

**Ordinance**  
of 23 August 2005  
**on Investment Undertakings**  
**(Investment Undertakings Ordinance, IUO)**

Pursuant to article 115 of the Law of 19 May 2005 on Investment Undertakings (Investment Undertakings Act, IUA), Liechtenstein Law Gazette 2005 No. 156, the Government issues the following Ordinance:

**I. General provisions**

Article 1

*Establishment and legal form of investment undertakings*

1) For the establishment of an investment fund in the legal form of a collective trusteeship according to article 4, paragraph 1, subparagraph (a) of the Act, the following shall apply:

- a) the investment fund shall be entered into the Public Register in application *mutatis mutandis* of articles 900 et seq. of the Persons and Company Law (PCL) as a collective trusteeship.
- b) the full and simplified prospectuses must be deposited at the Office of Land and Public Registration;
- c) the Office of Land and Public Registration shall publish extracts of the facts entered into the Public Register in the official publication organs.

2) For the establishment of an investment fund in the legal form of a limited company according to article 4, paragraph 1, subparagraph (b) of the Act, the following shall apply:

- a) the limited company shall be entered into the Public Register in accordance with the relevant legal provisions of the Persons and Company Law and the provisions of special legislation;

b) the full and simplified prospectuses, the articles of incorporation, and any bylaws shall be deposited at the Office of Land and Public Registration;

c) paragraph 1, subparagraph (c) shall apply to publication.

3) Changes to facts entered into the Public Register shall be notified to the Office of Land and Public Registration as soon as possible, but at most within a period of 30 days.

4) The FMA shall only approve other legal forms for purposes of collective capital investment within the meaning of article 4, paragraph 4 of the Act if in particular the organization and the liable equity capital of its management company conform to the Act, to this Ordinance, and subsidiarily to the PCL.

## Article 2

### *Transferable securities*

1) For purposes of the Act, the following shall be considered transferable securities:

a) shares and equivalent securities;

b) bonds and other securitized debt securities; and

c) all other marketable securities that convey an entitlement to purchase such securities through subscription or exchange.

2) Instruments of payment and derivative financial instruments shall not be considered transferable securities.

## Article 3

### *Money market instruments*

For purposes of the Act, instruments normally traded on the money market that are liquid and whose value can be determined precisely at any time shall be considered money market instruments.

## Article 4

### *Derivative financial instruments*

1) For purposes of the Act, instruments whose value is derived from another financial instrument (underlying instrument) and that are con-

tractually governed forward transactions shall be considered derivative financial instruments.

2) The following shall be differentiated:

- a) unconditional derivative financial instruments, which necessarily must lead to the fulfillment of the transaction for all participants;
- b) conditional derivative financial instruments, the fulfillment of which is dependent on the satisfaction of a condition.

3) Derivative financial instruments may be employed for purposes of hedging, investment, and speculation. Relevant distinctions shall be:

- a) in distinguishing between investment and speculation transactions: the fact whether a greater volume of the underlying instrument is indirectly acquired through the derivative financial instrument than would have been the case through a simple investment purchase of the underlying instrument (leverage effect), as long as this volume exceeds 100% of the net asset value of the investment undertaking;
- b) in distinguishing between hedging and speculation transactions: the fact whether a greater volume of the underlying instrument is indirectly sold than would have been the case through a simple sale of the underlying instrument (short sale).

## **II. Conduct of business**

### **A. General provisions**

#### **1. Publications**

##### Article 5

##### *Principle*

1) Unless the Act and this Ordinance expressly provide for publication of information for investors in the publication medium according to article 2, paragraph 1, subparagraph (g) of the Act, the management

company may make available the relevant information to the investor in another physical or electronic form.

2) To the extent the Act and this Ordinance permit documents to be saved on a durable medium, such a durable medium shall be understood to be any medium which allows the recipient to save information addressed personally to him in such a way that he can subsequently view it for a duration appropriate to the purpose of the information, and which enables the saved information to be reproduced unchanged.

3) Unless the Act and this Ordinance provide deadlines for the publication of information subject to approval, such information shall be published as soon as possible, but at most 30 days after approval by the FMA.

4) When substantial changes to the full prospectus are published, the investors shall be informed that they may return their units.

## **2. Full and simplified prospectuses**

### Article 6

#### *Minimum content*

The minimum content of the full and simplified prospectuses shall be in accordance with articles 6 and 9 of the Act and with Annexes 1 and 2 of this Ordinance.

### Article 7

#### *Guidelines of investment policy*

1) The guidelines of the investment policy of the full prospectus according to article 6, paragraph 3, subparagraph (d) of the Act must define the investment goal and the investment strategy and determine the permissible investments as follows:

- a) by type (participation rights, choses in action, bulk commodities, precious metals, derivative financial instruments, residential buildings, office buildings, etc.);
- b) by line of business, country, or country group; or
- c) by their share in the assets.

2) If the investment undertaking replicates an index, the index shall be named and the degree of replication expressed in figures.

## Article 8

### *Name*

- 1) The name of an investment undertaking may not give rise to confusion or deception.
- 2) If the name of an investment undertaking indicates a certain investment strategy or policy, this strategy or policy must largely be implemented.
- 3) Articles 1011 et seq. of the PCL concerning business names shall apply *mutatis mutandis*.

## Article 9

### *Risk warning*

- 1) The full and simplified prospectuses must include a clearly visible risk warning that describes the risks corresponding to the risk potential of the investment undertaking.
- 2) If derivative financial instruments are used, it must be described whether they are used for purposes of investment, hedging, or speculation and how they affect the risk profile.
- 3) If the investment undertaking exhibits an unusual investment policy, uses special investment products, types, and techniques, or exhibits increased volatility, reduced risk spreading, or other unusual features, this must be specified in the risk warning.
- 4) The level of detail and the description of the risk warning shall depend on the type of the investment undertaking and its risk.
- 5) In the case of investment undertakings for other values with increased risk, the risk warning must additionally be included in the solicitation materials and on any subscription form.
- 6) If, in the case of closed-end investment undertakings, the right of investors to return units is excluded, this must be specified in the risk warning.

## Article 10

### *Expenses*

1) The amount and the calculation bases of expenses according to article 6, paragraph 3, subparagraph (k) of the Act must comply with article 11 of the Act.

2) Charges against the assets of an investment undertaking or of the investor shall be listed in detail in the full prospectus and in summary in the simplified prospectus and broken down by the beneficiary in question, in particular:

- a) payments to the management company of the investment undertaking, to the depositary bank, and to the persons entitled to market units (e.g., issue and redemption commissions); and
- b) incidental charges for the purchase and sale of the investments (e.g., brokerage, fees), other costs, and public duties and taxes.

3) Payments independent of the assets (fixed), payments dependent on the assets (variable), and payments dependent on profit shall be distinguished.

## Article 11

### *Transparency of costs*

All commissions and costs that are continuously charged against the assets of an investment undertaking shall be disclosed in the business report and the half-yearly report in accordance with general principles recognized by the FMA (total expense ratio, TER).

## **3. Restructuring**

## Article 12

### *Forms and preconditions*

1) The management company may merge or split investment undertakings or transfer their assets to a different investment undertaking.

2) The management company and the investment undertaking may change their legal form (transformation).

3) Investment undertakings may be merged or transferred if:

- a) the full prospectuses so provide;
- b) the provisions of article 64 of the Act are complied with;
- c) the full prospectuses do not diverge significantly with respect to the costs charged against the assets of the investment undertaking;
- d) the investment undertakings are valued at the time of merging or transfer using the same basis of valuation, the exchange ratio is specified, and the assets and liabilities are assumed; and
- e) the investment undertaking and the investors do not incur any direct costs.

4) Paragraph 3 shall apply *mutatis mutandis* to the splitting of investment undertakings or the merging, transfer, and splitting of segments.

5) Unit-holders must be given the opportunity to return their units without additional costs within a reasonable period, with the exception of the costs provided in the prospectuses.

6) In individual cases, the FMA may specify additional conditions or grant easements.

### Article 13

#### *Principles of procedure for merging, transfer, and splitting*

1) The details of the procedure for merging investment undertakings shall be laid down in the full prospectus. In particular, the full prospectus shall contain details concerning the right of investors to return their units.

2) At the time of merging or transfer, the investors shall receive units in accordance with the specified exchange ratio.

3) In the case of merging and transfer, the provisions concerning the liquidation of investment undertakings according to article 17 of the Act shall not be applicable.

4) The FMA may grant a suspension of the redemption of units if the merging or the transfer of the assets takes more than one day.

5) The management company shall inform the FMA of the formal conclusion of the merging or transfer. The external audit office shall confirm the conclusion to the FMA.

6) The provisions of this Article shall be applicable *mutatis mutandis* to the splitting of investment undertakings.

#### Article 13a

##### *Transformations of types of investment undertakings*

1) Investment undertakings for other values and investment undertakings for real estate may be transformed into investment undertakings for transferable securities.

2) As a matter of principle, the transformation of investment undertakings for transferable securities into another type shall not be permissible.

### **4. Marketing of units**

#### Article 14

##### *Persons entitled to market units*

1) The following shall be entitled to market units of investment undertakings in Liechtenstein:

- a) management companies of investment companies according to the Act;
- b) banks and finance companies according to the Banking Act;
- c) insurance undertakings according to the Insurance Supervision Act and mandataries acting on their behalf and for their account;
- d) the Liechtensteinische Post AG according to the Postal Act;
- e) asset management companies according to the Law on Asset Management.

2) The FMA may license other persons to market units if it is ensured that this does not contradict the object of the Act and these persons supply evidence of:

- a) a good reputation;
- b) relevant professional training;
- c) the requisite experience;
- d) a marketing contract in writing with the management company; and
- e) the use of permissible marketing arrangements.

## 5. Business report, half-yearly report, and quarterly reporting

### a) General provisions

#### Article 15

##### *Principles of accounting*

1) Unless otherwise provided by the Act and this Ordinance, the provisions concerning business accounting (articles 1045 et seq. of the PCL) shall apply to investment undertakings.

2) Subject to special provisions, assets and liabilities as well as expense and income items may not be accounted for together.

3) In the case of segmented investment undertakings, the management company must keep separate books for each segment.

4) In the case of segmented investment undertakings, the segments must be presented individually in the business report; in the case of investment companies, they must also be presented in aggregated form. The amounts must be given in Swiss francs or another currency in accordance with the relevant provisions of the PCL.

#### Article 16

##### *Valuation of the assets and the units*

1) The assets shall be valued at the market value in accordance with the valuation provisions in the full prospectus:

- a) at the end of the accounting year;
- b) at the end of the half-year; and
- c) for every day on which units are issued or redeemed.

2) The market value of an object or a right corresponds to the price that would probably be obtained in a prudent sale at the time of the valuation. In the case of transferable securities or book-entry securities admitted to official quotation or traded on a market open to the public, the market value corresponds to the value of the assets on that market.

3) The net asset value of a unit corresponds to the market value of the assets, reduced by any obligations of the investment undertaking and any taxes expected to become due upon liquidation of the assets, divided by the number of units in circulation.

#### Article 17

##### *Straight-line depreciation and appreciation*

1) In the case of investments in transferable securities or money market instruments with a term to maturity of less than 12 months, the difference between the cost price (acquisition price) and the redemption price (price at the final due date) may be depreciated or appreciated on a straight-line basis and valuation at the current market price may be omitted if the redemption price is known and fixed. This provision is subject to any adjustment due to changes in creditworthiness.

2) Straight-line depreciation shall not be permissible for bond funds.

#### Article 18

##### *Capital gains and capital losses*

1) Gains and losses arising from the sale of property and rights belonging to investment undertakings shall be posted to the account "Capital gains and capital losses" of the income statement over the course of the accounting year.

2) Realized capital gains of the accounting period may also be distributed if previous accounting years exhibit capital losses.

#### Article 19

##### *Revaluations and write-offs*

Revaluations of the investments and write-offs on the income statement shall not be permissible, except for:

- a) straight-line depreciation according to article 17;
- b) revaluation of construction sites and buildings on which construction has commenced by including construction interest at the usual market rate, to the extent that this does not increase the investment costs of the object in question above the estimated market value;
- c) write-offs on real property appropriate under the circumstances; and
- d) write-offs of capitalized formation expenses when establishing an investment undertaking.

