

In case of discrepancies between the French and the English text, the French text shall prevail

Law of 5 April 1993 on the financial sector, as amended

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- by the Law of 21 November 1997 on banks issuing mortgage bonds (Mém. A 1997, p. 2913);

- by the Law of 12 March 1998
 - amending the Law of 5 April 1993 on the financial sector for the purposes of transposing Directive 93/22/EEC (the "investment services" directive);
 - amending Article 113 of the Commercial Code (Mém. A 1998, p. 338);

- by the Law of 11 August 1998 creating and introducing into the Penal Code the offence of membership of a criminal organisation and the offence of money laundering and amending:
 - (1) the Law of 19 February 1973 on the sale of medicinal substances and the fight against drug addiction, as amended;
 - (2) the Law of 5 April 1993 on the financial sector, as amended;
 - (3) the Law of 6 December 1991 on the insurance sector, as amended;
 - (4) the Law of 9 December 1976 on the organisation of the profession of notary, as amended;
 - (5) the Law of 20 April 1977 on gaming and betting on sporting events;
 - (6) the Law of 28 June 1984 on the organisation of the profession of company auditor;
 - (7) the Code of Criminal Procedure (Mém. A 1998, p. 1456);

- by the Law of 29 April 1999 transposing Directive 97/5/EC on cross-border credit transfers into the Law of 5 April 1993 on the financial sector, as amended (Mém. A 1999, p. 1297);

- by the Law of 29 April 1999
 - transposing Directive 95/26/EC on the reinforcement of prudential supervision into the Law of 5 April 1993 on the financial sector, as amended, and into the Law of 30 March 1988 on undertakings for collective investment, as amended;

- partially transposing Article 7 of Directive 93/6/EEC on the capital adequacy of investment firms and credit institutions into the Law of 5 April 1993 on the financial sector, as amended;
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 - amending and supplementing the Law of 28 December 1988 regulating access to the professions of artisan, trader and industrialist and certain liberal professions, as amended;
 - supplementing the Law of 12 July 1977 on holding companies;
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- by the Law of 1 August 2001
 - on the transfer of ownership under guarantees;
 - amending and supplementing the Law of 21 December 1994 on borrowing by credit institutions against security pledging;
 - amending and supplementing the Law of 5 April 1993 on the financial sector, as amended;
 - amending and supplementing the Law of 21 June 1984 on financial futures traded on the Luxembourg Stock Exchange and financial futures traded in by credit institutions (Mém. A 2001, p. 2183);
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- European Parliament and of the Council of 7 November 2000 amending Council Directives 85/611/EEC, 92/49/EEC, 92/96/EEC and 93/22/EEC as regards exchange of information with third countries, into the Law of 5 April 1993 on the financial sector, as amended;
- amending Article 8 of the Law of 23 December 1998 on supervision of the capital assets markets (Mém A 2001, p. 2251);
 - by the Law of 13 January 2002
 - approving the International Convention for the Suppression of Counterfeiting Currency and the Protocol thereto, signed in Geneva on 20 April 1929;
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 - by the Law of 14 May 2002 transposing into the Law of 5 April 1993 on the financial sector, as amended:
 - Directive 2000/28/EC amending Directive 2000/12/EC relating to the taking up and pursuit of the business of credit institutions;
 - Directive 2000/46/EC on the taking up, pursuit of and prudential supervision of the business of electronic money institutions (Mém. A 2002, p. 881);
 - by the Law of 19 December 2002 on the Commercial and Companies Registry and the accounting practices and annual accounts of undertakings and amending divers other statutory provisions (Mém. A 2002, p. 3630);
 - by the Law of 2 August 2003
 - amending the Law of 5 April 1993 on the financial sector, as amended;
 - amending the Law of 23 December 1998 setting up a Commission for Supervision of the Financial Sector, as amended;
 - amending Law of 31 May 1999 governing the domiciliation of companies, as amended (Mém. A 2003, p. 2364);
 - by the Law of 19 March 2004 transposing into the Law of 5 April 1993 on the financial sector, as amended, Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions (Mém. A 2004, p. 708 and Mém. A 2004, p. 864);
 - by the Law of 22 March 2004 on securitisation and amending
 - the Law of 5 April 1993 on the financial sector, as amended;
 - the Law of 23 December 1998 setting up a Commission for Supervision of the Financial Sector, as amended;
 - the Law of 27 July 2003 on trusts and fiduciary contracts;
 - the Law of 4 December 1967 on income tax, as amended;
 - the Law of 16 October 1934 on wealth tax, as amended;
 - the Law of 12 February 1979 on value added tax, as amended (Mém. A 2004, p. 720);
 - by the Law of 12 November 2004 on combating money laundering and the financing of terrorism, transposing Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on the use of the financial system for the purpose of money laundering, and amending:

1. the Penal Code;
 2. the Code of Criminal Procedure;
 3. the Law of 7 March 1980 of the organisation of the judicial system, as amended;
 4. the Law of 23 December 1909 setting up a Commission for Supervision of the Financial Sector, as amended;
 5. the Law of 5 April 1993 on the financial sector, as amended;
 6. the Law of 6 December 1991 on the insurance sector, as amended;
 7. the Law of 9 December 1976 on the organisation of the profession of notary, as amended;
 8. the Law of 10 August 1991 on the organisation of the profession of lawyer, as amended;
 9. the Law of 28 June 1984 on the organisation of the profession of company auditor, as amended;
 10. the Law of 10 June 1999 on the organisation of the profession of accountant;
 11. the Law of 20 April 1977 on gaming and betting on sporting events, as amended;
 12. the General Fiscal Code ("Abgabenordnung") (Mém A 2004, p. 2766).
- by the law of 5 August 2005 on financial collateral arrangements (Mém A 2005, p.2212).

PART I: Access to professional activities in the financial sector

Chapter I: Authorisation of banks or credit institutions established under Luxembourg law.

«Section 1: Provisions of general application¹»

Art. 1 Scope

This chapter shall apply to all legal persons established under Luxembourg law whose business is to receive deposits or other repayable funds from the public and to grant credits for their own account, irrespective of whether such persons are called credit institutions or banks.

Art. 2 Authorisation requirement

- (1) No legal person established under Luxembourg law may carry on the business of a credit institution without holding a written authorisation from the Minister responsible for the «*Commission de surveillance du secteur financier*»² [Commission for Supervision of the Financial Sector].
- (2) No person may be authorised to carry on the business of a credit institution either through another person or as an intermediary for the carrying-on of such business.
- (3) No person other than a credit institution may carry on the business of taking deposits or other repayable funds from the public. This prohibition shall not apply to the taking of deposits or other funds repayable by the State, by local authorities or by public international bodies of which one or more EEC Member States are members, or to cases expressly covered by national or Community legislation, provided that those activities are subject to regulations and controls intended to protect depositors and investors and applicable to those cases.

Art. 3 Authorisation procedure

- (1) Authorisation shall be granted upon written application, following an investigation by the *Commission de surveillance du secteur financier* [Commission for Supervision of the Financial Sector] (hereinafter referred to as "the CSSF") to establish whether the conditions laid down by the present Law are fulfilled.
- (2) Prior to granting authorisation, the CSSF must consult with the competent authorities of the other EEC Member States regarding the authorisation of any credit institution which is:
 - a subsidiary of a credit institution authorised in another Member State, or
 - a subsidiary of the parent undertaking of a credit institution authorised in another Member State, or
 - controlled by the same persons, whether natural or legal, as control a credit institution authorised in another Member State.
- (3) The authorisation shall be granted for an unlimited period of time.
- (4) The application for authorisation must be accompanied by all such information as may be needed for the assessment thereof and by a programme of operations indicating the type and volume of business envisaged and the administrative and accounting structure of the institution in question.

¹ Law of 21 November 1997.

² Art. 28 of the Law of 23 December 1998 setting up a Commission for Supervision of the Financial Sector (Mém. A 1998, p. 2985).

- (5) Authorisation shall likewise be required before any change is made to the object, name or legal form of the institution in question and for the setting up or acquisition of any agency, branch or subsidiary in Luxembourg or abroad, without prejudice to the application of «Article 33»³.
- (6) The decision taken on any application for authorisation must be supported by a statement of the reasons on which it is based and must be notified to the applicant within six months of receipt of the application or, if the application is incomplete, within six months of receipt of the information needed for the adoption of the decision. Such a decision shall in any event be adopted within twelve months of receipt of the application, failing which the absence of a decision shall be deemed to constitute notification of a decision refusing the application. An appeal against the decision may be lodged within one month, and may be struck out if it is not so lodged, before the «*tribunal administratif*»⁴ [administrative court], which shall determine the matter (...) as a court adjudicating on the substance.
- (7) Application of the provisions of this article shall where necessary be adapted in line with any measures decided upon by the EEC authorities which limit or suspend decisions on applications for authorisation lodged by institutions established in countries which are not EEC Member States.

Art. 4 The legal form of the institution

Authorisation may be granted to a legal person established under Luxembourg law only if that person is established in the form of a public-law institution, a *société anonyme* [public limited company], a *société en commandite par actions* [limited partnership with a share capital] or a *société coopérative* [cooperative society].

Art. 5 Central administration and infrastructure

- (1) Authorisation shall be subject to the production of evidence showing the existence in Luxembourg of the central administration of the institution in respect of which authorisation is sought.
- (2) The institution shall also be required to show that it has a sound administrative and accounting organisation and adequate internal control procedures.

Art. 6 Shareholdings

- (1) Authorisation shall be subject to communication to the CSSF of the identities of shareholders or members, whether direct or indirect and whether natural or legal persons, whose holdings in the institution to be authorised are qualifying holdings or are such as to enable them to exercise a significant influence on the conduct of its business, and of the amounts of such holdings. The suitability of those shareholders or members must be satisfactory, having regard to the need to ensure that the credit institution is managed in a sound and prudent manner.
- (2) Authorisation shall be subject to the following conditions: (a) the direct and indirect shareholding structure of the institution must be transparent and organised in such a way that the authorities responsible for prudential supervision of the institution and, as the case may be, of the group to which it belongs can be clearly determined; (b) such supervision must be exercisable without impediment or obstacle; and (c) supervision on a consolidated basis of the group to which the institution belongs must be ensured.
- (3) Any natural or legal person who proposes to acquire, directly or indirectly, a qualifying holding in a credit institution must first inform the CSSF, telling it of the

³ Law of 12 March 1998.

⁴ Art. 100 of the Law of 7 November 1996 on the organisation of administrative courts and tribunals (Mém. A 1996, p. 2261).

amount of the intended holding. Such a person must likewise inform the CSSF if he proposes to increase his qualifying holding in such a way that the proportion of the voting rights or of the capital held by him will reach or exceed 20%, 33% or 50% or so that the credit institution will become his subsidiary.

- (4) The CSSF shall have three months from the date of the notification provided for in the preceding paragraph in which to oppose such a plan if, in view of the need to ensure sound and prudent management of the credit institution, it is not satisfied as to the suitability of the person referred to in that paragraph. If it does not oppose the plan in question, the CSSF may fix a maximum period for its implementation. If a holding is acquired despite the opposition of the CSSF, the latter may suspend the exercise of the corresponding voting rights or demand the nullification or cancellation of votes cast.
- (5) If the acquirer of the holdings referred to in paragraph (3) is a credit institution authorised in another Member State, or the parent undertaking of a credit institution authorised in another Member State, or a natural or legal person controlling a credit institution authorised in another Member State, and if, as a result of that acquisition, the institution in which the acquirer proposes to acquire a holding would become a subsidiary or subject to the control of the acquirer, the assessment of the acquisition must be the subject of the prior consultation referred to in Article 3(2).
- (6) Any natural or legal person who proposes to dispose, directly or indirectly, of a qualifying holding in a credit institution must first inform the CSSF, telling it of the amount of the holding concerned. Such a person must likewise inform the CSSF if he proposes to reduce his qualifying holding in such a way that the proportion of the voting rights or of the capital held by him will fall below 20%, 33% or 50% or so that the credit institution will cease to be his subsidiary.
- (7) On becoming aware of them, credit institutions shall inform the CSSF of any acquisitions or disposals of holdings in their capital that cause holdings to exceed or fall below one of the thresholds referred to in paragraphs (3) and (6). They shall also, at least once a year, inform the CSSF of the names of shareholders and members possessing qualifying holdings and the amounts of such holdings as shown, for example, by the information received at the annual general meetings of shareholders and members or as a result of compliance with the regulations relating to companies listed on stock exchanges.
- (8) Application of the provisions of this article shall where necessary be adapted in line with any measures decided upon by the EEC authorities which limit or suspend decisions on requests for the acquisition of holdings lodged by direct or indirect parent undertakings established under the laws of countries which are not EEC Member States.

Art. 7 Professional standing and experience

- (1) Authorisation shall be conditional on the production by the members of the bodies performing administrative, management and supervisory functions, and by the shareholders or members referred to in the preceding article, of evidence of their professional standing. Such standing shall be assessed on the basis of police records and of any evidence tending to show that the persons concerned are of good repute and offering every guarantee of irreproachable conduct on the part of those persons.
- (2) At least two persons must be responsible for the management of the institution. Those persons must be empowered effectively to determine the direction taken by the business and must possess adequate professional experience by virtue of their having previously carried on similar activities at a high level of responsibility and autonomy.

- (3) Any change in the persons required to fulfil the legal conditions of professional standing and experience must be authorised in advance by the CSSF. To that end, the CSSF may request all such information as may be necessary regarding the persons who may be required to fulfil the legal conditions. An appeal against the decision of the CSSF may be lodged within one month, and may be struck out if it is not so lodged, before the «*tribunal administratif*»⁵ [administrative court], which shall determine the matter (...) as a court adjudicating on the substance.

Art. 8 Capital base

- (1) Authorisation shall be conditional on the production of evidence showing the existence of an authorised capital of «8 700 000 euros»⁶, of which «6 200 000 euros»⁷ must be fully paid up. Those amounts may be modified by Grand-Ducal regulation.
- (2) The own funds of a credit institution may not be less than the amount of the authorised capital prescribed pursuant to the preceding paragraph. If the own funds fall below that amount, the CSSF may, where the circumstances so justify, allow the institution a limited period in which to rectify its situation or cease its activities.

Art. 9 Credit standing

Authorisation shall be conditional on the production of evidence showing the existence of an adequate credit standing commensurate with the programme of operations.

Art. 10 External auditing

- (1) Authorisation shall be conditional on the institution having its annual accounts audited by one or more external auditors who can show that they possess adequate professional experience. Those external auditors shall be appointed by the body responsible for managing the credit institution.
- (2) Any change in the external auditors must be authorised in advance by the CSSF in accordance with Article 7(3).
- (3) Neither the rules in respect of *commissaires aux comptes* [auditors], as laid down in the Law on commercial companies, nor Article 137 of the Law of 10 August 1915, as amended, shall apply to credit institutions.

Art. 10-1 Participation in a deposit guarantee scheme

(Law of 11 June 1997)

«Without prejudice to Article 62-5(4), authorisation shall be conditional on the participation by the credit institution in a deposit guarantee scheme established in Luxembourg and recognised by the CSSF.»

Art. 10-2 Participation in an investors' compensation scheme

(Law of 27 July 2000)

«Without prejudice to Article 62-15(4), authorisation shall be conditional on the participation by the credit institution in an investors' compensation scheme established in Luxembourg and recognised by the CSSF.»

Art. 11 Withdrawal of authorisation

⁵ Art. 100 of the Law of 7 November 1996 on the organisation of administrative courts and tribunals (Mém. A 1996, p. 2261).

⁶ Law of 2 August 2003.

⁷ Law of 2 August 2003.

- (1) The authorisation shall be withdrawn if the conditions for the grant thereof cease to be fulfilled.
- (2) The authorisation shall lapse if no use is made thereof for an uninterrupted period of more than twelve months.
- (3) An appeal against the decision to withdraw the authorisation may be lodged within one month, and may be struck out if it is not so lodged, before the «*tribunal administratif*»⁸ [administrative court], which shall determine the matter (...) as a court adjudicating on the substance.

«Section 2: Specific provisions relating to *caisses rurales*⁹ [rural banks]»

Art. 12 Special provisions relating to *caisses rurales*

- (1) The composite entity comprising the central credit institution of the *caisses rurales* and those *caisses rurales* which have been affiliated to that central institution since before 15 December 1977 or have resulted from any merger of such *caisses*, and which are still affiliated to the central institution, shall be regarded as forming a single credit institution. "Affiliation", for the purposes of this article, shall mean the holding of one or more shares in the capital of the central institution.
- (2) The liabilities of the central institution and of the *caisses* affiliated thereto shall constitute joint and several liabilities.
- (3) The managing body of the central credit institution shall exercise administrative, technical and financial control over the organisation and management of each affiliated *caisse*. It shall be empowered to issue instructions to the managing bodies of the affiliated *caisses*.
- (4) The members of the administrative, management and supervisory bodies of each affiliated *caisse* shall be required to produce evidence of their professional standing and also, as regards persons responsible for the management of a *caisse*, evidence that those persons possess adequate professional experience.
- (5) (Law of 11 June 1997) «Without prejudice to Article 62-5(4), only the central credit institution shall be required to participate in a deposit guarantee scheme established in Luxembourg and recognised by the CSSF. The protection offered by that scheme shall cover not only deposits placed with the central institution but also deposits placed with affiliated *caisses*.»
- (6) (Law of 27 July 2000) «Without prejudice to Article 62-15(4), only the central credit institution shall be required to participate in an investor compensation scheme established in Luxembourg and recognised by the CSSF. The protection offered by that scheme shall cover not only investors who are clients of the central institution but also persons investing with affiliated *caisses*.»

«Section 3: Specific provisions relating to banks issuing mortgage bonds¹⁰»

Art. 12-1 Definition – Principal activity

(Law of 21 November 1997)

- «(1) Mortgage banks are credit institutions having as their main object the following activities:

⁸ Art. 100 of the Law of 7 November 1996 on the organisation of administrative courts and tribunals (Mém. A 1996, p. 2261).

⁹ Law of 21 November 1997.

¹⁰ Law of 21 November 1997.

- (a) the granting of loans secured by rights in rem in immoveable property or by charges on real property, and the issuing on that basis of debt instruments secured by those rights or charges, such instruments being known as mortgage bonds;
- (b) the granting of loans secured by bonds, or by other similar debt instruments fulfilling the requirements set out in paragraph 2, which are in turn coupled with the guarantees indicated in subparagraph (a) above, and the issuing on that basis of debt instruments covered by those guarantees, such instruments being known as mortgage bonds;
- (c) the granting of loans to public entities and the issuing of debt instruments secured by the debt entitlements resulting from those loans, such instruments being known as mortgage bonds;
- (d) the granting of loans secured by:
 - public entities,
 - bonds issued by public entities,
 - bonds fulfilling the requirements set out in paragraph 2 which are issued by credit institutions established in any State which is a Member State of the European Community, a Contracting Party to the Agreement on the European Economic Area or a Member country of the Organisation for Economic Cooperation and Development (OECD), such bonds being in turn secured by debts owed to public entities,

and the issuing on that basis of debt instruments secured by the debt entitlements resulting from those loans, such instruments being known as mortgage bonds.

- (2) Loans granted in accordance with the foregoing provisions may be granted in any form, including in the form of the acquisition of bonds or other similar debt instruments fulfilling the criteria laid down by Article 42(3) of the Law of 30 March 1988 on collective investment undertakings. Such bonds or other similar debt instruments must be issued by credit institutions or public entities as defined in paragraph 4 below and must be coupled with the guarantees mentioned in subparagraphs (a) to (d) of paragraph 1 above.
- (3) Bonds issued in accordance with the provisions of subparagraphs (a) and (b) of paragraph 1 are known as "mortgage bonds" (*lettres de gage hypothécaires*). Those issued in accordance with the provisions of subparagraphs (c) and (d) of paragraph 1 are known as "public-sector bonds" (*lettres de gage publiques*).
- (4)
 - (a) For the purposes of this section, "rights in rem in immoveable property" shall mean rights in property and the separate attributes thereof, surface rights, rights in rem acquired on the acquisition of a long lease and all other similar rights in rem in immoveable property provided for by the laws of States which are Member States of the European Community, Contracting Parties to the Agreement on the European Economic Area or Member countries of the OECD, conferring any right over immoveable property located within any such State that is capable of being asserted against third parties.
 - (b) For the purposes of this section, "charges on real property" shall mean ordinary mortgages (*hypothèques*), mortgages in which the mortgagee takes possession and receives the produce, rents and profits (*antichrèses*) and all other similar charges on real property provided for by the laws of States which are Member States of the European Community, Contracting Parties to the Agreement on the European Economic Area or Member countries of the OECD, conferring any charge over

immoveable property located within any such State that is capable of being asserted against third parties.

In order to meet legal requirements, the rights in rem in immoveable property and charges on real property referred to in subparagraphs (a) and (b) above must be such as to authorise the holder thereof to enforce those rights and charges with a view to obtaining payment of all debts secured thereby, without any possibility of such enforcement being impeded by any third-party rights, whether of a public or private nature.

(c) For the purposes of this section, "public entities" shall mean States which are Member States of the European Community, Contracting Parties to the Agreement on the European Economic Area, Member countries of the OECD, their institutions or bodies, central administrations, regional or local authorities, other public authorities and other public bodies or undertakings of those States.

