one may take the view that, if an entity is registered as the owner of the shares and the Certificate of Tax Residency of the entity is available to confirm that it is a tax resident of the respective country, the entity can be arguably considered to have the entitlement to the respective income. For any withholding tax that is to be imposed, the rate will be determined based on country of residency of that entity and the tax treaty Indonesia has with the country. Nevertheless, the ruling of July 2005 represents the Indonesian tax authorities’ formal interpretation of the term “beneficial owner” that would likely be applied by the tax offices until further ruling or regulation is released.

Further internal clarification was provided early 2006 by the tax authorities via a letter released on 10 February 2006 (S-95/PJ.42/2006), which provides further criteria for identifying beneficial ownership of the interest and indicates certain tests to be taken in identifying whether an entity is the beneficial owner of the interest or simply a pass through company. The criteria to determine whether a foreign company receiving interest income is the beneficial owner of that income are as follows:

- whether the foreign company will be subject to tax in its own country of domicile/residence on the entire interest income received from the source country (i.e. Indonesia) that would be eligible for tax treaty benefits, or
- whether the foreign company has an active business operation, or
- whether the foreign company has full rights over the entire interest income that it received from the source country to fund its business operation, or
- whether the foreign company’s shares are traded/listed on a recognized stock exchange.
### Country of investment

<table>
<thead>
<tr>
<th>Type of income</th>
<th>Interest</th>
<th>Capital gains on sale of securities %</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Dividends %</td>
<td>Corporate bonds %</td>
</tr>
<tr>
<td>Indonesia</td>
<td>15/10 (1)</td>
<td>10 (1)</td>
</tr>
<tr>
<td>Iran</td>
<td>0 (1)</td>
<td>0</td>
</tr>
<tr>
<td>Ireland</td>
<td>0 (1)</td>
<td>0 (2) (3)</td>
</tr>
</tbody>
</table>

See footnotes ( ) opposite and previous page.
### Footnotes

<table>
<thead>
<tr>
<th>Country</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Indonesia</strong></td>
<td><strong>(continued)</strong> Based on the letter, the tax authorities appear to have taken the view that a foreign entity may qualify as the “beneficial owner” of the income, provided that it has met the above “beneficial owner tests”. Although the letter is released for a specific case of the ruling, it would at the very least provide a hint of the approach that the tax authorities would take for other cases in respect of beneficial owner. Supporting documents satisfying any of the above beneficial owner tests are then recommended to be obtained and maintained by the Indonesian entity paying the dividend, interest and/or royalty; there might be a potential adverse position if the documents are not available. These documents may also be requested from the overseas party receiving the income (such as SICAVs/SICAFs). In accordance with the 2005 tax ruling outlined above, if SICAVs/SICAFs do not qualify as under the interpretation of beneficial owner, the Indonesia/Luxembourg tax treaty would not apply and the 20% statutory withholding tax rate will apply. <strong>(2)</strong> If sold on the Indonesian stock exchange there is a tax on the sale price of 0.5% on founding shares and 0.1% on all other public listed shares. The sale of non listed shares of an Indonesian company by a non-resident is subject to withholding tax at 5% of gross sales price. The tax will be withheld by the buyer. If the transactions are executed between non resident tax payers, the tax will be withheld by the issuing company itself. The 5% withholding tax may not apply if the seller (SICAV/SICAF/FCP or unitholders) submits an original tax residency certificate issued by the Luxembourg tax authorities. Please see the comments on beneficial owner concept above. It is indicated that the above beneficial owner interpretation applies to income in the form of interest/royalty/dividend. Although, the interpretation does not explicitly include capital gain income, there may be a potential issue that a similar approach is considered.</td>
</tr>
<tr>
<td><strong>Iran</strong></td>
<td><strong>(1)</strong> After a 25% corporation tax there is no further tax on the profit after tax, whether distributed or not. <strong>(2)</strong> There is a tax of 0.5% on the transaction value for quoted shares and 4% on the nominal value for unquoted shares.</td>
</tr>
</tbody>
</table>
| **Ireland**   | **(1)** 0% tax withheld for both SICAVs and SICAFs (and in practice for FCPs also), if:  
(i) the fund is resident for tax purposes in Luxembourg (certificate of tax residence from the Luxembourg Finance Ministry required) and not under the control of Irish residents, or  
(ii) the fund is ultimately controlled by persons resident in an EU Member State or country with which Ireland has a double tax treaty (Relevant Territory), or  
(iii) the principal class of shares of the fund is substantially and regularly traded on a recognized stock exchange in a Relevant Territory.  
Appropriate documentation including auditors’ certificate must be in place before the dividend is paid.  
Even if the above conditions are not met, SICAVs and SICAFs (and in practice FCPs) may be able to reclaim tax withheld, under the Ireland/Luxembourg treaty (filing of form, which includes certificate of tax residence, required). **(2)** The following are exempt from withholding tax:  
(i) interest on quoted Eurobonds  
(ii) interest on bonds issued under the authority of the Minister for Finance with the condition that interest be paid without deduction of tax  
(iii) interest paid by a company or an Irish domiciled collective investment scheme, in the ordinary course of its trade or business, to a company resident in a Relevant Territory. **(3)** Under the Double Taxation Treaty between Ireland and Luxembourg the withholding tax rate on interest is 0% (filing of form, which includes certificate of tax residence, required in order to obtain upfront exemption). **(4)** Gains arising on sale of unquoted shares in companies that derive the greater part of their value from immovable property in Ireland are subject to 15% tax where the sales consideration exceeds €500,000. |
<table>
<thead>
<tr>
<th>Country of investment</th>
<th>Type of income</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Dividends %</td>
<td>Corporate bonds %</td>
<td>Government bonds %</td>
<td>Capital gains on sale of securities %</td>
</tr>
<tr>
<td>Isle of Man</td>
<td>0 (1)</td>
<td>0 (2)</td>
<td>0 (2)</td>
<td>0</td>
</tr>
<tr>
<td>Israel</td>
<td>20/25 (1)</td>
<td>20/25/27 (2)</td>
<td>0/20/25 (2)</td>
<td>0/20/25 (3)</td>
</tr>
</tbody>
</table>

See footnotes ( ) opposite.
### Footnotes

<table>
<thead>
<tr>
<th>Country</th>
<th>Notes</th>
</tr>
</thead>
</table>
| Isle of Man | (1) Since 6 April 2006, the standard rate of income tax for companies in the Isle of Man is 0%. The standard rate is generally applicable to all forms of income received by all companies with the exception of income from banking business and land and property, both of which are taxable at 10%. In the tax year 2006/07 (6 April 2006 – 5 April 2007) dividends paid from income subject to tax at 10% suffer a 10% withholding tax when the recipient is a non resident company or individual. From 6 April 2007, no withholding taxes apply to any dividends.  
(2) No withholding taxes apply to interest payments since 6 April 2006. |
| Israel    | (1) A withholding tax rate of 20% applies to distribution of dividends to a person which is not treated as a ‘significant shareholder’ (a ‘significant shareholder’ is a person who directly or indirectly, alone or with another, holds at least 10% of any means of control of a company). Dividends are subject to withholding tax of 0%, 4% or 15% if they are paid out of the profits of a “privileged enterprise” or an “approved enterprise” or an “approved property” pursuant to the Law for the Encouragement of Capital Investments, 1959.  
(2) A withholding tax rate of 20% applies to individuals investing in the fund and a rate of 25%-29% applies (in 2007) to entities. Note that, in certain circumstances, a reduction may be provided to government interest paid to foreign residents if the interest income is not attributed to a permanent establishment that he has in Israel.  
(3) A withholding tax rate of 0% applies to listed securities traded in Israel, and held by foreign residents. Capital gains tax rate on unlisted securities is 20%/25% (depending on ownership) if held by a resident of a country with which Israel has no double taxation treaty and 0% if held for at least 10 years by a resident of a country which has a double taxation treaty with Israel (e.g. Luxembourg) if certain conditions are met. |
<table>
<thead>
<tr>
<th>Country of investment</th>
<th>Type of income</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Dividends %</td>
<td>Corporate bonds %</td>
<td>Government bonds %</td>
<td>Capital gains on sale of securities %</td>
</tr>
<tr>
<td>Italy</td>
<td>27 (1)</td>
<td>0 (2)</td>
<td>0 (3)</td>
<td>0 (4)</td>
</tr>
<tr>
<td>Jamaica</td>
<td>33.33 (1)</td>
<td>33.33</td>
<td>33.33 (2)</td>
<td>0 (3)</td>
</tr>
<tr>
<td>Japan</td>
<td>7 (1)</td>
<td>15</td>
<td>0 (2)</td>
<td>0 (3)</td>
</tr>
</tbody>
</table>

See footnotes () opposite.
<table>
<thead>
<tr>
<th>Country</th>
<th>Footnotes</th>
</tr>
</thead>
</table>
| **Italy** | (1) The withholding tax rate on dividends paid to a non-resident investor is 27% for ordinary shares and 12.5% for capitalization shares (Risparmio – RMC). As SICAVs/SICAFs are not subject to income tax, the treaty rate of 15% would normally not be applicable to ordinary shares.  
   (2) The exemption applies only with respect to interest on bonds issued by banks and listed companies with a remaining maturity of more than 18 months paid to foreign investors resident in countries allowing an adequate exchange of information with Italy. Since Luxembourg is one of these countries, the Luxembourg fund must provide the financial intermediary paying the income with a self-certification of residence, in order to benefit from the exemption. If the fund does not submit this certificate of residence, the withholding tax on interest will be at the rate of 12.5%. If the bonds have a maturity at their issue date of less than 18 months, the withholding tax rate of 27% will apply.  
   (3) The exemption applies only if the Luxembourg fund provides a self-certification of residence to the financial intermediary paying the income. If the certification is not provided the withholding tax on interest will be at the rate of 12.5%.  
   (4) Gains derived by a non-resident from the disposal of shares listed either in an Italian or foreign stock exchange and which do not represent a qualified participation (i.e. less than 2% of voting rights or 5% of share capital) are out of the scope of taxation in Italy. Accordingly, capital gains will be exempt from withholding tax in Italy, if the Luxembourg fund provides proof that it is not resident in Italy.  
   Gains from the disposal of unlisted shares not representing a qualified participation (i.e. less than 20% of the voting rights or less than 25% of the capital of a non stock-exchange-listed company) are exempt from taxation in Italy if derived by foreign investors resident in countries allowing an adequate exchange of information with Italy. Since Luxembourg is one of these countries, in order to benefit from the exemption, the Luxembourg fund submits a self-certification of residence to the financial intermediary paying the income.  
   In both described cases a capital gain tax at a rate of 12.5% applies if the fund does not provide the required documentation. Capital gains derived from the disposal of shares that represent a qualified participation are subject to taxation at the ordinary 33% corporate tax rate on 40% of the amount. |
| **Jamaica** | (1) The withholding tax rate is currently 33.33%; however, where the dividend derives from a company which is listed on the Jamaica Stock Exchange, the applicable rate is 0%.  
   (2) Certain Government bonds are not subject to withholding tax on interest but these bonds are specifically stated as being tax-free when issued.  
   (3) Jamaica does not have a capital gains tax. There is, however a transfer tax of 7.5% and a stamp duty of 1% that is generally applied to the transfer of securities (not including securities issued by the Government of Jamaica) held in a Jamaican company. |
| **Japan** | (1) The withholding tax rate on dividends from listed shares is 7% up to 31 March 2008 after which date a 15% rate will apply. The withholding tax rate applicable to unlisted shares is 20%.  
   (2) A rate of 0% applies if certain conditions are met.  
   (3) Foreign corporations are not taxed on capital gains from the sale of shares unless the gain is derived from transfer of shares similar to a transfer of business. In addition to this, since 1 April 2005, capital gains derived by non-residents or foreign corporations from the sale of stock or other comparable rights in a company which derives at least 50% of its value directly or indirectly from real property in Japan will be subject to Japanese tax (as compared to 0% tax on capital gains on securities, as described above). |
## Withholding Tax Rates Applicable to Luxembourg UCIs