Article 20

*Business report and half-yearly report*

1) The business report shall include the following information with any applicable explanations:

- a) the annual accounts, consisting of an assets statement at market values and an income statement, as well as information on the use of profits;
- b) the number of units redeemed and newly issued in the reporting year and the closing inventory of the units issued;
- c) the inventory of the assets at market values and the derived value (net asset value) of a unit of the assets as of the last day of the accounting year;
- d) changes to the composition of the transferable security inventory over the reporting period;
- e) the depositaries mandated by the depositary bank;
- f) the names of the persons to which investment decisions have been delegated;
- g) information on matters of particular economic or legal importance with which the management company dealt in the reporting year, especially concerning amendments to the full and the simplified prospectuses or concerning significant questions of interpretation of law and the full prospectus;
- h) a short report of the external audit office on the above information, in the case of real estate also on the information according to articles 24 and 25;
- i) a comparative overview of the latest three fiscal years with respect to the development of the net assets and the value of a unit; and
- k) the commissions and costs according to article 11 (statement of TER).

2) The half-yearly report shall contain unaudited assets and income statements and the information according to paragraph 1, subparagraphs (b), (c), and (d).

3) The business report and the half-yearly report shall be structured in accordance with Annex 3.

## Article 21

### *Publication*

1) The business report and half-yearly report shall be published by the management company in accordance with article 5.

2) The business report and the half-yearly report shall also be provided free of charge prior to conclusion of the contract at the management company of the investment undertaking and, if applicable, at the depositary bank. The offices where they are made available shall be mentioned in the full and the simplified prospectuses.

## Article 22

### *Inventory of assets*

1) The inventory of assets shall be structured at least according to type of investment (transferable securities, money market instruments, derivative financial instruments, precious metals, etc.) and, within the types of investment, also according to appropriate criteria (lines of business, countries, currencies, etc.).

2) For each category, the sum and, for each category and each value individually stated in the inventory, the percentage share in the net assets shall be indicated.

3) In addition, transferable securities and book-entry securities shall be divided into:

- a) those traded on an exchange;
- b) those traded on another market open to the public;
- c) those whose new issue is to be admitted on an exchange or on another market open to the public; and
- d) those that do not fall within the scope of subparagraphs (a) to (c).

4) In the case of the transferable securities and book-entry securities listed under paragraph (3), only the subtotal per category must be listed and labeled accordingly.

## Article 23

### *Quarterly reporting*

1) The quarterly reporting to the FMA shall be structured according to the form in Annex 4 and shall be submitted within one month of the end of each quarter.

2) The quarterly reporting to the FMA shall be submitted in physical format or in an appropriate electronic format.

3) For statistical purposes of the FMA, the amounts of the quarterly reporting of all investment undertakings shall be given in Swiss francs, in the case of segmented investment undertakings in aggregated form.

4) Any reports to the Swiss National Bank pursuant to article 29, paragraph 5 of the Act shall be submitted by the FMA along with the quarterly reports.

b) Special provisions for investment undertakings for real estate

## Article 24

### *Consolidated accounts*

1) For each investment undertaking for real estate and the real estate companies associated with it, consolidated accounts shall be compiled as of the end of each accounting year in accordance with recognized principles.

2) The investment companies associated with the investment undertaking shall balance their accounts as of the same day as the investment undertaking. The FMA may authorize exceptions if it is ensured that consolidated accounts can nevertheless be compiled.

3) If the management company acquires a holding in a real estate company above its book value, then the share capital and the reserves formed prior to its association with the investment undertaking shall be accounted for in the consolidated balance sheet with the acquisition price of the holding, and the remainder on the investment account shall be added to the balance of the assets undervalued in the balance sheet of the real estate companies.

## Article 25

### *Inventory*

1) The inventory of investment undertakings for real estate shall at a minimum be divided into:

- a) construction sites including demolition objects;
- b) buildings on which construction has commenced; and
- c) completed buildings including land, divided into residential buildings, office buildings, and commercially utilized real properties.

2) For each real estate value, the inventory shall contain the following information separately:

- a) address;
- b) acquisition costs;
- c) insurance value;
- d) estimated market value; and
- e) gross income attained.

3) To the extent that investment undertakings for real estate invest in other types of investment in addition to real estate, they shall also document these types of investments.

4) A directory of the associated real estate companies shall be compiled for each investment undertaking for real estate.

## **B. Investors**

### Article 26

#### *Exception to the right of cancellation at any time*

1) In the case of investment undertakings for other values whose investments are only marketable to a limited extent or are difficult to value, the full and simplified prospectuses may provide that cancellation may only be effected as of specific deadlines, but at least once a year.

2) On application of a management company, the FMA may, in justified individual cases and depending on the type of the investments, au-

authorize additional cancellation deadlines or advancement of the payment deadline.

#### Article 27

##### *Suspension of repayment by the management*

1) The full prospectus may provide that, under extraordinary circumstances, repayment may temporarily and exceptionally be suspended by the management company, in conjunction with a simultaneous suspension of the issue of units:

- a) if a market constituting the basis for valuation of a significant part of the assets is closed unexpectedly, or if trading on such a market is limited or suspended;
- b) in the case of political, economic, or other emergencies; or
- c) if transactions become impossible to perform for the investment undertaking due to limitations on the transfer of assets.

2) The management company shall immediately inform the FMA, the external audit office, and the investors, in an appropriate manner, of the suspension.

3) If a proper valuation of the assets is not possible, the management company shall immediately inform the FMA and submit proposals on appropriate measures.

#### Article 28

##### *Investment undertakings for qualified investors*

1) The following provisions shall not apply to investment undertakings which are exclusively marketed to one or more qualified investors within the meaning of article 29 (investment undertakings for qualified investors):

- a) the licensing requirement according to article 55, paragraph 1, subparagraph (b) of the Act;
- b) the obligation to draw up full and simplified prospectuses pursuant to articles 5 and 8 of the Act and all other provisions relating to the full and simplified prospectuses;
- c) the obligation to draw up a half-yearly report pursuant to article 14 of the Act;

- d) the obligation to compile an inventory of assets in the business report pursuant to article 20, paragraph 1, subparagraph (c), article 22, and Annex 3, point 8 of this Ordinance;
- e) the publication obligations with respect to the investment undertaking;
- f) the marketing of units of investment undertakings for transferable securities pursuant to articles 87 and 90 of the Act.

2) The initiation of business activities requires that:

- a) a prospectus for investment undertakings for qualified investors according to Annex 2a is available that has been signed by a licensed management company and depositary bank;
- b) the prospectus for investment undertakings for qualified investors circumscribes the circle of qualified investors and contains a clearly visible warning informing the investors that:
  - 1. the investment undertaking is for qualified investors within the meaning of this Article; and
  - 2. the investment undertaking is exempt from the licensing requirement and the other obligations listed in paragraph 1;
- c) the warning according to subparagraph (b) is clearly visible on all solicitation materials and the subscription form;
- d) the management company has submitted a confirmation by the external audit office to the FMA attesting that:
  - 1. the external audit office conducts the audit for the investment undertaking in question in accordance with article 27 of the Act;
  - 2. the investment undertaking conforms to the Act and this Ordinance; and
  - 3. the prospectus for investment undertakings for qualified investors, and in particular the warning according to subparagraph (b), conforms to this Ordinance.

3) Business activities may only be taken up once the FMA attests to the management company that it has received the confirmation by the external audit office according to paragraph 2, subparagraph (d).

4) At the latest six months after receipt of the attestation according to paragraph 3, the following shall be submitted to the FMA:

- a) by the management company: the prospectus for investment undertakings for qualified investors;
- b) by the external audit office: the audit report pursuant to article 99, paragraphs 2 and 3.

5) Amendments to the prospectus for investment undertakings for qualified investors shall become effective as soon as:

- a) the external audit office confirms that the amendments correspond to the Act and this Ordinance; and
- b) the FMA attests to the management company that it has received the confirmation by the external audit office and the prospectus signed by the management company and the depositary bank.

6) Until the first submission of the prospectus for investment undertakings for qualified investors and the audit report, supervision by the FMA shall exclusively be limited to the responsibilities enumerated in this Article, subject to the issuing of measures in accordance with article 96, paragraph 4 of the Act.

## Article 29

### *Qualified investors*

1) The following persons and enterprises shall be considered qualified investors, if they invest at least 250,000 Swiss francs or the equivalent in a different currency in the investment undertaking for qualified investors:

- a) banks and finance companies, insurance undertakings, occupational pension schemes, postal institutions, securities firms, asset management companies, collective capital investments and their management companies, and any non-supervised companies whose only purpose consists in investing securities for third parties;
- b) other enterprises whose:
  - 1. own funds amounted to more than 40 million Swiss francs or the equivalent in a different currency in the most recent fiscal year; or
  - 2. beneficial owner or owners are qualified investors within the meaning of subparagraph (c);
- c) natural persons whose securities portfolio at the time of signing of the subscription form exceeds one million Swiss francs or the equivalent in a different currency; or
- d) States, corporations and institutes under public law, central banks, international and supranational institutions, and other comparable international organizations.

2) The acquisition of a unit of an investment undertaking for qualified investors requires signature of a subscription form by the qualified investor. On the subscription form, the qualified investor must confirm

that he fulfills the requirements enumerated in paragraph 1 at the time of the acquisition.

3) The office receiving subscriptions from qualified investors (subscription office) shall only accept subscriptions from investors whose explanation concerning their status as qualified investors appears plausible.

## **C. Management company**

### Article 30

#### *Domicile and head office*

1) The domicile and head office of the management company must be in Liechtenstein.

2) The head office shall be considered to be in Liechtenstein if a management company located in Liechtenstein is responsible for:

- a) decisions concerning the investments;
- b) decisions concerning the issue of units;
- c) calculation of the issue and redemption prices;
- d) determining the distribution of earnings;
- e) determining the contents of the full prospectus and of the periodic reports.

### Article 31

#### *Responsibilities*

The responsibilities according to article 24, paragraph 2 of the Act shall include in particular the following activities, to which mutual recognition in the framework of the European passport applies (article 76, paragraph 2 of the Act):

- a) investment management;
- b) administrative activities:

1. accounting services required by law and for investment management;
  2. client inquiries;
  3. valuation and price determination (including tax returns);
  4. monitoring of compliance with legal provisions;
  5. maintaining the unit-holder register;
  6. distribution of earnings;
  7. issue and redemption of units;
  8. contract settlement (including delivery of certificates);
  9. maintaining records;
- c) marketing.

#### Article 32

##### *Qualifying holdings*

1) The management company must notify the FMA of the following, indicating the amount of the holding:

- a) the acquisition or abandonment of a qualifying holding by a natural or legal person in the voting capital of a management company;
- b) a change to a qualifying holding of a natural or legal person, if the holding reaches, exceeds, or falls below the threshold values of 22%, 33%, or 50% of the voting capital.

2) The FMA may prohibit the planned acquisition or increase of a qualifying holding if the persons mentioned in paragraph 1 do not meet the requirements necessary to fulfill the interest of ensuring solid and prudent management of the company. If the planned acquisition and the increase are approved, a deadline may be fixed by which the acquisition must be completed.

3) The FMA shall consult the competent authorities of a another Member State of the EEA before prohibiting the acquisition or increase of a holding according to paragraph 2, if the acquirer:

- a) is a management company licensed in another Member State of the EEA;

- b) is a parent enterprise of a management company licensed in another Member State of the EEA; or
- c) is a natural or legal person who controls a management company licensed in another Member State of the EEA, and if the management company in which the acquirer intends to procure a holding would become a subsidiary or would be controlled by the acquirer as a consequence of the acquisition.

4) If there is a danger that the influence exercised by the owner with the qualifying holding does not meet the requirements necessary to fulfill the interest of ensuring solid and prudent management and conduct of business of the investment undertaking, then the FMA may, in order to ward off this danger or to bring such a situation to an end, take the necessary measures, in particular suspension of the voting rights for shares in the voting capital held by the persons in question.

5) The FMA shall take the necessary measures against the persons mentioned in paragraph 1, if such persons no longer fulfill their obligations to notify the FMA in advance or if they acquire a holding in violation of a prohibition according to paragraph 2. The voting rights for such shares in voting capital held by the persons in question shall be considered suspended. Any exercise of voting rights shall be invalid.