- (5) The provisions of Articles 86 and 94-8 of the Law of 10 August 1915 on commercial companies, as amended, shall apply to mortgage bonds.
- (6) The form taken by mortgage bonds may be prescribed by Grand-Ducal regulation.»

Art. 12-2 Incidental and ancillary activities

(Law of 21 November 1997)

- «(1) Mortgage banks may engage in other banking and financial activities only in so far as these are incidental and ancillary to their main activity.

For the purposes of this provision, the following shall be regarded as incidental activities:

- (a) selling and purchasing securities in their own name for the account of third parties, but excluding forward transactions;
 - (b) with a view to granting mortgage loans, loans to public entities or loans of the type referred to in Article 12-1(1)(a), (b) and (c):
 - receiving capital sums as deposits from third parties, with or without interest;
 - taking out loans and furnishing security for such loans;
 - issuing bonds which are not subject to the mandatory cover requirements laid down for mortgage bonds (*lettres de gage hypothécaires*) or public-sector bonds (*lettres de gage publiques*);
 - (c) providing custody and management services in respect of securities for third parties;
 - (d) acquiring holdings in undertakings, where such holdings are intended to further operations carried out in accordance with Article 12-1 and the liability of the mortgage bank resulting from those holdings is limited by the legal form of the undertaking, provided however that each holding does not in total exceed one third of the nominal value of all the shares in the undertaking in which the holding is acquired. A larger holding shall be authorised in so far as the corporate object of the undertaking is in essence – by virtue either of the law or of its statutes – to engage in operations of the same type as those which the mortgage bank is itself authorised to carry out; the total amount of such holdings may not exceed twenty per cent of the mortgage bank's own funds.
- (2) Mortgage banks may use the funds available in order to:
 - (a) deposit them with other suitable credit institutions;

- (b) redeem their mortgage bonds and public-sector bonds;
 - (c) purchase:
 - bills of exchange and cheques,
 - securities, debts, Treasury bills and Treasury bonds the debtor in respect of which is a public entity,
 - debt instruments in respect of which the payment of interest and the repayment of capital are guaranteed by a public entity,
 - other debt instruments listed on a stock exchange;
 - (d) make advances against pledges of securities in accordance with internal rules to be laid down by the mortgage bank. Such rules must specify the securities eligible to be accepted by way of pledge and fix the authorised amount of the advance;
 - (e) invest them in the form of investment units in assets invested in accordance with the principle of risk-spreading, where those units have been issued by a capital investment company or a foreign investment company which is subject to special official surveillance with a view to protecting holders of securities, provided that, under the terms of the contractual conditions or statutes of the capital investment company or investment company, the assets may be invested only in debt instruments of the type referred to in (c) and in bank deposits.
- (3) Mortgage banks may acquire immoveable property only with a view to avoiding losses on mortgages and in order to meet their own needs.»

Art. 12-3 Maximum amount of mortgage bonds in circulation

(Law of 21 November 1997)

«The aggregate amount of the mortgage bonds (*lettres de gage hypothécaires*) and public-sector bonds (*lettres de gage publiques*) of a mortgage bank which are in circulation at any given time may not exceed 60 times the amount of its own funds.

This maximum amount may be modified by Grand-Ducal regulation.»

Art. 12-4 Protection of denomination

(Law of 21 November 1997)

«No entity may issue transferable securities or other debt instruments under the denomination of "mortgage bonds" (in French: *lettres de gage*; in German: *Pfandbriefe*), or under any identical or similar denomination in another language, or call itself a "mortgage bank" if it does not fulfil the conditions laid down by this section.»

Art. 12-5 Collateral

(Law of 21 November 1997)

- «(1) Ordinary collateral shall be comprised of the debts due coupled with the guarantees relating thereto, as described in Article 12-1(1)(a), (b) and (c), and held as assets as consideration for the commitments of the mortgage bank resulting from the issue of mortgage bonds.
- (2) The collateral shall be divided into two separate categories, according to whether they are allocated to mortgage bonds (*lettres de gage hypothécaires*) or to public-sector bonds (*lettres de gage publiques*).

- (3) In each of the categories defined above, ordinary collateral may be replaced, to the extent of 20% of the nominal value of the mortgage bonds in circulation, by substitute collateral comprising:
- (a) cash;
 - (b) assets held in central banks or credit institutions having their seat or registered office in a State which is a Member State of the European Community, a Contracting Party to the Agreement on the European Economic Area or a Member country of the OECD;
 - (c) bonds fulfilling the criteria laid down by Article 42(3) of the Law of 30 March 1988 on collective investment undertakings.
- (4) The aggregate nominal amount of mortgage bonds in circulation at any given time must be fully secured by collateral. Such collateral must produce a global interest income which is at least equal to the amount of interest produced by those mortgage bonds.
- (Law of 22 June 2000) «In order to ensure global cover, in terms of both principal and interest, for the mortgage bonds in circulation and the other debts eligible for the preferential treatment referred to in Article 12-8, mortgage banks must take appropriate measures and may have recourse, in particular, to financial futures. The assets resulting from such measures must be included in the collateral required by this Law. Any sums payable by virtue of those measures shall enjoy, following set-off as the case may be, the preferential status referred to in Article 12-8.»
- (Law of 22 June 2000) «Sums payable by virtue of the financial futures used to cover operations of the kind referred to in Article 12-2 shall not enjoy that preferential status.»
- (5) Debts resulting from loans coupled with the guarantees provided for in Article 12-1(1)(a) and (b) may be used as collateral only up to a maximum of 60% of the estimated realisation value of the immoveable property serving as a guarantee. That estimated value is to be determined on a genuine and prudent basis in accordance with the valuation rules laid down in Article 12-7(2); it shall take into consideration only the lasting characteristics of the property in question and the lasting income that it may produce for any owner making normal use of it in accordance with its intended purpose. Residential property may serve as a guarantee, as well as properties used for industrial, commercial or business purposes.»

Art.12-6 Mortgage bond register

(Law of 21 November 1997)

- «(1) All mortgage banks shall be required to draw up a register, known as the "mortgage bond register" (*registre des gages*), in which details of all assets serving as collateral must be entered individually. That register shall be composed of two parts, one of which shall be used for the registration of assets securing mortgage bonds (*lettres de gage hypothécaires*) and the other for registration of assets securing public-sector bonds (*lettres de gage publiques*), in application of the provisions of Article 12-5(2).
- (2) The form of that register, of the entries to be made therein and of the deletions to be made therefrom may be prescribed by Grand-Ducal Regulation, as may all other provisions necessary in order to ensure that the register is properly kept.»

Art. 12-7 Special auditor

(Law of 21 November 1997)

- «(1) All mortgage banks must have a special auditor, being a qualified company auditor, who is distinct from the company auditor who audits its accounts. That special

auditor shall be appointed by the CSSF on a proposal by the credit institution concerned. The special auditor shall be required to report to the CSSF on the findings and observations made by him in performing his duties. The special auditor may be removed from office by the CSSF at any time.

- (2) The special auditor shall be under a duty to ensure that the collateral to be provided under this Law by mortgage banks is duly furnished and registered in the mortgage bond register, that the value thereof is in the prescribed amount and that it continues to exist.

The special auditor shall also be required to ascertain whether the estimated value of the items of immoveable property serving as guarantees in rem has been determined in accordance with the valuation rules to be drawn up to that end by the credit institution with the approval of the CSSF, and whether the maximum rate of cover in respect of which the immoveable property in question may serve as guarantee has been respected.

The special auditor shall not be required to ascertain whether the estimated value of the immoveable property in question corresponds to its actual value.

- (3) The collateral entered in the mortgage bond register may not be deleted therefrom without the written consent of the special auditor.

The special auditor, acting jointly with the mortgage bank, shall be required to ensure the safe-keeping of the collateral entered in the mortgage bond register and of the deeds and documents relating to such collateral. At the request of the mortgage bank, he shall release the said collateral, deeds and documents unto that bank and shall consent to the removal from the mortgage bond register of the entries relating thereto, in so far as the other items of collateral entered therein are sufficient fully to cover the mortgage bonds in circulation.

- (4) In the performance of his duties, the special auditor shall remain wholly independent of the credit institution, the mortgage bond holders and the supervisory authority.

- (5) The special auditor shall not represent the mortgage bond holders.

- (6) Before mortgage bonds are issued, each of them shall be endorsed with a certificate of the special auditor certifying the existence of the cover required by law and the entry thereof in the mortgage bond register. The signature of the certificate by the special auditor may be in manuscript, printed or in the form of a stamp.

- (7) All disputes between the special auditor and the mortgage bank shall be determined by the CSSF.»

Art. 12-8 Preferential rights to payment of mortgage bond holders

(Law of 21 November 1997)

- «(1) Without prejudice to the conditions to be fulfilled and the formalities to be completed for the creation and maintenance of the guarantees comprised in the collateral, that collateral shall serve, in the first instance, to guarantee to the holders of mortgage bonds that they will be paid the full amount of the debt due to them from the issuer of the bond or bonds in question. The collateral may not be attached or form the subject of any execution or enforcement measure by personal creditors of the issuer other than the mortgage bond holders.

- (2) Registration of the collateral in the mortgage bond register shall confer upon the mortgage bond holders preferential rights over that collateral in priority to all other rights, preferences and priorities of any kind whatever, including Treasury rights, without there being any need for the conclusion of any special contract earmarking or pledging the same or any other contract, or for the delivery of the collateral to the mortgage bond holders or to any agreed third party, the service of any document or

the completion of any other formality. The entry in the register shall constitute good evidence of the date thereof.

- (3) Regardless of the date of issue thereof, all mortgage bonds shall rank *pari passu*, in terms of the security afforded by them, with the collateral respectively allocated to them, whether relating to mortgage bonds (*lettres de gage hypothécaires*) or to public-sector bonds (*lettres de gage publiques*), and the same preferential rights shall attach to them in the event of the collective liquidation of the mortgage bank.
- (4) In the event of the collective liquidation of the mortgage bank, the collateral shall not form part of the assets to be realised in favour of the general body of creditors.
- (5) (Law of 22 June 2000) «Where one of the acts referred to in Article «60-2(3)»¹¹ or Article 61(1) is lodged in relation to a mortgage bank, the CSSF shall by operation of law act as manager of the aggregate comprised of the mortgage bonds and the collateral relating thereto. The CSSF shall continue so to act until such time as the reorganisation and liquidation measures implemented in pursuance of the aforesaid acts produce their effects.

Articles «60-2»¹² and 61 shall not apply to the aggregate comprised of the mortgage bonds and the collateral relating thereto.

The CSSF shall manage the collateral and exercise upon the maturity thereof the mortgage bond holders' rights over such collateral on behalf of the mortgage bond holders and on behalf of the mortgage bank in whose name or for whose account the collateral in question is held by third parties or entered or registered with third parties or in public registers.

Mortgage bonds shall be paid as and when they respectively mature.

The CSSF may conclude with a mortgage credit institution which is authorised and supervised by the competent authorities of a Member State of the European Community, a Contracting Party to the Agreement on the European Economic Area or a Member country of the OECD a service contract relating to the management of mortgage bonds and the realisation of the underlying security as and when the mortgage bonds mature.

It may also transfer the mortgage bonds and the collateral in their entirety to a mortgage credit institution or an issuer of mortgage bonds which is authorised and supervised by the competent authorities referred to in the preceding subparagraph.

Where any assets remain after the creditors enjoying the preferential rights have been paid off in full, those assets shall be transferred to the general pool of assets comprised in the liquidation of the mortgage bank.

In the event that the collateral proves to be insufficient to satisfy in full the debts due to the creditors enjoying the preferential rights, the latter may prove their claims as against the general assets comprised in the liquidation and the ordinary rules of collective liquidation shall apply.»

- (6) (Law of 22 June 2000) «Notwithstanding the provisions of Article 450 of the Commercial Code, the collective liquidation of a mortgage bank shall not have the effect of causing the mortgage bonds and other debts covered by the preferential rights referred to in this article to become due and payable.»
- (7) (Law of 22 June 2000) «The provisions of the second paragraph of Article 444 and Article 445 of the Commercial Code shall not apply to contracts concluded by or with the mortgage bank or to any legal acts performed by that bank or for its benefit,

¹¹ Law of 19 March 2004.

¹² Law of 19 March 2004 .

provided that such contracts or acts are directly linked to the operations provided for in Article 12-1 and to the financial futures contracts relating thereto.»

«(8)»¹³ The right of precedence and the preferential rights established by the provisions of paragraphs 1 and 2 shall exist in favour of the holders of bonds issued by mortgage credit institutions and/or mortgage bond issuers which are authorised and supervised by the competent authorities of a Member State of the European Community, a Contracting Party to the Agreement on the European Economic Area or a Member country of the OECD, provided that such bonds meet the criteria laid down by Article 43(2) of the Law of 30 March 1988 on collective investment undertakings, provided that they are issued by credit institutions or by public entities within the meaning of Article 12-1(4) and coupled with the guarantees referred to in Article 12-1(1)(a) to (d), and provided further that the right of precedence and the preferential rights established by this article are recognised under the laws of the foreign country concerned.»

Art. 12-9 Special supervision by the CSSF

(Law of 21 November 1997)

«In addition to carrying out general supervision of credit institutions, the CSSF shall carry out, in relation to the credit institutions to which this section applies, special supervision activities to ensure compliance with the provisions of this section. The CSSF may commission the auditor of the institution concerned or another auditor chosen by the CSSF, whose remuneration shall be payable by that institution, to carry out a complete or partial review of the collateral.»

«Section 4: Special provisions relating to electronic money institutions»¹⁴

Art. 12-10 Definition – Principal activity

(Law of 14 May 2002)

«(1) "Electronic money institution" shall mean a legal person the principal business of which is to issue means of payment in the form of electronic money. Electronic money institutions must be credit institutions within the limits provided for by this Law. They may not receive from the public any deposits or other repayable funds within the meaning of Article 2(3).

For the purposes of this Law, "electronic money" shall mean monetary value as represented by a claim on the issuer which is:

- stored on an electronic device;
- issued on receipt of funds of an amount not less in value than the monetary value issued;
- accepted as means of payment by undertakings other than the issuer.

The receipt of funds by electronic money institutions in accordance with the second indent of the preceding subparagraph shall not constitute a deposit or other repayable funds within the meaning of Article 2(3) if they are immediately exchanged for electronic money.

¹³ Law of 22 June 2000.

¹⁴ Law of 14 May 2002.

- (2) Electronic money institutions may in addition carry on only commercial activities which are limited to:
- the provision of closely related financial and non-financial services such as the administering of electronic money by the performance of operational and other ancillary functions related to its issuance, and the issuing and administering of other means of payment but excluding the granting of any form of credit; and
 - the storing of data on the electronic device on behalf of other undertakings or public institutions.
- (3) Electronic money institutions may have holdings in other undertakings only where those undertakings perform operational or other ancillary functions related to electronic money issued or distributed by the institution concerned.
- (4) No person or undertaking other than an electronic money institution or credit institution as defined in Article 1 may carry on the business of issuing electronic money.
- (5) No person or undertaking may carry on the business of issuing electronic money under the name or style of an electronic money institution or under any identical or similar name or style in another language unless it fulfils the criteria laid down by this section.»

Art. 12-11 Applicable legal provisions

(Law of 14 May 2002)

- «(1) Save in so far as may be otherwise expressly provided for, electronic money institutions shall be subject to the provisions of Section 1 of Chapter 1 of Part I¹⁵, Chapters 3 and 4 of Part I, Part II, Chapters 1, 2, 3 and 4 of Part III and Parts IV and V. They shall draw up their annual accounts and, as the case may be, their consolidated annual accounts in accordance with the Law of 17 June 1992 on the annual accounts and consolidated annual accounts of credit institutions incorporated under Luxembourg law, as amended.
- (2) Articles 8, 10-1, 10-2, 31, 47, 51(1) and 57(2) to (5) shall not apply to electronic money institutions.
- (3) Articles 30, 33, 34, 34-1, 45 and 46 shall apply only to the business of issuing electronic money.
- (4) Credit institutions as defined in Article 1 which issue means of payment in the form of electronic money are not covered by the provisions of this section apart from Article 12-12.»

Art. 12-12 Requirements in relation to the redeemability of funds received by the issuer

¹⁵ Law of 14 May 2002. **Art. 11 – Transitional provisions:**

Electronic money institutions which started to carry on their business in Luxembourg before the date of entry into force of this Law or before 27 April 2002, if that date occurs in the interim, shall be deemed to be authorised. Such institutions shall be required to provide the CSSF with all such information as the CSSF may consider relevant in order for it to establish, within six months from the date of entry into force of this Law, whether they satisfy the requirements of this Law, to determine the measures to be taken so as to ensure compliance with those requirements, or to decide whether the authorisation should be withdrawn. In the event that compliance with those requirements is not ensured within six months from the date of entry into force of this Law, the electronic money institution concerned shall cease, from that date onwards, to be covered by the provisions of Articles 30, 33, 34, 34a, 45 and 46 of the Law of 5 April 1993 on the financial sector, as amended.

(Law of 14 May 2002)

- «(1) During the period of validity of the electronic money device and for ten years after the end of that period of validity, a bearer of electronic money may ask the issuer to redeem it at par value in coins and bank notes or by a transfer to an account.
- During the period of validity, redemption shall be effected free of charges other than those strictly necessary to carry out that operation.
- (2) The contract between the issuer and the bearer shall clearly state the conditions of redemption. Such redemption may be obtained *inter alia* in the event of loss, theft, destruction or technical defect in the electronic money device, subject however to its being possible technically to determine the value of the electronic money.
- (3) The contract may stipulate a minimum threshold for redemption. The threshold may not exceed EUR 10.»

Art. 12-13 Capital base

(Law of 14 May 2002)

- «(1) The authorisation of electronic money institutions shall be subject to their showing that they have a subscribed and fully paid-up capital of not less than EUR 1 million in value. This amount may be modified by Grand-Ducal regulation.
- (2) The own funds of electronic money institutions may not fall below the amount of capital required pursuant to the preceding paragraph. In the event that an institution's own funds fall below that amount, the CSSF may, if the circumstances so warrant, fix a time-limit within which the institution must either regularise its situation or cease carrying on its business.»

Art. 12-14 Limitations of investments

(Law of 14 May 2002)

- «(1) Electronic money institutions shall be required to have investments of an amount of no less than their financial liabilities related to outstanding electronic money.
- The investments may be in the following assets only:
- (a) cash in hand and equivalent items;
 - (b) claims on Zone A central governments and central banks, or claims which carry the explicit guarantees of such governments and banks and are sufficiently liquid;
 - (c) claims on the European Communities (ECSC, EC, Euratom), or claims which carry the explicit guarantees of those Communities and are sufficiently liquid;
 - (d) claims on Luxembourg municipalities, or claims which carry the explicit guarantees of such municipalities and are sufficiently liquid;
 - (e) sight deposits held with Zone A credit institutions;
 - (f) other debt instruments which are:
 - sufficiently liquid;
 - recognised by the CSSF as qualifying items, and
 - issued by undertakings other than undertakings which have a qualifying holding, as defined in Article 57, in the electronic money institution

concerned or which must be included in those undertakings' consolidated accounts.

For the purposes of this article, "Zone A" shall mean all EC Member States and all other countries which are full members of the Organisation for Economic Cooperation and Development (OECD) and those countries which have concluded special lending arrangements with the International Monetary Fund (IMF) associated with the IMF's general arrangements to borrow (GAB). Any country which reschedules its external sovereign debt is, however, precluded from Zone A for a period of five years. Countries other than EC Member States which are Contracting Parties to the Agreement on the European Economic Area shall be assimilated to EC Member States, within the limits defined by that Agreement and the acts relating thereto.

- (2) Investments referred to in paragraph 1(e) and (f) may not exceed 20 times the own funds of the electronic money institution concerned.
- (3) For the purpose of hedging market risks arising from the issuance of electronic money and from the investments referred to in paragraph 1, electronic money institutions may use sufficiently liquid interest-rate and foreign-exchange-related derivative instruments which are traded on a recognised regulated market or foreign-exchange contracts with an original maturity of 14 calendar days or less. The use of derivative instruments is permissible only if the full elimination of market risks is intended and, to the extent possible, achieved.
- (4) The CSSF shall lay down rules relating to limitation of the concentration risk and the market risks attaching to the investments referred to in this article, as well as rules concerning the minimum amount of own funds which electronic money institutions are required to hold. It shall define the matters to be taken into consideration in those rules.
- (5) For the purpose of applying paragraph 1, assets shall be valued at the lower of cost or market value.
- (6) If the value of the assets referred to in paragraph 1 falls below the amount of financial liabilities related to outstanding electronic money, the CSSF shall impose on the electronic money institution concerned a time-limit for remedying that situation. To this end, and for a temporary period only, the CSSF may allow the institution's financial liabilities related to outstanding electronic money to be backed by assets other than those referred to in paragraph 1 up to an amount not exceeding the lower of 5% of these liabilities or the institution's total amount of own funds.»