### Appendix I

<table>
<thead>
<tr>
<th>Country of investment</th>
<th>Type of income</th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Dividends %</td>
<td>Corporate bonds %</td>
<td>Government bonds %</td>
<td>Capital gains on sale of securities %</td>
<td></td>
</tr>
<tr>
<td>Jersey</td>
<td>0 (1)</td>
<td>0</td>
<td>N/A</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>Jordan</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>Kazakhstan</td>
<td>15</td>
<td>15 (1)</td>
<td>0</td>
<td>0 (2)</td>
<td></td>
</tr>
<tr>
<td>Kenya</td>
<td>10</td>
<td>15</td>
<td>15 (1)</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>Korea</td>
<td>27.5 (1)</td>
<td>27.5 (1) (2)</td>
<td>27.5 (1) (2)</td>
<td>0 (1) (2) (3)</td>
<td></td>
</tr>
<tr>
<td>Kuwait</td>
<td>0 (1)</td>
<td>0 (2)</td>
<td>0 (2)</td>
<td>0 (2)</td>
<td></td>
</tr>
<tr>
<td>Latvia</td>
<td>10 (1)</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>Lebanon</td>
<td>10</td>
<td>5</td>
<td>5</td>
<td>10</td>
<td></td>
</tr>
</tbody>
</table>

See footnotes ( ) opposite.
### Footnotes

<table>
<thead>
<tr>
<th>Location</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Jersey</strong></td>
<td>(1) A 0% withholding tax rate applies to “exempt” Jersey companies (which pay tax only on their Jersey source income excluding bank interest). Otherwise dividends are deemed to be paid net of 20% tax.</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Kazakhstan</strong></td>
<td>(1) The amount of accumulated (accrued) interest on debt securities paid by a resident buyer to a non-resident upon purchase is exempt from withholding tax as it is interest on debt securities purchased on the special trading floor of the regional financial centre for the city of Almaty.</td>
</tr>
<tr>
<td></td>
<td>(2) Income from capital gains following a sale (a) made at open trading on a stock exchange trading stocks and bonds, which on the day of trading are in the highest or second highest official stock exchange listings; or (b) of Government (state) securities and agency bonds, are not subject to taxation. Income from capital gains following the sale of other securities that is classified as Kazakh source income is subject to corporate income tax at 20% that is paid independently by the non-resident recipient of the income.</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Kenya</strong></td>
<td>(1) The government bonds and bills are taxable as per the above table. In certain rare circumstances, these bonds are exempted from tax – in which case they are exempted in writing through notice in the government’s official gazette. Currently, all bonds for investment purposes are taxable.</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Korea</strong></td>
<td>(1) The withholding tax rate shown in the table of 27.5% for dividends and interest is the non-treaty rate. If Luxembourg SICAVs, SICAFs and FCPs are treated as Luxembourg residents and the beneficial owners of the Korean source income such as the dividends, interest and capital gains, the reduced withholding tax rates on dividends and interest of 15% and 10%, respectively, would apply, while the capital gains on sale of securities in Korea is exempt from the withholding tax in Korea. However, if the Luxembourg SICAVs, SICAFs and FCPs are not treated as the beneficial owners of the Korean source income, the Korea tax treaty with the country where the real beneficial owner is located or the Korean domestic tax law for the investors having no tax treaty with Korea would apply in accordance with the look-through rule in Korea.</td>
</tr>
<tr>
<td></td>
<td>(2) Foreign currency denominated bonds and securities issued by the Korean government and Korean domestic corporations are exempt from taxes on interest income and capital gains, respectively. In the case of the transfer of securities other than equity shares, the capital gains are not subject to Korean tax unless they are sold to a Korean resident.</td>
</tr>
<tr>
<td></td>
<td>(3) A 0% withholding tax rate applies to securities listed on the Korean stock exchange or KOSDAQ provided the non-resident company and its related parties have not owned 25% or more of the Korean company’s equity at any time during the year of the share transfer date and the preceding 5 calendar years and the securities are sold on the Korean stock exchange or KOSDAQ. Otherwise the capital gains tax is the lesser of 27.5% of the gain or 11% of the sales price, while the capital gains tax arising from the real property holding company in Korea is taxed at the 27.5% of the gain. There is a transfer tax of 0.3% of the transferred price if sold on the Korean stock exchange or KOSDAQ and 0.5% if unlisted.</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Kuwait</strong></td>
<td>(1) The fund’s share in the profits of the investee company will be subject to tax in Kuwait.</td>
</tr>
<tr>
<td></td>
<td>(2) Interest as well as capital gains from the disposal of securities may however be treated as business income in Kuwait and therefore subject to tax.</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Latvia</strong></td>
<td>(1) A withholding tax rate of 0% is applicable for the dividend income if the beneficial owner of the dividends (Luxembourg fund) is subject to income tax in Luxembourg and holds directly at least 25% of the capital and voting rights of the payer of the dividends (Latvian company) for at least 2 subsequent years. In case a 2-year holding period is not fulfilled, a bank guarantee amounting to 10% of dividends shall be submitted to the Latvian tax authorities to apply a 0% withholding tax rate.</td>
</tr>
<tr>
<td>Country of investment</td>
<td>Type of income</td>
</tr>
<tr>
<td>-----------------------</td>
<td>----------------</td>
</tr>
<tr>
<td></td>
<td>Dividends %</td>
</tr>
<tr>
<td>Lesotho</td>
<td>25 (1)</td>
</tr>
<tr>
<td>Liechtenstein</td>
<td>4</td>
</tr>
<tr>
<td>Lithuania</td>
<td>15 (1)</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>15</td>
</tr>
<tr>
<td>Macau</td>
<td>0 (1)</td>
</tr>
<tr>
<td>Macedonia</td>
<td>10</td>
</tr>
<tr>
<td>Malawi</td>
<td>10</td>
</tr>
<tr>
<td>Malaysia</td>
<td>0</td>
</tr>
</tbody>
</table>

See footnotes ( ) opposite.
### Footnotes

<table>
<thead>
<tr>
<th>Country</th>
<th>Footnote</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lesotho</td>
<td>(1)</td>
<td>Dividends paid by manufacturing companies are exempt from withholding tax; in other cases, dividends are subject to 25% withholding tax. Section 10 (2) of the Income Tax Order of 1993 states: “The special rate for manufacturing income applies to chargeable income, which is Lesotho-source and is derived from manufacturing but does not apply to a Lesotho branch of a non-resident company”.</td>
</tr>
<tr>
<td></td>
<td>(2)</td>
<td>Interest received by a taxpayer is subject to withholding tax under Section 107 (1); a 10% rate applies to a resident taxpayer and 25% rate to a non-resident taxpayer.</td>
</tr>
<tr>
<td></td>
<td>(3)</td>
<td>There is no capital gains tax in Lesotho. The proceeds or gain from the disposal of shares is to be included in the taxpayer’s taxable income as per Section 103 (1)(d) and would be taxed at the marginal rate of the taxpayer. Please note that the tax rates for companies, which have been amended effective 1 April 2006, are as follows: manufacturing concerns 10%, other 25%.</td>
</tr>
<tr>
<td>Lithuania</td>
<td>(1)</td>
<td>A withholding tax rate of 0% applies where the holding exceeds 10% and is held for at least 12 months.</td>
</tr>
<tr>
<td></td>
<td>(2)</td>
<td>The basic rate of withholding tax on interest is 10%. Interest on corporate bonds issued before 1 January 2002 is exempt.</td>
</tr>
<tr>
<td></td>
<td>(3)</td>
<td>Interest on government bonds is subject to a 10% withholding tax rate. If the agreements on the distribution of Government bonds are concluded after 1 January 2003 the interest from such securities is exempt.</td>
</tr>
<tr>
<td>Macau</td>
<td>(1)</td>
<td>Macau law does not contain specific measures imposing withholding tax on interest, dividends or capital gains. A corporate entity is subject to income tax in Macau on its income derived from its commercial and industrial activities carried on in Macau. There is no distinction between residents and non-residents for tax purposes in Macau. Should the sale and purchase of shares in Macau companies constitute commercial or industrial activities carried on in Macau, the fund will be subject to income tax on capital gain arising in Macau at progressive rates from 3% to 12% for taxable profits below MOP300,000 and fixed rate of 12% for taxable profits exceeding MOP300,000. Income tax is imposed on dividends received if dividends are paid out of pre-tax profits.</td>
</tr>
<tr>
<td>Macedonia</td>
<td>(1)</td>
<td>Zero rate is applicable only if the financial institutions/ consultants/ banks are acting as agents of the Government of the Republic of Macedonia. In all other cases the withholding tax rate is 10%.</td>
</tr>
<tr>
<td></td>
<td>(2)</td>
<td>Capital gains are not subject to Macedonian withholding tax (i.e. income from capital gain is not stipulated within the income subject to withholding tax).</td>
</tr>
<tr>
<td>Malawi</td>
<td>(1)</td>
<td>Only 50% of the gain from the disposal of securities is taxable.</td>
</tr>
<tr>
<td>Malaysia</td>
<td>(1)</td>
<td>Interest from certain specified bonds or securities may be exempt from tax. Also, generally interest derived from securities and bonds issued or guaranteed by the Malaysian Government and received by a unit trust or a listed closed-end fund is exempted from tax. In applying this exemption, the unit trust or the listed closed-end fund need not be incorporated, resident or listed in Malaysia.</td>
</tr>
<tr>
<td>Country of investment</td>
<td>Type of income</td>
<td>Dividends %</td>
</tr>
<tr>
<td>-----------------------</td>
<td>----------------</td>
<td>-------------</td>
</tr>
<tr>
<td>Malta</td>
<td>Interest</td>
<td>0 (1)</td>
</tr>
<tr>
<td>Mauritius</td>
<td></td>
<td>0</td>
</tr>
</tbody>
</table>