### Article 33

#### *Supervisory rules (internal control mechanisms)*

Management companies shall ensure that the investment undertakings continuously comply with the following principles:

- a) proper management and accounting;
- b) proper monitoring and security provisions in relation to electronic data processing;
- c) appropriate internal control procedures, in particular rules for personal transactions by employees;
- d) appropriate internal control procedure by which every transaction concerning the investment undertaking can be reconstructed with respect to origin, counterparty, type, and time and place of conclusion;
- e) appropriate internal control procedure ensuring that the assets are managed in accordance with the full prospectus;
- f) appropriate measures regarding the units in investment undertakings belonging to investors, in order to protect their ownership rights, es-

pecially in the event of insolvency, and to prevent that the units of the investors are used for the account of the management company without express consent;

- g) appropriate measures to ensure that the risk of conflicts of interests with the unit-holders or between different unit-holders damaging the interests of other unit-holders is as low as possible; and
- h) written determination of and compliance with the necessary principles such as those concerning the use of derivative financial instruments and risk management.

### *Delegation*

#### Article 34

##### *a) In general*

1) On application, the FMA shall approve the delegation by a management company of responsibilities to third parties domiciled in Liechtenstein or abroad if:

- a) supervision by the FMA continues to be ensured and the interests of the investors do not appear to be endangered;
- b) taking into account the type of the delegated responsibilities, the mandated person has the necessary qualifications and is able to fulfill the responsibilities in question impeccably; and
- c) there are no collisions of interests that could arise if multiple responsibilities are delegated.

2) The management company shall take measures that effectively secure monitoring of the delegation at all times. It may give instructions to the mandated person at any time or withdraw the delegation with immediate effect.

3) This provision is subject to article 30.

4) The delegation of significant responsibilities shall be listed in the full prospectus; the delegation of investment decisions according to article 35 shall also be listed in the simplified prospectus.

## Article 35

### *b) Delegation of the investment decisions for investment undertakings for transferable securities*

1) The delegation of investment decisions of an investment undertaking for transferable securities to third parties domiciled in another Member State of the EEA shall be approved by the FMA if such third parties are subject to appropriate supervision with respect to their asset management activities.

2) In the case of delegation of investment decisions to third parties domiciled in a third State, such third parties must, in addition to complying with the conditions set out in paragraph 1, be subject to supervision that is equivalent to Liechtenstein supervision, and cooperation between the concerned supervisory authorities must be ensured.

3) Article 34 shall apply *mutatis mutandis*.

## Article 36

### *Change of management company*

1) The FMA shall approve a change of management company if the legal requirements on an investment undertaking continue to be fulfilled. The interests of the investors in the continuation of the investment undertaking shall be taken into account in this regard.

2) A written takeover agreement shall be required to take over rights and duties.

3) The planned change must be justified by the parties concerned and shall require the approval of the depositary bank. The external audit office required by law must be informed of the change.

4) The change must be published upon approval by the FMA in the publication medium of the investment undertaking. In this notice, the investors shall be informed that they may demand to return their units in accordance with the prospectus.

## D. Investment rules

### 1. Investment undertakings for transferable securities

#### a) Investments and risk diversification

##### Article 37

##### *Investments*

1) At least 90% of the assets of the investments of an investment undertaking for transferable securities must consist of the following assets:

- a) transferable securities, book-entry securities, and money market instruments that are traded on an exchange or another regulated market open to the public;
- b) transferable securities from new issues, as long as they are intended for trading on an exchange or another regulated market open to the public and are admitted for trading after at most one year;
- c) sight deposits or callable deposits with a term of at most twelve months at credit institutions domiciled in a Member State of the EEA or in another State, if they are subject to supervision there that is equivalent to Liechtenstein supervision;
- d) money market instruments that are not traded on a regulated market, that are liquid, and whose value can be determined at any time, if the issue or the issuer is already subject to the provisions on deposit and investor protection and if:
  1. the issue is launched or guaranteed by a Member State of the EEA, by a regional or local subdivision, by the central bank of a Member State of the EEA, by the European Central Bank, the European Union, by the European Investment Bank, by a third State, or, if the third State is a federal State, by a member State of the federation, or by an international institution of public law character to which at least one Member State of the EEA belongs;
  2. the issue is launched by an undertaking whose transferable securities are traded on the regulated markets designated in subparagraph (a);
  3. the issuer is subject to supervision equivalent to Liechtenstein supervision;

4. the issuer belongs to a category approved by the FMA, if the provisions for investor protection applying to investments in these instruments are equivalent to those in points 1 to 3 and if the issuer has own funds of at least 15 million Swiss francs and compiles and publishes annual accounts in accordance with Directive 78/660/EEC, as long as it is a legal entity that
  - within a group of enterprises comprising one or more companies listed on the stock exchange, is responsible for the financing of this group; or
  - is intended to finance securitization by using a credit line granted by a bank;
- e) units of investment undertaking for transferable securities or equivalent investment undertakings, if:
  1. they are subject to supervision that is equivalent to Liechtenstein supervision, and there are sufficient guarantees for cooperation between the authorities;
  2. equivalent investor protection exists and the provisions concerning separate keeping of assets, borrowing, lending, and short sales are equivalent;
  3. public access to qualitatively equivalent business reports and half-yearly reports is guaranteed; and
  4. the investment undertakings are only allowed to invest at most 10% of their assets in other investment undertakings for transferable securities and equivalent investment undertakings;
- f) derivative financial instruments that are traded on an exchange or another regulated market open to the public, if such instruments are permissible as investments in accordance with the full prospectus;
- g) derivative financial instruments that are not traded on a regulated market (over-the-counter or OTC derivatives), if:
  1. they are permissible as investments in accordance with the full prospectus;
  2. the counterparty is subject to supervision equivalent to Liechtenstein supervision; and
  3. they can at any time be valued in a reproducible way, sold, liquidated, or offset by an offset transaction;
- h) derivative financial instruments that are embedded in a transferable security or money market instrument (structured financial instru-

ments), if they are permissible as investments in accordance with the full prospectus.

2) An investment company may acquire movable and immovable assets, to the extent this is essential for the performance of its activities.

3) An investment undertaking for transferable securities may not acquire precious metals or precious metal certificates.

4) An investment undertaking for transferable securities may hold reasonable liquid assets.

5) Short sales shall not be permissible.

#### Article 38

##### *Liquid assets*

1) Bank balances and claims from repurchase transactions on demand and with terms of up to twelve months that secure ongoing ability to pay and are to be held at the depositary bank shall be considered liquid assets.

2) Liquid assets within the meaning of article 40, paragraph 3 of the Act shall be considered reasonable if:

- a) fulfillment of the investment purpose specified in the full prospectus is not endangered by the holding of the liquid assets; and
- b) they are necessary to cover liquidity needs that arise under normal circumstances.

3) Permanently higher liquidity than permissible according to paragraph 2 shall require justification by the management company.

4) Risk diversification requirements need not be observed with respect to liquid assets.

5) This provision is subject to article 79, paragraph 2.

### *Risk diversification*

#### Article 39

##### *a) In general*

1) An investment undertaking for transferable securities may invest no more than 10% of its assets in transferable securities or money market instruments of the same issuer. This provision is subject to paragraphs 6 to 8.

2) Deposits with the same institution may not exceed 20% of the assets.

3) An unrestricted amount of the requisite margins for derivative financial instruments may be kept at the depositary bank.

4) The sum of all transferable securities, money market instruments or deposits and positions in OTC derivatives with the same issuer or the same enterprise group may not exceed 20% of the assets.

5) When ascertaining the risk with the same issuer, the overall risk position (debtor risk and exchange risk) must be taken into account.

6) Investments launched or guaranteed by a State, a corporation under public law within the OECD, or international organizations of a public law character may not exceed 35% of the assets per issuer.

7) Investments in bonds of credit institutions domiciled in the EEA that are subject to special public supervision on the basis of legal provisions for the protection of the bearers of such bonds may not exceed 25% of the assets. The sum of the corresponding investments that exceeds 5% of the assets of the investment undertaking with the same issuer may not exceed 80% of the assets.

8) Companies that keep consolidated accounts in accordance with the relevant provisions of banking legislation or the corresponding recog-

nized international accounting provisions shall be considered an enterprise group, in which no more than 20% of the assets may be invested.

9) An accumulation of the investment thresholds specified in paragraphs 1 to 8 shall not be permissible. The sum of the investments in transferable securities, money market instruments, deposits and OTC derivatives with the same issuer may in no case exceed 35% of the assets.

10) The sum of the transferable securities and money market instruments exceeding 5% with the same issuer may not exceed 40% of the assets, bearing in mind that:

- a) this restriction shall not apply to investments and transactions with OTC derivatives effected with financial institutions subject to supervision equivalent to Liechtenstein supervision;
- b) the sum of the investments according to paragraphs 6 and 7 shall not be taken into account in this respect; and
- c) no more than 5% of the remaining assets may be invested with a single issuer.

11) In exercising subscription rights attached to transferable securities or money market instruments that are part of separate assets, the investment thresholds in the Article need not be complied with.

#### Article 40

##### *b) investments in derivative financial instruments*

1) Investments in derivative financial instruments must be included in the limits specified in article 39.

2) When a derivative financial instrument is embedded in a transferable security or a money market instrument (structured financial instrument), it must be included in the limits enumerated in article 39. In this respect, both the risk from the derivative financial instrument (underlying instrument) and the risk from the issuer of the transferable security or the money market instrument must be taken into account.

#### Article 41

##### *c) holdings*

1) A holding in an enterprise may not exceed 10% of the voting capital. Investment undertakings for transferable securities that are managed by the same management company or by linked management companies may in total hold at most 10% of the voting capital of an enterprise.

2) The management company may not acquire more than 10% of the non-voting equity papers of a single issuer.

3) The management company may acquire at most:

- a) 10% each of the bonds or money market instruments of a single issuer;
- b) 25% of the units of the same investment undertaking for transferable securities or equivalent investment undertakings.

4) The limits specified in paragraph 3 shall not apply if calculation at the time of acquisition is not possible.

#### Article 42

##### *d) investments in other investment undertakings*

1) The management company may, on behalf of an investment undertaking for transferable securities, acquire units of other investment undertakings for transferable securities or equivalent investment undertakings in accordance with article 37, paragraph 1, subparagraph (e) if it does not invest more than 20% of its net assets in the same investment undertaking for transferable securities or equivalent investment undertaking.

2) Investments in units of investment undertakings equivalent to investment undertakings for transferable securities may not exceed a total of 30% of the net assets of the investment undertaking for transferable securities.

3) If the management company of an investment undertaking for transferable securities has acquired units of a different investment undertaking for transferable securities or an equivalent investment undertaking, then the investment values of the investment undertaking for transferable securities in question or the equivalent investment undertaking shall not be taken into account with respect to the thresholds specified in

article 39 and article 43, paragraph 3. Article 39, paragraphs 3 and 11 remain applicable.

4) If an investment undertaking for transferable securities acquires units of other investment undertakings that are managed directly or indirectly by the same management company or by a different company with which the management company is linked by joint administration or control or by significant direct or indirect holdings, then the management company or the other company may not charge any fees for the subscription or redemption of units of the other investment undertakings for transferable securities or equivalent investment undertakings via the investment undertaking for transferable securities.

5) If an investment undertaking for transferable securities invests a significant part of its assets in units of other investment undertakings or equivalent investment undertakings, then the prospectus of the investing investment undertaking must contain information on how high the maximum administrative fees may be that must be borne by the affected investment undertaking for transferable securities itself and also by the other investment undertakings for transferable securities or equivalent investment undertakings in which it plans to invest. The annual report must indicate how high the maximum share of administrative fees is that the investment undertaking for transferable securities on the one hand and the investment undertakings for transferable securities or equivalent investment undertakings in which it invests on the other hand must bear.

6) The maximum share that an investment undertaking may invest in units of an investment undertaking that is managed by the same or by a linked management company must be indicated in the full prospectus.

#### Article 43

##### *e) Default risks for derivative financial instruments*

1) Open positions with counterparties, the fulfillment of which is endangered by liquidity difficulties or bankruptcy of the counterparty, are termed default risks (counterparty risk). As a rule, the default risk refers to the positive replacement value of the open position. The calculation method of the default risk shall be determined by the FMA.

2) All derivative transactions conducted on an exchange and whose clearing office fulfills the following conditions shall be considered default-risk free:

a) appropriate performance guarantee;

- b) daily revaluation of derivative positions on the basis of the current market rate; and
- c) initial margin payment at least daily.