Art. 12-15 Waiver

(Law of 14 May 2002)

- «(1) The CSSF may, on the basis of a written application, waive, in relation to electronic money institutions, the obligation to comply with some or all of the provisions applicable to them, apart from Articles «39»¹⁶ to 41, where:
- (a) the total business activities of the institution related to the issue of means of payment in electronic form generate financial liabilities related to outstanding electronic money the total amount of which does not normally exceed EUR 5 million and at no time exceeds EUR 6 million; or
 - (b) the electronic money issued by the institution is accepted as a means of payment only by any subsidiaries of the institution which perform operational or other ancillary functions related to electronic money issued or distributed by

¹⁶ Law of 12 November 2004.

the institution, any parent undertaking of the institution or any other subsidiaries of that parent undertaking; or

- (c) electronic money issued by the institution is accepted as payment only by a limited number of undertakings, which can be clearly distinguished by:
- their location in the same premises or other limited local area; or
 - their close financial or business relationship with the issuing institution, such as a common marketing or distribution scheme.

The underlying contractual arrangements must provide that the electronic storage device at the disposal of bearers for the purpose of making payments is subject to a maximum storage amount of not more than EUR 150.

- (2) Articles 30, 33, 34, «34-1»¹⁷, 45 and 46 shall not apply to electronic money institutions to which a waiver has been granted pursuant to the preceding paragraph.
- (3) An electronic money institution to which a waiver has been granted under paragraph 1 shall each year provide to the CSSF a report on their activities including the total amount of financial liabilities related to electronic money.»

«Chapter 2: Authorisation of other financial sector professionals established under Luxembourg law

Section 1: General provisions»¹⁸

Art. 13 Scope

(Law of 12 March 1998)

- «(1) (Law of 2 August 2003) «This Chapter shall apply to all legal persons established under Luxembourg law who pursue, as their business, an activity in the financial sector or one of the connected or ancillary activities referred to in sub-section 3 of section 2 of this Chapter, apart from the legal persons listed in paragraph 2 of this article. The abbreviation "FSP", as used in and by reference to this Law, denotes exclusively financial sector professionals as thus defined, to the exclusion of the financial sector professionals covered by paragraph 2 of this article.»

Such persons shall be known as investment firms where they carry on the business of providing an investment service to third parties. "Investment service" shall mean any service mentioned in Section A of Annex II which relates to any of the instruments listed in Section B of Annex II and is provided to third parties.

- (2) This chapter shall not apply to:
- credit institutions as referred to in the preceding chapter,
 - persons providing an investment service where that service is provided in an incidental manner in the course of a professional activity and that activity is regulated by legal or regulatory provisions or a code of ethics governing the profession which do not exclude the provision of that service,
 - undertakings which provide investment services exclusively for their parent undertakings, for their subsidiaries or for other subsidiaries of their parent undertakings,

¹⁷ Law of 2 August 2003.

¹⁸ Law of 12 March 1998.

- «– undertakings which provide a service under this chapter, other than an investment service, exclusively to one or more undertakings forming part of the same group as the undertaking providing the service,»¹⁹
- undertakings which provide investment services consisting exclusively in the administration of employee-participation schemes,
- undertakings which provide investment services consisting in both the services referred to in the third indent and those referred to in the «fifth»²⁰ indent of this paragraph,
- advisers and managers of Luxembourg collective investment undertakings as referred to in the Law of 30 March 1988 on collective investment undertakings or the Law of 19 July 1991 on collective investment undertakings the securities of which are not intended offered for investment purposes to the public at large,
- persons whose main business consists of dealing in commodities between themselves or with persons or entities producing or using those products for business purposes, and who provide investment services only to those counterparties and to the extent necessary for the carrying on of their main business,
- undertakings which provide investment services consisting exclusively in dealing for their own account on financial-futures or options markets or which deal for the accounts of other members of those markets or make prices for them and which are guaranteed by clearing members of the same markets and where responsibility for ensuring the performance of contracts entered into by such undertakings is assumed by clearing members of the same markets,
- «– securitisation bodies and fiduciary representatives having dealings with such bodies,»²¹
- other persons carrying on any activity access to which, and the pursuit of which, are governed by special laws.»

Art. 14 Authorisation requirement

(Law of 12 March 1998)

- «(1) No legal person established under Luxembourg law may carry on any financial sector business without holding a written authorisation from the Minister responsible for the CSSF.
- (2) No person may be authorised to carry on any financial sector business either through another person or as an intermediary for the carrying-on of such business.»

Art. 15 Authorisation procedure

(Law of 12 March 1998)

- «(1) Authorisation shall be granted upon written application, following an investigation by the CSSF to establish whether the conditions laid down by this Law are fulfilled.
- (2) The authorisation shall be granted for an unlimited period of time.
Where authorisation is granted, the FSP may immediately start to carry on business.
- (3) The authorisation of an investment firm shall specify the investment services mentioned in Section A of Annex II which it is authorised to provide. The

¹⁹ Law of 2 August 2003.

²⁰ Law of 2 August 2003.

²¹ Law of 22 March 2004.

authorisation may additionally cover one or more of the ancillary services listed in Section C of Annex II.

- (4) Before authorisation is granted, there must be consultation with the competent authorities of the other EC Member State concerned regarding the authorisation of any investment firm which is:
- a subsidiary of an investment firm or credit institution which is authorised in another Member State,
or
 - a subsidiary of the parent undertaking of an investment firm or credit institution which is authorised in another Member State,
or
 - controlled by the same persons, whether natural or legal, as control an investment firm or credit institution which is authorised in another Member State.
- (5) The application for authorisation must be accompanied by all such information as may be needed for the assessment thereof and by a programme of operations indicating the type and volume of business envisaged and the administrative and accounting structure of the institution in question.
- (6) Authorisation shall likewise be required before any change is made to the object, name or legal form of the institution in question and for the setting up or acquisition of any agency, branch or subsidiary in Luxembourg or abroad.
- (7) The decision taken on any application for authorisation must be supported by a statement of the reasons on which it is based and must be notified to the applicant within six months of receipt of the application or, if the application is incomplete, within six months of receipt of the information needed for the adoption of the decision. Such a decision shall in any event be adopted within twelve months of receipt of the application, failing which the absence of a decision shall be deemed to constitute notification of a decision refusing the application. An appeal against the decision may be lodged within one month, and may be struck out if it is not so lodged, before the *Tribunal administratif* [administrative court], which shall determine the matter as a court adjudicating on the substance.»

Art. 16 The legal form of the entity

(Law of 12 March 1998)

«Authorisation for any activity involving the management of funds of third parties may be granted only to legal persons having the form of a public entity or a commercial company.»

Art. 17 Central administration and infrastructure

(Law of 12 March 1998)

- «(1) Authorisation shall be subject to the production of evidence of the existence in Luxembourg of the central administration of the applicant therefor.
- (2) The applicant shall be required to show that it has a sound administrative and accounting organisation and adequate internal control procedures.»

Art. 18 Shareholders

(Law of 12 March 1998)

- «(1) Authorisation of legal persons shall be subject to communication to the CSSF of the identities of the shareholders or members, whether direct or indirect and whether natural or legal persons, that have qualifying holdings in the FSP to be authorised,

and of the amounts of those holdings. "Qualifying holding" shall mean a direct or indirect holding in the FSP which represents 10% or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of the FSP in which a holding subsists. The CSSF must be satisfied as to the suitability of the abovementioned shareholders or members, having regard to the need to ensure the sound and prudent management of the FSP.

- (2) Any person who proposes to acquire, directly or indirectly, a qualifying holding in an FSP must first inform the CSSF, telling it of the amount of the intended holding. Such a person must likewise inform the CSSF if he proposes to increase his qualifying holding so that the proportion of the voting rights or of the capital held by him would reach or exceed 20%, 33% or 50% or so that the FSP would become his subsidiary.

Without prejudice to paragraph 3, the CSSF shall have a maximum of three months from the date of the notification provided for in the preceding subparagraph to oppose such a plan if, having regard to the need to ensure sound and prudent management of the FSP, it is not satisfied as to the suitability of the person referred to in the preceding subparagraph. If the CSSF does not oppose the plan in question, it may fix a maximum period for its implementation. If a holding is acquired despite the opposition of the CSSF, the latter may suspend the exercise of the corresponding voting rights or demand the nullification or cancellation of votes cast.

- (3) If the acquirer of the holdings referred to in paragraph 2 is an investment firm authorised in another Member State, the parent undertaking of an investment firm authorised in another Member State or a natural or legal person controlling an investment firm authorised in another Member State, and if, as a result of that acquisition, the undertaking in which the acquirer proposes to acquire a holding would become a subsidiary or subject to the control of the acquirer, the assessment of the acquisition must be the subject of the prior consultation referred to in Article 15.

- (4) Any person who proposes to dispose, directly or indirectly, of a qualifying holding in an FSP must first inform the CSSF, telling it of the amount of the holding concerned. Such a person must likewise inform the CSSF if he proposes to reduce his qualifying holding so that the proportion of the voting rights or of the capital held by him would fall below 20%, 33% or 50% or so that the FSP would cease to be his subsidiary.

- (5) On becoming aware of them, FSPs shall inform the CSSF of any acquisitions or disposals of holdings in their capital that cause holdings to exceed or fall below one of the thresholds referred to in paragraphs 2 and 4.

They shall also, at least once a year, inform it of the names of shareholders and members possessing qualifying holdings and the amounts of such holdings as shown, for example, by the information received at the annual general meetings of shareholders and members or as a result of compliance with the regulations relating to companies listed on stock exchanges.

- (6) Authorisation shall be subject to the following conditions: the direct and indirect shareholding structure of the FSP must be transparent and organised in such a way that the authorities responsible for prudential supervision of the FSP and, as the case may be, of the group of which it forms part are clearly identified; it must be possible for such supervision to be exercised without hindrance; and supervision on a consolidated basis of the group of which the FSP forms part must be possible.»

Art. 19 Professional standing and experience

(Law of 12 March 1998)

- «(1) In order to obtain authorisation, natural persons and, in the case of legal persons, the members of the bodies performing administrative, management and supervisory functions, and the shareholders or members referred to in the preceding article, must

produce evidence of their professional standing. Such standing shall be assessed on the basis of police records and of any evidence tending to show that the persons concerned are of good repute and offering every guarantee of irreproachable conduct on the part of those persons.

- (2) The persons responsible for the management must be empowered effectively to determine the direction taken by the business and must possess adequate professional experience by virtue of their having previously carried on similar activities at a high level of responsibility and autonomy.
- (3) Where authorisation is granted to a legal person, the persons referred to in the preceding paragraph must be at least two in number.
- (4) Any change in the persons required to fulfil the legal conditions of professional standing and experience must be authorised in advance by the CSSF. To that end, the CSSF may request all such information as may be necessary regarding the persons who may be required to fulfil the legal conditions. An appeal against the decision of the CSSF may be lodged within one month, and may be struck out if it is not so lodged, before the *Tribunal administratif* [administrative court], which shall determine the matter as a court adjudicating on the substance.»

Art. 20 Capital base

(Law of 12 March 1998)

- «(1) Authorisation for any professional activity in the financial sector precluding the applicant from managing funds for third parties shall be conditional on the production of evidence showing the existence of a capital base amounting to not less than «EUR 125 000»²².
- (2) Authorisation for any professional activity in the financial sector involving the applicant in the management of funds for third parties shall be conditional on the production of evidence showing the existence of a fully paid-up authorised capital amounting to not less than «EUR 620 000»²³.
- (3) The form of the capital base and the conditions and detailed arrangements relating thereto shall be laid down by Grand-Ducal regulation, which may increase the amounts fixed in the preceding paragraphs and the amounts required under the subsequent articles of this Chapter for certain specific activities.»

Art. 21 Credit standing

(Law of 12 March 1998)

«Authorisation shall be conditional on the production of evidence showing the existence of sufficient credit standing commensurate with the programme of operations.»

Art. 22 External auditing

(Law of 12 March 1998)

- «(1) «Authorisation shall be conditional on the FSP having its annual accounts audited by one or more external auditors who can show that they possess adequate professional experience.»²⁴ Those external auditors shall be appointed by the body responsible for managing the FSP.
- (2) Any change in the external auditors must be authorised in advance by the CSSF in accordance with Article 19(4).

²² Law of 2 August 2003.

²³ Law of 2 August 2003.

²⁴ Law of 2 August 2003.

- (3) Neither the rules in respect of *commissaires aux comptes* [auditors], as laid down in the Law on commercial companies, nor Article 137 of the Law of 10 August 1915, as amended, shall apply to the FSPs covered by this article.»

Art. 23 Withdrawal of authorisation

(Law of 12 March 1998)

- «(1) The authorisation shall lapse if no use is made thereof for an uninterrupted period of more than twelve months.
- (2) The authorisation shall be withdrawn if the conditions for the grant thereof cease to be fulfilled.
- (3) The authorisation shall be withdrawn if it has been obtained by means of false declarations or by any other improper means.
- (4) The authorisation shall be withdrawn if the FSP has seriously and systematically infringed the provisions of Articles 36, 36a or 37.
- (5) An appeal against the decision to withdraw the authorisation may be lodged within one month, and may be struck out if it is not so lodged, before the *Tribunal administratif* [administrative court], which shall determine the matter as a court adjudicating on the substance.»

«Section 2: Specific provisions relating to certain categories of FSPs

Subsection 1: Investment firms»²⁵

Art. 24 Investment firms

(Law of 12 March 1998)

«(A) Commission agents

- (1) Commission agents are professionals whose business is to receive and transmit, for the account of investors, orders relating to one or more instruments referred to in Section B of Annex II, and to execute such orders for the account of third parties.
- (2) (Law of 2 August 2003) «Authorisation to carry on business as a commission agent may be granted only to legal persons and shall be conditional on the production of evidence showing the existence of a share capital amounting to not less than EUR 620 000.»
- (3) Commission agents shall be automatically authorised to act, in addition, as financial operations advisers and as brokers.

(B) Asset managers

- (1) Asset managers are professionals whose business is to manage investment portfolios on a discretionary and individual basis pursuant to a mandate given by the investors, where those portfolios comprise one or more of the instruments referred to in Section B of Annex II.
- (2) Authorisation to carry on business as an asset manager shall be conditional on the production of evidence showing the existence of a share capital amounting to not less than «EUR 620 000»²⁶.
- (3) Asset managers shall be automatically authorised to act, in addition, as financial operations advisers, brokers and commission agents.

²⁵ Law of 12 March 1998.

²⁶ Law of 2 August 2003.

(C) Professionals acting for their own account

- (1) Professionals acting for their own account are those whose business is to negotiate for their own account any of the instruments referred to in Section B of Annex II.
- (2) Authorisation to act for one's own account shall be conditional on the production of evidence showing the existence of a share capital amounting to not less than «EUR 1 500 000»²⁷.
- (3) Professionals acting for their own account shall be automatically authorised to act, in addition, as financial advisers, brokers, commission agents and asset managers.

(D) Distributors of units in UCIs

- (1) Distributors of units in UCIs are professionals whose business is to distribute units in UCIs authorised for sale in Luxembourg.
- (2) Authorisation to carry on business as a distributor of units in UCIs may be granted only to legal persons and shall be conditional on the production of evidence showing the existence of a share capital of not less than «EUR 250 000»²⁸, and of not less than «EUR 1 500 000»²⁹ if the distributor in question accepts or makes payments.
- (3) (Law of 2 August 2003) «Distributors of units in UCIs who are able to accept or make payments shall be automatically authorised to act, in addition, as transfer agents and registrars.»

(E) Underwriters

- (1) Underwriters are professionals whose business is to engage in the direct underwriting, with regard to issues, of all or part of the instruments referred to in Section B of Annex II and in the placement of such issues.
- (2) Authorisation to carry on business as an underwriter shall be conditional on the production of evidence showing the existence of a share capital of not less than «EUR 2 500 000»³⁰.

«(F) Professional depositaries of securities or other financial instruments

(Law of 12 March 1998)

- «(1) Professional depositaries of securities or other financial instruments are professionals who engage in the receipt into custody of securities or other financial instruments exclusively from financial sector professionals and who are entrusted with the safekeeping and administration thereof and with the task of facilitating their circulation.
- (2) Authorisation to carry on business as a professional depositary of securities or other financial instruments may be granted only to legal persons and shall be conditional on the production of evidence showing the existence of a share capital of not less than «EUR 2 500 000»³¹.»³²

(G) Transfer agents and registrars

(Law of 2 August 2003)

- «(1) Transfer agents and registrars are professionals engaging in the receipt and execution of orders relating to one or more of the instruments referred to in Section B of Annex II.

²⁷ Law of 2 August 2003.

²⁸ Law of 2 August 2003.

²⁹ Law of 2 August 2003.

³⁰ Law of 2 August 2003.

³¹ Law of 2 August 2003.

³² Law of 2 August 2003.

Execution of the orders referred to in the preceding paragraph shall include the keeping of the register for the issuer.

- (2) Authorisation to carry on business as a transfer agent and/or registrar may be granted only to legal persons and shall be conditional on the production of evidence showing the existence of a share capital of not less than EUR 1 500 000.
- (3) Transfer agents and registrars shall be automatically authorised to act, in addition, as financial sector administrative agents and as client communication agents.»

Art. 24-1 Participation in an investors' compensation scheme

(Law of 27 July 2000)

«Without prejudice to Article 62-15(4), authorisation shall be conditional on participation by the investment firm in an investors' compensation scheme set up in Luxembourg and recognised by the CSSF.»

«Subsection 2: Miscellaneous FSPs other than investment firms»³³

Art. 25 Financial operations advisers

(Law of 12 March 1998)

- «(1) Financial operations advisers are professionals engaging in the provision, on an individual basis, of advice concerning financial operations, particularly investments.
- (2) Financial operations advisers shall be remunerated solely by their clients. They shall not be authorised to intervene, directly or indirectly, in the implementation of the advice provided by them.
- (3) The mere provision of information is not covered by this Law.»

Art. 26 Brokers

(Law of 12 March 1998)

- «(1) Brokers are professionals engaging in the business of bringing parties together with a view to the conclusion of a specific financial operation.
- (2) Authorisation to carry on business as a broker shall be conditional on the production of evidence showing the existence of a capital base of not less than «EUR 370 000»³⁴.
- (3) Brokers shall be automatically authorised to act, in addition, as financial operations advisers.»

Art. 27 Market makers

(Law of 12 March 1998)

- «(1) Market makers are professionals engaging in the simultaneous quotation of a buying and selling price at which they undertake to accept a transaction in the volumes displayed.
- (2) Authorisation to carry on business as a market maker may be granted only to legal persons and shall be conditional on the production of evidence showing the existence of a share capital of not less than «EUR 2 500 000»³⁵.»

Art. 28 (repealed by the Law of 2 August 2003)

³³ Law of 12 March 1998.

³⁴ Law of 2 August 2003.

³⁵ Law of 2 August 2003.

«Art. 28-1»³⁶ Operators of payment or securities settlement systems

(Law of 12 January 2001)

- «(1) An operator of a payment or securities settlement system approved in Luxembourg is a person who is responsible, either alone or with others, for the proper functioning of the system and who is the contact person designated by the authorities referred to in Articles 34-4 and 34-5. The person in question may be a participant in the system.
- (2) Authorisation to act as the operator of the system may be granted only to legal persons having the form of a public-law institution, a commercial company, a civil-law partnership or an economic interest grouping. This paragraph shall not apply to the *Banque centrale du Luxembourg* or to any other entity forming part of the European System of Central Banks.»

«Art. 28-2»³⁷ Persons carrying out foreign exchange cash operations

(Law of 12 March 1998)

- «(1) Persons carrying out foreign exchange cash operations are professionals who carry out operations involving the purchase or sale of foreign currencies in cash.
- (2) Such persons shall be required to display the rates applied to the various currencies dealt in and to issue to clients, in respect of each operation, a statement indicating the name of the foreign exchange office, the amounts in the currencies dealt in, the rates applied and the date of the operation.
- (3) Authorisation to carry out foreign exchange cash operations shall not be conditional on the production of evidence showing the existence of a capital base.»

«Art. 28-3»³⁸ Debt recovery

(Law of 12 March 1998)

«The recovery of debts owed to third parties, to the extent that it is not reserved by law to certificated bailiffs, shall be authorised only with the assent of the Minister of Justice.»

Art. 28-4 Professionals carrying on lending operations

(Law of 2 August 2003)

- «(1) Professionals carrying on lending operations are professionals engaging in the business of granting loans to the public for their own account.
- (2) The following, in particular, shall be regarded as lending operations for the purposes of this article:
 - (a) financial leasing operations involving the leasing of moveable or immovable property specifically purchased with a view to such leasing by the professional, who remains the owner thereof, where the contract reserves unto the lessee the right to acquire, either during the course of or at the end of the term of the lease, ownership of all or any part of the property leased in return for payment of a sum specified in the contract;
 - (b) factoring operations, either with or without recourse, whereby the professional purchases commercial debts and proceeds to collect them for his own account.

³⁶ Law of 2 August 2003.

³⁷ Law of 2 August 2003.

³⁸ Law of 2 August 2003.

- (3) This article shall not apply to persons engaging in the granting of consumer credit, including financial leasing operations as defined in paragraph 2(a) of this article, where that activity is incidental to the pursuit of any activity covered by the Law of 28 December 1988 on the right of establishment.

This article shall not apply to persons engaging in securitisation operations.

- (4) Authorisation to act as a professional carrying on lending operations may be granted only to legal persons and shall be conditional on the production of evidence showing the existence of a share capital of not less than EUR 1 500 000.»

Art. 28-5 Professionals carrying on securities lending operations

(Law of 2 August 2003)

- «(1) Professionals carrying on securities lending operations are professionals engaging in the business of lending or borrowing securities for their own account.