See footnotes ( ) opposite.
### Footnotes

<table>
<thead>
<tr>
<th>Country</th>
<th>Notes</th>
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</thead>
</table>
| **Malta** | (1) Malta operates the full imputation system with respect to the taxation of dividends. The taxation of dividends at the level of the shareholder may also vary according to whether the income out of which the dividends were distributed was taxed at the level of the Maltese company.  
(i) Dividends received from income derived from a “participating holding”.  
When a Maltese company derives income from a “participating holding”, it is entitled in terms of Article 12(i)(u) of the Income Tax Act to opt for a participation exemption, in which case the income will be exempt from tax in Malta. Upon re-distribution of the exempt income, by way of dividends, the non-resident shareholder would not be subject to any further tax in Malta (by way of withholding or otherwise) on the dividends received.  
Alternatively, the Maltese company may opt to have its income derived from the “participating holding” to be allocated its foreign income account and taxed at the normal corporate tax rate of 35%. Upon the redistribution of these profits allocated to the foreign income account, the dividends will be subject to tax in the hands of the non-resident shareholder; however, the non-resident shareholder receives an imputation credit for the tax paid on the profits out of which the dividends were distributed. Accordingly, the full imputation system ensures that the shareholder would not be subject to any further tax on the dividends received. Moreover, the non-resident shareholder may claim a full refund of tax paid by the Maltese company.  
(ii) Dividends received from income which was not derived from a “participating holding”.  
Any income which is not derived from a “participating holding” will be allocated to the Maltese taxed account or foreign income account and taxed at the normal corporate rate of tax of 35%. Upon the distribution of a dividend, the non-resident shareholder will be subject to tax on the dividend but will, receive an imputation credit for the tax paid by the company on the profits out of which the dividends were distributed. The imputation system, again ensures that no additional tax is paid on the dividends received by the shareholder. The non-resident shareholder may also be entitled to claim certain tax refunds. The amount of refund depends on the type of income derived by the Maltese company and whether double tax relief was claimed on that income.  
(2) Interest, discounts or premiums payable in respect of a public issue by a company, entity or other legal person howsoever constituted and whether resident in Malta or otherwise, and a private issue by a company, entity or other legal person howsoever constituted and resident in Malta paid to a collective investment scheme licensed in terms of Maltese Investment Services Legislation is subject to a Final Withholding Tax (“FWT”) of 15%.  
(3) Interest, discounts or premiums payable by the Government of Malta or by any agency thereof are subject to a FWT of 15%.  
(4) Any gains or profits accruing to or derived by any person not resident in Malta, on a disposal of any units in a collective investment scheme as defined in Article 2 of the Investment Services Act and any units and similar instruments relating to linked long term business of insurance, including the surrender or maturity of linked long term policies of insurance and of any shares or securities in a company (which for the avoidance of doubt includes redemption, liquidation or cancellation) which is not a company, the assets of which consist wholly or principally of immovable property situated in Malta, are exempt. |
<p>| <strong>Mauritius</strong> | (1) The rate of 0% does not apply if the recipient of the interest is an investment fund within the meaning of the Act of 20 December 2002. Where the Mauritian payer holds either a Category 1 Global Business Licence or a Category 2 Global Business Licence pursuant to the Financial Services Development Act 2001 and the recipient does not have a place of business in Mauritius, then the 0% tax rate will apply irrespective of the status of the non-resident recipient. |</p>
<table>
<thead>
<tr>
<th>Country of investment</th>
<th>Type of income</th>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Dividends %</td>
<td>Corporate bonds %</td>
<td>Government bonds %</td>
</tr>
<tr>
<td>Mexico</td>
<td>0 (1) (2)</td>
<td>4.9 (2) (3)</td>
<td>0</td>
</tr>
<tr>
<td>Moldova</td>
<td>10</td>
<td>10 (1)</td>
<td>0 (2)</td>
</tr>
<tr>
<td>Monaco</td>
<td>0</td>
<td>0 (1)</td>
<td>N/A (1)</td>
</tr>
<tr>
<td>Morocco</td>
<td>10 (1)</td>
<td>10</td>
<td>0</td>
</tr>
<tr>
<td>Mozambique</td>
<td>20</td>
<td>20</td>
<td>0</td>
</tr>
<tr>
<td>Namibia</td>
<td>10 (1)</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Netherlands</td>
<td>15</td>
<td>0 (1)</td>
<td>0</td>
</tr>
<tr>
<td>Netherlands Antilles</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>New Zealand</td>
<td>15 (1)</td>
<td>0 (2)</td>
<td>0 (2)</td>
</tr>
</tbody>
</table>

See footnotes ( ) opposite.
### Footnotes

<table>
<thead>
<tr>
<th>Country</th>
<th>(1)</th>
<th>(2)</th>
<th>(3)</th>
<th>(4)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Mexico</strong></td>
<td>There is no domestic withholding tax on dividends. A withholding tax is imposed on the distributing company if dividends are paid from earnings that have not been subject to tax.</td>
<td>Notwithstanding the Double Taxation Treaty between Mexico and Luxembourg in force since 2002, the tax treaty benefits are not applicable to Luxembourg investment funds, so the Mexican statutory withholding tax rates will apply to payments made to said funds.</td>
<td>This withholding tax rate will apply if certain requirements are fulfilled. If such requirements are not met, the rate may change.</td>
<td>The applicable rate would be 25% on gross proceeds or 28% on net proceeds. A 40% capital gain rate could apply, if the investment fund is not subject to tax and treated as an investment in a low tax jurisdiction or deemed to benefit from a special regime. Furthermore, for transfers of publicly traded shares through a stock exchange, the capital gain may be exempt.</td>
</tr>
<tr>
<td><strong>Moldova</strong></td>
<td>Interest on corporate bonds is not taxable until 2010, provided that the bonds are issued for a period of more than 3 years.</td>
<td>Interest on state securities is not taxable until 1 January 2015.</td>
<td>Capital gains from the sale of securities should be subject to a withholding tax of 10% only if the purchaser is a Moldovan resident.</td>
<td></td>
</tr>
<tr>
<td><strong>Monaco</strong></td>
<td>Monaco has entered into a treaty with the European Union (“the Savings Directive”) which may, in certain circumstances, lead to a withholding tax at the rate of 15% on interest income. Income from corporate bonds and Government bonds may therefore be liable to this tax. SICAVs and SICAFs, as legal persons, are always exempt from this withholding tax. FCPs might be liable to this tax, depending on the way interest income is paid to the final investor (if the latter is an individual residing in the EU). No withholding tax will apply in Monaco if the fund manager or the custodian bank of the Luxembourg fund are regarded as paying agents.</td>
<td>Although the Double Taxation Treaty concluded between Morocco and Luxembourg applies to SICAVs and SICAFs, the withholding tax rate on dividends is the same as the non-treaty rate.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Morocco</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Namibia</strong></td>
<td>Dividends paid out of oil and gas profits are exempt from withholding tax.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Netherlands</strong></td>
<td>A 25% withholding tax may be applied if the corporate bond qualifies as a hybrid loan.</td>
<td></td>
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<td></td>
</tr>
<tr>
<td><strong>New Zealand</strong></td>
<td>A 15% withholding tax rate will apply where a company pays a cash dividend which has full imputation, dividend withholding payment credits or conduit tax credits attached, or to the extent imputation credits are passed on to foreign investors through the payment of supplementary dividends under the foreign investor tax credit regime or the payment of additional dividends under the conduit tax relief regime. A 0% withholding tax rate applies to non-cash dividends to the extent they are fully imputed. Otherwise, the rate is 30%.</td>
<td>A 0% withholding tax rate applies where an Approved Issuer pays a levy of 2% on interest payments in respect of Registered Securities. All Government stock transactions have been approved as Registered Securities and the Reserve Bank is an Approved Issuer. Otherwise, the rate is 15%.</td>
<td>Capital gains on the sale of bonds/shares are generally not taxable unless the investor is considered to be in the business of dealing in shares/bonds or the particular bonds/shares were acquired with the dominant purpose of resale.</td>
<td></td>
</tr>
<tr>
<td>Country of investment</td>
<td>Type of income</td>
<td></td>
<td></td>
<td>Capital gains on sale of securities %</td>
</tr>
<tr>
<td>-----------------------------</td>
<td>----------------</td>
<td>----------</td>
<td>----------</td>
<td>---------------------------------------</td>
</tr>
<tr>
<td></td>
<td>Dividends %</td>
<td>Corporate bonds %</td>
<td>Government bonds %</td>
<td></td>
</tr>
<tr>
<td>Nicaragua</td>
<td>0 (1)</td>
<td>0 or 22.5 (3)</td>
<td>0</td>
<td>0 or 10.5 (2)</td>
</tr>
<tr>
<td>Nigeria</td>
<td>10</td>
<td>10</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Northern Mariana Islands</td>
<td>30</td>
<td>30</td>
<td>30</td>
<td>0</td>
</tr>
<tr>
<td>Norway</td>
<td>25 (1)</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Oman</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Pakistan</td>
<td>10</td>
<td>30 (1)</td>
<td>30 (1)</td>
<td>0 (2)</td>
</tr>
<tr>
<td>Palestine</td>
<td>8-16</td>
<td>8-16</td>
<td>8-16</td>
<td>8-16</td>
</tr>
</tbody>
</table>

See footnotes ( ) opposite.
### Nicaragua

1. A 0% withholding tax rate applies if the dividend is paid out of taxed income. Otherwise, the withholding tax rate is 10.5%.

2. The general withholding tax rate on remittances to non-residents is 10.5% (i.e. remittances that are not levied with a particular withholding tax rate). However, the Nicaraguan Fiscal Equity Law provides an exemption for capital gains derived from securities dealt in on a local stock exchange.

3. The general withholding tax rate on interest payments to non-residents is 22.5%. However, the Nicaraguan Fiscal Equity Law provides an exemption for long term financial instruments (more than 4 years) as well as interest and capital gains derived from securities dealt in on a local stock exchange.

### Norway

1. Based on information from the Norway Ministry of Finance, a SICAV does not qualify for the exemption from Norwegian Withholding Tax on dividends paid from Norway to the SICAV. The Ministry argues that a SICAV is a transparent vehicle for tax purposes. The new understanding is not quoted in the yearly guidelines published by the Tax Directorate (Lignings-ABC 2006), in Utvalget (regular tax news magazine), or on the web-page of the Ministry. The new understanding is now used by the tax office that handles claims for refund of Norwegian withholding tax (Central Tax Office for Foreign Tax Affairs, “COFTA”).

If a SICAV is investing in Norwegian securities, any dividends from Norway to the SICAV would be subject to 25% withholding tax, unless the individual unit holder in the SICAV can demonstrate that he is a:

- company resident in the EU – he will get a full refund of withholding tax
- individual resident in the EU – he will get a refund limited to the tax treaty withholding tax rate
- company or individual person resident in tax treaty country outside the EU – refund limited to tax treaty withholding tax rate.

In practice, we assume that the company paying the dividend would levy a 25% withholding tax, and that the unit holder must apply for refund.

### Pakistan

1. Tax is leviable at a rate of 35% for tax year 2007. The difference between the tax leviable and the tax withheld of 30% should be paid when a return is filed.