3) The default risk for transactions of an investment undertaking for transferable securities with OTC derivatives may not exceed the following rates:

- a) 10% of the net asset value, if the counterparty is a credit institution in the EEA or is subject to supervision equivalent to Liechtenstein supervision, and
- b) 5% in all other cases.

4) Open OTC derivatives may only be closed by closing them with the original issuer. They shall then no longer be subject to these risk diversification requirements.

#### Article 44

##### *Notification requirement to the EFTA Surveillance Authority*

1) The FMA shall transmit to the EFTA Surveillance Authority a directory of the categories of bonds and the categories of issuers that are authorized to issue bonds in accordance with article 39, paragraph 7.

2) The directory shall include a notice explaining any guarantees offered.

## b) Special limitations

### Article 45

#### *Investments in government bonds and equivalent investments*

1) If the purposes of the Act are not interfered with and with approval by the FMA, up to 100% of assets may be invested in transferable securities and money market instruments of the same issuer, as long as they are launched or guaranteed by a State, a corporation under public law within the OECD, or international organizations with a public law character.

2) In the event of investments in bond issues and comparable investments, the full prospectus must contain an indication of whether the investments are corporate bonds or government bonds, how long their term is, and the rating requirements to which they are subject.

3) The investments must be divided into transferable securities and money market instruments that have been launched as part of at least six different issues; the transferable securities and money market instruments from the same issue may not exceed 30% of the assets.

4) The approval according to paragraph 1 and the issuers or guarantors must be listed in the full prospectus and in other solicitation materials.

### Article 46

#### *Replication of an index (index fund)*

1) An investment undertaking for transferable securities may replicate a particular stock index or debt-security index if the full prospectus so provides.

2) A clearly visible indication of the replication of an index must be included in the full and simplified prospectuses and in all solicitation materials. The indication included in the full prospectus must be sufficiently elaborate for the investor to identify what the index in question is and to what extent this index is to be replicated.

3) The recognition of an index requires in particular that:

- a) its composition is sufficiently diversified;
- b) it represents an adequate subscription basis for the market; and

c) it is published in an appropriate manner.

4) If the objective of the investment policy is to replicate such an index, the threshold for investments in a single issuer shall increase to 20%.

5) If the security of an issuer dominates an index, the limit according to paragraph 4 may be increased to 35% in the full prospectus. All other investments may not exceed the limit of 20%.

c) Deviation from investment rules

#### Article 47

##### *Deviation from investment rules*

1) A newly established investment undertaking need not fulfill the investment rules during the first six months at the longest. After submission of the notification in accordance with article 82, paragraph 2, all risk diversification requirements must be complied with.

2) If the management company, the depositary bank, or the external audit office discovers a deviation from the investment rules due to the exercise of subscription rights or price fluctuations, the necessary countermeasures shall be taken as quickly as possible and at the latest within the following periods:

- a) in the case of investment undertakings valued daily, within five banking days; and
- b) in the case of all other investment undertakings, within 20 days of valuation of the net asset value.

d) Investment techniques and investment instruments

#### Article 48

##### *Derivative financial instruments*

1) To the extent the full prospectus permits investments in derivative financial instruments according to article 4 or if necessary to hedge against the risks associated with the investment (price, interest, currency,

creditworthiness risk, etc.), an investment undertaking for transferable securities may conduct transactions with derivative financial instruments.

2) The use of derivative financial instruments for purposes of speculation shall not be permissible.

3) Derivative financial instruments shall be permissible if they directly or indirectly concern transferable securities covered by article 40, paragraph 1 of the Act and the risks associated therewith.

4) Investment undertakings conducting transactions with derivative financial instruments shall take into account the principles recognized by international expert circles for the monitoring and control of the risks, depending on the type and scope of these transactions.

5) The management company shall lay down in writing its principles for the use of derivative financial instruments. These principles shall be kept up to date.

6) Index-based derivative financial instruments shall be considered as a whole. The individual index components shall not be taken into account.

7) The external audit office shall review the requirements according to paragraphs 1 to 6 and issue its conclusions in the audit report.

#### Article 49

##### *Risk management procedure*

1) The management company shall use a base model to calculate the risks arising from the investment instruments, especially with respect to derivative financial instruments, and shall use generally recognized calculation methods in this regard. The management company must ensure that at no point in time the risk from derivative financial instruments exceeds the total value of the portfolio, and in particular that no positions are entered into that represent an unlimited risk for the assets. The overall risk of the portfolio may not exceed 200% of the net asset value. In assessing the overall risk, both the default risk and the leverage effect achieved through derivative financial instruments must be taken into account. Combinations of derivative financial instruments and transferable securities must also fulfill these requirements at all times.

2) When taking out loans in accordance with article 50, paragraph 2, the overall risk may not exceed 210% of the net asset value.

3) When calculating the risk, the market value of the underlying instruments, the default risk, future market fluctuations, and the settlement dates of the positions shall be taken into account.

4) The management company shall outline its risk management and the responsibilities and procedures relating to risky transactions in writing.

5) The management company must in particular value and measure overall positions or delegate in accordance with article 34. In addition, it must precisely and independently record, delineate, and continuously monitor the types of derivative financial instruments, risks associated with underlying instruments, investment limits, and methods used.

6) With respect to transactions associated with risks, the management company shall compile all documents necessary for decision-making and monitoring. These documents must also allow the external audit office to form a reliable judgment on the conduct of business and the financial situation of the investment undertaking.

7) Each year, the external audit office shall provide an assessment in its report on the appropriateness and effectiveness of the rules adopted in relation to risk management pursuant to paragraphs 1 to 4 and by the management company.

8) In connection with the required business report, the FMA shall be notified with respect to compliance with paragraphs 1 to 4.

9) The FMA shall determine the base models to be used for risk management, the calculation methods, and the content and scope of notification by the external audit office to the FMA.

10) The FMA shall submit to the EFTA Surveillance Authority the methods for calculating the risks, including the default risk in the case of OTC derivatives, and all amendments to the related legal provisions.

## Article 50

### *Taking out and granting loans*

1) Investment undertakings for transferable securities may neither take out nor grant loans nor serve as a guarantor for third parties.

2) In exceptional cases and if necessary in the interest of the investors, investment undertakings for transferable securities may take out fixed-

term loans for repaying units, up to an amount not more than 10% of their net assets.

3) The property and rights associated with the assets may not be pledged as collateral, except for taking out permissible loans according to paragraph 2 and for transactions with derivative financial instruments according to article 48.

4) Paragraph 1 shall not preclude the acquisition by the investment undertaking of transferable securities, money market instruments, or other financial instruments that are not fully paid up.

## **2. Investment undertakings for other values**

### a) General provisions

#### Article 51

##### *Investments*

1) Investment undertakings for other values may, in particular, invest their assets in:

- a) transferable securities and book-entry securities, units of other investment undertakings, money market instruments, and bank balances, without having to observe the restrictions applicable to investment undertakings for transferable securities;
- b) derivative financial instruments; or
- c) precious metals.

2) Investment undertakings for other values may continuously hold unrestricted liquid assets.

3) Investments not traded on a regulated market or for which no quote is available must be valued at the price that would probably be attained in a sale at the time of the valuation.

#### Article 52

##### *Fixed-term investment undertakings*

If a fixed term is provided for the investment undertaking for other values, there shall be no obligation to issue and/or redeem units. This re-

striction must be indicated in a clearly visible location in the full and simplified prospectuses.

#### Article 53

##### *Deviation from investment rules*

1) If the management company, the depositary bank, or the external audit office discovers a deviation from the investment rules due to the exercise of subscription rights or price fluctuations, the necessary countermeasures shall be taken as quickly as possible and at the latest after the third calculation of the net asset value subsequent to the determination of the deviation.

2) Article 47, paragraph 1 shall apply *mutatis mutandis*.

b) Special provisions for investment undertakings for other values with increased risk

#### Article 54

##### *Principle*

1) Investment undertakings for other values with increased risk according to article 44 of the Act are characterized in particular by:

- a) a clearly increased risk through borrowing;
- b) the use of derivative financial instruments for speculation purposes;
- c) the use of investments that can only be valued with extreme difficulty or not at all;
- d) investments that lack transparency and for which obtaining information is not ensured;
- e) short sales; or
- f) a clearly increased cost burden.

2) The management company may determine its own conditions, and especially the deadlines, for issuing and/or redeeming units.

## Article 55

### *Special requirements*

1) In the case of investment undertakings for other values with increased risk, special features must be indicated in a clearly visible location and in detail in the full and simplified prospectuses, on any subscription form, and in every solicitation. This shall apply in particular to increased investment risks arising from the investment policy and to restrictions on the redemption of units.

2) The persons responsible for the management company shall be required to have the training and experience appropriate to the investment policy and related requirements for such an investment undertaking. If the investment decisions are delegated to third parties, these third parties must also fulfill the aforementioned requirements.

3) The investor shall confirm on any subscription form that he has been informed of the increased risks of the investment undertaking.

4) The management company shall determine the investment process in writing, including the investment decisions and the valuation methods for the investments. The audit report shall contain an assessment of the adequacy of the documentation.

5) The risk-determination procedure used by the management company must be reviewed by the external audit office. The audit report shall contain an assessment of the adequacy of the procedure used.

## **3. Investment undertakings for real estate**

## Article 56

### *Investments*

1) Both privately and commercially used real estate and real estate values in the broader sense shall be permissible as investments in real estate. These shall include in particular:

- a) residential buildings, commercial buildings, and mixed-use real properties;
- b) condominiums;
- c) real properties under construction, if the approved construction plan falls within the scope of subparagraph (a) or (b), or real properties

- which are expected to be under construction in the foreseeable future, up to 20% of the assets;
- d) real properties encumbered with a right to build, up to 20% of the assets;
  - e) mortgage liens up to 10% of the assets;
  - f) autonomous rights to build, if they encumber real properties according to subparagraphs (a) and (b);
  - g) holdings in and claims against real estate companies and other real estate funds up to 49%; or
  - h) real estate debt securities.

2) Up to a third of the assets may be invested in liquid assets or in fixed-interest securities with a creditworthiness of at least A-, A3, or equivalent.

3) Objects may also be acquired that are necessary for the management of the assets.

4) The FMA may approve exceptions to the percentage limits in paragraph 1, subparagraphs (c) to (e) and (g), if the purpose of the Act does not appear endangered thereby.

#### Article 57

##### *Risk diversification*

1) Investment undertakings for real estate may, calculated at the time of acquisition, invest at most 20% of their net assets in a single real estate value.

2) Real estate values whose performances are closely linked shall be considered a single real estate value.

Article 58

*Securing liabilities*

1) Choses in action with a term or a term to maturity of up to twelve months shall be considered short-term fixed-interest securities.

2) Cash balances, postal check balances, and bank balances on demand and with terms of up to twelve months shall be considered assets on short call.

Article 59

*Valuation of real estate*

The calculation of the real estate value shall be based on the mathematical average of the expert valuations conducted on the same valuation date.

Article 60

*Deviation from investment rules*

1) A newly established investment undertaking for real estate need not fulfill the investment rules during the first two years.

2) If the management company, the depositary bank, or the external audit office discovers a deviation from the investment rules due to the exercise of subscription rights, changes in valuation, or price fluctuations, the necessary countermeasures shall be taken as quickly as possible and at the latest after the second calculation of the net asset value subsequent to the determination of the deviation.

Article 61

*Limitations on encumbrances*

The sum of the bond issues or loans taken out by an investment undertaking for real estate may on average not exceed 50% of the market value of all real estate holdings.

## Article 62

### *Requirements for experts*

1) In the framework of granting a license to the investment undertaking, the FMA shall recognize a person as an expert who:

- a) is independent of the management company of the investment undertaking, of the depositary bank, of companies associated with them, and of real estate companies of the investment undertakings managed by them;
- b) holds a recognized diploma (e.g., architect, engineer, or real estate trustee diploma) or otherwise can demonstrate the necessary expertise;
- c) has at least five years of experience in the field of real estate appraisal; and
- d) is familiar with the relevant real estate market.

2) The persons belonging to the management company, the depositary bank, or a company close to the management company or the depositary bank who are entrusted with administration or management, as well as their employees, shall not be considered independent for purposes of paragraph 1, subparagraph (a).

3) In the case of conflicts of interest, the experts must recuse themselves.

## 4. Segmented investment undertakings

### Article 63

#### *Principle*

1) A segmented investment undertaking consists of at least two segments; the preparation of one full and one simplified prospectus shall be sufficient.