- (2) Authorisation to act as a professional carrying on securities lending operations may be granted only to legal persons and shall be conditional on the production of evidence showing the existence of a share capital of not less than EUR 2 500 000.»

Art. 28-6 Professionals providing fund transfer services

(Law of 2 August 2003)

- «(1) Professionals providing fund transfer services are professionals engaging in the business of:

- receiving funds from an originator and transferring those funds on behalf of that originator to a third-party correspondent by means of an accounting entry with a view to placing those funds at the disposal of a beneficiary designated by the originator, or
- holding and remitting the funds referred to in the preceding indent to the beneficiary designated by the originator.

- (2) Authorisation to act as a professional providing fund transfer services may be granted only to legal persons and shall be conditional on the production of evidence showing the existence of a share capital of not less than EUR 1 500 000.»

Art. 28-7 Mutual savings fund administrators

(Law of 2 August 2003)

- «(1) Mutual savings fund administrators are natural or legal persons engaging in the administration of one or more mutual savings funds. No person other than a mutual savings fund administrator may carry on, even in an incidental capacity, the business of administering mutual savings funds.

For the purposes of this article, "mutual savings fund" means any undivided fund of cash deposits administered for the account of joint savers numbering not less than 20 persons with a view to securing more favourable financial terms.

- (2) The mutual savings fund administrator and the savers shall be required to conclude in writing an administration agreement clearly setting out their respective obligations and the conditions governing withdrawal from the mutual savings fund.

- (3) The assets of the mutual savings fund may be invested only in term or sight deposits and must be deposited for the account of the mutual savings fund with one or more credit institutions having their registered office in Luxembourg or in another EC Member State. Each credit institution in which assets of the mutual savings fund are deposited must, upon the entry by the fund administrator into business relations,

receive a copy of the administration agreement and must thereafter be provided with copies of any amendments made thereto.

- (4) The mutual savings fund administrator shall be answerable to the savers in accordance with the general rules governing his mandate. He shall administer the mutual savings fund in accordance with the administration agreement and solely in the interests of the savers. He may make only the investments expressly provided for in the administration agreement. In no circumstances may he use the assets of the mutual savings fund for his own purposes.
- (5) The expenses charged by the mutual savings fund administrator may not exceed those which are strictly necessary for the administration of that fund. The remuneration of the mutual savings fund administrator must be fixed in the administration agreement.
- (6) Save in the liquidation situations provided for by the administration agreement, the savers may not require the mutual savings fund to be split, divided or dissolved.
- (7) The mutual savings fund shall be in a state of liquidation:
 - upon expiry of the period, if any, fixed by the administration agreement;
 - in the event of cessation of the performance by the administrator of his duties, if he is not replaced within two months;
 - in all other cases provided for by the administration agreement.The administrator shall be required to advise the savers in writing of the fact or matter giving rise to the state of liquidation.
- (8) Authorisation to act as a mutual savings fund administrator shall be conditional on the production of evidence showing the existence of a capital base amounting to not less than EUR 125 000.»

Art. 28-8 Managers of non-coordinated UCIs

(Law of 2 August 2003)

- «(1) Managers of non-coordinated UCIs are professionals engaging in the management of undertakings for collective investment other than UCIs established in Luxembourg and other than UCITS authorised in accordance with Directive 85/611/EEC as amended by Directive 2001/107/EC.

The activities of managers of non-coordinated UCIs may include the provision of central administration services for entities the management of which is provided by the professional.
- (2) Authorisation to act as a manager of a non-coordinated UCI or UCIs may be granted only to legal persons and shall be conditional on the production of evidence showing the existence of a share capital of not less than EUR 1 500 000.»

«Subsection 3: FSPs carrying on activities related or supplementary to a financial sector activity»³⁹

«Art. 29»⁴⁰ Corporate domiciliation agents

(Law of 31 May 1999)

³⁹ Law of 2 August 2003.

⁴⁰ Law of 2 August 2003.

«(1) Corporate domiciliation agents, who are by their nature regarded as carrying on a business activity in the financial sector, are natural or legal persons who agree to the establishment at their address, by one or more companies with which the agent is not himself associated and over the conduct of the business of which he does not exercise a significant influence, of a registered office for the purposes of carrying on there any activity falling within the ambit of their corporate object, and who provide services of any kind connected with that activity.

(Law of 19 December 2002) «The definition of corporate domiciliation agents within the meaning of the preceding subparagraph shall also include companies which agree to the establishment at their address, by one or more companies in the group of which they themselves form part, of a registered office for the purposes of carrying on there any activity falling within the ambit of their corporate object, and which provide services of any kind connected with that activity.»

(2) Authorisation to act as a corporate domiciliation agent shall be conditional on the production of evidence proving the completion of a course of university education in law, economics or business management and of the existence of a capital base amounting to not less than «EUR 370 000»⁴¹.

Art. 29-1 Client communication agents

(Law of 2 August 2003)

«(1) Client communication agents are professionals engaging in the provision, on behalf of credit institutions, FSPs, UCIs or pension funds established under Luxembourg law or foreign law, of one or more of the following services:

- the production, in tangible form or in the form of electronic data, of confidential documents intended for the personal attention of clients of credit institutions or FSPs, investors in UCIs or contributors, members or beneficiaries of pension funds;
- the maintenance in archives of the documents referred to in the preceding indent;
- the communication to the persons referred to in the first indent of documents or information relating to their assets and to the services offered by the professional in question;
- the consolidation, pursuant to an express mandate, of positions held with diverse financial professionals by the persons referred to in the first indent.

(2) Authorisation to act as a client communication agent may be granted only to legal persons and shall be conditional on the production of evidence showing the existence of a share capital of not less than EUR 370 000.

(3) The condition governing the grant of authorisation laid down in Article 19(2) shall not apply to client communication agents.»

Art. 29-2 Financial sector administrative agents

(Law of 2 August 2003)

«(1) Financial sector administrative agents are professionals engaging in the provision, on behalf of credit institutions, FSPs, UCIs or pension funds established under Luxembourg law or foreign law, pursuant to a sub-contract, of administration services forming an integral part of the business activities of the originator.

(2) Authorisation to act as a financial sector administrative agent may be granted only to legal persons and shall be conditional on the production of evidence showing the existence of a share capital of not less than EUR 1 500 000.

⁴¹ Law of 2 August 2003.

- (3) Financial sector administrative agents shall be automatically authorised to act, in addition, as client communication agents.»

Art. 29-3 Operators of financial sector information technology systems and communications networks

(Law of 2 August 2003)

- «(1) Operators of financial sector information technology systems and communications networks are professionals in charge of running information technology systems and communications networks forming part of the information technology and communications apparatus pertaining to credit institutions, FSPs, UCIs or pension funds established under Luxembourg law or foreign law.

The activities of such operators shall include the electronic processing or transfer of data stored in the information technology apparatus.

Such apparatus and communications networks may either belong to the credit institution, FSP, UCI or pension fund established under Luxembourg law or foreign law or be made available to it by the operator.

- (2) Operators of financial sector information technology systems and communications networks must act exclusively on behalf of credit institutions, FSPs, UCIs or pension funds established under Luxembourg law or foreign law.
- (3) Operators of financial sector information technology systems and communications networks shall in addition be entitled to install and maintain the information technology systems and networks referred to in paragraph 1.
- (4) Authorisation to act as an operator of financial sector information technology systems and communications networks may be granted only to legal persons and shall be conditional on the production of evidence showing the existence of a share capital of not less than EUR 1 500 000.
- (5) The condition governing the grant of authorisation laid down in Article 19(2) shall not apply to operators of financial sector information technology systems and communications networks.»

Art. 29-4 Professionals providing company formation and management services

(Law of 2 August 2003)

- «(1) Professionals providing company formation and management services are natural and legal persons engaging in the provision of services relating to the formation or management of one or more companies.
- (2) Authorisation to act as a professional providing company formation and management services shall be conditional on the production of evidence showing the existence of a capital base amounting to not less than EUR 370 000.
- (3) Corporate domiciliation agents as referred to in Article 29 and the notaries and registered members of other regulated professions listed in Article 1(1) of the Law of 31 May 1999 governing the domiciliation of companies shall be automatically authorised to act, in addition, as professionals providing company formation and management services. In consequence, such persons shall not be subject to prior approval by the Minister responsible for the CSSF or to prudential supervision by the CSSF.»

«Chapter 3: Authorisation for the establishment of branches and freedom to provide services in Luxembourg by credit institutions or FSPs governed by foreign law»⁴²

⁴² Law of 12 March 1998.

Art. 30 Community credit institutions and investment firms

(Law of 12 March 1998) «Any credit institution or investment firm authorised and supervised by the competent authorities of another EC Member State may carry on business in Luxembourg, either by the establishment of a branch or by way of the provision of services, provided that its activities are covered by its authorisation. The pursuit of those activities shall not be subject to authorisation by the Luxembourg authorities.»

(Law of 29 April 1999) «For the purposes of the application of this Law, credit institutions and investment firms having their registered office in a State other than an EC Member State which is a Contracting Party to the Agreement on the European Economic Area shall be assimilated to Community credit institutions and investment firms, within the limits laid down by that Agreement and the acts relating thereto.»

Art. 31 Community financial institutions

(Law of 12 March 1998)

«(1) The provisions of the preceding article shall also apply to financial institutions of another EC Member State provided that they fulfil all of the conditions set out in the next following paragraph. For the purposes of this Law, "financial institution" shall mean an undertaking, other than a credit institution, engaging as its principal activity in the acquisition of participations or the pursuit of one or more of the activities listed in points 2 to 12 of Annex I hereto. The list contained in that Annex may be modified by Grand-Ducal regulation in line with changes in Community law.

(Law of 29 April 1999) «For the purposes of the application of this Law, financial institutions having their registered office in a State other than an EC Member State which is a Contracting Party to the Agreement on the European Economic Area shall be assimilated to Community financial institutions, within the limits laid down by that Agreement and the acts relating thereto.»

(2) The conditions referred to in the preceding paragraph are as follows:

- the financial institution must be the subsidiary of a credit institution or the jointly owned subsidiary of two or more credit institutions;
- the legal status of the financial institution must be such as to permit it to carry on the activities specified in the preceding paragraph;
- the parent undertaking or undertakings must be authorised as credit institutions in the Member State by the law of which the subsidiary is governed;
- the activities in question must actually be carried on within the territory of the same Member State;
- the parent undertaking or undertakings must hold 90% or more of the voting rights attaching to shares in the capital of the subsidiary;
- the parent undertaking or undertakings must satisfy the competent authorities regarding the prudent management of the subsidiary and must have declared, with the consent of the relevant home Member State competent authorities, that they jointly and severally guarantee the commitments entered into by the subsidiary;
- the subsidiary must be effectively included, for the activities in question in particular, in the consolidated supervision of the parent undertaking, or of each of the parent undertakings, in particular for the calculation of the solvency ratio, for the control of large exposures and for purposes of the limitation of holdings.»

Art. 32 Non-Community credit institutions and investment firms; Community or non-Community FSPs other than investment firms

(Law of 12 March 1998)

- «(1) Non-Community credit institutions and investment firms and Community or non-Community FSPs other than investment firms wishing to establish a branch in Luxembourg shall be subject to the same authorisation rules as those applying to credit institutions and other professionals governed by Luxembourg law, as respectively covered by Chapters 1 and 2 of this Part.
- (2) For the purposes of applying the preceding paragraph, compliance with the conditions for authorisation shall be assessed in relation to the foreign institution.
- (3) Authorisation for an activity involving the applicant in the management of funds of third parties shall be granted to subsidiaries of companies governed by foreign law only if those companies are endowed with own funds which are separate and distinct from the assets of their shareholders. In addition, the branch must have at its permanent disposal an endowment capital or capital base equivalent to that required of a person governed by Luxembourg law who carries on the same activity.
- (4) The requirement concerning professional standing and experience shall extend to those responsible for the management of the branch. In addition, the branch in question, instead of fulfilling the condition regarding central administration, shall be required to produce evidence of the existence of a satisfactory administrative infrastructure in Luxembourg.»

«Chapter 4: Authorisation for the establishment of branches and freedom to provide services in another EC Member State by credit institutions, investment firms or certain financial institutions governed by Luxembourg law »⁴³

Art. 33 Establishment of branches in the EC

(Law of 12 March 1998)

- «(1) Any credit institution or investment firm authorised in Luxembourg, or any financial institution governed by Luxembourg law corresponding to the definition and conditions laid down in Article 31, which wishes to establish a branch within the territory of another EC Member State shall notify the CSSF in advance of its intention so to do, providing, together with such notification, the following information:
- (a) the Member State within the territory of which it plans to establish a branch;
 - (b) a programme of operations setting out inter alia the types of business envisaged and the organisational structure of the branch;
 - (c) the address in the host Member State from which documents may be obtained;
 - (d) the names of those responsible for the management of the branch.
- (2) Unless the CSSF has reason to doubt the adequacy of the administrative structure or the financial situation of the applicant professional, taking into account the activities envisaged, it shall, within three months of receiving all the information referred to in preceding paragraph, communicate that information to the competent authority of the host Member State and shall inform the applicant accordingly. The CSSF shall also communicate, where appropriate, the amount of the applicant's own funds and solvency ratio, together with details of any deposit-guarantee scheme

⁴³

Law of 12 March 1998.

intended to protect the branch's depositors, and shall inform the applicant of such communication.

- (3) Where the CSSF refuses to communicate the information referred to in paragraph 1 to the competent authority of the host Member State, it shall give reasons for its refusal to the applicant within three months of receiving all the information. An appeal against that refusal or any failure to reply may be lodged within one month, and may be struck out if it is not so lodged, before the *Tribunal administratif* [administrative court], which shall determine the matter as a court adjudicating on the substance.»

Art. 34 Provision of services in the EC

(Law of 12 March 1998)

«Any credit institution or investment firm authorised in Luxembourg, or any financial institution governed by Luxembourg law corresponding to the definition and conditions laid down in Article 31, which wishes to carry on business within the territory of another EC Member State for the first time in the form of the provision of services shall notify the CSSF of the activities which it intends to carry on there.»

«Art. 34-1 Establishment of branches or provision of services in a State other than an EC Member State which is a Contracting Party to the EEA Agreement»⁴⁴

(Law of 12 April 1999)

«The provisions of Articles 33 and 34 of this Law shall also apply, within the limits laid down by the Agreement on the European Economic Area and the acts relating thereto, where a credit institution or investment firm authorised in Luxembourg, or a financial institution governed by Luxembourg law corresponding to the definition and conditions laid down in Article 34, wishes to establish a branch or to carry on business for the first time within the territory of a State other than an EC Member State which is a Contracting Party to that Agreement.»

⁴⁴

Law of 12 January 2001.

«Chapter 5: Authorisation of payment and securities settlement systems»⁴⁵

Art. 34-2 Definitions

(Law of 12 January 2001)

«For the purposes of this Chapter and of Articles 37-1, 41, 42, 47-1, 52 and «61-24 to 61-26»⁴⁶,

- (a) "system" shall mean a formal arrangement:
- governed by Luxembourg law, authorised as a payment or securities settlement system and notified as a system to the European Commission, or
 - governed by the law of another Member State, designated as a system and notified to the European Commission by a Member State;
- (b) "institution" shall mean:
- a credit institution authorised in a Member State, including the institutions listed in Article 2(2) of Directive 77/780/EEC, or
 - an investment firm authorised in a Member State, excluding the institutions listed in Article 2(2)(a) to (k) of Directive 93/22/EEC, or
 - a public authority or publicly guaranteed undertaking, or
 - any undertaking whose head office is outside the European Community and whose functions correspond to those of the Community credit institutions or investment firms referred to in the preceding indents,
- which participates in a system and which is responsible for discharging the financial obligations arising from transfer orders within that system.
- Undertakings which:
- participate in a system which is supervised in accordance with the legislation of a Member State and which only execute transfer orders as defined in the second indent of (j), as well as payments resulting from such orders,
 - and which have responsibility for discharging the financial obligations arising from transfer orders within that system,
- shall be regarded as institutions, provided that at least three participants in that system fall within the categories referred to in the first subparagraph and that such assimilation is warranted on grounds of systemic risk;
- (c) "central counterparty" shall mean an entity which is interposed between the institutions in a system and which acts as the exclusive counterparty of those institutions with regard to their transfer orders;
- (d) "settlement agent" shall mean an entity providing to institutions, or to a central counterparty participating in systems, settlement accounts through which transfer orders within such systems are settled and, as the case may be, extending credit to those institutions or central counterparties for settlement purposes;

⁴⁵ Law of 12 January 2001.

⁴⁶ Law of 19 March 2004.

(e) "clearing house" shall mean an entity responsible for the calculation of the net positions of institutions, a possible central counterparty or a possible settlement agent;

(f) "participant" shall mean an institution, a central counterparty, a settlement agent or a clearing house.

According to the rules of the system, the same participant may act as a central counterparty, a settlement agent or a clearing house or carry out part or all of those tasks.

An indirect participant shall be regarded as a participant if it is known to the system and such assimilation is warranted on the grounds of systemic risk;

(g) "indirect participant" shall mean a credit institution as defined in (b) having a contractual relationship with an institution participating in a system executing transfer orders as defined in the first indent of (j) which enables the abovementioned credit institution to pass transfer orders through the system;

(h) "system operator" shall mean the entity having responsibility, either alone or with others, for the proper functioning of the system and which is the contact entity designated by the authorities. It may be a participant in the system.

(i) "securities" shall mean all instruments referred to in section B of Annex II hereto;

(j) "transfer order" shall mean:

– any instruction by a participant to place at the disposal of a recipient an amount of money by means of a book entry on the accounts of a credit institution, a central bank or a settlement agent, or any instruction which results in the assumption or discharge of a payment obligation as defined by the rules of the system, or

– an instruction by a participant to transfer the title to, or interest in, a security or securities by means of a book entry on a register, or otherwise;

(k) "insolvency proceedings" shall mean any collective measure provided for by the law of a Member State or third country, either to wind up the participant or to reorganise it, where such measure involves the suspension of, or the imposition of limitations on, transfers or payments;

(l) "moment of opening of insolvency proceedings" shall mean the moment when the competent judicial or administrative authority of a Member State or third country handed down its decision;

(m) "netting" shall mean the conversion into one net claim or one net obligation of claims and obligations resulting from transfer orders which a participant or participants either issue to, or receive from, one or more other participants with the result that only a net claim can be demanded or a net obligation be owed;

(n) "settlement account" shall mean an account at a central bank, a settlement agent or a central counterparty used to hold funds and securities and to settle transactions between participants in a system;

(o) "Member State" shall mean a Member State of the European Community or any other State which is a Contracting Party to the Agreement on the European Economic Area, within the limits laid down by that Agreement and the acts relating thereto.»

Art. 34-3 Scope

(Law of 12 January 2001)

«This Chapter shall apply to any payment or securities settlement system authorised in Luxembourg. However, it shall not apply to payment and securities settlement systems governed by Luxembourg law in which the *Banque centrale du Luxembourg* or any other entity forming part of the European System of Central Banks is a participant within the meaning of Article 34-2(f); such systems shall be regarded as automatically authorised under Luxembourg law from the date on which they are notified to the European Commission by the *Banque centrale du Luxembourg*.»

Art. 34-4 Application for authorisation

(Law of 12 January 2001)

- «(1) A formal arrangement
- agreed between three or more participants, without counting a settlement agent, central counterparty, clearing house or indirect participant, with common rules and standardised arrangements for the execution of transfer orders between the participants,
 - which the participants have chosen to be governed by Luxembourg law,
 - at least one of the participants in which is a legal person having its registered office in Luxembourg, and
 - which designates an operator of the system,
- may be authorised as a payment or securities settlement system.

Subject to compliance with the conditions laid down in the first subparagraph, a formal arrangement which involves the execution of transfer orders as defined in the second indent of Article 34-2(j), and, to a limited extent, the execution of orders relating to other financial instruments, may be authorised provided that such authorisation is warranted on grounds of systemic risk.

Authorisation may also be granted for a formal arrangement between two participants, without counting a settlement agent, central counterparty, clearing house or indirect participant, which the participants have chosen to be governed by Luxembourg law, at least one of the participants in which is a legal person having its registered office in Luxembourg, and which designates an operator of the system, provided that such authorisation is warranted on grounds of systemic risk.

- (2) The Minister responsible for the CSSF shall be the authority competent to grant authorisation for such systems. The CSSF shall notify the European Commission of the systems authorised by the Minister.»

Art. 34-5 Authorisation procedure

(Law of 12 January 2001)

- «(1) Authorisation shall be granted upon written application by the system operator, following an investigation by the CSSF to establish whether the conditions laid down by this Law are fulfilled and after the opinion of the *Banque centrale du Luxembourg* has been sought concerning the systemic risk aspects.
- (2) The authorisation shall be granted for an unlimited period of time.
- (3) The application for authorisation must be accompanied by all such information as may be needed for the assessment thereof.
- (4) Authorisation shall be required before any change is made to the formal arrangement on which the system authorised is based.
- (5) The decision taken on any application for authorisation must be supported by a statement of the reasons on which it is based and must be notified to the applicant

within six months of receipt of the application or, if the application is incomplete, within six months of receipt of the information needed for the adoption of the decision. Such a decision shall in any event be adopted within twelve months of receipt of the application, failing which the absence of a decision shall be deemed to constitute notification of a decision refusing the application. An appeal against the decision may be lodged within one month, and may be struck out if it is not so lodged, before the *Tribunal administratif* [administrative court], which shall determine the matter as a court adjudicating on the substance.»