2. Unquoted securities are subject to capital gains tax at a rate of 35% for tax year 2007. 25% of the gain realised upon the sale of unquoted securities held for more than 12 months is exempt.
### Country of investment

<table>
<thead>
<tr>
<th>Country of investment</th>
<th>Type of income</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Dividends %</td>
</tr>
<tr>
<td>Panama</td>
<td>10/20 (1)</td>
</tr>
<tr>
<td>Paraguay</td>
<td>19.25 (1)</td>
</tr>
<tr>
<td>Peru</td>
<td>4.1 (1)</td>
</tr>
</tbody>
</table>

See footnotes ( ) opposite.
### Panama

<table>
<thead>
<tr>
<th>Footnote</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>A withholding tax rate of 20% applies in the case of dividends paid on bearer shares.</td>
</tr>
<tr>
<td>(2)</td>
<td>Capital gains derived from the transfer of bonds, shares, quotas and other securities issued by legal entities are subject to income tax at a rate of 10%. Capital gains derived from the transfer of shares (or other forms of participation) of a Panamanian company should be considered local source income regardless of where the transaction takes place, if such company has operations within the territory of the Republic of Panama or has assets located in Panama. Buyers are required to withhold and deposit with the Tax Authorities 5% of the purchase price paid to the seller. This amount must be remitted to the tax authorities within ten days from the date the withholding obligations arise. Sellers have the alternative of considering the 5% withholding tax to be definite and final tax or computing the actual net gain and paying tax at a rate of 10% on the gain. The 5% withheld will be credited against the final 10% capital gain tax liability determined. Profits from the sale of securities issued by corporations which have taxable income in Panama, or capital assets located in Panama, are taxable as ordinary income. Profit from the sale of securities issued by companies registered with the National Securities Commission and traded on Panamanian Stock Exchange are tax exempt; in these cases the interest is also exempt. Profits from the sale from government securities are also tax exempt; the interest is exempt.</td>
</tr>
</tbody>
</table>

### Paraguay

<table>
<thead>
<tr>
<th>Footnote</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>The dividend withholding tax rate is 5% (5% x 100) = 5. If dividends are remitted abroad an additional withholding tax of 15% applies (15% x 95) = 14.25. Therefore, the final withholding tax rate is 19.25% for dividends remitted abroad.</td>
</tr>
<tr>
<td>(2)</td>
<td>For non-residents, a 30% withholding tax on the capital gain realised is applied.</td>
</tr>
</tbody>
</table>

### Peru

<table>
<thead>
<tr>
<th>Footnote</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>Dividends distributed to non domiciled entities or individuals as from 1 January 2003 are subject to a 4.1% withholding tax.</td>
</tr>
</tbody>
</table>
| (2)      | Interest obtained on bonds issued by a Peruvian corporation by means of a public offer and pursuant to requirements established in the Peruvian Market Securities Law are exempt from Income Tax until 31 December 2008. As a general rule interest obtained by non-residents are subject to a 30% withholding Income Tax. However, a reduced rate of 4.99% may be applied if the following requirements are met:

   (i) If the loans are provided in cash, the foreign currency entrance to Peru shall be fully documented.
   (ii) The loans are subject to an annual interest rate not greater than the PRIME rate plus 6 points or LIBOR rate plus 7 points, depending on whether the credit comes from the American or any other market, respectively. This rate includes all fees, commissions and premiums.
   (iii) The lender and the borrower are not regarded as economically related parties. |
| (3)      | Capital gains, arising from the transfer of securities are exempt from Income Tax until 31 December 2008 provided the following:

   (i) If the transferee is a corporation, exemption applies to securities listed in the Securities Public Register transferred through the Lima stock exchange. If the transferee is a natural person or natural married persons with common property, exemption applies to securities, listed or not in the Securities Public Register, and transferred through the stock exchange or OTC. Consequently, OTC transfers made by corporations are subject to Income Tax. |

As per a recent amendment to the Income Tax Law, to enter into force on 1 January 2009, the above rules have been subject to significant changes. The following exemptions have been eliminated: i) interest from bonds issued by Peruvian corporations by means of a public offer and pursuant to requirements established in the Peruvian Market Securities Law, ii) capital gains obtained by corporations in the stock exchange and iii) capital gains obtained by individuals, however in this case a reduced Income Tax rate of 5% has been enacted.
<table>
<thead>
<tr>
<th>Country of investment</th>
<th>Type of income</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Dividends %</td>
<td>Corporate bonds %</td>
<td>Government bonds %</td>
</tr>
<tr>
<td>Philippines</td>
<td>35 (1)</td>
<td>20 (2)</td>
<td>20 (3)</td>
</tr>
</tbody>
</table>

See footnotes ( ) opposite.
<table>
<thead>
<tr>
<th>Footnotes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Philippines</strong></td>
</tr>
<tr>
<td>(1) Dividends paid by a Philippine corporation to a foreign corporation not doing business in the Philippines are generally subject to a withholding tax of 35% on the gross amount of dividends. The tax must be withheld by the Philippine corporation and remitted to the tax authority. The tax rate may be reduced to 15% if the country of domicile of the foreign corporation does not impose tax on offshore dividends or allows a credit for tax deemed paid in the Philippines equivalent to 20% (15% effective 1 January 2009), which represents the difference between the 35% regular tax (30% effective 1 January 2009) and the 15% preferential tax rate (pursuant to the amendments to the Tax Code of 1997 introduced by Republic Act No. 9337 which took effect on 1 November 2005).</td>
</tr>
<tr>
<td>(2) Investments by non-resident foreign corporations in corporate bonds may be classified as foreign loans under Section 28(B)(5)(a) of the 1997 Tax Code. Any interest income derived therein shall be subject to a final Withholding Tax of 20%.</td>
</tr>
<tr>
<td>Section 32(B)(7)(g) of the 1997 Tax Code provides that “Gains realized from the sale or exchange or retirement of bonds, debentures or other certificate of indebtedness with a maturity of more than five years” shall be excluded from the gross income. Thus, the gains derived from the investments may be exempt from income tax.</td>
</tr>
<tr>
<td>In this regard, the courts and the tax authority have ruled that the term “gain” does not include “interest”. Hence, interest on long-term bonds are not exempt under Section 2(B)(7)(g) of the 1997 Tax Code.</td>
</tr>
<tr>
<td>(3) Interest or discounts on government securities are subject to 20% final withholding (income) tax; such tax is withheld by the government agency concerned at the time of original issue of the Treasury Bills or upon periodic coupon payments of Treasury Bonds. Gains realized from the sale or exchange or retirement of bonds, debentures or other certificate of indebtedness with a maturity of more than 5 years shall be exempt from income tax (please refer the caveat in footnote (2) with respect to this exemption provision).</td>
</tr>
<tr>
<td>(4) Shares of domestic corporations that are listed and traded on a local stock exchange are exempt from income tax but subject to the stock transaction tax of 0.5% of gross selling price (to be withheld by the stockbroker). Net capital gains realized during the taxable year from the sale, barter, exchange or other disposal of shares of stock in a domestic corporation not through the local stock exchange shall be subject to the capital gains of 5% on the first P 100,000 and 10% in excess of P 100,000.</td>
</tr>
<tr>
<td>The sale, transfer or exchange of shares in domestic corporations is generally subject to documentary stamp tax (DST) at the rate of P 0.75 on each P 200.00 of the par value of the shares sold, transferred or exchanged. However, under Section 199 of the Tax Code, as amended by Republic Act No. 9243, the sale, barter or exchange of shares of stock listed and traded through the local stock exchange shall be exempt from DST for a period of five years from the effectivity of the RA 9243 (i.e. 20 March 2004).</td>
</tr>
<tr>
<td>Country of investment</td>
</tr>
<tr>
<td>-----------------------</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>Poland</td>
</tr>
<tr>
<td>Portugal</td>
</tr>
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See footnotes ( ) opposite.
### Footnotes

<table>
<thead>
<tr>
<th>Country</th>
<th>Footnote</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Poland</strong></td>
<td>(1)</td>
<td>Luxembourg SICAVs and SICAFs qualify for the application of the Double Taxation Treaty (DTT) concluded between Poland and Luxembourg if they are liable to tax in Luxembourg. Additionally, in order to benefit from the DTT protection they should present their Luxembourg tax residency certificate to the Polish income payer. There are certain doubts whether the investment funds in question may be classified as “liable to tax” and therefore whether they qualify for the treaty protection (if this would be the case the standard Polish withholding rates on dividend, interest, and capital gains would apply). However, based on our experience and based on the opinion of tax authorities, once the Polish company obtained a certificate of tax residency, the DTT rate may be applied.</td>
</tr>
<tr>
<td></td>
<td>(2)</td>
<td>The non-treaty withholding tax rate on dividends is 19%. The lower tax treaty rate (5%) applies if the dividend is paid to a company other than partnership (a Luxembourg tax resident) which owns at least 25% of the dividend paying company.</td>
</tr>
<tr>
<td></td>
<td>(3)</td>
<td>The treaty rate on interest is 10%, compared with the non-treaty rate of 20%. Interest on certain government bonds (floated on the foreign markets) is exempt from withholding tax.</td>
</tr>
<tr>
<td></td>
<td>(4)</td>
<td>As a rule, capital gains received by corporations/companies are taxed with 19% Polish corporate income tax. If Luxembourg SICAVs and SICAFs are considered Luxembourg tax residents, capital gains earned by them should be exempt from taxation in Poland based on the Article 13 of the DTT. This relates also to capital gains from the sale of shares in Polish real estate companies. If SICAVs and SICAFs are not protected by the tax treaty, there is a risk that the capital gains realized by them upon sale of Polish securities may be considered as derived in Poland and therefore subject to taxation therein (with regular 19% corporate income tax). The issue of when the gains are considered as derived in Poland is not clearly regulated in Polish tax law and therefore requires a case-by-case analysis.</td>
</tr>
<tr>
<td><strong>Portugal</strong></td>
<td>(1)</td>
<td>If Luxembourg investment funds qualify for the application of the Double Taxation Treaty concluded with Portugal, the rate on dividends should decrease from 20% (domestic rate) to 15% (treaty rate).</td>
</tr>
<tr>
<td></td>
<td>(2)</td>
<td>Interest on Portuguese corporate bonds registered in a clearing system recognised by the Portuguese Securities and Exchange Commission (except bonds of a monetary nature, namely short-term debt with maturity less than one year) and paid to non-residents (except non-residents domiciled in offshore jurisdictions or residents holding more than 20%) are exempt from withholding tax in Portugal. Otherwise the rates are 20% (domestic rate) or 10% or 15% (treaty rates). The treaty rate applicable on corporate bonds is 10% if the paying entity considers interest as corporate income tax deductible and pays it to a financial establishment resident in the other country and 15% on the remaining situations.</td>
</tr>
<tr>
<td></td>
<td>(3)</td>
<td>Interest on Government bonds registered in a clearing system recognised by the Portuguese Securities and Exchange Commission (except bonds of monetary nature, namely short-term debt with maturity less than one year, but including Treasury Bills) and paid to non-residents (except non-residents domiciled in offshore jurisdictions or residents holding more than 20%) are exempt from withholding tax in Portugal. Otherwise the withholding tax rates are 20% (domestic rate) or 10% or 15% (treaty rates).</td>
</tr>
<tr>
<td></td>
<td>(4)</td>
<td>Capital gains on Portuguese corporate bonds and Government bonds benefiting from the interest tax exemption described in (2) and (3) above are exempt from taxation in Portugal. In other cases, capital gains arising from the sale of shares and bonds are exempt from tax due to the double taxation agreement. If the Double Taxation Treaty does not apply, capital gains are exempt from taxation in Portugal, with the following exceptions: the non-resident holds more than 25% of the resident entities; the non-resident company obtaining the gain is resident in some specific countries, namely offshore jurisdictions; the sale of a participation in the equity capital of a resident company whose assets are composed of more than 50% in real estate properties located in Portugal or the sale of a participation in the equity capital of a company that has a domain relationship over a resident company whose assets are composed of more than 50% in real estate properties located in Portugal.</td>
</tr>
<tr>
<td>Country of investment</td>
<td>Type of income</td>
<td>Interest</td>
</tr>
<tr>
<td>-----------------------</td>
<td>----------------</td>
<td>----------</td>
</tr>
<tr>
<td></td>
<td>Dividends %</td>
<td>Corporate bonds %</td>
</tr>
<tr>
<td>Puerto Rico</td>
<td>10</td>
<td>0</td>
</tr>
<tr>
<td>Qatar</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Romania</td>
<td>16 (1)</td>
<td>16 (2)</td>
</tr>
<tr>
<td>Russian Federation</td>
<td>15</td>
<td>9/15/20 (1)</td>
</tr>
<tr>
<td>Rwanda</td>
<td>15</td>
<td>15</td>
</tr>
<tr>
<td>Saipan and Micronesia</td>
<td>30 (1)</td>
<td>30 (1)</td>
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</table>