2) If the management company has the right to open additional segments or to dissolve or merge existing segments, this must be indicated in the full prospectus.

3) A transformation from a segmented investment undertaking into an unsegmented investment undertaking and vice-versa shall be permissible. If a single segment remains, the investment undertaking shall be

considered unsegmented. All documents to be prepared for an investment undertaking must be adapted accordingly.

4) In particular, it must be indicated in the full prospectus that:

- a) a division of the assets of the individual segments is ensured;
- b) payments and liabilities are assigned to the individual segments according to how they are incurred;
- c) costs that cannot be assigned according to how they are incurred are charged against the individual segments in proportion to the assets; and
- d) the investor is only entitled to the assets and income of those segments in which he participates.

5) If changing from one segment to another gives rise to fees, this must be indicated in the full and simplified prospectuses.

#### Article 64

##### *Classification*

1) Segmented investment undertakings for transferable securities shall only be considered as such if all segments comply with the provisions for investment undertakings for transferable securities. This shall apply *mutatis mutandis* for investment undertakings for real estate.

2) Segmented investment undertakings for which the individual segments belong to different types of investment undertakings shall be considered segmented investment undertakings for other values. The provisions applicable to the relevant type of investment undertakings shall be complied with.

### **5. Provisions for special investment products, types, and techniques**

- a) Funds of funds

#### Article 65

##### *Funds of funds*

1) An investment undertaking is called a fund of funds if the majority of its investments are in units of other investment undertakings.

2) As long as the fund of funds complies with the investment provisions according to articles 37 et seq., the fund of funds shall also be considered an investment fund for transferable securities.

3) repealed

4) The full prospectus and the business report of a fund of funds must include information concerning how high the maximum direct costs are and how high the indirect costs are estimated to be.

#### b) Securities loan

##### Article 66

###### *Definition*

1) A securities loan is considered to be a loan-like legal transaction through which the management company as the lender with effect for the investment undertaking is obligated vis-à-vis the borrower to transfer possession of particular securities. The borrower is obligated to refund securities of the same type, amount, and quality and must transfer the income arising over the duration of the securities loan to the lender.

2) The securities loan shall not be considered a grant of a loan for purposes of article 50.

##### Article 67

###### *Principle*

1) The management company may lend securities from the assets of the investment undertaking under management as part of its regular management activities, in accordance with the conditions governed by the following articles.

2) The depositary bank shall additionally guarantee that the securities loan is handled in conformity with the market and according to professional qualifications.

## Article 68

### *Forms*

With respect to securities of the investment undertaking, the management company may either, on behalf of and for the account of the investment undertaking:

- a) lend them to a borrower (principal transaction); or
- b) mandate an intermediary to make the securities available to a borrower either through indirect representation as a trustee (agent) or through indirect representation (finder).

## Article 69

### *Counterparties*

1) The management company may only engage in the securities loan with:

- a) borrowers specialized in such transactions or intermediaries such as banks, brokers, and insurance undertakings; or
- b) recognized securities clearing organizations.

2) The counterparties enumerated in paragraph 1, subparagraph (a) must exhibit a long-term, current rating by a rating agency recognized by the FMA of at least A-, A3, or equivalent.

3) The management company may also engage in a securities loan with its depositary bank, independently of the rating.

## Article 70

### *Loanable securities*

1) The management company may loan the securities that are approved for the type of investment undertaking in question.

2) Loaned securities must continue to be taken into account in complying with investment rules.

## Article 71

### *Collateral*

1) The management company may only loan securities of the investment undertaking against collateral, the value of which must at all times correspond to at least 105% of the market value of the loaned securities. The collateral must, until expiry of the securities loan agreement, be pledged for the benefit of the investment undertaking or transferred into its possession.

2) The following shall be permissible as collateral:

- a) liquid assets;
- b) shares that are traded on an exchange or another regulated market open to the public and that are launched by companies whose values are represented in a stock or debt-security index recognized by the FMA;
- c) fixed-interest or variable-interest securities that exhibit a long-term, current rating by a rating agency recognized by the FMA of at least A-, A3, or equivalent; or
- d) irrevocable letters of credit, guarantees, and sureties by third party banks that exhibit a long-term, current rating by a rating agency recognized by the FMA of at least A-, A3, or equivalent.

3) The FMA may approve other types of collateral if they are equivalent to the types of collateral mentioned in paragraph 2.

4) Securities that have been pledged for the benefit of the investment undertaking or transferred into its possession may neither be loaned, further pledged, sold, used as part of a securities repurchase transaction, nor used to cover obligations arising from derivative financial instruments by the management company.

5) As a matter of principle, the depositary bank shall monitor compliance with the collateral requirements. If the securities loan is concluded via the depositary bank, then the depositary bank shall require its counterparty to provide collateral. The collateral must fulfill the requirements enumerated in paragraphs 1 to 4. If further pledging of the collateral is allowed, then the investment undertaking shall be granted a legal lien on this collateral. In this case, the depositary bank need not provide separate collateral to the investment undertaking.

## Article 72

### *Volume and term*

1) If it has been agreed that the management company may again legally dispose of the loaned securities only after expiry of a defined period of notice, then not more than 50% of the loanable holdings of a given type of security may be loaned, calculated according to the market value at the time of conclusion of the agreement. In this case, the term of the securities loan agreement shall be limited to 30 calendar days.

2) If, however, the management company has been contractually assured that it may again legally dispose of the loaned securities even on the same day or on the next banking day, then the entire loanable holdings of a given type of security may be loaned. In this case, the term of the agreement may be unlimited.

## Article 73

### *Framework agreement*

The management company shall regulate the securities loan in a framework agreement in accordance with the aforementioned conditions. The content of the framework agreement must comply with common international standards.

## Article 74

### *Information and taking inventory*

In its periodic reports of the investment undertaking, the management company shall provide information on the type and scope of the securities loaned as of the reporting date and on the amount of the commissions taken in through the securities loans.

c) Repurchase transactions (repo, reverse repo)

## Article 75

### *Definitions*

1) A repurchase transaction is the sale of assets accompanied by an agreement to buy back the assets.

2) In the case of a repo (repurchase agreement), a transferable security is sold with the obligation to buy it back at a later time.

3) In the case of a reverse repo, a transferable security is bought with the obligation to resell it at a later time.

#### Article 76

##### *Conclusion of repurchase transactions*

1) As part of its ordinary management activities, the management company may conclude repurchase transactions as reverse repos for investment undertakings for transferable securities.

2) The management company may conclude the transaction on behalf of and for the account of the investment undertaking (principal) or it may mandate an intermediary to perform this function as a trustee in direct or indirect representation.

3) The management company or the mandated institution shall guarantee that the repurchase transactions are handled in conformity with the market and according to professional qualifications.

4) Parties may engage in repurchase transactions who are also eligible to engage in securities loans in accordance with article 69. If the depositary bank is not a counterparty itself, its approval is required for the choice of the counterparty.

5) Transferable securities originating from repurchase agreements may neither be loaned, sold, nor used to cover derivative financial instruments.

6) An agreement must be concluded on execution of the repurchase transaction between the management company and every executing institution.

7) The periodic reports must contain information on the repurchase transactions effected.

#### Article 77

##### *Procedure and internal control*

The management company shall regulate the procedure for concluding a repurchase transaction and its control in a guideline.

#### Article 78

##### *Special obligations of the depositary bank*

The depositary bank must fulfill the following special obligations:

- a) it shall monitor that the transaction is handled in conformity with the agreement;
- b) it shall undertake the daily balancing of the changes in value of the transferable securities in the assets (mark-to-market); and
- c) it shall undertake the requisite administrative activities and shall assert all applicable rights.

#### Article 79

##### *Special requirements*

1) An individual transaction and the agreement may have a notice period of at most ten days.

2) Only repo transactions shall be considered loan transactions for the purposes of article 50. Reverse repo transaction shall be considered liquid assets within the meaning of article 38.

### **III. Licenses for management companies and investment undertakings**

#### **A. General provisions**

#### Article 80

##### *Application materials*

1) The application for a license as a management company or investment undertaking must sufficiently document the legal licensing conditions. In particular, the application must include the following information and documents:

- a) the personal composition of the board of directors and the general management of the management company;
- b) the drafts of the full and simplified prospectuses according to articles 5 et seq. of the Act and articles 6 et seq. of this Ordinance;
- c) a business plan;
- d) the names of the depositary bank and of the persons responsible for the depositary bank function;
- e) information concerning the origin of the capital, significant capital holdings, and the form of payment under subscription;
- f) documents providing evidence of guarantees for sound and proper business operation by the persons entrusted with the administration and general management of the management company according to articles 84 and 85, in particular:
  - 1. documented curricula vitae;
  - 2. up-to-date criminal records;
  - 3. information on any criminal and administrative proceedings, to the extent that they interfere with fulfillment of the responsibilities of the person in question, and the commitment to report changes in this regard; and
  - 4. notices of acceptance of the persons entrusted with the administration of the management company;
  - 5. signing authorities of the persons entrusted with the general management and administration of the management company;
- g) the names of the external audit office recognized by the FMA, of the head of mandate and of the head auditor, and their statement confirming that:
  - 1. it accepts the mandate as the external audit office; and
  - 2. the reviewed documents comply with the Act and Ordinance;
- h) the names of the founders (at least two shareholders are required for the formation of a limited company);
- i) the contracts required in a particular case by the instructions;
- k) the articles of incorporation of the management company;
- l) the rules of organization and business of the management company, governing the division of responsibilities between the board of directors and the general management;

- m) a confirmation by the Office of Land and Public Registration that the name is eligible to be registered; and
- n) a declaration on the knowledge of and compliance with the Code of Conduct.

2) The FMA shall provide further details on the submission of application materials according to paragraph 1 in the form of instructions.

## Article 81

### *Code of Conduct*

1) The management company shall confirm that it knows and will comply with the Code of Conduct.

2) The FMA shall issue a Code of Conduct, which shall at least contain the following principles:

- a) the management company must conduct its activities according to article 24 of the Act in the best interest of the investor and of market integrity, in accordance with law and equity and with the requisite expertise, care, and conscientiousness;
- b) the investment undertaking must have the necessary resources and procedures for proper conduct of business, and it must employ these resources and procedures effectively; and
- c) the management company must endeavor to avoid conflicts of interest. If a conflict of interest cannot be avoided, however, it must ensure that the investment undertakings it manages are treated in accordance with law and equity.

3) The FMA may take appropriate measures to enforce the Code of Conduct according to paragraph 1.

4) To the extent necessary for the fulfillment of their supervisory powers, the competent authorities of a home Member State shall be informed by the FMA on the measures taken in accordance with paragraph 2.

## **B. Licensing conditions for investment undertakings**

### Article 82

#### *Net assets*

1) The net assets of an investment undertaking according to article 59 of the Act must amount to at least two million Swiss francs at the latest six months after grant of the license and may then no longer fall below this amount.

2) At the latest after six months, the management company must report to the FMA on attaining the requisite net assets and shall at the same time commit to maintaining the specified investment restrictions on a continuous basis.

3) If the net assets fall below the minimum amount according to paragraph 1, then the management company must immediately report this to the FMA.

## **C. Licensing conditions for the management company**

### Article 83

#### *Organization*

1) The organs of a management companies shall be the general meeting, the board of directors, and the general management.

2) The board of directors must consist of at least three members.

3) As a rule, the general management must consist of at least two persons. At least one member of the general management must actually work for the company in a leading function and must have the necessary qualifications. The general management may consist of only person if it is shown that solid and prudent management of the management company and its survival in the case of loss of capacity of the general manager through an appropriate substitution and succession arrangement is ensured without interruption.

4) The organization, in particular the division of powers between the board of directors and the general management, shall be clearly defined in the rules of business and organization. The personal composition of the board of directors and the general management may not impede the proper exercise of the overall direction and supervision functions of the board of directors. In every case, at least two persons who individually exhibit the qualifications according to article 84, paragraph 1 must determine the business policy of the management company.

#### Article 84

##### *Guarantee of sound and proper business operation*

1) The persons designated for the board of directors and the general management must altogether have sufficient professional qualifications for their designated responsibilities on the basis of their education or their professional experience.

2) In assessing the requirements, the FMA shall take into account *inter alia* the guidelines of the investment policy of the investment undertaking.

3) The designated persons must also, taking into account their additional obligations, their place of residence, and the infrastructure and organization of the undertaking, be able to fulfill their responsibilities for the investment undertaking in an sound and proper manner.