Art. 34-6 Conditions for authorisation

(Law of 12 January 2001)

- «(1) Systems must be organised in such a way as to ensure the orderly settlement of transfer orders.
- (2) Authorisation of a system shall be conditional on the system operator having its registered office in Luxembourg or in another Member State.
- (3) Authorisation of a system shall be conditional on the system operator being authorised as a credit institution in Luxembourg or in another Member State, as an FSP in Luxembourg or as an investment firm in another Member State, or as a system operator in another Member State which is subject to supervision equivalent to that exercised by the CSSF with regard to operators authorised in Luxembourg.
- (4) The rules of the system must be detailed and satisfactory having regard to the nature and volume of business transacted and the number of participants envisaged. Those rules must *inter alia*:
- lay down the conditions for the admission of participants to the system and their exclusion therefrom,
 - specify the rights and obligations of the participants resulting from their participation in the system,
 - specify the point in time at which a transfer order is introduced into the system,
 - fix the point in time after which a transfer order may no longer be revoked by a participant in the system or by a third party,
 - specify the mode of settlement of transfer orders,
 - lay down the settlement procedures applicable in ordinary situations and in crisis situations,
 - establish risk management procedures,
 - indicate which courts are to have jurisdiction in the event of disputes,
 - designate the person or persons responsible for notifying the CSSF of the participants in the system and of any change in those participants,
 - « ensure compliance with the professional obligations laid down in Article 39.»⁴⁷

Art. 34-7 Withdrawal of authorisation

(Law of 12 January 2001)

- «(1) The Minister responsible for the CSSF shall withdraw the authorisation if the conditions for the grant thereof cease to be fulfilled. The CSSF shall forthwith inform the European Commission of the withdrawal of the authorisation.

⁴⁷ Law of 12 November 2004.

- (2) An appeal against the decision to withdraw the authorisation may be lodged within one month, and may be struck out if it is not so lodged, before the *Tribunal administratif* [administrative court], which shall determine the matter as a court adjudicating on the substance.»

«PART II: Professional obligations, prudential rules and rules of conduct in the financial sector»⁴⁸

Art. 35 Scope

- (1) (Law of 12 January 2001) «Apart from Article «36-1»⁴⁹ and Article 37-1, this Part shall apply to all credit institutions and FSPs permitted to carry on their business pursuant to Chapters 1, 2 or 3 of this Law.»
- (2) (Law of 12 November 2004) «Credit institutions and FSPs shall be required to ensure that the professional obligations laid down in this Part are also complied with by their branches and subsidiaries, in Luxembourg and abroad in which they have a holding legally enabling them to impose their will as regards the manner in which business is conducted. »
- (3) (Law of 12 January 2001) «Article 37-1 shall apply to all institutions within the meaning of Article 34-2(b) that are established in Luxembourg.»

Art. 36 Prudential rules of the financial sector

(Law of 12 March 1998)

«Each credit institution and FSP shall be bound by prudential rules:

- to have sound administrative and accounting procedures, control and safeguard arrangements for electronic data processing, and adequate internal control mechanisms including, in particular, rules for personal transactions by its employees;
- to make adequate arrangements for instruments belonging to investors with a view to safeguarding the latter's ownership rights, especially in the event of the insolvency of the credit institution or FSP, and to preventing the use by the credit institution or FSP of investors' instruments for its own account except with the investors' express consent;
- to make adequate arrangements for funds belonging to investors with a view to safeguarding the latter's rights and, except in the case of credit institutions, preventing the use of investors' funds for its own account;
- to arrange for records to be kept, and retained for periods laid down in the Commercial Code, of transactions executed which shall at least be sufficient to enable the CSSF to monitor compliance with the prudential rules which it is responsible for applying;
- to be structured and organised in such a way as to minimise the risk of clients' interests being prejudiced by conflicts of interest between the credit institution or FSP and its clients or between one of its clients and another.

Nevertheless, where a branch is set up the organisational arrangements may not conflict with the rules of conduct laid down by the host Member State to cover conflicts of interest.»

⁴⁸ Law of 12 March 1998.

⁴⁹ Law of 2 August 2003.

«Art. 36-1»⁵⁰ Prudential rules specific to certain FSPs

(Law of 12 March 1998)

- «(1) Contracts concluded between an FSP managing third party funds and its own clients must specify all the accounts and other assets of the clients to which they relate. Under no circumstances may the FSP dispose in its own favour of clients' assets.
- (2) Assets of third parties must be deposited with an authorised depositary and must be subject to official supervision.
- (3) The assets in question shall not form part of the collective assets of the FSP in the event of its liquidation. They may not be seized by the latter's personal creditors. The FSP must enter them in accounts separate from those relating to its own assets.»

Art. 37 Rules of conduct of the financial sector

(Law of 12 March 1998)

- «(1) Each credit institution and FSP shall be bound by rules of conduct:
- to act honestly and fairly in conducting its business activities in the best interests of its clients and the integrity of the market,
 - to act with due skill, care and diligence, in the best interests of its clients and the integrity of the market,
 - to have and employ effectively the resources and procedures that are necessary for the proper performance of its business activities,
 - to seek from its clients information regarding their financial situations, investment experience and objectives as regards the services requested,
 - to make adequate disclosure of relevant material information in its dealings with its clients,
 - to try to avoid conflicts of interests and, when they cannot be avoided, to ensure that its clients are fairly treated, and
 - to comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of its clients and the integrity of the market.
- (2) Where a credit institution or FSP executes an order, for the purposes of applying the rules referred to in paragraph 1, the professional nature of the investor shall be assessed with respect to the investor from whom the order originates, regardless of whether the order was placed directly by the investor himself or indirectly through a credit institution or investment firm providing the service referred to in Section A(1)(a) of Annex II.»

Art. 37a (repealed by the Law of 27 July 2000)

Art. 37-1 Right to information with regard to Luxembourg institutions participating in payment or securities settlement systems

(Law of 12 January 2001)

«Anyone with a legitimate interest may require an institution established in Luxembourg to inform him of the payment and securities settlement systems in which it participates and to provide information about the main rules governing the functioning of those systems.»

Art. 38 (repealed by the Law of 12 November 2004)

⁵⁰ Law of 2 August 2003.

Art. 39 Professional obligations of the financial sector as regards combating money laundering and the financing of terrorism

(Law of 12 November 2004)

«Credit institutions and FSPs shall be bound by the professional obligations laid down by the Law of 12 November 2004 on combating money laundering and the financing of terrorism, as follows:

- the obligation to know their customers, in accordance with Article 3 of that Law,
- the obligation to have an adequate internal organisation, in accordance with Article 4 of that Law, and
- the obligation to cooperate with the authorities, in accordance with Article 5 of that Law.

In addition, credit institutions and FSPs shall be required to include in remittances and transfers of funds, and in any messages relating thereto, the name or account number of the originator.»

Art. 40 Obligation to cooperate with the authorities

Credit institutions and other financial sector professionals shall be required to provide the fullest possible response to, and cooperation with, any lawful demand which may be made to them by the authorities responsible for applying the law in the exercise by those authorities of their powers.

(...) ⁵¹

Art. 41 Obligation of professional secrecy

- (1) (Law of 12 January 2001) «All administrators, members of managing and supervisory bodies, directors, employees and other persons in the service of credit institutions, other financial sector professionals, settlement entities, central counterparties, clearing houses and foreign operators of systems authorised in Luxembourg, as referred to in Part I of this Law, shall be required to keep secret any information confided to them in the context of their professional activities. Disclosure of such information shall be punishable by the penalties laid down in Article 458 of the Penal Code.»
- (2) The obligation to maintain secrecy shall cease to exist where disclosure of information is authorised or required by or pursuant to any legislative provision, even where the provision in question predates this Law.
- (3) The obligation to maintain secrecy shall not exist in relation to the national and foreign authorities responsible for prudential supervision of the financial sector where those authorities are acting in the exercise of their legal powers for the purposes of such supervision and the information communicated is covered by the rules of professional secrecy governing the supervisory authority by which it is received. The transmission of the requisite information to a foreign authority with a view to prudential supervision shall be effected through the intermediary of the parent undertaking, shareholder or partner involved in the supervision in question.
- (4) The obligation to maintain secrecy shall not exist in relation to shareholders or partners whose status or capacity is a precondition for authorisation of the institution in question, in so far as the information communicated to such shareholders or partners is necessary for the proper and prudent management of the institution and

⁵¹ Repealed by the Law of 12 November 2004.

does not fall directly within the ambit of the obligations owed by that institution to any customer other than a financial sector professional.

«By way of derogation from the preceding subparagraph, credit institutions and FSPs forming part of a financial group shall guarantee to the group's internal control bodies, where necessary, access to information concerning specific business relations, to the extent that this is needed for the global management of legal risks and risks to their reputation in connection with money laundering or the financing of terrorism within the meaning of the laws of Luxembourg.»⁵²

(5) (Law of 2 August 2003) «The obligation to maintain secrecy shall not exist in relation to the professionals referred to in Articles 29-1, 29-2 and 29-3, in so far as the information communicated to those professionals is provided in pursuance of a contract for services falling within the ambit of one of the activities regulated by the abovementioned legal provisions, and provided that the information concerned is indispensable for the performance of the contract for services in question.»

«(6)»⁵³ Subject to the rules applicable in penal matters, once any information of the kind referred to in paragraph 1 has been disclosed, it may not be used for any purposes other than those for which its disclosure is permitted by law.

«(7)»⁵⁴ No person bound by the obligation of secrecy referred to in paragraph 1 who lawfully discloses any information covered by that obligation shall, by reason of that disclosure alone, incur any criminal responsibility or civil liability.

«PART IIa: Obligations concerning cross-border credit transfers»⁵⁵

«Chapter 1: Definitions and scope»⁵⁶

Art. 41-1 Definitions

(Law of 29 April 1999)

«For the purposes of this Part, and without prejudice to the scope thereof as more precisely defined in Article 41-2,

- "credit institution" means any private or public undertaking the activities of which correspond to the definition set out in Article 1 of this Law;
- "institution" means a credit institution or any other natural or legal person that by way of business executes cross-border credit transfers; for the purposes of Articles 41-6 to 41-8, branches of one credit institution situated in different Member States which participate in the execution of a cross-border credit transfer shall be regarded as separate institutions;
- "intermediary institution" means an institution which is neither that of the originator nor that of the beneficiary and which participates in the execution of a cross-border credit transfer;
- "financial institution" means a credit institution, investment firm, life assurance undertaking, non-life insurance undertaking, undertaking for collective investment in transferable securities and any other undertaking or institution the

⁵² Law of 12 November 2004.

⁵³ Law of 2 August 2003.

⁵⁴ Law of 2 August 2003.

⁵⁵ Law of 29 April 1999.

⁵⁶ Law of 29 April 1999.

activities of which are similar to those of the undertakings referred to above or the principal activity of which is to acquire holdings of financial assets or to transform financial claims;

- "cross-border credit transfer" means a transaction carried out on the initiative of an originator via an institution or its branch in one Member State, with a view to making available an amount of money to a beneficiary at an institution or its branch in another Member State; the originator and the beneficiary may be one and the same person;
- "cross-border credit transfer order" means an unconditional instruction in any form, given directly by an originator to an institution to execute a cross-border credit transfer;
- "originator" means a natural or legal person that orders the making of a cross-border credit transfer to a beneficiary;
- "beneficiary" means the final recipient of a cross-border credit transfer for whom the corresponding funds are made available in an account;
- "customer" means the originator or the beneficiary, as the context may require;
- "reference interest rate" means an interest rate representing compensation and established in accordance with the rules laid down by the Member State in which the establishment which must pay the compensation to the customer is situated. Where the compensation is payable by an institution situated in Luxembourg, the applicable rate of interest is the legal rate specified in the Law of 22 February 1984;

- "date of acceptance" means the date of fulfilment of all the conditions required by the institution as to the execution of the cross-border credit transfer order and relating to the availability of adequate financial cover and the information required to execute that order;
- "Member State" means a Member State of the European Community or any other State which is a Contracting Party to the Agreement on the European Economic Area, within the limits laid down by that Agreement and the acts relating thereto.»

Art. 41-2 Scope

(Law of 29 April 1999)

«This Part shall apply to institutions that by way of business intervene in cross-border credit transfers:

- in the currencies of the Member States and in euros,
- up to the equivalent of EUR 50 000,
- ordered by persons other than institutions or financial institutions, and
- executed by institutions.»

«Chapter 2: Transparency of conditions for cross-border credit transfers»⁵⁷

⁵⁷

Law of 29 April 1999.

Art. 41-3 Prior information on conditions for cross-border credit transfers

(Law of 29 April 1999)

«The institutions shall make available to their actual and prospective customers in writing, including where appropriate by electronic means, and in a readily comprehensible form, information on conditions for cross-border credit transfers. This information shall include at least:

- an indication of the time needed, when a cross-border credit transfer order given to the institution is executed, for the funds to be credited to the account of the beneficiary's institution; the start of that period must be clearly indicated,
- an indication of the time needed, upon receipt of a cross-border credit transfer, for the funds credited to the account of the institution to be credited to the beneficiary's account,
- the manner of calculation of any commission fees and charges payable by the customer to the institution, including where appropriate the rates,
- the value date, if any, applied by the institution,
- details of the complaint and redress procedures available to the customer and arrangements for access to them,
- an indication of the reference exchange rates used.»

Art. 41-4 Information subsequent to a cross-border credit transfer

(Law of 29 April 1999)

«The institutions shall supply their customers, unless the latter expressly forgo this, subsequent to the execution or receipt of a cross-border credit transfer, with clear information in writing, including where appropriate by electronic means, and in a readily comprehensible form. This information must include at least:

- a reference enabling the customer to identify the cross-border credit transfer,
- the original amount of the cross-border credit transfer,
- the amount of all charges and commission fees payable by the customer,
- the value date, if any, applied by the institution.

Where the originator has specified that the charges for the cross-border credit transfer are to be wholly or partly borne by the beneficiary, the latter shall be informed thereof by his own institution.

Where any amount has been converted, the institution which converted it shall inform its customer of the exchange rate used.»

«Chapter 3: Obligations of institutions in respect of cross-border credit transfers»⁵⁸

Art. 41-5 Specific undertakings by the institution

(Law of 29 April 1999)

«An institution which agrees to execute a cross-border credit transfer with stated specifications for a customer must at the request of that customer give an

⁵⁸ Law of 29 April 1999.

undertaking concerning the time needed for execution of the transfer and the commission fees and charges payable, apart from those relating to the exchange rate used.»

Art. 41-6 Obligations regarding time-limits

(Law of 29 April 1999)

«(1) The originator's institution shall execute the cross-border credit transfer in question within the time limit agreed with the originator.

Where the agreed time limit is not complied with or, in the absence of any such time limit, where, at the end of the fifth banking business day following the date of acceptance of the cross-border credit transfer order, the funds have not been credited to the account of the beneficiary's institution, the originator's institution shall compensate the originator.

Compensation shall comprise the payment of interest calculated by applying the reference interest rate to the amount of the cross-border credit transfer for the period from:

- the end of the agreed time limit or, in the absence of any such time limit, the end of the fifth banking business day following the date of acceptance of the cross-border credit transfer order, to
- the date on which the funds are credited to the account of the beneficiary's institution.

Similarly, where non-execution of the cross-border credit transfer within the time limit agreed or, in the absence of any such time limit, before the end of the fifth banking business day following the date of acceptance of the cross-border credit transfer is attributable to an intermediary institution, that institution shall be required to compensate the originator's institution.

(2) The beneficiary's institution shall make the funds resulting from the cross-border credit transfer available to the beneficiary within the time limit agreed with the beneficiary.

Where the agreed time limit is not complied with or, in the absence of any such time limit, where, at the end of the banking business day following the day on which the funds were credited to the account of the beneficiary's institution, the funds have not been credited to the beneficiary's account, the beneficiary's institution shall compensate the beneficiary.

Compensation shall comprise the payment of interest calculated by applying the reference interest rate to the amount of the cross-border credit transfer for the period from:

- the end of the agreed time limit or, in the absence of any such time limit, the end of the banking business day following the day on which the funds were credited to the account of the beneficiary's institution, to
- the date on which the funds are credited to the beneficiary's account.

(3) No compensation shall be payable pursuant to paragraphs 1 and 2 where the originator's institution or, as the case may be, the beneficiary's institution can establish that the delay is attributable to the originator or, as the case may be, the beneficiary.

(4) Paragraphs 1, 2 and 3 shall be entirely without prejudice to the other rights of customers and institutions that have participated in the execution of a cross-border credit transfer order.»

Art. 41-7 Obligation to execute the cross-border transfer in accordance with instructions

(Law of 29 April 1999)

- «(1) Unless the originator has specified that the costs of the cross-border credit transfer are to be borne wholly or partly by the beneficiary, the originator's institution, any intermediary institution and the beneficiary's institution, after the date of acceptance of the cross-border credit transfer order, shall each be obliged to execute that credit transfer for the full amount thereof.

The first subparagraph shall be without prejudice to the possibility of the beneficiary's institution levying a charge on the beneficiary relating to the administration of his account, in accordance with the relevant rules and customs. However, such a charge may not be used by the institution to avoid the obligations imposed by the said subparagraph.

- (2) Without prejudice to any other claim which may be made, where the originator's institution or an intermediary institution has made a deduction from the amount of the cross-border credit transfer in breach of paragraph 1, the originator's institution shall, at the originator's request, credit, free of all deductions and at its own cost, the amount deducted to the beneficiary unless the originator requests that the amount be credited to him.

Any intermediary institution which has made a deduction in breach of paragraph 1 shall credit the amount deducted, free of all deductions and at its own cost, to the originator's institution or, if the originator's institution so requests, to the beneficiary of the cross-border credit transfer.

- (3) Where a breach of the duty to execute the cross-border credit transfer order in accordance with the originator's instructions has been caused by the beneficiary's institution, and without prejudice to any other claim which may be made, the beneficiary's institution shall be liable to credit to the beneficiary, at its own cost, any sum wrongly deducted.»

Art. 41-8 Obligation upon institutions to refund in the event of non-execution of transfers

(Law of 29 April 1999)

- «(1) If, after a cross-border credit transfer order has been accepted by the originator's institution, the relevant amounts are not credited to the account of the beneficiary's institution, and without prejudice to any other claim which may be made, the originator's institution shall credit the originator, up to the equivalent of EUR 12 500, with the amount of the cross-border credit transfer plus:

- interest calculated by applying the reference interest rate to the amount of the cross-border credit transfer for the period between the date of the cross-border credit transfer order and the date of the credit, and
- the charges relating to the cross-border credit transfer paid by the originator.

These amounts shall be made available to the originator within fourteen banking business days following the date of his request, unless the funds corresponding to the cross-border credit transfer have in the meantime been credited to the account of the beneficiary's institution.

Such a request may not be made before expiry of the time limit agreed between the originator's institution and the originator for the execution of the cross-border credit transfer order or, in the absence of any such time limit, before expiry of the time limit laid down in the second subparagraph of Article 41-6(1).

Similarly, each intermediary institution which has accepted the cross-border credit transfer order owes an obligation to refund at its own cost the amount of the credit transfer, including the related costs and interest, to the institution which instructed it to carry out the order. If the cross-border credit transfer was not completed because of errors or omissions in the instructions given by that institution, the intermediary institution shall endeavour as far as possible to refund the amount of the transfer.

- (2) By way of derogation from paragraph 1, if the cross-border credit transfer was not completed because of its non-execution by an intermediary institution chosen by the beneficiary's institution, the latter institution shall be obliged to make the funds available to the beneficiary up to an amount equivalent to EUR 12 500.
- (3) By way of derogation from paragraph 1, if the cross-border credit transfer was not completed because of an error or omission in the instructions given by the originator to his institution or because of non-execution of the cross-border credit transfer by an intermediary institution expressly chosen by the originator, the originator's institution and the other institutions involved shall endeavour as far as possible to refund the amount of the transfer.

Where the amount has been recovered by the originator's institution, it shall be obliged to credit it to the originator. The institutions, including the originator's institution, are not obliged in this case to refund the charges and interest accruing, and can deduct the costs arising from the recovery if specified.»

Art. 41-9 Force majeure

(Law of 29 April 1999)

« «Without prejudice to Articles 39 and 40»⁵⁹, institutions participating in the execution of a cross-border credit transfer order shall be released from the obligations laid down in this Part where they can adduce reasons of force majeure, namely abnormal and unforeseeable circumstances beyond the control of the person pleading force majeure, the consequences of which would have been unavoidable despite all efforts to the contrary, which are relevant to this Part. The insolvency of the institution shall not constitute a situation of force majeure.»

Art. 41-10 Settlement of disputes

(Law of 29 April 1999)

«Article 58 of this Law shall apply to the settlement of disputes between an originator and his institution or between a beneficiary and his institution.»

PART III: Prudential supervision of the financial sector

Chapter 1: The competent authority responsible for supervision and its task

Art. 42 The competent authority

«The CSSF shall be the competent authority responsible for the supervision of credit institutions and other financial sector professionals.»⁶⁰ «It shall also be the

⁵⁹ Law of 2 August 2003.