See footnotes ( ) opposite.
### Footnotes

<table>
<thead>
<tr>
<th>Country</th>
<th>Note</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Puerto Rico</strong></td>
<td>(1)</td>
<td>A withholding tax rate of 0% applies provided the transaction is effected outside Puerto Rico. Otherwise the rate is 29%.</td>
</tr>
<tr>
<td><strong>Romania</strong></td>
<td>(1)</td>
<td>Luxembourg SICAVs and SICAFs may qualify for the benefits of the Double Tax Treaty concluded between Romania and Luxembourg if these funds can provide the Romanian payer with certificates of fiscal residency from the Luxembourg Fiscal Authorities. The domestic Romanian withholding tax rate is 16% both on dividends and on interest received by non-resident shareholders (interest earned from current accounts/on sight deposits in Romanian banks are in certain conditions not subject to withholding tax). The Double Tax Treaty rates are 15% on dividends (reduced to 5% for holdings of at least 25%) and 10% on interest. The interest withholding tax is reduced to nil if the Luxembourg entities qualify as financial institutions (certified as such by a governmental body from Luxembourg). Based on the provisions of the Romanian legislation, non-residents may benefit from the 10% dividend tax rate provided by the Romanian domestic legislation in case of Romanian residents. Therefore, dividends received from Romania by Luxembourg investment funds may be subject to 10% Romanian dividend tax (i.e. more beneficial than the tax rate provided by the double tax treaty), if a valid certificate of fiscal residence is available.</td>
</tr>
<tr>
<td></td>
<td>(2)</td>
<td>The withholding tax exemption applies to interest from debt instruments issued by a Romanian legal person (e.g. corporate bonds), provided that such instruments are traded on a recognised stock exchange and the interest is not paid to an affiliate of the issuer.</td>
</tr>
<tr>
<td></td>
<td>(3)</td>
<td>Based on the domestic Romanian law applicable in 2006, capital gains obtained by a foreign entity from disposal of shares held in a Romanian legal entity are subject to domestic corporate income tax at a rate of 16%. However, under the double tax treaty, such capital gains from the disposal of shares should be taxable only in Luxembourg (please note that the domestic Romanian law’s definition of “immovable property” would not include shares). Where a certificate of fiscal residency from the Luxembourg tax authorities can be provided by Luxembourg investment funds, the more favorable treatment provided by the double tax treaty should apply.</td>
</tr>
</tbody>
</table>
| **Russian Federation** | (1) | The following tax rates apply to the tax base which is determined for operations involving particular types of debt obligations:  
   a) 15% - for interest on State and municipal securities (other than the securities which are referred to under b) & c) below) and for interest on mortgage-backed bonds issued after 1 January 2007  
   b) 9% - for interest on municipal securities issued for a period of not less than three years before 1 January 2007 and for interest on mortgage-backed bonds issued before 1 January 2007  
   c) 0% - for interest on State and municipal bonds which were issued up to 20 January 1997 inclusively, and for interest on the 1999 State bonds which were issued upon the novation of series III OGVZ bonds.  
(2) Income from the sale of shares in (share interests in the capital of) Russian organizations more than 50% of whose assets consist of immovable property situated in the territory of the Russian Federation, and from the sale of financial instruments derived from such shares (share interests) is subject to withholding tax. However, income from the sale on foreign exchanges of securities or financial instruments derived therefrom, which are legally circulated on those exchanges, shall not be deemed to be income from sources in the Russian Federation and therefore should not be taxable. Where tax applies, the withholding tax rate is 24% on the gain (i.e. income from the sale less costs). In the absence of information on the costs of the securities sold the withholding tax rate is 20% on gross revenue. |
<p>| <strong>Saipan and Micronesia</strong> | (1) | Normally the withholding tax is subject to a rebate of approximately 50%. |</p>
<table>
<thead>
<tr>
<th>Country of investment</th>
<th>Type of income</th>
<th>Interest</th>
<th>Capital gains on sale of securities %</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Dividends %</td>
<td>Corporate bonds %</td>
<td>Government bonds %</td>
</tr>
<tr>
<td>Saudi Arabia</td>
<td>5 (1) (2)</td>
<td>5 (1) (2)</td>
<td>5 (1) (2)</td>
</tr>
<tr>
<td>Senegal</td>
<td>10</td>
<td>13 (1)</td>
<td>0</td>
</tr>
<tr>
<td>Seychelles</td>
<td>15</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Singapore</td>
<td>0 (1)</td>
<td>15 (2) (3)</td>
<td>15 (2) (4)</td>
</tr>
<tr>
<td>Slovak Republic</td>
<td>0 (1)</td>
<td>19 (2)</td>
<td>19/0 (2) (3)</td>
</tr>
</tbody>
</table>

See footnotes ( ) opposite.
### Footnotes

<table>
<thead>
<tr>
<th>Country</th>
<th>Note</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Saudi Arabia</strong></td>
<td>(1)</td>
<td>In practice, it may not be permissible for a Luxembourg fund to invest in a Saudi Arabian publicly held entity. However, under the new Capital Market Law being implemented currently, this is expected to change.</td>
</tr>
<tr>
<td></td>
<td>(2)</td>
<td>In accordance with the tax regulations since 30 July 2004, 5% withholding tax is payable on payments of interest and dividends paid by resident entities to non-residents.</td>
</tr>
<tr>
<td></td>
<td>(3)</td>
<td>Capital gains arising from sale of securities not traded in on the Saudi stock exchange are subject to a withholding tax at a rate of 20%.</td>
</tr>
<tr>
<td><strong>Senegal</strong></td>
<td>(1)</td>
<td>A withholding tax rate of 6% applies to interest on long term bonds (more than 5 years).</td>
</tr>
<tr>
<td><strong>Seychelles</strong></td>
<td>(1)</td>
<td>There is no withholding tax on capital gains, this is not mentioned anywhere in the legislation.</td>
</tr>
<tr>
<td><strong>Singapore</strong></td>
<td>(1)</td>
<td>Singapore has, with effect from 1 January 2003, moved to a one-tier system and dividends paid under this system attract no dividend withholding tax. However, there are transitional provisions in place and franked dividends under the previous imputation system can still be declared and paid up to 31 December 2007. Where dividends are paid under these transitional provisions and are franked by the underlying 20% corporate income tax, the 20% corporate income tax is considered to be “attached” to the dividend. The 20% withholding tax satisfies the Singapore tax liability of a non-resident shareholder. It was proposed in the recent Singapore budget that the corporate tax rate be reduced to 18% with effect from the year of assessment 2008 (i.e. for income earned in financial year 2007). The franking of dividends will also be 18%.</td>
</tr>
<tr>
<td></td>
<td>(2)</td>
<td>The reduced Double Taxation Treaty rate of 10% on interest may be applicable if the SICAV/SICAF is able to submit a form, certified by the Luxembourg tax authorities, stating that it is the beneficial owner of the interest and that effective management is in Luxembourg. FCPs may not be able to rely on the treaty.</td>
</tr>
<tr>
<td></td>
<td>(3)</td>
<td>An exemption applies to certain qualifying corporate debt securities issued up to 31 December 2008.</td>
</tr>
<tr>
<td></td>
<td>(4)</td>
<td>A withholding tax rate of 0% applies to certain government bonds.</td>
</tr>
<tr>
<td></td>
<td>(5)</td>
<td>Capital gains are not taxable, but whether the gain arising from sale of securities is a capital gain will generally depend on whether the seller is carrying on a business of trading in securities.</td>
</tr>
<tr>
<td><strong>Slovak Republic</strong></td>
<td>(1)</td>
<td>Distribution of dividends (i.e. profit after corporate taxation) related to profit from 2004 onwards is not subject any taxation in Slovakia.</td>
</tr>
<tr>
<td></td>
<td>(2)</td>
<td>The withholding tax rate shown is the normal rate of 19% and not the Double Taxation Treaty (which was signed between Luxembourg and Czechoslovakia) rate of 0%, as it is considered that the treaty rate is in fact not applied in Slovakia.</td>
</tr>
<tr>
<td></td>
<td>(3)</td>
<td>Income from mortgage bonds issued before 31 December 2003 and income from State Bonds and bonds of National Bank of Slovakia denominated in hard currency and issued before 31 December 2003 is exempt from the Slovak income tax. Income from State Bonds issued abroad after 31 December 2003 is also exempt from Slovak taxation.</td>
</tr>
<tr>
<td></td>
<td>(4)</td>
<td>The amount of 19% represents a tax guarantee which applies only in case of sale of Slovak securities to Slovak tax residents or permanent establishments in Slovakia. The tax guarantee of 19% might be either considered as final tax or submitting a tax return could be considered. From 1 January 2006 the tax guarantee has been cancelled for entities from the EU, but only those which are subject to taxation (from worldwide income) in an EU Member State.</td>
</tr>
<tr>
<td>Country of investment</td>
<td>Dividends %</td>
<td>Corporate bonds %</td>
</tr>
<tr>
<td>-----------------------</td>
<td>-------------</td>
<td>--------------------</td>
</tr>
<tr>
<td>Slovenia</td>
<td>15/5 (1)</td>
<td>15/5 (2)</td>
</tr>
<tr>
<td>South Africa</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Spain</td>
<td>18 (1)</td>
<td>0 (1)</td>
</tr>
<tr>
<td>Sri Lanka</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Swaziland</td>
<td>15</td>
<td>10</td>
</tr>
<tr>
<td>Sweden</td>
<td>30</td>
<td>0</td>
</tr>
<tr>
<td>Switzerland</td>
<td>35</td>
<td>35/0 (1)</td>
</tr>
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</table>