4) In evaluating the designated persons, the FMA may also avail itself of curricula vitae, educational and job performance reports and records, and references.

5) In order to ensure proper conduct of business, the FMA may order joint signing authority conferred on two persons.

#### Article 85

##### *Good reputation*

The persons designated for the board of directors and the general management must have a good reputation as businesspersons.

*Providing services beyond the fund business*

Article 86

*a) In general*

1) If activities are conducted according to article 24, paragraph 3 of the Act, then

- a) the provisions on organization in accordance with article 10, paragraphs 1 and 2 of the Ordinance on the Asset Management Act (Asset Management Ordinance, AMO) shall apply to the fund management, in addition to the provisions of the Act and this Ordinance;
- b) the following provisions of the Law on Asset Management (Asset Management Act, AMA) and the corresponding ordinance shall apply to the fund management in lieu of the provisions of the Act and this Ordinance:
  1. code of conduct (article 14 of the AMA);
  2. conflicts of interest (article 20 of the AMA); and
  3. recording requirements (article 22 of the AMA);
- c) the fund management shall submit periodic reports with respect to these activities exclusively in accordance with article 28, paragraph 2 of the Law on Asset Management;
- d) the assets of the investor may not be invested in whole or in part in units of the investment undertaking managed by the fund management, unless the client has given general approval in advance; and
- e) the investor may turn to the extrajudicial arbitration board in accordance with article 61 of the Law on Asset Management to resolve disputes between the investor and the fund management concerning the management of individual portfolios.

2) In the case of activities according to article 24, paragraph 3 of the Act that are performed by a State, a central bank of a Member State of the EEA, or other national institutions with comparable responsibilities, the conditions according to paragraph 1 need not be observed.

Article 87

*b) Equity position*

If the fund management accepts or holds assets of its clients and is therefore a debtor of its clients in performing activities according to article 24, paragraph 3 of the Act, then it shall comply with the provisions of the Banking Act and the Banking Ordinance concerning equity capital, liquidity, legal reserves, deposit guarantees, and investor protection.

#### **IV. Relationship to the EEA and third States**

Article 88

*Representatives and paying agent of foreign investment undertakings*

1) Only persons who are entitled to market units may be appointed as representatives of foreign investment companies that market units in Liechtenstein. The representation authority shall in particular encompass the following rights and duties:

- a) representing the investment undertaking vis-à-vis the investors and the supervisory authority;
- b) undertaking the legally required publications and assuming responsibility for solicitation;
- c) submitting the documents required by the FMA instructions and updating them as necessary;
- d) assuming responsibility for the manner in which units are marketed;
- e) assuming responsibility for ensuring that the market presence of the investment undertaking corresponds to the practices of the Liechtenstein financial center;
- f) initiating measures to restore a lawful state of affairs if the provisions to be complied with in Liechtenstein are not fulfilled.

2) Only banks according to article 30 of the Act may be appointed as a paying agent for foreign investment undertakings that market units in Liechtenstein. In particular, the paying agent shall carry out the issue and redemption of units and, if applicable, their authentication.

3) The function of the representative and of the paying agent may also be executed by the same persons.

4) The representative and the paying agent shall be named in every publication. The powers according to paragraphs 1 and 2 may not be limited.

5) The representative and the paying agent shall be responsible for the publication of all new editions, any changes to the documents corresponding to the full prospectus, and the net asset values.

6) Even after cancellation of the representation and paying agent agreement, the place of performance and the jurisdictional venue according to article 107 of the Act shall be maintained.

#### Article 89

##### *Marketing of units of investment undertakings not in conformity with the Directive in Liechtenstein*

1) The marketing of units of investment undertakings not in conformity with the Directive in Liechtenstein may be taken up immediately upon grant of the license in accordance with article 93, paragraph 1 of the Act.

2) The licensing conditions according to article 93, paragraph 2 of the Act must be fulfilled on a continuous basis.

3) The applicant must submit the complete application materials to the FMA in accordance with the FMA instructions. The FMA shall issue a confirmation of receipt.

#### Article 90

##### *Marketing of units of investment undertakings from third States in Liechtenstein*

1) The marketing of units of investment undertakings from third States in Liechtenstein may be taken up immediately upon grant of the license in accordance with article 94, paragraph 1 of the Act.

2) The licensing conditions according to article 94, paragraph 2 of the Act must be fulfilled on a continuous basis.

3) The applicant must submit the complete application materials to the FMA in accordance with the FMA instructions. The FMA shall issue a confirmation of receipt.

## **V. Supervision of management companies and investment undertakings**

### **A. Financial Market Supervision (FMA)**

#### Article 91

##### *Directories*

1) The FMA shall compile a separate directory for the following entities licensed in Liechtenstein:

- a) management companies;
- b) investment undertakings;
- c) (depository) banks; and
- d) recognized external audit offices.

2) The directories shall be made available to interested parties in an appropriate manner.

#### Article 92

##### *Extraordinary audits*

1) The FMA may itself mandate a recognized external audit office to conduct an extraordinary audit pursuant to article 96, paragraph 2, subparagraph (b) of the Act.

2) The FMA may demand an advance payment from the investment undertaking.

### **B. Audit offices**

#### Article 93

##### *Grant and withdrawal of license*

1) The license to operate as an external audit office of investment undertakings shall be granted if the conditions according to article 97 of the Act and articles 94 to 96 of this Ordinance are fulfilled.

2) The application for a license as an external audit office of investment undertakings must sufficiently document the legal licensing conditions. In particular, the application must encompass the following information and documents:

- a) information concerning holdings in the share capital and the form of payment under subscription;
- b) the business report;
- c) a list of the ten largest audit mandates and of the fees received per mandate; and
- d) evidence of the qualifications and the sound and proper and good reputation of the head auditors and the general management.

3) The FMA shall provide further details concerning the submission of the application materials according to paragraph 2 in the form of instructions.

4) The FMA shall withdraw the license from the external audit office if:

- a) the conditions for granting the license are no longer fulfilled; or
- b) the external audit office has grossly violated its legal duties.

#### Article 94

##### *Licensing conditions*

A license according to article 97 of the Act shall only be granted to audit companies if:

- a) they are limited companies with paid-up share capital of at least 200,000 Swiss francs;
- b) the organization of their business guarantees the proper and continuous fulfillment of their auditing duties; and
- c) the head auditors have a good reputation as businesspersons and are able to demonstrate thorough knowledge in the auditing of banks and/or investment undertakings.

#### Article 95

##### *Foreign audit offices*

A foreign audit company will only be granted a license if it commits to engage only in audit activities and immediately related activities even abroad.

#### Article 96

##### *Independence*

1) The external audit office may neither take on administrative nor accounting mandates for the investment undertaking and the management company to be audited, nor any other tasks that are incompatible with its audit mandate.

2) The fees received for an audit mandate may on average amount to no more than 20% of the entire annual fees received by the external audit office. Audit mandates for investment undertakings that are managed by the same management company shall be considered a single audit mandate.

#### Article 97

##### *Duties of the external audit office*

- 1) The external audit offices are obliged to:
  - a) report to the FMA any changes to its articles of incorporation or rules and any staffing changes to its organs and of the head auditors;
  - b) only entrust the supervision of audits to auditors who have been reported to the FMA and who fulfill the necessary conditions;
  - c) report the head of mandate and the head auditor to the FMA before beginning the audit; and
  - d) submit their business report to the FMA every year.
- 2) The FMA may demand information concerning the reasons for resignation or dismissal of members of the general management and of the head auditors reported to the FMA.

## Article 98

### *Change of the external audit office*

1) To change the external audit office, the management company must submit an application to the FMA, on which the FMA must decide within six weeks.

2) Before making its decision, the FMA shall consult with the previous external audit office.

3) The FMA shall approve the change of the external audit office if the designated external audit office guarantees a proper audit under the given circumstances and if the interests of the investors do not appear threatened.

4) Upon approval by the FMA, the management company shall publish the change of the external audit office in the publication medium. An indication must be included that the investors may demand to return their units in accordance with the prospectus.

5) If the license is withdrawn from the external audit office, the contract on the audit mandate is cancelled, or the audit office is otherwise no longer able to conduct its activities, then the management company must immediately designate a new external audit office. In justified individual cases, the FMA may set a deadline of at most three months, by which the management company must designate the new external audit office.

## **C. Audit and audit report**

### **1. Audit**

#### Article 99

##### *Requirements*

1) The verifications required by article 98, paragraph 1 of the Act shall be undertaken in accordance with the recognized principles of the profession.

2) Over the course of the accounting year, the external audit office shall conduct at least one unannounced interim audit.

3) During the unannounced interim audit, the audit office shall verify in particular whether:

- a) the accounts are being kept properly;
- b) the equivalent value of the newly issued units has been added to the assets of the investment undertaking;
- c) the valuation of the assets, the calculation and publication of the issue and redemption prices, and the issue and redemption of units comply with the provisions of the Act and the full prospectus;
- d) the asset values constituting the assets are preserved in their entirety;
- e) the investment rules are complied with;
- f) the information flow with the depositary bank and any mandataries functions properly; and
- g) any unloaned certificates of indebtedness are kept by the depositary bank.

#### Article 100

##### *Cooperation with the audit office of the depositary bank according to banking law*

1) Cooperation between the external audit office of the investment undertaking and the audit office of the depositary bank according to banking law shall be structured in a way that duplication is avoided.

2) The external audit office of the investment undertaking shall ensure that the audit office of the depositary bank according to banking law verifies whether the depositary bank fulfills the duties that are imposed upon it by the Act, the Ordinance, and the full prospectus.

## **2. Audit report**

#### Article 101

##### *General requirements*

1) The audit report shall clearly describe whether the provisions concerning the conduct of business have been complied with, and whether the conditions for granting the license continue to be fulfilled.

2) In the case of segmented investment undertakings, each segment must be reported on separately.

3) The head auditor must declare whether he has received all necessary information and documents from the investment undertaking.

4) The audit report must be signed by the head auditor and by the head of mandate of the external audit office.

5) If a fund management manages several investment funds, then separate audit reports may be compiled for the fund management and the investment funds.

## Article 102

### *Verification of the licensing conditions*

In particular, the following licensing conditions shall be considered in the audit report:

- a) guarantee of sound and proper business operation according to article 68 of the Act and articles 84 and 85 of this Ordinance;
- b) legality of the full and simplified prospectuses according to articles 5 et seq. of the Act and articles 6 et seq. of this Ordinance or of the prospectus for investment undertakings for qualified investors according to Annex 2a;
- c) organization of the investment undertaking according to article 64 of the Act and article 83 of this Ordinance;
- d) responsibilities of the depositary bank according to article 31 of the Act;
- e) legal form and capital of the management company according to articles 65 and 66 of the Act;
- f) requirements on the domicile and the head office in Liechtenstein according to article 30 of this Ordinance;
- g) net assets according to article 59 of the Act and article 82 of this Ordinance; and
- h) fulfillment of the submission and reporting requirements according to article 29 of the Act.