⁶⁰ Law of 2 August 2003.

competent authority responsible for the prudential supervision of payment and securities settlement systems authorised by the Minister.»⁶¹

(...)⁶²

Art. 43 Purpose of supervision

- (1) The CSSF shall exercise its powers of prudential supervision exclusively in the public interest. Where the public interest so warrants, it may publish its decisions.
- (2) The CSSF shall monitor the application of the laws and regulations relating to the financial sector by the persons subject to its supervision.
- (3) The CSSF shall ensure the implementation of international agreements and of European Community law applicable to the area falling within the scope of its powers. To that end, it shall also be required to carry out all consultations and to effect all communications prescribed by international agreements or by Community law within its field of competence.

Art. 44 Obligation of professional secrecy of the CSSF

(Law of 29 April 1999)

«(1) All persons who work or who have worked for the CSSF, as well as auditors and experts instructed thereby, shall be bound by the obligation of professional secrecy referred to in Article 16 of the Law of 23 December 1998 establishing a Commission for the Supervision of the Financial Sector. Such secrecy implies that no confidential information which they may receive in the course of their duties may be divulged to any person or authority whatsoever, save in summary or aggregate form such that financial sector professionals cannot be individually identified, without prejudice to cases covered by criminal law.

(2) Paragraph 1 shall not prevent the CSSF from exchanging with the supervisory authorities of other Member States of the Community information necessary for the supervision of the financial sector.

Supervisory authorities of States other than EC Member States which are Contracting Parties to the Agreement on the European Economic Area shall be assimilated to Community supervisory authorities, within the limits laid down by that Agreement and the acts relating thereto.

«(3) (Law of 1 August 2001) Paragraph 1 shall not prevent the CSSF, in the performance of its task of supervising credit institutions and investment firms, from exchanging information with:

- third country authorities entrusted with the public task of prudential supervision of credit institutions,
- third country authorities entrusted with the public task of prudential supervision of investment firms,
- the authorities, bodies and persons referred to in paragraph 5, other than central credit registers, which are established in third countries,
- the third country authorities referred to in paragraph 6.

The communication by the CSSF of information as authorised by this paragraph shall be subject to the following conditions:

- the information communicated must be necessary for the performance of the duties of the authorities, bodies and persons receiving it,

⁶¹ Law of 12 January 2001.

⁶² Repealed by the Law of 2 August 2003.

- the information communicated must be covered by the professional secrecy incumbent on the authorities, bodies and persons receiving it, and the professional secrecy imposed on those authorities, bodies and persons must provide safeguards at least equivalent to those inherent in the corresponding obligation incumbent on the CSSF,
- the authorities, bodies and persons receiving information from the CSSF must use that information only for the purposes for which it has been communicated to them, and must be in a position to ensure that no other use is made thereof;
- the authorities, bodies and persons receiving information from the CSSF must afford the same right to information to the CSSF,
- information received by the CSSF from competent Community authorities responsible for the prudential supervision of credit institutions or of investment firms may be disclosed by it only with the express consent of those authorities and, as the case may be, solely for the purposes for which those authorities have given their consent.

"Third country", within the meaning of this paragraph, means a State other than one of the States referred to in paragraph 2.»

(4) Where the CSSF receives confidential information pursuant to paragraphs 2 and 3, it may use it in the performance of its duties only:

- in order to check that the conditions for taking up the business of financial sector professionals are met and to facilitate the monitoring, on a non-consolidated or consolidated basis, of compliance with the conditions for the pursuit of that business, especially as regards supervision of liquidity, solvency, large exposures, capital adequacy in relation to market risks, administrative and accounting procedures and internal control mechanisms; or
- to impose penalties; or
- in administrative appeals against decisions by the CSSF; or
- in court proceedings brought against decisions refusing to grant authorisation or withdrawing such authorisation.

(5) Paragraphs 1 and 4 shall not preclude:

(a) exchanges of information, within the Community, between the CSSF and:

- authorities responsible for the supervision of other financial institutions and insurance companies and the authorities responsible for the supervision of financial markets,
- bodies involved in the liquidation and bankruptcy of financial sector professionals and other analogous proceedings,
- persons responsible for carrying out statutory audits of the accounts of financial sector professionals and other financial institutions,

in the performance of their functions;

(b) the transmission within the Community by the CSSF to bodies responsible for the management of deposit-guarantee schemes, investor compensation schemes or central credit registers, of information necessary for the performance of their functions.

The communication of information by the CSSF as authorised by this paragraph shall be conditional on the information in question being covered by the professional

secrecy incumbent on the authorities, bodies and persons receiving it, and shall be authorised only to the extent that the obligation of professional secrecy incumbent on those authorities, bodies and persons provides safeguards at least equivalent to those inherent in the corresponding obligation incumbent on the CSSF. In particular, authorities receiving information from the CSSF may use it only for the purposes for which it has been communicated to them, and must be in a position to ensure that no other use is made thereof.

States other than EC Member States which are Contracting Parties to the Agreement on the European Economic Area shall be assimilated to EC Member States, within the limits laid down by that Agreement and the acts relating thereto.

(6) Paragraphs 1 and 4 shall not preclude exchanges of information within the Community between the CSSF and:

- authorities responsible for the supervision of bodies involved in liquidations, bankruptcies and other analogous proceedings concerning financial sector professionals, insurance companies, undertakings for collective investment in transferable securities, management companies and depositaries of undertakings for collective investment in transferable securities,
- authorities responsible for supervising persons entrusted with the legal auditing of the accounts of financial sector professionals, insurance companies and other financial institutions.

The communication of information by the CSSF as authorised by this paragraph shall be conditional on the following:

- the information communicated must be intended for the performance of the duties of the authorities receiving it,
- the information communicated must be covered by the professional secrecy incumbent on the authorities receiving it, and the obligation of professional secrecy imposed on those authorities must provide safeguards at least equivalent to those inherent in the corresponding obligation incumbent on the CSSF,
- the authorities receiving information from the CSSF must use that information only for the purposes for which it has been communicated to them, and must be in a position to ensure that no other use is made thereof;
- information received by the CSSF from the authorities referred to in paragraphs 2 and 3 may be disclosed by it only with the express consent of those authorities and, as the case may be, solely for the purposes for which those authorities have given their consent.

States other than EC Member States which are Contracting Parties to the Agreement on the European Economic Area shall be assimilated to EC Member States, within the limits laid down by that Agreement and the acts relating thereto.

(7) This article shall not prevent the CSSF from transmitting:

- to central banks and other bodies called upon to perform similar functions as monetary authorities, and/or,
- as the case may be, to other public authorities responsible for the supervision of payment systems,

information intended to enable them to perform their task.

The communication of information by the CSSF as authorised by this paragraph shall be conditional on that information being covered by the professional secrecy incumbent on the authorities receiving it, and shall be authorised only to the extent

that the obligation of professional secrecy imposed on those authorities provides safeguards at least equivalent to those inherent in the corresponding obligation incumbent on the CSSF. In particular, authorities receiving information from the CSSF may use that information only for the purposes for which it has been communicated to them and must be in a position to ensure that no other use is made thereof.

Furthermore, this article shall not prevent the authorities referred to in this article from communicating to the CSSF any information which it needs for the purposes of paragraph 4. Information received by the CSSF shall be covered by the professional secrecy.

- (8) This article shall not prevent the CSSF from communicating the information referred to in paragraphs 1 to 4 to a clearing house or other similar body recognised by law for the provision of clearing or settlement services for a market in Luxembourg, if the CSSF considers that it is necessary to communicate the information in order to ensure the proper functioning of those bodies in relation to defaults or potential defaults by market participants.

The communication of information by the CSSF as authorised by this paragraph shall be conditional on that information being covered by the professional secrecy incumbent on the bodies receiving it, and shall be authorised only to the extent that the obligation of professional secrecy imposed on those bodies provides safeguards at least equivalent to those inherent in the corresponding obligation incumbent on the CSSF. In particular, bodies receiving information from the CSSF may use that information only for the purposes for which it has been communicated to them and must be in a position to ensure that no other use is made thereof.

Information received by the CSSF pursuant to paragraphs 2 and 3 may not be disclosed by it, in the circumstances covered by this paragraph, without the express consent of the supervisory authorities who disclosed it to the CSSF.»

«Chapter 2: Supervision of credit institutions, certain financial institutions and investment firms carrying on business in more than one EC Member State»⁶³

Art. 45 Competence to supervise credit institutions and investment firms carrying on business in more than one EC Member State

(Law of 12 March 1998)

- «(1) The prudential supervision by the CSSF, acting as the competent authority of the home Member State, of credit institutions and investment firms established under Luxembourg law shall also extend to the business carried on by any such institution or firm in another EC Member State, whether by means of the setting up of a branch or by way of the provision of services.

- (2) The prudential supervision of a credit institution or investment firm established in another EC Member State, including that of any business carried on by it in Luxembourg pursuant to the provisions of Article 31, shall be the responsibility of the competent authorities of the home Member State.»

Art. 46 Detailed rules governing the supervision of credit institutions and investment firms carrying on business in more than one EC Member State

(Law of 12 March 1998)

⁶³

Law of 12 March 1998.

- «(1) For the purposes of the supervision referred to in the preceding article, the competent authorities of the home Member State may, after informing the competent authorities of the host Member State, themselves or through the intermediary of persons they instruct for that purpose, carry out on-the-spot verification of such information relating to the running, management and ownership of the credit institutions and investment firms in question as is likely to facilitate their supervision and examination of the conditions of the grant of their authorisation, as well as all information likely to facilitate the monitoring of those credit institutions and investment firms, in particular as regards their capital adequacy, liquidity, solvency, deposit guarantees, limitation of large exposures, accounting procedures and internal control mechanisms.
- (2) The competent authorities of the home Member State may also, for the purposes of verifying such information, request the competent authorities of the host Member State to carry out such verification. The latter authorities must, within the framework of their powers, act upon such requests by carrying out the verifications themselves or by appointing auditors or experts to do so at the expense of the credit institution or investment firm concerned.
- (3) The competent authorities of the host Member State shall remain responsible, in collaboration with the competent authorities of the home Member State, for monitoring the liquidity of the branch of a credit institution or investment firm.
- (4) Where exposures arise from operations carried out on the financial markets of the host Member State, the competent authorities of the host Member State shall collaborate with the competent authorities of the home Member State to ensure that the institutions concerned adopt measures to cover those exposures.
- (5) Each Community credit institution and investment firm having a branch in another Member State shall be required on demand to send to the competent authorities of the host Member State, for statistical purposes, a periodic report on its activities in that State. In order to enable the competent authorities of the host Member State to perform their duties under paragraphs 3 and 4, branches of credit institutions and investment firms based in other EC Member States shall be required on demand to provide them with the same information as that which those authorities require for that purpose from their national credit institutions or investment firms.
- (6) Where the competent authorities of the host Member State ascertain that a Community credit institution or investment firm that has a branch or provides services within its territory is in breach of the laws of that State from which they derive their competence, they shall require the institution or firm concerned to put an end to its irregularity.
- (7) If the credit institution or investment firm concerned fails to take the necessary steps, the competent authorities of the host Member State shall inform the competent authorities of the home Member State accordingly. If, despite the measures taken by the home Member State, or because those measures appear to be inadequate or are not available in the State in question, the institution or firm persists in violating the laws of the host Member State, the competent authorities of the latter may, after informing the competent authorities of the home Member State, take such measures at their disposal as may be appropriate to prevent or curb further irregularities and, in so far as may be necessary, may prevent that institution or firm from initiating any further transactions within their State. The competent authorities of the host Member State may take the same measures to prevent or curb acts which are contrary to legislation adopted on public-interest grounds.
- (8) The foregoing provisions shall not affect the powers of host Member States to take appropriate measures to prevent or penalise acts committed within their territories which are contrary to the rules of conduct introduced pursuant to Article 37 or any

other laws or regulations enacted by them on public-interest grounds. This shall include the possibility of preventing offending credit institutions or investment firms from initiating any further transactions within their territories.

- (9) Any measure adopted pursuant to the preceding paragraph which involves penalties or restrictions on the provision of services must be duly supported by an adequate statement of reasons and communicated to the institution or firm concerned. An appeal against any such measure may be lodged within one month, and may be struck out if it is not so lodged, before the *Tribunal administratif* [administrative court], which shall determine the matter as a court adjudicating on the substance.
- (10) Before following the procedure provided for in paragraphs 6 and 7, the competent authorities of the host Member State may, in an emergency, take any such preservation measures as may be imperative for the protection of depositors, investors or other persons for whom services are provided.
- (11) In the event of withdrawal of an authorisation in the home State, the competent authorities of the host Member State shall take appropriate measures to prevent the institution or firm concerned from initiating any further transactions within their State and to safeguard the interests of depositors.»

Art. 47 Supervision of certain Community financial institutions

(Law of 12 March 1998)

«Articles 45 and 46 shall apply *mutatis mutandis* to the supervision of Community financial institutions, including those governed by Luxembourg law, which carry on business in a Member State other than their home Member State, whether by means of the setting up of a branch or by way of the provision of services, in accordance with the conditions laid down in Article 31.»

«Chapter 2a: Prudential supervision of payment and securities settlement systems authorised in Luxembourg»⁶⁴

Art. 47-1 Prudential supervision of payment and securities settlement systems authorised in Luxembourg

(Law of 12 January 2001)

«Without prejudice to the tasks imposed and the competences conferred on the European System of Central Banks by the Treaty establishing the European Community and by the statutes of the European System of Central Banks and of the European Central Bank, as well as those allocated to the Luxembourg Central Bank, the CSSF shall be the competent authority responsible for the prudential supervision of payment and securities settlement systems authorised by the Minister. The objective of that supervision, which shall relate to the operational and financial stability of each system and participants in systems, shall be to ensure the stability of the financial system as a whole. To that end, the CSSF shall monitor the application of the rules governing the functioning and implementation of the settlement procedures and risk management procedures attaching to the systems which it supervises.»

Chapter 3: Supervision of credit institutions on a consolidated basis

⁶⁴

Law of 12 January 2001.

Art. 48 Definitions

(Law of 3 May 1994)

«For the purposes of this Chapter:

- "credit institution" shall mean any private or public undertaking the activities of which correspond to the definition set out in Article 1 of this Law;
- "financial institution" shall mean an undertaking, other than a credit institution, the principal activity of which is to acquire holdings or to carry on one or more of the activities referred to in points 2 to 12 of the list appearing in Annex I hereto;
- "financial holding company" shall mean a financial institution the subsidiary undertakings of which are either exclusively or mainly credit institutions or financial institutions, one at least of such subsidiaries being a credit institution;
- "mixed-activity holding company" shall mean a parent undertaking, other than a financial holding company or a credit institution, the subsidiaries of which include at least one credit institution;
- "ancillary banking services undertaking" shall mean an undertaking the principal activity of which consists in owning or managing property, managing data-processing services, or any other similar activity which is ancillary to the principal activity of one or more credit institutions;
- "participation" shall mean the ownership, direct or indirect, of 20% or more of the voting rights or capital of an undertaking;
- "parent undertaking" shall mean an undertaking possessing the rights listed in subparagraphs (a), (b), (c) of Article 77(1) of the Law of 17 June 1992 on the accounts of credit institutions and any undertaking which, in the opinion of the CSSF, effectively exercises a dominant influence over another undertaking;
- "subsidiary" shall mean an undertaking in respect of which the rights listed in subparagraphs (a), (b), (c) of Article 77(1) of the Law of 17 June 1992 on the accounts of credit institutions are held and any undertaking over which, in the opinion of the CSSF, a parent undertaking effectively exercises a dominant influence; all subsidiaries of subsidiary undertakings shall also be considered subsidiaries of the undertaking that is their original parent.»

(Law of 29 April 1999) «For the purposes of the application of this Chapter, States other than EC Member States which are Contracting Parties to the Agreement on the European Economic Area shall be assimilated to EC Member States, within the limits laid down by that Agreement and the acts relating thereto.»

Art. 49 Scope and parameters of supervision on a consolidated basis

(Law of 3 May 1994)

- «(1) In relation to any credit institution authorised under this Law which has another credit institution or a financial institution as a subsidiary or which holds a participation in such institutions, the CSSF shall exercise, to the extent and in the manner prescribed by this Chapter, prudential supervision on the basis of the consolidated financial situation of that credit institution.
- (2) (a) In relation to any credit institution authorised under this Law the parent undertaking of which is a financial holding company, the CSSF shall exercise, to the extent and in the manner prescribed by this Chapter, prudential supervision on the basis of the consolidated financial situation of that financial holding company. The

consolidation of the financial situation of the financial holding company shall not in any way imply that the CSSF is required to play a supervisory role in relation to the financial holding company standing alone.

(b) However, where the financial holding company which is the parent undertaking of a credit institution authorised under this Law is constituted in another EC Member State and is also the parent undertaking of a credit institution authorised in that Member State, supervision on a consolidated basis shall be exercised not by the CSSF but by the competent authorities of that other Member State.

(c) Where, on the other hand, credit institutions authorised in two or more EC Member States have as their parent the same financial holding company and no credit institution subsidiary has been authorised in the Member State in which the financial holding company was set up, and where either one of those credit institutions is authorised in Luxembourg or the financial holding company is constituted in Luxembourg, the CSSF and the supervisory authorities of the other Member States concerned shall seek to reach agreement as to which of them is to exercise supervision on a consolidated basis. In the absence of such agreement, supervision on a consolidated basis shall be exercised by the CSSF only if the credit institution subsidiary authorised in Luxembourg has the greatest balance-sheet total; if that figure is the same, supervision on a consolidated basis shall be exercised by the CSSF only if Luxembourg was the first to grant authorisation to a credit institution subsidiary of the financial holding company.

(d) The CSSF may conclude with the other supervisory authorities concerned agreements waiving the rules laid down in points (a) and (b) of this paragraph.

(e) The CSSF may consent, in the agreements referred to in points (c) and (d) of this paragraph, to procedures for cooperation and for the transmission of information such that the objectives of supervision on a consolidated basis may be achieved, and shall be competent to implement those procedures.

(3) Where consolidated supervision by the CSSF is required pursuant to this article, ancillary banking services undertakings shall be included in consolidations in the cases, and in accordance with the methods, laid down in Article 50.

(4) The CSSF may decide in the cases listed below that a credit institution, financial institution or ancillary banking services undertaking which is a subsidiary or in which participation is held need not be included in the consolidation:

- if the undertaking that should be included is situated in a third country where there are legal impediments to the transfer of the necessary information,
- if, in the opinion of the CSSF, the undertaking that should be included is of negligible interest only with respect to the objectives of monitoring credit institutions and in all cases if the balance sheet total of the undertaking that should be included is less than the smaller of the following two amounts: «EUR» 10 million⁶⁵ in value or 1% of the balance sheet total of the parent undertaking or the undertaking that holds the participation; if several undertakings meet the above criteria, they must nevertheless be included in the consolidation where collectively they are of non-negligible interest with respect to the aforementioned objectives,

or

- if, in the opinion of the CSSF, the consolidation of the financial situation of the undertaking that should be included would be inappropriate or misleading as far as the objectives of the supervision of credit institutions are concerned.»

⁶⁵

Article 2 of Council Regulation (EC) No 1103/97 of 17 June 1997 on certain provisions relating to the introduction of the euro (OJ L 162, 19.6.1997, p. 1).

Art. 50 Form and extent of consolidation

(Law of 3 May 1994)

- «(1) The CSSF shall require full consolidation of all the credit institutions and financial institutions which are subsidiaries of a parent undertaking.

However, proportional consolidation may be prescribed where, in the opinion of the CSSF, the liability of a parent undertaking holding a share of the capital is limited to that share of the capital because of the liability of the other shareholders or members whose solvency is satisfactory. The liability of the other shareholders and members must be clearly established, if necessary by means of formal, signed commitments.

- (2) The CSSF shall require the proportional consolidation of participations in credit institutions and financial institutions managed by an undertaking included in the consolidation together with one or more undertakings not included in the consolidation, where those undertakings' liability is limited to the share of the capital they hold.

- (3) In the case of participations or capital ties other than those referred to in paragraphs 1 and 2, the CSSF shall determine whether and how consolidation is to be carried out. In particular, it may permit or require use of the equity method. That method shall not, however, constitute inclusion of the undertakings concerned in supervision on a consolidated basis.

- (4) Without prejudice to paragraphs 1, 2 and 3, the CSSF shall determine whether and how consolidation is to be carried out in the following cases:

- where, in the opinion of the CSSF, a credit institution exercises a significant influence over one or more credit institutions or financial institutions, but without holding a participation or other capital ties in those institutions,
- where two or more credit institutions or financial institutions are placed under single management other than pursuant to a contract or clauses of their memoranda or articles of association,
- where two or more credit institutions or financial institutions have administrative, management or supervisory bodies with the same persons constituting a majority.

In particular, the CSSF may permit, or require use of, the method whereby the items in respect of the capital, reserves and profit or loss of each of the undertakings concerned are aggregated. That method shall not, however, constitute inclusion of the undertakings concerned in consolidated supervision.»

Art. 51 Content of supervision on a consolidated basis

(Law of 3 May 1994)

- «(1) Supervision on a consolidated basis shall cover, at the very least, solvency, the adequacy of own funds to cover market risks and control of large exposures. The CSSF shall adopt any measures necessary, where appropriate, to include financial holding companies in consolidated supervision, in accordance with Article 49(2).

Compliance with the limits set for participations shall be supervised and controlled on the basis of the consolidated or sub-consolidated financial situation of the credit institution.

- (2) Prudential supervision on a consolidated basis shall not affect supervision on a non-consolidated basis.