See footnotes ( ) opposite.
### Footnotes

<table>
<thead>
<tr>
<th>Country</th>
<th>Note(s)</th>
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</thead>
</table>
| Slovenia     | (1) According to the Double Taxation Treaty concluded between Slovenia and Luxembourg, the withholding tax rate of 5% applies if the holder owns 25% of capital. In all other cases, a 15% withholding tax rate applies (according to the Corporate Income Tax (CIT) Act). We assume the conditions in respect to the EU Parent-Subsidiary Directive are not met.  
(2) In line with the Double Taxation Treaty, the withholding tax rate of 5% may apply; in other cases, the 15% withholding tax rate applies according to the CIT Act.  
(3) According to the CIT Act, capital gains derived by a non-resident from the sale of securities are not taxed, except in case of a permanent establishment in Slovenia (in that case 23% corporate income tax applies to capital gains). According to the Double Taxation Treaty, there is no tax at source for capital gains. |
| South Africa | (1) Tax on capital gains will apply to immovable property, shares representing directly or indirectly more than 20% of the equity in any entity in which at least 80% of the market value is attributable either directly or indirectly to immovable property situated in South Africa and to any asset of a permanent establishment of the non-resident through which a trade is carried on in South Africa. |
| Spain        | (1) The withholding tax rate is 18% on dividends and 0% on interest and capital gains if the recipient is resident in an EU country that is not on Spain’s tax haven list, and such interest is not attributable to its Spanish permanent establishment.  
Since May 2000, the Spanish tax authorities have held, by means of several tax rulings, that Luxembourg UCITS (i.e. which have complied with the UCITS Directive) are not to be considered as residents of a tax haven, and therefore it can reasonably be maintained that they might also enjoy treaty protection rates (10% on dividends), provided that the investment institutions are able to obtain a tax certificate issued by the Luxembourg tax authorities stating that they are tax resident in Luxembourg under the terms of the Treaty. (The certificate must state the tax residence of the investment institution in Luxembourg for the purposes of the Spain-Luxembourg Treaty).  
Conversely, for Luxembourg investment institutions that do not comply with the UCITS Directive and/or cannot obtain a certificate of residence in the terms of the Treaty, the following withholding taxes would be levied:  
• 18% on dividends  
• 0% on interest and capital gains if the institution can provide any evidence of its tax residence in Luxembourg for purposes other than the treaty ones.  
In other cases, 18% on interest, 0% on capital gains arising from the disposal of shares of Spanish listed companies or Spanish Collective Investment Schemes and 18% on other capital gains. |
<p>| Sri Lanka    | (1) The sale of unlisted securities where the period of ownership is less than 2 years is subject to a tax of 15% on the profit on sale. Listed securities and unlisted securities held for more than 2 years are not liable to this tax. The turnover of every share trading transaction in respect of listed shares is liable to a “share transaction levy” of 0.2%. The sale of listed shares on which the share transaction levy is paid is not liable to 15% income tax irrespective of the period for which they have been held. |
| Switzerland  | (1) There is no Swiss withholding tax levied on interest payments in connection with corporate loans. |</p>
<table>
<thead>
<tr>
<th>Country of investment</th>
<th>Type of income</th>
<th></th>
<th></th>
<th></th>
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</thead>
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<tr>
<td></td>
<td><strong>Dividends %</strong></td>
<td><strong>Corporate bonds %</strong></td>
<td><strong>Government bonds %</strong></td>
<td><strong>Capital gains on sale of securities %</strong></td>
</tr>
<tr>
<td>Syria</td>
<td>8.25/Nil (1)</td>
<td>8.25</td>
<td>8.25</td>
<td>(2)</td>
</tr>
<tr>
<td>Taiwan</td>
<td>25 (1)</td>
<td>20</td>
<td>20</td>
<td>0</td>
</tr>
<tr>
<td>Tanzania</td>
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<td>10</td>
<td>10</td>
<td>30 (2)</td>
</tr>
<tr>
<td>Thailand</td>
<td>10 (1)</td>
<td>15 (1)</td>
<td>0 (2)</td>
<td>0 (3)</td>
</tr>
<tr>
<td>Trinidad and Tobago</td>
<td>15 (1) (2)</td>
<td>20 (1)</td>
<td>20 (1)</td>
<td>0</td>
</tr>
<tr>
<td>Tunisia</td>
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See footnotes ( ) opposite.
### Footnotes

<table>
<thead>
<tr>
<th>Country</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Syria</em></td>
<td>(1) Share dividends are also subject to a 8.25% withholding tax.</td>
</tr>
<tr>
<td></td>
<td>(2) The law is silent about the taxability of capital gains on the sale of securities by non-resident entities.</td>
</tr>
<tr>
<td><em>Taiwan</em></td>
<td>(1) A withholding tax rate of 20% applies if investments are approved by the Taiwan government.</td>
</tr>
<tr>
<td><em>Tanzania</em></td>
<td>(1) A 5% withholding tax rate applies to companies listed on the Dar es Salaam Stock Exchange. Otherwise, the rate is 10%.</td>
</tr>
<tr>
<td></td>
<td>(2) Corporations are not subject to capital gains tax on income from the sale of investments. Such gains are subject to corporate tax at a rate of 30% on net income.</td>
</tr>
<tr>
<td><em>Thailand</em></td>
<td>(1) While it is not yet certain whether the treaty rates will be applied to Luxembourg SICAVs/ SICAFs, the treaty and non-treaty rates on dividends and interest are both 10% and 15% respectively.</td>
</tr>
<tr>
<td></td>
<td>(2) According to Thai tax law, a 0% withholding tax rate applies to interest paid to companies. In principle, therefore, FCPs may be subject to 15% unless the unitholders themselves (companies or partnerships) are able to claim the 0% rate.</td>
</tr>
<tr>
<td></td>
<td>(3) There is no Thai tax on the capital gains from the disposal of securities between non-Thai residents. In theory there is no capital gains tax but the gain is subject to corporate income tax. The withholding tax of 15% may, however, be payable if the buyer is a Thai resident and the seller is a non-Thai resident who does not benefit from treaty protection. To determine whether the seller has treaty protection, the Thai authorities look at the registered owner rather than the beneficial owner. No capital gains tax is withheld where the transaction is carried out through and in the name of a non-Thai broker in, for example, Singapore or UK, in accordance with the Double Taxation Treaty between these countries and Thailand.</td>
</tr>
<tr>
<td><em>Trinidad and Tobago</em></td>
<td>(1) The withholding tax rates shown are the non-treaty rates as there appears to be uncertainty regarding the application of the Double Taxation Treaty concluded with Trinidad and Tobago.</td>
</tr>
<tr>
<td></td>
<td>(2) The 10% withholding tax rate applies to dividends paid to corporations owning 50% or more of the voting rights of the distribution company. The 15% rate applies to other dividends.</td>
</tr>
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</table>
### Country of investment

<table>
<thead>
<tr>
<th>Type of income</th>
<th>Dividends %</th>
<th>Corporate bonds %</th>
<th>Government bonds %</th>
<th>Capital gains on sale of securities %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Turkey *</td>
<td>0 (1)</td>
<td>0 (2)</td>
<td>0 (3)</td>
<td>0 (4)</td>
</tr>
<tr>
<td>Uganda</td>
<td>15</td>
<td>15</td>
<td>15</td>
<td>0</td>
</tr>
</tbody>
</table>

See footnotes ( ) opposite.
Under a regulation effective from 1 January 2006, income derived from securities and the other stock market instruments within the scope of the regulation was subject to withholding tax (applicable rate is 10 %) regardless of whether the beneficiaries are resident or non-resident individuals and legal entities, or taxpayer or those exempt from tax, or whether the gains derived are tax-exempt. However, as of 7 July 2006, the withholding tax rate applicable to such income is 0% for non-residents. Please note that the regulation in question does not cover dividend income.

(1) The withholding tax rate is 0% if the fund has a Permanent Representative (PR) in Turkey. Otherwise the applicable withholding tax rate, which was previously 10%, is 15% for the dividends distributed on or after 23 July 2006. However, there is an important point to mention in case of dividend distribution. If the dividend distribution is made to a grandfathered portfolio, withholding rate is 0%. On the other hand, if the distribution is made to a second portfolio (new portfolio in dual system), the withholding rate is 10% until 23 July 2006, after 23 July 2006 it is 15%.

(2) The withholding tax rate is applicable to bonds issued after 1 January 2006 (please note that this rate applies to interest income derived on or after 7 July 2006. In the event that the interest income was derived in the period between 1 January 2006 and 6 July 2006, the applicable rate would be 15%). If the issue date is before 1 January 2006, the applicable rate will be 10%.

(3) Government bonds do not include Eurobonds. Both capital gains and interest income derived from Eurobonds are not subject to withholding. It will not be declared.

Interest income was subject to 15% for interest income derived from those issued after 1 January 2006 in the period between 1 January 2006 and 6 July 2006. On or after 7 July 2006, the rate is applied at 0%. If the issue date is before 1 January 2006, the applicable rate will be 0% regardless of when the interest income is derived.

(4) • The withholding tax rate is 0% if the gains derive from bonds issued and shares purchased after 1 January 2006 (Please note that this rate applies to capital gains derived on or after 7 July 2006).

• Either withholding tax of 0% or 10% is the applicable rate for gains derived from bonds issued before 1 January 2006 and shares purchased before 1 January 2006 if the fund has a PR. Otherwise, the rate is 32% (rate applicable from 1 January 2006: 20% corporate income tax + 15% withholding on remaining 80% of dividend distributed (12) = total tax burden of 32%). The PR is responsible for submitting the corporate tax return within the 15 days following the date the full income payment is obtained. In case of no PR, the party providing such income (i.e. Turkish bank or financial institution, etc.) is responsible for submitting the return and paying the taxes.
### Withholding Tax Rates Applicable to Luxembourg UCIs

**Appendix I**

<table>
<thead>
<tr>
<th>Country of investment</th>
<th>Interest</th>
<th>Capital gains on sale of securities %</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Dividends %</td>
<td>Corporate bonds %</td>
</tr>
<tr>
<td>Ukraine</td>
<td>15</td>
<td>15/25 (1)</td>
</tr>
</tbody>
</table>