## Article 103

### *Verification of conduct of business*

1) In particular, the following points concerning the conduct of business shall be discussed in the audit report:

- a) the accuracy of the business and half-yearly reports and the quarterly reports according to articles 15 to 25 of this Ordinance;
- b) in the case of investment undertakings for transferable securities and investment undertakings for other values, the external audit office shall assess the valuation methods used, especially for investments that are only marketable to a limited extent;
- c) in the case of investment undertakings for other values with increased risk, the external audit office shall assess compliance with the special requirements according to article 55 of this Ordinance;
- d) in the case of investment undertakings for real estate, the external audit office shall in particular assess the review and consolidation of the real estate companies associated with the investment undertaking, the acceptability of the valuation methods used, the capitalization rates, and the estimated values;
- e) compliance with the investment rules of the Act and the Ordinance and either of the full prospectus or of the prospectus for investment undertakings for qualified investors;
- f) the delegation of responsibilities to third parties according to article 25 of the Act and articles 34 et seq. of this Ordinance;
- g) the lawfulness of and compliance with the risk management procedure to be specified by the management company of the investment undertaking;
- h) the lawfulness of and compliance with any documents to be issued internally, especially those concerning derivative financial instruments, repurchase transactions, and conflicts of interest;
- i) the lawfulness of the revaluations and write-offs (article 19 of this Ordinance);
- k) the lawfulness of any solicitation materials, the publication of the issue and redemption prices (articles 12 and 26, paragraph 3 of the Act), and any reports to the Swiss National Bank according to article 29, paragraph 5 of the Act.
- l) the use of experts, in particular with respect to the requirements for experts (article 62 of this Ordinance), the estimation of the market value (article 48, paragraph 1 of the Act), and substantial deviations of the purchasing or selling price from the estimated value (article 48, paragraph 3 of the Act);
- m) compliance with the provisions on the return of units (article 19 of the Act);
- n) the lawfulness of the payments to the management company and the depository bank (article 22 of the Act);

- o) fulfillment of the fiduciary duty and observation of the Code of Conduct (article 11 of the Act and article 81 of this Ordinance);
- p) limitation of activities to those licensed for the management company of the investment undertaking (article 24 of the Act and article 31 of this Ordinance);
- q) observation of the supervisory rules issued by the FMA (internal control mechanisms) (article 33 of this Ordinance);
- r) qualification of the conduct of business in accordance with the Due Diligence Act and any requisite detailed reporting;
- s) the receipt of a declaration of completeness for the audit;
- t) the provisions on the export of capital pursuant to the Currency Treaty between the Principality of Liechtenstein and the Swiss Confederation; and
- u) the written confirmation of examination of the audit report of the preceding year by the management company of the investment undertaking.
- v) to the extent that the fund management conducts activities according to article 24, paragraph 3 of the Act, compliance with the obligations according to articles 86 and 87.

2) If separate audit reports are compiled for the fund management and the investment funds, then the audit report concerning the fund management must at least discuss the points enumerated in article 102 (a), (c) and (f) and in article 103, paragraph 1, subparagraphs (f), (o), (p), (s), and (u).

3) If the external audit office believes additional questions to be important, then it shall expand the audit and report on these questions.

#### Article 104

##### *Short report*

1) In the business report of the investment undertaking, the external audit office shall confirm that:

- a) the investments, the assets and income statement, the calculation of the net asset value, and the use of the income comply with the provisions of the Act, the Ordinance, and the full prospectus or the prospectus for investment undertakings for qualified investors;

- b) the information concerning issue, redemption, and closing inventory of the units and the compilation of the purchases and sales are complete and correct; and
  - c) information on the depositaries mandated by the depositary bank and the mandataries of the management company and on matters of particular economic and legal importance is included in the business report
- 2) In the business report of investment undertakings for real estate, the external audit office must additionally confirm that:
- a) the estimated market value of the assets and the deduction for the tax liabilities arising upon liquidation of the investment undertaking are acceptable; and
  - b) the information on valuation methods and the capitalization rates used and on the acquisition costs, insurance values, and estimated market values of the individual real properties are correctly recorded.

#### Article 105

##### *Treatment of the audit report*

1) The audit report must be submitted to the FMA at the latest six months after the end of the business year and simultaneously circulated to the persons entrusted with the general management and administration of the management company and to the general management and the audit office according to banking law of the depositary bank. The audit report shall be discussed, with minutes, in a meeting of the board of directors of the management company, on the request of the external audit office in the presence of one of its representatives.

2) The annual accounts of the management company or of the investment company may only be submitted for the approval of the general meeting once the board of directors and the external audit office have, in accordance with paragraph 1, taken note of the audit report on the annual accounts approved in the preceding year and, if the report is already available, on the just completed annual accounts.

## VI. Transitional and final provisions

### Article 106

#### *Repeal of existing law*

The following enactments are hereby repealed:

- a) Ordinance of 2 July 1996 on the Law on Investment Undertakings, Liechtenstein Law Gazette 1996 No. 90;
- b) Publication of 16 July 1996 on the Correction to Liechtenstein Law Gazette 1996 No. 90, Liechtenstein Law Gazette 1996 No. 108;
- c) Ordinance of 21 December 2004 concerning Amendment of the Ordinance on the Law on Investment Undertakings, Liechtenstein Law Gazette 2004 No. 299.

### Article 107

#### *Entry into force*

1) Subject to paragraph 2, this Ordinance shall enter into force on 1 September 2005.

2) Articles 86, 87 and 103, paragraph 1, subparagraph (p) of this Ordinance concerning the activities according to article 24, paragraph 3 shall enter into force at the same time as the Asset Management Act.

The Government:  
signed *Otmar Hasler*  
Prime Minister

## **Minimum content of the full prospectus**

In addition to the content required by the Act and the Ordinance, the full prospectus must at least contain the following:

- 1 Information on the investment fund**
- \*1.1 designation and State of domicile;
- \*1.2 date of formation;
- \*1.3 in the case of fixed-term investment funds, the term;
- \*1.4 if applicable, indication of different segments;
- \*1.5 contact office for obtaining the fund rules, the periodic reports, and additional information;
- \*1.6 indication of any tax provisions relevant for the investor (including potential deductions from income);
- 1.7 reporting date for the annual accounts;
- 1.8 type of appropriation of earnings, date, type and manner of distribution;
- \*1.9 name of the external audit office;
- \*1.10 competent supervisory authority;
- \*1.11 name of the financial group soliciting for the investment fund;
- 1.12 information on the type and the main characteristics of the units, especially the type of right represented in the unit; available legal documents or certifications of these legal documents, entries into a register or on an account; characteristics of the units such as qualification and denomination of any securities; description of voting rights; conditions under which the termination of the investment fund can be decided and details of the termination, especially with regard to the rights of the unit-holders;

- 1.13 if applicable, information on exchanges and markets on which the units are listed or traded;
- 1.14 if applicable, information on bond issues in which may be invested;
- 1.15 if applicable, information on an index according to which the investment policy orients itself;
- \*1.16 arrangements and conditions for the issue, sale, redemption, and payment of units; special conditions for segments, such as changing from one segment to another and the associated costs;
- \*1.17 information on ascertaining and using profit;
- \*1.18 frequency and location of publication of the net asset value;
- \*1.19 definition of the investment goals, the investment policy and strategy and their restrictions, the permissible investment techniques and instruments, especially the use of derivative financial instruments, and taking out loans and their scope;
- \*1.20 profile of the typical investor;
- \*1.21 risk profile and risk warning;
- \*1.22 any delegations of responsibilities to third parties, especially the delegation of investment decisions;
- 1.23 information on the valuation of the assets;
- 1.24 information on determining the selling or issue price and the disbursement or redemption price of the units, especially the method and frequency of price calculation; indication of the costs associated with sale, issue, redemption, or disbursement; indication of the type, location, and frequency of publication of these prices;
- \*1.25 information on the method, amount, and calculation of the payments, fees, and reimbursements to the management company, the depositary bank, or third parties that are charged against the investment fund and the investor, broken down according to those to be paid by the investor or the investment fund; indication of the TER;
- 1.26 information on the type of the investment fund (transferable securities, other values, real estate);
- \*1.27 any information on results so far, and the warning that previous results do not entail conclusions about future results.

## **2 Information on the management company**

- \*2.1 designation or company name, date of formation, legal form, State of domicile and head office;
- \*2.2 in the case of fixed-term management companies, their term;
- 2.3 information about other investment funds managed by the management company;
- 2.4 name and function of the members of the board of directors and the general management, as well as any relevant activities they may perform outside the management company;
- 2.5 amount of the subscribed and paid-up capital;

### **3 Information on the investment company**

- \*3.1 designation or company name, date of formation, legal form, State of domicile and head office;
- \*3.2 in the case of fixed-term investment companies, their term;
- \*3.3 if applicable, indication of different segments;
- \*3.4 contact office for obtaining the articles of incorporation, the fund rules, the periodic reports, and additional information;
- \*3.5 indication of any tax provisions relevant for the investor (including potential deductions from income);
- 3.6 reporting date for the annual accounts;
- \*3.7 type of appropriation of earnings, date, type and manner of distribution of dividends;
- \*3.8 name of the external audit office;
- \*3.9 competent supervisory authority;
- \*3.10 name of the financial group soliciting for the investment company;
- 3.11 name and function of the members of the board of directors and the general management, as well as any relevant activities they may perform outside the management company;
- 3.12 amount of the subscribed and paid-up capital;
- 3.13 information on the type and the main characteristics of the units, especially available legal documents or certificates pertaining to these legal documents, entries into a register or on an account; characteristics of the units such as qualification and denomination of any securities; description of voting rights; conditions under which the termination of the investment fund can

- be decided and details of the termination, especially with regard to the rights of the unit-holders;
- 3.14 if applicable, information on exchanges and markets on which the units are listed or traded;
  - \*3.15 arrangements and conditions for the issue, sale, redemption, and payment of units; special conditions for segments, such as changing from one segment to another and the associated costs;
  - \*3.16 information on ascertaining and using profit;
  - \*3.17 frequency and location of publication of the net asset value;
  - \*3.18 definition of the investment goals, the investment policy and strategy and their restrictions, the permissible investment techniques and instruments, especially the use of derivative financial instruments, and taking out loans and their scope;
  - \*3.19 profile of the typical investor;
  - \*3.20 risk profile and any necessary risk warning;
  - \*3.21 any delegations of responsibilities to third parties, especially the delegation of investment decisions;
  - 3.22 information on the valuation of the assets;
  - 3.23 information on determining the selling or issue price and the disbursement or redemption price of the units, especially the method and frequency of price calculation; indication of the costs associated with sale, issue, redemption, or disbursement; indication of the type, location, and frequency of publication of these prices;
  - \*3.24 information on the method, amount, and calculation of the payments, fees, and reimbursements to the members of the board of directors and the general management, the depositary bank, or third parties that are charged against the investment company and the investor, broken down according to those to be paid by the investor or the investment company;
  - 3.25 information on the type of the investment fund (transferable securities, other values, real estate);
  - \*3.26 any information on results so far, and the warning that previous results do not entail conclusions about future results.
- 4 Information on the depositary bank**
- \*4.1 designation or business name, legal form, State of domicile and head office;

4.2 main activity.

**5 Information on third parties, payments to whom are charged against the investment undertaking**

5.1 name;

5.2 the elements of the agreement between the management company and third parties that are significant for the investor, except for payment arrangements;

5.3 additional significant activities of the third parties;

5.4 expertise of third parties with management and decision-making responsibilities.

**6 Additional information**

6.1 The full prospectus shall contain information on arrangements for payments to the investor, concerning the redemption of units, and information and publications on an investment undertaking both in relation to the State of domicile and to a third State in which units are distributed;

6.2 designation of the publication media;

6.3 date of approval of the full and the simplified prospectus.

\*) Substantial changes (contents of the simplified prospectus) must be approved in accordance with article 7 of the Act. In this Annex, the relevant points are marked with an asterisk as an orientation aid.

## **Minimum content of the simplified prospectus**

In addition to the content required by the Act and the Ordinance, the simplified prospectus must at least contain the following:

- 1 General information on the investment undertaking**
  - 1.1 date of formation;
  - 1.2 State of domicile;
  - 1.3 if applicable, indication of different segments and the arrangements in the case of changes between segments;
  - 1.4 name of the management company;
  - 1.5 any delegations of investment decisions;
  - 1.6 in the case of fixed-term investment undertakings, their term;
  - 1.7 details on the issue and/or redemption of units;
  - 1.8 name of the depositary bank;
  - 1.9 name of the external audit office;
  - 1.10 name of the financial group soliciting for the investment undertaking.
  
- 2 Investment information**
  - 2.1 short definition of the investment goal or goals;
  - 2.2 investment policy or strategy (instruments, lines of business, geographical areas);
  - 2.3 risk profile and any necessary risk warning;
  - 2.4 any information on results so far, and the warning that previous results do not entail conclusions about future results (also possible as an annex to the prospectus);

2.5 profile of the typical investor.

**3 Economic information on the investment undertaking**

3.1 indication of any tax provisions relevant for the investor (including potential deductions from income);

3.2 information on issue and redemption fees;

3.3 information on the conversion fees between different segments of an investment undertaking;

3.4 information on the additional costs, broken down according to those to be paid by the investor or the investment fund, indication of the TER.

**4 Information on the marketing and the trading of units of the investment undertaking**

4.1 manner of acquisition of unit certificates;

4.2 manner of disposal of unit certificates;

4.3 type of appropriation of earnings; if applicable, date, type and manner of distribution;

4.4 frequency and location of publication of the net asset value.