- (3) (a) The CSSF may waive application, on an individual or sub-consolidated basis, of the rules laid down in paragraph 1 to a credit institution that, as a parent undertaking, is subject to supervision by the CSSF on a consolidated basis, and to any subsidiary of such a credit institution which is subject to its authorisation and supervision and is included in the supervision on a consolidated basis of the credit institution which is the parent undertaking. In that case, the CSSF shall require steps to be taken to ensure that capital is distributed adequately within the banking group.
- (b) Where a credit institution the parent of which is a credit institution authorised in another State has been authorised in Luxembourg, the CSSF shall apply the rules laid down in paragraph 1 to that institution on an individual or, where appropriate, a sub-consolidated basis.»

Art. 51-1 Means used to exercise supervision on a consolidated basis

(Law of 3 May 1994)

- «(1) Where the CSSF is called upon, pursuant to this Chapter, to exercise prudential supervision of a credit institution on a consolidated basis, the following conditions must be fulfilled:

- (a) the structure of the direct and indirect participations covered by the consolidation must be transparent and organised in such a way that the prudential supervision can be exercised, without impediment, in the most effective and direct way;
- (b) the central administrative and accounting bodies and the management of all of the undertakings included in the consolidation must be established in Luxembourg;
- (c) in all the undertakings included in the consolidation, there must be adequate internal control mechanisms for the production of any data and information which would be relevant for the purposes of supervision on a consolidated basis.

- (2) (a) In the exercise of prudential supervision of a credit institution on a consolidated basis, the CSSF may require, for the purposes of such supervision, any undertaking included in the consolidation, and the subsidiaries of a credit institution or financial holding company which do not fall within the scope of supervision on a consolidated basis, to supply any information which would be relevant.

(b) Where the parent undertaking of one or more credit institutions subject to supervision by the CSSF is a mixed-activity holding company, the CSSF shall, by approaching the mixed-activity holding company and its subsidiaries either directly or via credit institution subsidiaries, require them to supply any information which would be relevant for the purposes of supervising the credit institution subsidiaries.

The CSSF may carry out, or have carried out by external inspectors, on-the-spot inspections to verify information received from mixed-activity holding companies and their subsidiaries. If the mixed-activity holding company or one of its subsidiaries is an insurance undertaking, it may also have recourse to collaboration by the supervisory authority of that insurance undertaking. If the mixed-activity holding company or one of its subsidiaries is situated in another State, on-the-spot verification of information shall be carried out in accordance with the procedure laid down in paragraph 3 of this article.

(c) Where a credit institution authorised in Luxembourg which is the subsidiary of a parent undertaking situated in another State is not included in the consolidated supervision of that parent undertaking for one of the reasons set out in Article 49(4), the CSSF may ask the parent undertaking for information which may facilitate its supervision of that credit institution.

- (3) (a) Where the CSSF is the competent authority responsible for supervising on a consolidated basis a credit institution the parent undertaking of which is situated in another State, it may request the competent authority of that other State to ask the

parent undertaking for any information which would be relevant for the purposes of supervision on a consolidated basis and to transmit the same to the CSSF.

Where it receives such a request from the competent authority of another EC Member State and the parent undertaking is situated in Luxembourg, the CSSF must act on that request by asking the parent undertaking for the relevant information and by transmitting it to that authority.

(b) Where, in the context of the supervision of credit institutions on a consolidated basis, the CSSF wishes in specific cases to verify information concerning a credit institution, a financial holding company, a financial institution, an ancillary banking services undertaking, a mixed-activity holding company or one of its subsidiaries or a subsidiary of a credit institution or financial holding company which does not fall within the scope of consolidated supervision and is situated in another State, it may ask the competent authorities of that other State to have that verification carried out.

Where it receives such a request for verification from the competent authority of another EC Member State, the CSSF must, within the framework of its competence, act upon that request either by carrying out the verification itself or by allowing an auditor or expert to carry it out.

- (4) (a) Each undertaking falling within the scope of the supervision of a credit institution on a consolidated basis, together with mixed-activity holding companies and their subsidiaries and the subsidiaries of a credit institution or financial holding company that do not fall within the scope of supervision on a consolidated basis, shall be required, upon demand by the competent supervisory authorities, to provide any information which would be relevant for the purposes of supervision on a consolidated basis.

They shall be authorised to exchange such information with each other.

(b) Where a credit institution authorised in another EC Member State which is the subsidiary of a parent undertaking situated in Luxembourg is not included by the CSSF in its consolidated supervision for one of the reasons set out in Article 49(4), the parent undertaking shall be required upon demand to provide to the supervisory authority of the Member State in which that credit institution subsidiary is situated any information which may facilitate the supervision of that credit institution subsidiary.

- (5) The collection or possession by the CSSF of information from or concerning an undertaking for the purposes of supervising a credit institution on a consolidated basis shall not in any way imply that the CSSF is required to play a supervisory role in relation to that undertaking standing alone.

However, in the event of non-compliance with the provisions of this article by an undertaking which is not subject to prudential supervision by the CSSF, the CSSF may call upon it, by registered letter, to remedy the situation found to exist within a period fixed by the CSSF. Article 63 of this Law shall apply to persons in charge of the administration or management of such an undertaking.»

«Chapter 3a: Supervision of investment firms on a consolidated basis»⁶⁶

Art. 51-2 Definitions

(Law of 29 April 1999)

⁶⁶

Law of 29 April 1999.

«For the purposes of this Chapter:

- "investment firm" shall mean an investment firm within the meaning of Article 13;
- "financial institution" shall mean an undertaking other than a credit institution or investment firm engaging as its principal activity in the acquisition of participations or the pursuit of one or more of the activities listed in points 2 to 12 of Annex I hereto;
- "financial holding company" shall mean a financial institution the subsidiary undertakings of which are either exclusively or mainly investment firms or financial institutions, one at least of such subsidiaries being an investment firm;
- "mixed-activity holding company" shall mean a parent undertaking, other than a financial holding company or an investment firm, the subsidiaries of which include at least one investment firm;
- "credit institution" shall mean a credit institution within the meaning of Article 48;
- "ancillary banking services undertaking" shall mean an undertaking within the meaning of Article 48;
- "participation" shall mean a participation within the meaning of Article 48;
- "parent undertaking" shall mean a parent undertaking within the meaning of Article 48;
- "subsidiary" shall mean a subsidiary within the meaning of Article 48.

For the purposes of the application of this Chapter, States other than EC Member States which are Contracting Parties to the Agreement on the European Economic Area shall be assimilated to EC Member States, within the limits laid down by that Agreement and the acts relating thereto.»

«Section I: Investment firms not having a credit institution as one of their subsidiaries or not holding any participation in a credit institution, and investment firms the parent undertaking of which is a financial holding company not having a credit institution as one of its subsidiaries or not holding any participation in a credit institution»⁶⁷

Art. 51-3 Scope and parameters of supervision on a consolidated basis

(Law of 29 April 1999)

- «(1) In relation to any investment firm authorised under this Law which has another investment firm or financial institution as a subsidiary or which holds a participation in such institutions, the CSSF shall exercise, to the extent and in the manner prescribed by this Section, prudential supervision on the basis of the consolidated financial situation of that investment firm.
- (2) (a) In relation to any investment firm authorised under this Law the parent undertaking of which is a financial holding company, the CSSF shall exercise, to the extent and in the manner prescribed by this Chapter, prudential supervision on the basis of the consolidated financial situation of that financial holding company. The consolidation of the financial situation of the financial holding company shall not in any way imply that the CSSF is required to play a supervisory role in relation to the financial holding company standing alone.

⁶⁷ Law of 29 April 1999.

(b) Where the financial holding company which is the parent undertaking of an investment firm authorised under this Law is constituted in another EC Member State and is also the parent undertaking of an investment firm authorised in that Member State, supervision on a consolidated basis shall be exercised not by the CSSF but by the competent authorities of that other Member State.

(c) Where investment firms authorised in two or more EC Member States have as their parent the same financial holding company and no investment firm subsidiary has been authorised in the Member State in which the financial holding company was set up, and where either one of those investment firms is authorised in Luxembourg or the financial holding company is constituted in Luxembourg, the CSSF and the supervisory authorities of the other Member States concerned shall seek to reach agreement as to which of them is to exercise supervision on a consolidated basis. In the absence of such agreement, supervision on a consolidated basis shall be exercised by the CSSF only if the investment firm subsidiary authorised in Luxembourg has the greatest balance-sheet total; if that figure is the same, supervision on a consolidated basis shall be exercised by the CSSF only if Luxembourg was the first to grant authorisation to an investment firm subsidiary of the financial holding company.

(d) The CSSF may conclude with the other supervisory authorities concerned agreements waiving the rules laid down in points (a) and (b) of this paragraph.

(e) The CSSF may consent, in the agreements referred to in points (c) and (d) of this paragraph, to procedures for cooperation and for the transmission of information such that the objectives of supervision on a consolidated basis may be achieved, and shall be competent to implement those procedures.

(3) Where consolidated supervision by the CSSF is required pursuant to this article, ancillary banking services undertakings shall be included in consolidations in the cases, and in accordance with the methods, laid down in Article 51-4.

(4) The CSSF may decide in the cases listed below that an investment firm, financial institution or ancillary banking services undertaking which is a subsidiary or in which a participation is held need not be included in the consolidation:

- if the undertaking that should be included is situated in a third country where there are legal impediments to the transfer of the necessary information,
- if, in the opinion of the CSSF, the undertaking that should be included is of negligible interest only with respect to the objectives of monitoring investment firms and in all cases if the balance sheet total of the undertaking that should be included is less than the smaller of the following two amounts: EUR 10 million in value or 1% of the balance sheet total of the parent undertaking or the undertaking that holds the participation; if several undertakings meet the above criteria, they must nevertheless be included in the consolidation where collectively they are of non-negligible interest with respect to the aforementioned objectives,

or

- if, in the opinion of the CSSF, the consolidation of the financial situation of the undertaking that should be included would be inappropriate or misleading as far as the objectives of the supervision of investment firms are concerned.

(5) Where the circumstances so warrant, the CSSF may decide not to supervise investment firms on a consolidated basis, provided that each investment firm, whether based in the European Community or elsewhere, which is likely to be

included within the parameters of the supervision on a consolidated basis to be exercised by the CSSF:

- applies its non-liquid assets by way of deduction of own funds, and
- is subject to supervision on an individual basis covering, at the very least, solvency, the adequacy of own funds to cover market risks and control of large exposures, and
- sets up systems to monitor and control the sources of capital and financing of all the other financial institutions likely to be included within the parameters of supervision on a consolidated basis.

Investment firms governed by Luxembourg law which are exempt from supervision on a consolidated basis by the CSSF shall be required to notify the CSSF of all exposures, including those linked to the composition and origin of their capital and their financing, which may prejudice the financial situation of those investment firms.

Where the CSSF considers that the financial situation of investment firms governed by Luxembourg law which are exempt from supervision on a consolidated basis by the CSSF is not sufficiently protected, it shall require measures to be taken, including measures designed, as the case may be, to restrict transfers of funds by those investment firms to other undertakings in the same group.

The CSSF may apply the provisions of Article 51-5(3)(a) and (b).»

Art. 51-4 Form and extent of consolidation

(Law of 29 April 1999)

- «(1) The CSSF shall require full consolidation of all the investment firms and financial institutions which are subsidiaries of a parent undertaking.
- However, proportional consolidation may be prescribed where, in the opinion of the CSSF, the liability of a parent undertaking holding a share of the capital is limited to that share of the capital because of the liability of the other shareholders or members whose solvency is satisfactory. The liability of the other shareholders and members must be clearly established, if necessary by means of formal, signed commitments.
- (2) The CSSF shall require the proportional consolidation of participations in investment firms and financial institutions managed by an undertaking included in the consolidation together with one or more undertakings not included in the consolidation, where those undertakings' liability is limited to the share of the capital they hold.
- (3) In the case of participations or capital ties other than those referred to in paragraphs 1 and 2, the CSSF shall determine whether and how consolidation is to be carried out. In particular, it may permit or require use of the equity method. That method shall not, however, constitute inclusion of the undertakings concerned in supervision on a consolidated basis.
- (4) Without prejudice to paragraphs 1, 2 and 3, the CSSF shall determine whether and how consolidation is to be carried out in the following cases:
- where, in the opinion of the CSSF, an investment firm exercises a significant influence over one or more investment firms or other financial institutions, but without holding a participation or other capital ties in those institutions,
 - where two or more investment firms or financial institutions are placed under single management other than pursuant to a contract or clauses of their memoranda or articles of association,

- where two or more investment firms or financial institutions have administrative, management or supervisory bodies with the same persons constituting a majority.

In particular, the CSSF may permit, or require use of, the method whereby the items in respect of the capital, reserves and profit or loss of each of the undertakings concerned are aggregated. That method shall not, however, constitute inclusion of the undertakings concerned in consolidated supervision.»

Art. 51-5 Content of supervision on a consolidated basis

(Law of 29 April 1999)

- «(1) Supervision on a consolidated basis shall cover, at the very least, solvency, the adequacy of own funds to cover market risks and control of large exposures. The CSSF shall adopt any measures necessary, where appropriate, to include financial holding companies in consolidated supervision, in accordance with Article 51-3(2).
- (2) Prudential supervision on a consolidated basis shall not affect supervision on a non-consolidated basis.
- (3) (a) The CSSF may waive application, on an individual or sub-consolidated basis, of the rules laid down in paragraph 1 to an investment firm that, as a parent undertaking, is subject to supervision by the CSSF on a consolidated basis, and to any subsidiary of such an investment firm which is subject to its authorisation and supervision and is included in the supervision on a consolidated basis of the investment firm which is the parent undertaking. In that case, the CSSF shall require steps to be taken to ensure that capital is distributed adequately within the group of investment firms.
- (b) Where an investment firm the parent of which is an investment firm authorised in another State has been authorised in Luxembourg, the CSSF shall apply the rules laid down in paragraph 1 to that investment firm on an individual or, when appropriate, a sub-consolidated basis.»

Art. 51-6 Means used to exercise supervision on a consolidated basis

(Law of 29 April 1999)

- «(1) Where the CSSF is called upon, pursuant to this Chapter, to exercise prudential supervision of an investment firm on a consolidated basis, the following conditions must be fulfilled:
- the structure of the direct and indirect participations covered by the consolidation must be transparent and organised in such a way that the prudential supervision can be exercised, without impediment, in the most effective and direct way;
 - the central administrative and accounting bodies and the management of all of the undertakings included in the consolidation must be established in Luxembourg;
 - in all the undertakings included in the consolidation, there must be adequate internal control mechanisms for the production of any data and information which would be relevant for the purposes of supervision on a consolidated basis.
- (2) (a) In the exercise of prudential supervision of an investment firm on a consolidated basis, the CSSF may require, for the purposes of such supervision, any undertaking included in the consolidation, and the subsidiaries of an investment firm or financial

holding company which do not fall within the scope of supervision on a consolidated basis, to supply any information which would be relevant.

(b) Where the parent undertaking of one or more investment firms subject to supervision by the CSSF is a mixed-activity holding company, the CSSF shall, by approaching the mixed-activity holding company and its subsidiaries either directly or via investment firm subsidiaries, require them to supply any information which would be relevant for the purposes of supervising the investment firm subsidiaries.

The CSSF may carry out, or have carried out by external inspectors, on-the-spot inspections to verify information received from mixed-activity holding companies and their subsidiaries. If the mixed-activity holding company or one of its subsidiaries is an insurance undertaking, it may also have recourse to collaboration by the supervisory authority of that insurance undertaking. If the mixed-activity holding company or one of its subsidiaries is situated in another State, on-the-spot verification of information shall be carried out in accordance with the procedure laid down in paragraph 3 of this article.

(c) Where an investment firm authorised in Luxembourg which is the subsidiary of a parent undertaking situated in another State is not included in the consolidated supervision of that parent undertaking for one of the reasons set out in Article 51-3(4), the CSSF may ask the parent undertaking for information which may facilitate their supervision of that investment firm.

- (3) (a) Where the CSSF is the competent authority responsible for supervising on a consolidated basis an investment firm the parent undertaking of which is situated in another State, it may invite the competent authority of that other State to ask the parent undertaking for any information which would be relevant for the purposes of supervision on a consolidated basis and to transmit the same to the CSSF.

Where it receives such an invitation from the competent authority of another EC Member State and the parent undertaking is situated in Luxembourg, the CSSF must act on that invitation by asking the parent undertaking for the relevant information and by transmitting it to that authority.

(b) Where, in the context of the supervision of investment firms on a consolidated basis, the CSSF wishes in specific cases to verify information concerning an investment firm, a financial holding company, another financial institution, an ancillary banking services undertaking, a mixed-activity holding company or one of its subsidiaries or a subsidiary of an investment firm or financial holding company which does not fall within the scope of consolidated supervision and is situated in another State, it may ask the competent authorities of that other State to have that verification carried out.

Where it receives such a request for verification from the competent authority of another EC Member State, the CSSF must, within the framework of its competence, act upon that request either by carrying out the verification itself or by allowing an auditor or expert to carry it out.

- (4) (a) Each undertaking falling within the scope of the supervision of an investment firm on a consolidated basis, together with mixed-activity holding companies and their subsidiaries and the subsidiaries of an investment firm or financial holding company that do not fall within the scope of supervision on a consolidated basis, shall be required, upon demand by the competent supervisory authorities, to provide any information which would be relevant for the purposes of supervision on a consolidated basis.

They shall be authorised to exchange such information with each other.

(b) Where an investment firm authorised in another EC Member State which is the subsidiary of a parent undertaking situated in Luxembourg is not included by the

CSSF in its consolidated supervision for one of the reasons set out in Article 51-3(4), the parent undertaking shall be required upon demand to provide to the supervisory authority of the Member State in which that investment firm subsidiary is situated any information which may facilitate the supervision of that investment firm subsidiary.

- (5) The collection or possession by the CSSF of information from or concerning an undertaking for the purposes of supervising an investment firm on a consolidated basis shall not in any way imply that the CSSF is required to play a supervisory role in relation to that undertaking standing alone.

However, in the event of non-compliance with the provisions of this article by an undertaking which is not subject to prudential supervision by the CSSF, the CSSF may call upon it, by registered letter, to remedy the situation found to exist within a period fixed by the CSSF. Article 63 of this Law shall apply to persons in charge of the administration or management of such an undertaking.»

«Section II: Investment firms having a subsidiary which is a credit institution governed by foreign law or holding a participation in such a credit institution, and investment firms the parent undertaking of which is a financial holding company having a subsidiary which is a credit institution governed by foreign law or holding a participation in such a credit institution»⁶⁸

Art. 51-7 Scope and content of supervision on a consolidated basis

(Law of 29 April 1999)

- «(1) Investment firms governed by Luxembourg law having a subsidiary which is a credit institution governed by foreign law or holding a participation in such a foreign credit institution shall be subject to supervision on a consolidated or, as the case may be, sub-consolidated basis by the CSSF, to the extent and in the manner laid down by this Chapter. The exercise by the CSSF of such supervision on a consolidated basis shall relate solely to solvency, the adequacy of own funds to cover market risks and control of large exposures. It shall be without prejudice to supervision on a non-consolidated basis. The CSSF may apply the provisions of Article 51-5(3)(a) and (b).
- (2) In relation to any investment firm governed by Luxembourg law the parent undertaking of which is a financial holding company having a subsidiary which is a foreign credit institution or holding a participation in a foreign credit institution, the CSSF shall exercise, to the extent and in the manner laid down by this Chapter, prudential supervision on the basis of the consolidated financial situation of that financial holding company. The exercise by the CSSF of such supervision on a consolidated basis shall relate solely to solvency, the adequacy of own funds to cover market risks and control of large exposures. It shall be without prejudice to supervision on a non-consolidated basis.»

«Section III: Investment firms having a subsidiary which is a credit institution governed by Luxembourg law or holding a participation in such a credit institution, and investment firms the parent undertaking of which is a financial holding company having a subsidiary which is a credit institution governed by Luxembourg law or holding a participation in such a credit institution»⁶⁹

⁶⁸ Law of 29 April 1999.

⁶⁹ Law of 29 April 1999.

Art. 51-8 Scope and content of supervision on a consolidated basis

(Law of 29 April 1999)

- «(1) Investment firms governed by Luxembourg law having a subsidiary which is a credit institution governed by Luxembourg law or holding a participation in a credit institution governed by Luxembourg law shall be subject to supervision on a consolidated or, as the case may be, sub-consolidated basis by the CSSF, to the extent and in the manner laid down by Chapter 3 of this Part of this Law.
- (2) In relation to any investment firm governed by Luxembourg law the parent undertaking of which is a financial holding company having a subsidiary which is a credit institution governed by Luxembourg law or holding a participation in a foreign credit institution, the CSSF shall exercise, to the extent and in the manner laid down by Chapter 3 of this Part of this Law, prudential supervision on the basis of the consolidated financial situation of that financial holding company.»