See footnotes ( ) opposite and next page.
<table>
<thead>
<tr>
<th>Ukraine</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Income on corporate bonds:</td>
<td></td>
</tr>
<tr>
<td>a) interest-only bearing bonds: 15% withholding tax rate applies to the amount of interest</td>
<td></td>
</tr>
<tr>
<td>b) bonds with discount income only: 25% withholding tax rate applies to the amount of discount</td>
<td></td>
</tr>
<tr>
<td>c) bonds combining both interest and discount income: 15% withholding tax rate applies to the amount of interest on such bonds</td>
<td></td>
</tr>
<tr>
<td>There is a conflict between different provisions of the legislation in respect of taxation of the discount, in particular:</td>
<td></td>
</tr>
<tr>
<td>• 15% withholding tax rate applies to, inter alia, the amount of discount income payable to non-residents, although</td>
<td></td>
</tr>
<tr>
<td>• 25% withholding tax rate applies to the difference between the face value of the bond payable to non-residents by the issuer and the price of the bond’s acquisition at the primary or secondary stock market.</td>
<td></td>
</tr>
<tr>
<td>It is considered that there is more likelihood of substantiating the applicability of 15% rate.</td>
<td></td>
</tr>
<tr>
<td>Non-residents may acquire or sell both corporate and government discount bonds only through a permanent establishment in Ukraine or a Ukrainian resident acting as an agent of such non-resident. In theory, this requirement may be applied to the transactions on acquisition and sale of interest-bearing bonds as well.</td>
<td></td>
</tr>
<tr>
<td>(2) Income on government bonds:</td>
<td></td>
</tr>
<tr>
<td>a) interest-only bearing bonds:</td>
<td></td>
</tr>
<tr>
<td>• 0% withholding tax rate applies to the amount of interest on external government bonds sold (placed) to non-residents out of the territory of Ukraine by non-resident authorized agents</td>
<td></td>
</tr>
<tr>
<td>• 15% withholding tax rate applies to the amount of interest on government bonds placed on the conditions different from the above.</td>
<td></td>
</tr>
<tr>
<td>b) bonds with discount income only:</td>
<td></td>
</tr>
<tr>
<td>• 0% withholding tax rate applies to the amount of discount income on external government bonds sold (placed) to non-residents out of the territory of Ukraine by non-resident authorized agents.</td>
<td></td>
</tr>
<tr>
<td>• 25% withholding tax rate applies to the amount of discount income on government bonds placed on the conditions different from the above.</td>
<td></td>
</tr>
<tr>
<td>The legislation does not describe the taxation pattern applicable to interest/discount with regard to the cases where the interest/discount is payable by the issuer on the bonds purchased at the secondary market.</td>
<td></td>
</tr>
<tr>
<td>c) bonds combining both interest and discount income:</td>
<td></td>
</tr>
<tr>
<td>• 0% withholding tax rate applies to the amount of discount or interest income on external government bonds sold (placed) to non-residents out of the territory of Ukraine by non-resident authorized agents.</td>
<td></td>
</tr>
<tr>
<td>• As regards the bonds placed on conditions different from above there is a conflict between different provisions of the legislation, in particular:</td>
<td></td>
</tr>
<tr>
<td>- 15% withholding tax rate applies to the amount of the discount income payable to non-residents, although</td>
<td></td>
</tr>
<tr>
<td>- 25% withholding tax rate applies to the difference between the face value of the bond payable to non-resident by the issuer and the price of their acquisition by non-residents on the primary or secondary stock market.</td>
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</tr>
<tr>
<td>It is believed that there is more likelihood of substantiating the applicability of the 15% withholding tax rate.</td>
<td></td>
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</table>
### Withholding Tax Rates Applicable to Luxembourg UCIs

#### Appendix I

<table>
<thead>
<tr>
<th>Country of investment</th>
<th>Type of income</th>
<th>Interest</th>
<th>Capital gains on sale of securities %</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Dividends %</td>
<td>Corporate bonds %</td>
<td>Government bonds %</td>
</tr>
<tr>
<td>Ukraine</td>
<td>15</td>
<td>15/25 (1)</td>
<td>0/15/25 (2)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>15/25 (3)</td>
</tr>
<tr>
<td>United Arab Emirates</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>0</td>
<td>20 (1) (2)</td>
<td>0 (3)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>0</td>
</tr>
</tbody>
</table>

See footnotes ( ) opposite and previous page.
### Footnotes

<table>
<thead>
<tr>
<th>Ukraine (continued)</th>
<th>(3)</th>
<th>Capital gains:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>a) Capital gains on government bonds (of any of the types as mentioned above) including external government bonds sold (placed) to non-residents out of the territory of Ukraine by non-resident authorized agents:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• 15% withholding tax rate applies to interest-bearing bonds.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>It is considered that there is a high likelihood of substantiating the application of the 15% rate to capital gains on interest-free (discount) bonds, although the authorities might try to apply the 25% rate attributing the capital gain to permanent establishment through which sale of the bonds is to be performed.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>b) Capital gains on corporate bonds:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• 15% withholding tax rate applies to interest-bearing bonds.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>It is considered that there is a high likelihood of substantiating the application of the 15% rate to capital gains on interest-free (discount) bonds, although the authorities might try to apply the 25% rate attributing the capital gain to permanent establishment through which sale of the bonds is to be performed.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>c) Capital gains on shares:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• 15% withholding tax rate applies.</td>
</tr>
</tbody>
</table>

| United Kingdom |  (1)  | Interest paid on quoted Eurobonds is exempt. |
|                |  (2)  | The distinction between yearly or short interest is relevant in the context of withholding tax. Where the interest payable is “short interest” there is no requirement to deduct tax at source. “Short interest” is that paid on a loan/bond with a term less than 365 days. There is a requirement to deduct income tax at source for yearly or annual interest. Yearly interest is that paid on a loan/bond with a term capable of lasting 365 days or more. |
|                |  (3)  | Interest on gilts is paid without deduction of income tax unless the registered holder elects for payment with deduction of tax at the rate of 20%. |
| Country of investment | Type of income |  |
|-----------------------|----------------|
|                       | Dividends %    | Corporate bonds % | Government bonds % | Capital gains on sale of securities % |
| United States of America | 30 (1)          | 30 (2)            | 30 (2)             | 0                                    |

See footnotes ( ) opposite and next page.
### Footnotes

<p>| <strong>United States of America</strong> | <strong>(1)</strong> It should be noted that a very small number of securities that are publicly traded in the U.S. equities market are, in fact, partnerships for U.S. tax purposes. The tax compliance for an investment in a U.S. partnership is much more complex, and in certain cases may require the investor to file a U.S. tax declaration. The tax consequences for dividends paid by certain “real estate investment trusts” (REITs) and certain other U.S. real estate investment entities, and certain gains on sale with respect to such entities and other entities that primarily invest in U.S. real estate, can be more complex, and may require the investor to file a U.S. tax declaration. Investors should obtain advice before investing in equity securities of entities that primarily invest in U.S. real estate, although it should be noted that, there is significant relief for investors holding less than 5% of the shares of certain publicly-traded REITs and other entities. |
| <strong>(2)</strong> Broad exceptions severely limit the general applicability of U.S. withholding tax at the 30% rate on interest income. These exceptions to withholding on interest income are: |
| | a) 0% rate applies to interest on corporate and U.S. government obligations if the obligations are payable within 183 days from the date of issuance. Therefore, short-term U.S. treasury bills, commercial paper, and banker’s acceptances will typically produce income not subject to U.S. withholding tax. |
| | b) 0% rate applies to interest on bank deposits (including certificates of deposit). |
| | c) Under the “portfolio debt exemption”, interest on obligations (including, but not limited to, U.S. treasury obligations and other government bonds) issued after 18 July 1984 is generally not subject to U.S. withholding tax if the obligations are either (a) in registered form (e.g. held through the Depository Trust Company or other such central securities depositories), and the beneficial owner of the interest duly certifies its foreign status and the foreign status of any partners of the beneficial owner or (b) not in registered form provided certain restrictions exist intended to prohibit sale to and ownership by U.S. persons (that is, the obligation must be targeted to non-U.S. markets, under what are generally known as the “TEFRA D” rules). For securities held at onshore accounts in the United States (with either U.S. or non-U.S. institutions), certification of foreign status would be done on Form W-8BEN for non-U.S. corporations and individuals, and Form W-8IMY for non-U.S. partnerships. For securities held at accounts outside of the United States with institutions (either U.S. or non-U.S.) that have agreed with the U.S. tax authorities to become “qualified intermediaries” (“QIs”), foreign status might, in the alternative, be established with “know-your-customer” documentation, as the QI may have agreed with the IRS. |
| d) Since 1 January 2001, non-U.S. partnerships are treated on a “look-through” basis. A non-U.S. partnership (ordinarily, except for a special election, FCPs, SICAVs, and SICAFs probably would not be regarded as partnerships for U.S. tax purposes; on the other hand, a société en nom collectif or a société en commandite might well be a partnership for U.S. tax purposes) must obtain IRS certificates of foreign status from all of its partners and attach them to its own IRS certification, and explain how its income is to be allocated among the partners, unless the partnership has obtained withholding foreign partnership (WFP) status from the IRS, in which case less documentation is provided to the payer of the income (i.e. the custodian). |
| e) If the non-U.S. partnership obtains WFP status from the IRS, then the partnership will bear the burden of obtaining and keeping statements from partners regarding their status, instead of being required to file these statements with the payer of the income. The procedures for becoming a WHP are set forth in IRS Revenue Procedure 2003-64, as modified by IRS Revenue Procedure 2004-21. In theory, this may be an attractive option for non-U.S. partnerships in some circumstances. However, this has not proven very popular in practice. |</p>
<table>
<thead>
<tr>
<th>Country of investment</th>
<th>Type of income</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Dividends %</td>
<td>Corporate bonds %</td>
<td>Government bonds %</td>
<td>Capital gains on sale of securities %</td>
</tr>
<tr>
<td>United States of America</td>
<td>30 (1)</td>
<td>30 (2)</td>
<td>30 (2)</td>
<td>0</td>
</tr>
<tr>
<td>U.S. Virgin Islands</td>
<td>11</td>
<td>11</td>
<td>11</td>
<td>0</td>
</tr>
<tr>
<td>Uruguay</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Uzbekistan</td>
<td>10 (1) (2)</td>
<td>10 (1)</td>
<td>10 (1)</td>
<td>0 (1)</td>
</tr>
<tr>
<td>Venezuela</td>
<td>34/50/60 (1)</td>
<td>0 (2)</td>
<td>0</td>
<td>(3)</td>
</tr>
<tr>
<td>Vietnam</td>
<td>0</td>
<td>0.1 (1)</td>
<td>0.1 (1)</td>
<td>0.1 (2)</td>
</tr>
</tbody>
</table>

See footnotes ( ) opposite and previous page.
### Footnotes

#### United States of America (continued)

**f)** A non-U.S. partnership is obligated to identify its non-U.S. partners to the U.S. payer of interest or other investment income, who in turn is obligated to identify the non-U.S. partners to the IRS on Form 1042-S, Foreign Person’s U.S. Source Income Subject to Withholding, except in certain cases when the partnership has WFP status.

**g)** 0% rate applies for interest on obligations of various U.S. states and their political subdivisions and the District of Columbia (e.g. interest from municipal bonds). Certain limited exceptions apply to this general rule.

It should be noted that distributions out of income by a U.S. mutual fund of the usual type generally are treated as dividends for this purpose, and so subject to 30% withholding, even though some or all of the income of the fund might be interest income that could be received directly without Withholding Tax. Persons making money market investments in the United States are encouraged to make thorough enquiry about this issue, especially since terminology is not always precise. It may not always be immediately clear whether an offered “money market” investment is (a) a bank deposit, which is exempt from withholding under the bank deposit rule mentioned above, or (b) a U.S. mutual fund of the usual type. It is possible for a U.S. mutual fund of the usual type that receives income that would be exempt from withholding if earned directly to pay an “interest-related dividend” out of such income that also would be exempt from withholding. As of March 2007, certain funds take advantage of these rules but many do not; investors are encouraged to enquire whether a particular mutual fund proposes to take advantage of these rules.

#### Uzbekistan

**1)** In order to obtain treaty benefits, certain documents should be filed with the Uzbekistan Tax Authorities including a certificate of residence issued by the Luxembourg Tax Authorities confirming that the recipient of income is resident in Luxembourg for treaty purposes. The rate of withholding tax on dividends and interest has been decreased from 15% to 10% as of 1 January 2006 according to Uzbekistan national legislation.