**5 Additional information**

5.1 indication of where the full and simplified prospectuses and the half-yearly and business reports are available upon request;

5.2 competent supervisory authority;

5.3 indication of a contact office where additional information may be obtained if desired;

5.4 date of approval of the current full and simplified prospectuses.

## **Minimum content of the prospectus for investment undertakings for qualified investors**

The prospectus for investment undertakings for qualified investors shall at least contain the following:

- 1 General information on the investment undertaking**
  - 1.1 date of formation;
  - 1.2 State of domicile;
  - 1.3 if applicable, indication of different segments and the arrangements in the case of changes between the segments;
  - 1.4 name of the management company;
  - 1.5 any delegations of investment decisions;
  - 1.6 in the case of fixed-term investment undertakings, their term;
  - 1.7 details on the issue and/or redemption of units;
  - 1.8 name of the depositary bank;
  - 1.9 name of the external audit office;
  - 1.10 name of the financial group soliciting for the investment undertaking.
  
- 2 Circle of qualified investors and indication that the investment undertaking is for qualified investors**
  
- 3 Investment information**
  - 3.1 definition of the investment goals, the investment policy and strategy and their restrictions, the permissible investment tech-

- niques and instruments, especially the use of derivative financial instruments, and taking out loans and their scope;
- 3.2 profile of the typical investor.
- 4 Economic information on the investment undertaking**
- 4.1 indication of any tax provisions relevant for the investor (including potential deductions from income);
- 4.2 information on issue and redemption fees;
- 4.3 information on the conversion fees between different segments of an investment undertaking;
- 4.4 information on the additional costs, broken down according to those to be paid by the investor or the investment fund, indication of the TER.
- 5 Information on the subscription and acquisition of units of the investment undertaking**
- 5.1 statement on the subscription and acquisition as well as the issue and redemption of units;
- 5.2 indication of the offices via which the units can be subscribed;
- 5.3 type of appropriation of earnings and, if applicable, date, type and manner of distribution.
- 6 Additional information**
- 6.1 indication of where the prospectus and the business reports are available upon request;
- 6.2 competent supervisory authority;
- 6.3 indication of a contact office where additional information may be obtained if desired;
- 6.4 date of confirmation of receipt according to article 28, paragraph 3.

## Structure of the business and half-yearly report

- A. Investment undertakings for transferable securities**
- I. Business report**
- Ia. Annual accounts<sup>1</sup>**
- 1. Assets statement**

The assets statement must be divided at least into:
- 1.1 bank balances (including trust investments with third party banks), divided into:
  - 1.1.1 sight deposits;
  - 1.1.2 time deposits;
- 1.2 money market instruments;
- 1.3 transferable securities (including loaned securities);
- 1.4 other securities and book-entry securities;
- 1.5 other rights equivalent to securities;
- 1.6 derivative financial instruments;
- 1.7 other asset values;
- 1.8 total assets;
- minus:
- 1.9 liabilities;
- 1.10 net assets;
- 1.11 number of units in circulation;
- 1.12 net asset value per unit.

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<sup>1</sup> In the case of segmented investment undertakings, the segments shall be listed individually in the annual accounts and in the case of investment companies also in aggregated form.

## **2. Off-balance-sheet operations**

The off-balance-sheet operations must be divided at least into:

- 2.1 information on the volume of the contracts in derivative financial instruments open as of the balance sheet date, divided by type of transaction;
- 2.2 information on the liquid assets that are bound by contracts in derivative financial instruments open as of the balance sheet date;
- 2.3 information on the underlying instruments that are bound by contracts open as of the balance sheet date;
- 2.4 information on the sum of the loans taken out as of the balance sheet date (article 50);
- 2.5 information on the charges against the assets as of the balance sheet date, including margin deposits for contracts in derivative financial instruments;
- 2.6 information on the type and scope of the loaned securities as of the balance sheet date and the amount of the commissions received in the accounting year for securities loans.

## **3. Income statement**

The income statement must be divided at least into:

- 3.1 income from bank balances;
  - 3.2 income from money market instruments;
  - 3.3 income from securities, divided into:
    - 3.3.1 bonds, convertible bond issues, warrant issues;
    - 3.3.2 shares and other equity papers, including income from bonus shares;
    - 3.3.3 units of other investment undertakings;
  - 3.4 income from other transferable securities and book-entry securities;
  - 3.5 income from other rights equivalent to securities;
  - 3.6 income from derivative financial instruments;
  - 3.7 other income;
  - 3.8 purchases into accrued income when issuing units;
  - 3.9 total income;
- minus:

- 3.10 interest payable;
- 3.11 audit expenses;
- 3.12 payments to the management company according to regulations;
- 3.13 payments to the depositary bank according to regulations;
- 3.14 other expenses;
- 3.15 payment of accrued income when redeeming units;
- 3.16 net income;
- 3.17 realized capital gains and capital losses;
- 3.18 realized profit;
- 3.19 unrealized capital gains and capital losses;
- 3.20 total profit.

**4. Use of profit**

The statement on the use of profit must be divided at least into:

- 4.1 net income of the accounting year;
- 4.2 capital gains of the accounting year designated for distribution;
- 4.3 capital gains of previous accounting years designated for distribution;
- 4.4 balance carried forward from the preceding year;
- 4.5 profit available for distribution;
- 4.6 profit intended for distribution to the investors;
- 4.7 profit retained for reinvestment;
- 4.8 balance carried forward to the next accounts.

**5. Change of net assets**

For each investment undertaking, a statement of the changes of the net assets shall be made, divided at least into:

- 5.1 net assets at the beginning of the reporting year;
- 5.2 distributions;
- 5.3 balance from unit transactions;
- 5.4 total profit;
- 5.5 net assets at the end of the reporting year.

**Ib. Annual report**

**6. Number of units in circulation**

- 6.1 number of units at the beginning of the period;
- 6.2 newly issued units;
- 6.3 redeemed units;
- 6.4 number of units at the end of the period.

**7. Development of the net asset value (over three years)**

- 7.1 net fund assets;
- 7.2 number of units in circulation;
- 7.3 net asset value per unit;
- 7.4 net asset value at the beginning of the period;
- 7.5. percentage change.

**8. Inventory of assets**

In the business report, the investment undertaking must publish all changes to the composition of the assets (purchases, sales, off-balance-sheet operations, bonus shares, subscription rights, etc.). The individual asset values must be described precisely.

**9. Activity report**

- 9.1 depositaries mandated by the depositary bank;
- 9.2 names of persons to whom investment decisions are delegated;
- 9.3 information on matters of particular economic or legal importance with which the management company dealt in the reporting year, especially concerning amendments to the full and the simplified prospectuses or concerning significant questions of interpretation of law and the full prospectus;
- 9.4 statement of the TER.
- 9.5 statement on whether activities were conducted according to article 24, paragraph 3 of the Act.

**10. Short report of the external audit office (attestation)**

Details on the aforementioned information pursuant to article 104.

## **II. Half-yearly report**

The half-yearly report shall be composed of the following content:

1. unaudited assets and income statements analogous to the annual report;
2. number of units redeemed and newly issued in the reporting half-year, and the closing inventory of the units issued;
3. inventory of the assets at market values and the derived value (net asset value) of one unit of the assets, as of the last day of the reporting half-year;
4. changes to the composition of the inventory of transferable securities during the reporting period.

### **B. Investment undertakings for other values**

The provisions for investment undertakings for transferable securities in section A shall apply analogously to investment undertakings for other values. They shall additionally include the investments permissible for investment undertakings for other values.

### **C. Investment undertakings for real estate**

#### **I. Business report**

##### **Ia. Annual accounts<sup>1</sup>**

###### **1. Assets statement**

The assets statement must be divided at least into:

- 1.1 cash balances, postal check balances, bank balances on demand (including trust investments with third party banks);
- 1.2 bank time deposits (including trust investments with third party banks);
- 1.3 short-term fixed-interest securities;
- 1.4 real property, divided into:
  - 1.4.1 construction sites (including demolition objects);

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<sup>1</sup> In the case of segmented investment undertakings, the segments shall be listed individually in the annual accounts and in the case of investment companies also in aggregated form.

- 1.4.2 buildings on which construction has commenced (including land);
- 1.4.3 completed buildings (including land);
- 1.5 other asset values;
- 1.6 total assets;
- minus:
- 1.7 liabilities, divided into:
  - 1.7.1 mortgage debts;
  - 1.7.2 other liabilities;
- 1.8 shares of minority shareholders in real estate companies;
- 1.9 net assets before estimated liquidation taxes;
- 1.10 estimated liquidation taxes;
- 1.11 net assets;
- 1.12 number of units in circulation;
- 1.13 net asset value per unit.

**2. Information on the balance sheet and on the cancelled units**

This information must be divided at least into:

- 2.1 amount of the write-off account of the real properties;
- 2.2 amount of the reserve account for future repairs;
- 2.3 number of the units cancelled as of the end of the next accounting year.

**3. Income statement**

The income statement must be divided at least into:

- 3.1 income from postal check and bank balances;
- 3.2 income from short-term fixed-interest securities;
- 3.3 rental income;
- 3.4 construction interest earned;
- 3.5 other income;
- 3.6 purchases into accrued income when issuing units;
- 3.7 total income;
- minus:
- 3.8 mortgage interest;

- 3.9 other interest payable;
- 3.10 maintenance and repairs;
- 3.11 property management, divided into:
  - 3.11.1 property expenses;
  - 3.11.2 administrative expenses;
- 3.12 valuation and auditing expenses;
- 3.13 write-offs on real property;
- 3.14 reserves for future repairs;
- 3.15 payments to the management company according to regulations;
- 3.16 payments to the depositary bank according to regulations;
- 3.17 other expenses;
- 3.18 payment of accrued income when redeeming units;
- 3.19 shares of the minority shareholders in real estate companies;
- 3.20 net income;
- 3.21 realized capital gains and capital losses;
- 3.22 realized profit;
- 3.23 unrealized capital gains and capital losses;
- 3.24 total profit.

**4. Use of profit**

The statement on the use of profits must be divided at least into:

- 4.1 net income of the accounting year;
- 4.2 capital gains of the accounting year designated for distribution;
- 4.3 capital gains of previous accounting years designated for distribution;
- 4.4 balance carried forward from the preceding year;
- 4.5 profit available for distribution;
- 4.6 profit intended for distribution to the investors;
- 4.7 profit retained for reinvestment;
- 4.8 balance carried forward to the next accounts.

**5. Change of net assets**

For each investment undertaking, a statement of the changes of the net assets shall be made, divided at least into:

- 5.1 net assets at the beginning of the reporting year;
- 5.2 distributions;
- 5.3 balance from unit transactions;
- 5.4 total profit;
- 5.5 net assets at the end of the reporting year.

**Ib. Annual report**

The provisions for investment undertakings for transferable securities in section A on the annual report shall apply analogously to investment undertakings for real estate. In the statement of purchases and sales, each acquired or disposed of real estate value shall be listed individually. In the short report of the external audit office, articles 24 and 25 shall also be taken into account. In the case of an investment company, a consolidated balance and income statement shall be compiled that must comply with the provisions of the Persons and Company Law.

**II. Half-yearly report**

The provisions for investment undertakings for transferable securities in section A on the half-yearly report shall apply analogously to investment undertakings for real estate.

**Annex 4**  
**(article 23, paragraph 1)**

**Form for quarterly reporting**

Name of the investment undertaking:

Legal form:

Depository bank:

**Quarterly information on investment undertakings**

Information as of:	CHF / currency:
1. Information on the value of the net assets at the end of the quarter	
1.1 Total net assets in CHF / currency:	..... / ..... *
1.2 Net assets per unit:	.....
1.3 Change of 1.2. compared with the preceding quarter:	.....%
(If change is more than 10%, please include a short explanation!)	
2. Value of the portfolio in % of the net assets at the end of the quarter:	.....%
3. Issue and redemption of units in the reporting quarter	
3.1 Gross yield of the issues:	.....
3.2 Expenses for redemptions:	.....
3.3 Net issues (3.1. - 3.2.):	.....
4. Distributions in the reporting quarter:	.....
4.1 Total amount of the distributions:	.....
4.2 Distributions per unit:	.....

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Contact person at the management company of the investment undertaking (name, telephone, fax):

Submit to: Financial Market Authority Liechtenstein

\* In any case, the equivalent value in Swiss francs must be indicated in addition to any reference currency for the total net assets and for each segment. Article 23, paragraph 4 of the Investment Undertakings Ordinance shall be taken into

account.