**2)** 5% withholding tax applies if the owner holds at least 25% of the capital and is a company.

#### Venezuela

**1)** Dividends are subject to income tax withholding from 1 January 2001. The rates vary in consideration to the activity of the entity paying the dividend. For ordinary companies the rate will be 34%, for the mining related enterprises it will be 60% and for the hydrocarbons exploration and exploitation companies it will be 50%. The taxable base will be constituted by the difference between the financial profit and the taxable income of the payer entity in the same tax period.

**2)** Interest is subject to a withholding tax rate that could vary from 4.95% to 32.3%. The rate applicable is 4.95% if the beneficiary can be deemed a financial institution in Luxembourg and 32.3% for all other cases.

**3)** Sales proceeds are subject to 1% withholding tax for securities dealt in on the Stock Exchange and 5% for those that are not.

#### Vietnam

**1)** Bond interest is subject to withholding tax at a rate of 0.1% on the total value of the bond including face value and interest (based on Circular 72/2006/TT-BTC dated 10 August 2006 and the Double Taxation Treaty between Luxembourg and Vietnam, Article 11).

**2)** Disposal of securities (including shares, investment fund certificates, bonds, but except for tax-exempt bonds) is subject to withholding tax at the deemed rate of 0.1% on the total sales proceeds (based on Circular 72/2006/TT-BTC dated 10 August 2006 and the Double Taxation Treaty between Luxembourg and Vietnam, Article 13). Transfer of capital in a company will be subject to capital gains tax at 28% on the net gain.
<table>
<thead>
<tr>
<th>Country of investment</th>
<th>Type of income</th>
<th>Interest</th>
<th>Capital gains on sale of securities %</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Dividends %</td>
<td>Corporate bonds %</td>
</tr>
<tr>
<td>Yemen</td>
<td></td>
<td>0 (1)</td>
<td>0 (1)</td>
</tr>
<tr>
<td>Zambia</td>
<td></td>
<td>15</td>
<td>15</td>
</tr>
<tr>
<td>Zimbabwe</td>
<td></td>
<td>15 (1)</td>
<td>10</td>
</tr>
</tbody>
</table>

See footnotes ( ) opposite.
## Yemen

(1) Withholding tax was abolished in Yemen. A new tax called the “Advance Payment Tax” was introduced and which is 10% of the value of the invoice payable to non-resident companies.

## Zimbabwe

(1) The withholding tax rate is 15% for companies listed on stock exchange. Otherwise, the rate is 20%.

(2) Government bonds are exempt from tax on non-residents’ interest provided a statutory instrument confirming the exemption is published in the Government Gazette.

(3) At the time the shares are sold, capital gains withholding tax at the rate of 5% of gross sale proceeds in respect of shares quoted on the Zim Stock Exchange and 10% of gross sale proceeds in respect of other shares has to be withheld and remitted to Zimbabwe Revenue Authority by the depository/stock broker.

Sales from a Zimbabwe source by dealers are subject to income tax at the rate of 30.9% payable on quarterly payment dates of provisional tax during each year of assessment.

Sales from a Zimbabwe source by long term investors are subject to capital gains tax at the rate of 20%. Withholding tax will be refundable in the case of sales by dealers and offset against the capital gains tax payable on assessment in the case of long term investors.
The glossary provides a list of abbreviations and French translations of English terms used in this guide.

<table>
<thead>
<tr>
<th>English Name</th>
<th>French Name</th>
<th>Abbreviation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Association of the Luxembourg Fund Industry</td>
<td>Association Luxembourgeoise des Fonds d’Investissement</td>
<td>ALFI</td>
</tr>
<tr>
<td>auditor</td>
<td>réviseur d’entreprises</td>
<td></td>
</tr>
<tr>
<td>CCLux</td>
<td>Centrale de Communications Luxembourg S.A.</td>
<td>CCLux</td>
</tr>
<tr>
<td>Central Service for Statistics and Economic Studies</td>
<td>Service Central de la Statistique et des Etudes Economiques</td>
<td>STATEC</td>
</tr>
<tr>
<td>Commission for the Supervision of the Financial Sector</td>
<td>Commission de Surveillance du Secteur Financier</td>
<td>CSSF</td>
</tr>
<tr>
<td>Committee of European Securities Regulators</td>
<td></td>
<td>CESR</td>
</tr>
<tr>
<td>common fund</td>
<td>Fonds Commun de Placement</td>
<td>FCP</td>
</tr>
<tr>
<td>Cooperative company</td>
<td>Société cooperative</td>
<td></td>
</tr>
<tr>
<td>Cooperative company organized as a public limited company</td>
<td>Société coopérative organisée sous forme de société anonyme</td>
<td></td>
</tr>
<tr>
<td>Efficient Portfolio Management</td>
<td></td>
<td>EPM</td>
</tr>
<tr>
<td>European Fund and Asset Management Association</td>
<td></td>
<td>EFAMA</td>
</tr>
<tr>
<td>European Company</td>
<td></td>
<td>SE</td>
</tr>
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<td>European Economic Area</td>
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<td>EEA</td>
</tr>
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<td>European Union</td>
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<td>EU</td>
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<tr>
<td>International Federation of Accountants</td>
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<td>IFAC</td>
</tr>
<tr>
<td>International Standards on Auditing</td>
<td></td>
<td>ISA</td>
</tr>
<tr>
<td>investment company in risk capital</td>
<td>Société d’investissement en capital à risque</td>
<td>SICAR</td>
</tr>
<tr>
<td>investment company with fixed capital</td>
<td>Société d’investissement à capital fixe</td>
<td>SICAF</td>
</tr>
<tr>
<td>investment company with variable capital</td>
<td>Société d’investissement à capital variable</td>
<td>SICAV</td>
</tr>
<tr>
<td>Law of 19 July 1991 on UCIs the securities of which are not intended to be placed with the public</td>
<td></td>
<td>The 1991 Law</td>
</tr>
<tr>
<td>Law of 20 December 2002 on UCIs</td>
<td></td>
<td>The 2002 Law</td>
</tr>
<tr>
<td><strong>English Name</strong></td>
<td><strong>French Name</strong></td>
<td><strong>Abbreviation</strong></td>
</tr>
<tr>
<td>-----------------</td>
<td>-----------------</td>
<td>------------------</td>
</tr>
<tr>
<td>Law of 30 March 1988 on UCIs</td>
<td>The 1988 Law</td>
<td></td>
</tr>
<tr>
<td>Law of 5 April 1993 on the Financial Sector, as amended</td>
<td>The 1993 Law</td>
<td></td>
</tr>
<tr>
<td>Luxembourg Bankers’ Association</td>
<td>Association des Banques et Banquiers, Luxembourg</td>
<td>ABBL</td>
</tr>
<tr>
<td>Luxembourg Institute of Auditors</td>
<td>Institut des Réviseurs d’Entreprises</td>
<td>IRE</td>
</tr>
<tr>
<td>Luxembourg Stock Exchange</td>
<td>Bourse de Luxembourg</td>
<td>LSE</td>
</tr>
<tr>
<td>Money Market Instruments</td>
<td></td>
<td>MMI</td>
</tr>
<tr>
<td>net asset value</td>
<td></td>
<td>NAV</td>
</tr>
<tr>
<td>Official Gazette</td>
<td>Mémorial</td>
<td></td>
</tr>
<tr>
<td>over-the-counter</td>
<td></td>
<td>OTC</td>
</tr>
<tr>
<td>Partnership limited by shares</td>
<td>Société en commandite par actions</td>
<td>PFPV</td>
</tr>
<tr>
<td>pension fund pooling vehicles</td>
<td></td>
<td></td>
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<tr>
<td>Private limited company</td>
<td>Société à responsabilité limitée</td>
<td>S.à r.l.</td>
</tr>
<tr>
<td>private portfolio manager</td>
<td>gérant de fortunes</td>
<td></td>
</tr>
<tr>
<td>public limited company</td>
<td>Société anonyme</td>
<td>S.A.</td>
</tr>
<tr>
<td>subscription tax</td>
<td>taxe d’abonnement</td>
<td></td>
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<tr>
<td>total expense ratio</td>
<td></td>
<td>TER</td>
</tr>
<tr>
<td>Trade Register</td>
<td>Registre de Commerce et des Sociétés Luxembourg</td>
<td>RCSL</td>
</tr>
<tr>
<td>Undertakings for Collective Investment</td>
<td>UCI</td>
<td></td>
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<td>Undertakings for Collective Investment in Transferable Securities</td>
<td>UCITS</td>
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<td>Value Added Tax</td>
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<td>Value-at-Risk</td>
<td>VAR</td>
<td></td>
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</tbody>
</table>
APPENDIX III
Ernst & Young Luxembourg Asset Management Related Publications

Surveys and Leaflets

- The Luxembourg 2007 Law on Specialized Investment Funds

- UCITS III
  - Risk Valuation Services – Measuring, Monitoring and Managing Risk in UCITS III Funds
  - UCITS III - Sophisticated Fund Risk Management
  - UCITS III Risk Management - CSSF 07/308 Guide

- Serving the Hedge Fund Universe
  - Global Hedge Fund Services
  - Luxembourg Hedge Fund Services

- Luxembourg Real Estate Funds – a Comprehensive Survey by Ernst & Young

- The SICAR: Luxembourg’s tailormade structure for the Private Equity Fund Industry

- EYe on Luxembourg Tax
  - Investment Funds – Luxembourg VAT Changes
  - Abolition of the Luxembourg 1929 Holding Companies Regime
  - SPF: Luxembourg launches new ‘Personal Investment Company’

- Luxembourg Tax Alert
  - Luxembourg Investment Funds and VAT Impact of the ECJ Decisions in the BBL and Abbey National cases as from April 1st, 2007
  - Change in VAT rates applicable as from January 1st, 2007
- The Luxembourg IFRS Desk – Vision & Quality
- Worldwide Corporate Tax Guide 2007
Webcast

- The Markets in Financial Instruments Directive (MiFID): Key Milestones on the Critical Path for Asset Managers

Newsletters

- The Luxembourg Financial Connection for Executives in Financial Services
  This newsletter discusses regulatory and marketplace developments in the financial services industry from a Luxembourg perspective. It includes articles written by our experts, Luxembourg, EU and international news, and an update on our conference activities and publications.

- Global EYe on IFRS
  This bi-monthly publication provides an easy-to-read combination of Ernst & Young’s views on a number of current issues regarding IAS/IFRS in general, and educational technical content both for IFRS experts and the novice user.

- IFRS Alert
  A supplement to Global Eye on IFRS

- Developments in Financial Instruments
  This newsletter summarises the main discussions and conclusions reached concerning financial instruments at meetings of the International Accounting Standards Board (IASB) and IFRIC. It also reports on other developments in the reporting of financial instruments under International Financial Reporting Standards (IFRS).

- Board Matters Quarterly – Critical Insights for Today’s Audit Committee

Articles

Ernst & Young in Luxembourg regularly publishes articles related to investment fund topics. The following are examples:

- Private Equity Fund Administration: A people – or technology – driven business?
- UCITS III: Towards integrated and reliable risk management?
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