Chapter 4: Means used to exercise prudential supervision

Art. 52 Official lists and the protection of titles

- (1) The CSSF shall keep official lists of the credit institutions and other categories of financial sector professionals authorised to carry on business through an institution in Luxembourg, which are subject to its supervision. To that end, the competent Minister shall supply it with copies of decisions granting and withdrawing authorisation. «In addition, the CSSF shall keep the official list of the payment and securities settlement systems authorised by the Minister. The official list shall also include all payment and securities settlement systems notified by the Luxembourg Central Bank to the European Commission pursuant to Article 34-3»⁷⁰.
- «The various official lists shall be drawn up and published in the *Mémorial* [Luxembourg Official Journal] at least at the end of each year»⁷¹.
- (2) Only persons entered in an official list may use any title or name purporting to indicate that they are authorised to carry on any of the activities reserved to persons entered in such a list. This prohibition shall not apply where there is no possibility of anyone being misled or in cases involving a branch or service provider from abroad which is duly authorised to carry on business in Luxembourg and uses a title or name which it is authorised to use in its home State. However, where there is any possibility of anyone being misled, such persons must arrange for the title or name used by them to be followed by sufficiently precise particulars.
- (3) No person may make use for commercial purposes of his entry in an official list or of the fact of his being subject to supervision by the CSSF.

Art. 53 Right of inspection and right to information of the CSSF

The CSSF shall have the right to request from any person subject to supervision by it any information which may be of assistance in the performance of its tasks. It may inspect books, accounts, registers or any other deeds and documents belonging to such persons.

Art. 54 Relationship between the CSSF and external auditors

⁷⁰ Law of 12 January 2001.

⁷¹ Law of 12 January 2001.

- (1) Every financial sector professional who is subject to supervision by the CSSF and whose accounts are subject to audit by an external auditor shall be required of his own volition to communicate to the CSSF all written reports, analyses and commentaries produced by that auditor in the context of the latter's audit of the annual accounting documents. The CSSF may prescribe rules concerning the remit of the audit mandate and the contents of the report on the audit of the annual accounting documents.
- (2) The CSSF may request any external auditor to carry out an audit in relation to one or more specific aspects of the activities and operations of such a financial sector professional. Such audits shall be carried out at the expense of the professional concerned.
- (3) (Law of 29 April 1999) «The external auditor shall be required promptly to report to the CSSF any fact or decision of which he becomes aware while performing the task of auditing the annual accounting documents of a financial sector professional or any other statutory task, where that fact or decision:
- concerns that financial sector professional and
 - is liable to:
 - constitute a serious infringement of the provisions of this Law or of any regulations adopted for its implementation
 - or
 - affect the continuous functioning of the financial sector professional
 - or
 - lead to refusal to certify the accounts or to the expression of reservations relating thereto.

The external auditor, in completing for a financial sector professional the tasks referred to in the preceding subparagraph, shall likewise be required promptly to inform the CSSF of any fact or decision concerning that professional, and fulfilling the criteria enumerated in the preceding subparagraph, of which he becomes aware while auditing the annual accounting documents or performing any other statutory task within an undertaking which is linked to that financial sector professional by a relationship of control.

For the purposes of this article, "relationship of control" shall mean the relationship existing between a parent undertaking and a subsidiary in the cases referred to in Article 77 of the Law of 17 June 1992 on the annual and consolidated accounts of credit establishments, as amended, or a similar relationship existing between any natural or legal person and an undertaking; any subsidiary undertaking of a subsidiary undertaking shall also be considered a subsidiary of the parent undertaking which is at the head of those undertakings. A situation in which two or more natural or legal persons are permanently linked to one and the same person by a control relationship shall also be regarded as constituting a relationship of control.»

- (4) (Law of 29 April 1999) «The disclosure in good faith to the CSSF by an external auditor of any fact or decision as referred to in paragraph 3 shall not constitute a violation of the obligation of professional secrecy or a breach of any restriction on disclosure of information imposed by contract, and shall not expose that auditor to liability of any kind.»

Art. 55 Accounting documents

- (1) In the absence of any specific legislative provisions governing the publication of annual accounts, consolidated accounts and the accounting documents of branches, the CSSF shall lay down rules governing the content, lodging and publication of the

accounting documents of persons subject to its supervision. Communications or lodgements provided for by law or regulation, and, generally, any publication of the financial situation of a person subject to supervision by the CSSF, may be effected only in the forms thus prescribed.

- (2) Save in so far as may be otherwise provided for by a specific law, the properly approved annual accounts and consolidated accounts, the business report and consolidated business report, the reports drawn up by the person appointed to audit the annual accounts and consolidated accounts, and the accounting documents of branches must be lodged in the «Commercial and Companies Registry»⁷² within one month following their approval.

Art. 56 Coefficients

The CSSF shall fix structure coefficients to be observed by the various categories of credit institutions and other financial sector professionals subject to its supervision. It shall define the factors involved in the calculation of those coefficients. It shall monitor compliance with the coefficients fixed by international agreements or Community law.

Art. 57 Authorisation of holdings

- (1) Any credit institution or other financial sector professional subject to supervision by the CSSF which wishes to have a qualifying holding must first obtain authorisation from the CSSF.
- (2) No credit institution may have a qualifying holding the amount of which exceeds 15% of its own funds in an undertaking which is neither a credit institution, nor a financial institution, nor an undertaking carrying on an activity referred to in Article 84 of the Law of 17 June 1992 on the accounts of credit institutions. The restriction laid down in this paragraph shall not apply to holdings in insurance companies which are the subject of harmonisation under Community law.
- (3) The total amount of a credit institution's qualifying holdings in any of the undertakings referred to in the preceding paragraph may not exceed 60% of the own funds of that credit institution.
- (4) Shares held temporarily during a financial reconstruction or rescue operation or during the normal course of underwriting or in an institution's own name on behalf of others shall not be counted as qualifying holdings for the purpose of calculating the limits laid down in paragraphs 2 and 3. Shares which are not financial fixed assets shall not be included.
- (5) The limits laid down in paragraphs 2 and 3 may be exceeded only in exceptional circumstances. In such cases, however, the CSSF shall require a credit institution either to increase its own funds or to take other equivalent measures.

Art. 58 Complaints by clients

The CSSF shall be competent to entertain complaints by clients of persons subject to its supervision and to approach those persons with a view to achieving an amicable settlement of such complaints.

Art. 59 Powers of injunction and suspension of the CSSF

- (1) Where a person subject to supervision by the CSSF is not complying with the provisions of any laws, regulations or memorandum and articles of association relating to him, or where his management activities or financial situation are not such as to constitute an adequate guarantee of proper discharge of his commitments, the

⁷²

Law of 19 December 2002.

CSSF shall enjoin that person, by registered letter, to remedy within such period as it may prescribe the situation found to exist.

- (2) If, by the end of the period prescribed by the CSSF pursuant to the preceding paragraph, the situation in question has not been remedied, the CSSF may:
 - (a) suspend the members of the administrative, executive or management bodies or any other persons who, by their actions, negligence or lack of prudence, have brought about the situation found to exist or the continued exercise of whose functions may prejudice the implementation of recovery or reorganisation measures;
 - (b) suspend the exercise of voting rights attaching to shares held by shareholders or members whose influence is likely to operate to the detriment of the prudent and sound management of the person in question;
 - (c) suspend the pursuit of that person's business or, if the situation found to exist concerns a particular area of business, the pursuit of the latter.
- (3) Decisions adopted by the CSSF pursuant to the preceding paragraph shall take effect *vis-à-vis* the person in question from the date on which they are notified by registered letter or served by a process-server.
- (4) Where, on account of a suspension ordered pursuant to paragraph 2, an administrative, executive or management body no longer has the minimum number of members prescribed by law or by the memorandum and articles of association, the CSSF shall fix, by registered letter, the period within which the institution concerned is to fill the positions left vacant by the departure of the persons suspended.
- (5) If, by the end of that period, the positions left vacant by the departure of the persons suspended have not been filled, they shall be provisionally filled by persons appointed by the President of the *Tribunal d'Arrondissement de Luxembourg* [Luxembourg District Court], after the institution in question has been duly heard or called upon to put forward its submissions. The persons thus appointed shall have the same powers as the persons whom they replace. Their term of office may not exceed the duration of the suspension of the latter persons. Their fees shall be taxed by the judge appointing them and shall, together with all other expenses occasioned in pursuance of this article, be borne by the institution in question.

«PART IV: Reorganisation and winding up of certain financial sector professionals»⁷³

Art. 60 Definitions

(Law of 19 March 2004)

«For the purposes of this part:

- "administrator" shall mean any person or body appointed by the administrative or judicial authorities whose task is to administer reorganisation measures;
- "administrative or judicial authorities" shall mean such administrative or judicial authorities of the Member States as are competent for the purposes of reorganisation measures or winding-up proceedings;

⁷³

Law of 19 March 2004.

- "competent authorities" shall mean the national authorities which are empowered by law or regulation to supervise credit institutions or investment firms;
- "establishment" shall mean an establishment which manages funds for third parties. This term covers credit institutions, commission agents, asset managers, professionals acting for their own account, distributors of units in UCIs who accept or make payments, underwriters, transfer agents and registrars and professional depositaries of securities or other financial instruments;
- "Member State" shall mean a Member State of the European Community or any other State which is a Contracting Party to the Agreement on the European Economic Area, within the limits laid down by that Agreement and the acts relating thereto;
- "host State" shall mean the State in which the establishment managing funds for third parties has a branch or in which it provides services in the exercise of its freedom to provide services;
- "home State" shall mean the State in which the establishment managing funds for third parties has been authorised;
- "instruments" shall mean all the instruments referred to in section B of Annex II hereto;
- "liquidator" shall mean any person or body appointed by the administrative or judicial authorities whose task is to administer winding-up proceedings;
- "regulated market in the European Economic Area" shall mean a market mentioned in the list published by the European Commission in the *Official Journal of the European Union* in accordance with Article 16 of Directive 93/22/EEC;
- "regulated market in a third country" shall mean a market for financial instruments established in a State outside the European Economic Area which offers guarantees comparable to those offered in regulated markets in the European Economic Area in terms of liquidity, security and market transparency. Markets shall be deemed to offer comparable guarantees where they fulfil, in particular, the following criteria:
 - a legal or regulatory framework exists defining the organisation and functioning of the market, the conditions of access thereto and the conditions to be fulfilled by securities and financial instruments in order to be capable of being dealt in on the market concerned;
 - a public authority exists to ensure the supervision and proper functioning of the market;
 - a clearing house exists to organise liquidity and ensure that operations are properly carried out. The clearing house in question must keep the accounts opened in the names of the persons admitted to trade on the market, ensure supervision of the positions of those persons and, where necessary, proceed of its own motion to close out such positions;
 - requirements exist for the payment, in the case of financial futures markets, of an initial security deposit and of daily margins;
 - there exists an obligation to publish at regular intervals relevant information concerning the operations handled on the market concerned;
- "reorganisation measures" shall mean measures which are intended to preserve or restore the financial situation of an establishment managing funds

for third parties and which could affect third parties' pre-existing rights, including measures involving the possibility of a suspension of payments, suspension of enforcement measures or reduction of claims;

- "winding-up proceedings" shall mean collective proceedings opened and monitored by the administrative or judicial authorities of a State with the aim of realising assets under the supervision of those authorities, including where the proceedings are terminated by a composition or other, similar measure;
- "branch" shall mean a place of business which forms a legally dependent part of an establishment managing funds for third parties and which carries out directly all or some of the transactions inherent in the business of that establishment; any number of places of business set up in the same State by an establishment managing funds for third parties with headquarters in another State shall be regarded as a single branch;
- "*Tribunal*" shall mean the *Tribunal d'Arrondissement de Luxembourg* [Luxembourg District Court] sitting in its capacity as a commercial court.»

Art. 60-1 Scope

(Law of 19 March 2004)

«This Part shall apply to establishments managing funds for third parties.»

«Chapter 1: Suspension of payments»⁷⁴

«Section 1: Provisions governing the opening of proceedings for suspension of payments by establishments governed by Luxembourg law»⁷⁵

Art. 60-2 Opening of proceedings for suspension of payments

(Law of 19 March 2004)

- «(1) Suspension of payments may occur where:
- (a) the creditworthiness of the establishment is undermined or it finds itself in an insoluble liquidity crisis, whether or not there is a cessation of payments;
 - (b) the entire ability of the establishment to meet its commitments is compromised;
 - (c) the authorisation of the establishment has been withdrawn and the withdrawal decision has not yet become definitive.
- (2) Only the CSSF or the establishment may apply to the *Tribunal* for a suspension declaration.
- (3) The application, duly supported by a statement of reasons and by documentary evidence, shall be lodged in the Registry of the *Tribunal*.
- (4) Where the application is made by the establishment, it shall be required, on pain of inadmissibility of the application, before bringing the matter before the *Tribunal*, to give the CSSF advance notice thereof. The Registry shall certify the date and time on which the application was lodged and shall immediately inform the CSSF thereof.

⁷⁴ Law of 19 March 2004.

⁷⁵ Law of 19 March 2004.

- (5) Where the application is made by the CSSF, it shall be required to serve it on the establishment by means of service by a bailiff/process-server. The record of service by bailiff/process-server shall be exempt from stamp duty and registration fees and from the formality of registration.
- (6) The lodgement of the application by the establishment or, where it is brought by the CSSF, the service thereof shall automatically operate to bring about, in favour of the establishment and pending a final decision on the application, a suspension of all payments by that establishment and the prohibition, on pain of nullification, of all acts other than precautionary and protective measures unless authorised by the CSSF or by any contrary legal provision.
- (7) Save where otherwise provided for by any contrary legal provision, payments, operations and other acts, including those relating to the furnishing by an establishment of collateral and the realisation of such collateral, shall be valid and enforceable as against third parties, as against the establishment and as against the administrators, provided that such payments, operations and acts were effected prior to lodgement of the application or, as the case may be, service of the notice of lodgement thereof, or were effected without the beneficiary being aware of such lodgement or service.
- (8) The *Tribunal* shall adjudicate speedily on the application, at a hearing in open court taking place on a date and at a time previously communicated to the parties. If the *Tribunal* has received observations from the CSSF, and if it considers that it has sufficient information, it shall give its ruling forthwith in open court without hearing the CSSF or the establishment. If the CSSF has not submitted observations and the *Tribunal* considers it necessary, it shall call upon the CSSF and the establishment, through the Registrar, to appear before it no later than three days after lodgement of the application. It shall hear them in chambers and shall deliver its ruling in open court. The judgment shall state the time at which it was delivered.
- (9) The Registry shall forthwith inform the CSSF of the essential content of the judgment. It shall notify the judgment to the CSSF and to the establishment by registered post.
- (10) The judgment shall lay down, for a period not exceeding six months, the conditions and detailed arrangements governing the suspension of payments.
- (11) No application may be brought by any of the parties or by any third party to set aside the judgment on the grounds of its having been given in default or in the absence of any party, even where it is delivered without any hearing of the parties or any of them. It shall be immediately enforceable on the authority of the original thereof, prior to registration and without the furnishing of any security, notwithstanding the bringing of any appeal.
- (12) The CSSF and the establishment may appeal against the judgment within fifteen days from notification thereof in accordance with paragraph 9, by notice of appeal lodged in the Registry of the *Tribunal*. Any such appeal shall be determined as a matter of urgency by one of the chambers of the *Cour Supérieure de Justice* [High Court of Justice] dealing with civil and commercial cases. The parties to the appeal shall not be required to appear through counsel. The parties shall be called upon, through the Registrar of the *Cour Supérieure de Justice*, to appear before it within a period not exceeding eight days. The parties shall be heard in chambers. The *Cour Supérieure de Justice* shall deliver its ruling at a hearing in open court taking place on a date and at a time previously communicated to the parties. No appeal in cassation may be lodged against the appellate judgment.
- (13) Where any party fails to appear, no application may be brought to set aside the appellate judgment on the grounds of its having been given in default or in the absence of any party.

- (14) Where the first-instance judgment grants leave for a suspension of payments, it shall appoint one or more administrators, who shall control the management of the establishment's assets.
- (15) The written authorisation of the administrators shall be required for all acts and decisions of the establishment, without which such acts and decisions shall be null and void. However, the *Tribunal* may limit the scope of the operations which are to be subject to such authorisation. The administrators may submit for deliberation by the bodies of the establishment any proposals which they deem expedient. They may take part in the deliberations of the general meeting of shareholders and of the administrative, executive, managerial or supervisory bodies of the establishment.
- (16) Any dispute arising between the bodies of the establishment and the administrators shall be determined by the *Tribunal* upon application by one of the parties. The parties shall be heard in chambers. The decision of the *Tribunal* shall be final and unappealable.
- (17) The CSSF shall automatically act as administrator pending delivery of the first-instance judgment on the application provided for by paragraph 3.
- (18) The *Tribunal* shall determine the amount of the costs and fees payable to the administrators; it may order that advance payments be made to them.
- (19) Upon request by the CSSF, the establishment or the administrators, the *Tribunal* may alter the detailed terms of any first-instance judgment delivered pursuant to this article.
- (20) Within eight days after delivery thereof, any first-instance judgment granting leave for a suspension of payments and appointing one or more administrators, and any first-instance judgment modifying the terms of an earlier judgment, shall be published in the form of extracts, at the expense of the establishment and through the offices of the administrators, in the *Mémorial* [Luxembourg Official Journal] and in at least two Luxembourg newspapers and one foreign newspaper having a sufficiently large circulation, to be specified by the *Tribunal*.
- Any first-instance judgment granting leave for a suspension of payments and any first-instance judgment modifying the terms of an earlier judgment shall in addition be published in the form of extracts in two national newspapers in each host State. Where branches of credit institutions are located in other EC Member States, publication shall also take place in the *Official Journal of the European Union*. To that end, the administrators shall, within eight days from delivery of the same, forward extracts from any first-instance judgment granting leave for a suspension of payments and from any first-instance judgment modifying the terms of an earlier judgment to the Office for Official Publications of the European Communities.
- The notices published in the newspapers must in particular indicate, in one of the official languages of Luxembourg and, for the purposes of advertisement in the host States, in the official language or languages of those host States, the purpose and legal basis of the measure taken and the appeal remedies available.
- (21) Any judgment given on appeal which varies a first-instance judgment as referred to in the preceding paragraph shall be published without delay, in the form of extracts, at the expense of the unsuccessful party and through the offices of the CSSF, in the *Mémorial* [Luxembourg Official Journal] and in the same newspapers as those in which the first-instance judgment was published.
- (22) Any deeds or documents which may enlighten the *Tribunal* in its consideration of the application may be produced or lodged without needing first to be endorsed with an official stamp and without needing to undergo the formality of registration. Orders and judgments given in proceedings for suspension of payments shall be exempt from stamp duties and registration fees.

- (23) The fees of the administrators and all other expenses occasioned by the proceedings for suspension of payments shall be borne by the establishment in question. The fees and expenses shall be regarded as administration expenses and shall be deducted from the assets before any distribution of funds takes place.
- (24) All actions against the administrators acting in their capacity as such shall become time-barred five years after the date of publication of the closure of the suspension of payments procedure.
- All actions against the administrators in respect of acts done in the performance of their duties shall become time-barred five years after the date of such acts or, where they have been concealed by fraud, five years after the date of discovery of those acts.»

Art. 60-3 Competent jurisdiction and applicable law

(Law of 19 March 2004)

- «(1) The *Tribunal* shall have sole jurisdiction to declare a suspension of payments in respect of an establishment governed by Luxembourg law, including in respect of its branches established outside Luxembourg.
- (2) The suspension of payments shall operate in accordance with the laws, regulations and procedures applicable in Luxembourg, save in so far as this Part otherwise provides.
- (3) The suspension of payments shall have universal effect; it shall apply to branches and assets of the establishment located outside Luxembourg.»

Art. 60-4 Information to be provided by the CSSF to foreign competent authorities

(Law of 19 March 2004)

«The CSSF shall without delay inform, by any available means, the competent authorities of the host States of the lodgement of the application or of service thereof on the establishment. That information is to be communicated to the competent authorities of the States concerned, if possible prior to lodgement of the application or service thereof on the establishment or otherwise immediately thereafter. It must mention, in particular, the effects of the measure.»

«Section 2: Special provisions applicable to Luxembourg branches of Community establishments»⁷⁶

Art. 60-5 Competent jurisdiction and applicable law

(Law of 19 March 2004)

- «(1) The administrative or judicial authorities of the home Member State shall alone be empowered to decide on the implementation of one or more reorganisation

⁷⁶ Law of 19 March 2004.

measures in an establishment, including branches of that establishment in Luxembourg.

(2) The law applicable to those reorganisation measures shall be that of the home Member State, save in so far as this Part otherwise provides.

(3) The reorganisation measures shall be fully effective in Luxembourg, without any further formalities, in accordance with the legislation of the home Member State. This rule shall also apply where Luxembourg law does not provide for such measures or makes their implementation subject to conditions which are not fulfilled.

The reorganisation measures shall be effective in Luxembourg once they become effective in the Member State where they have been taken.

The reorganisation measures shall apply irrespective of the legal requirements of the home Member State in relation to publication and shall be fully effective as against creditors unless otherwise provided for by the administrative or judicial authorities or the legislation of the home Member State.

(4) If the CSSF considers it necessary to arrange for the implementation in Luxembourg of a reorganisation measure relating to a branch of a Community establishment, it shall without delay inform the competent authority of the home member State to that effect.»

«Section 3: Special provisions applicable to Luxembourg branches of non-Community establishments»⁷⁷

Art. 60-6 Competent jurisdiction and applicable law

(Law of 19 March 2004)

«(1) Reorganisation measures which are decided upon by the administrative or judicial authorities of the State in which the establishment has its head office and which, according to the law of that State, are effective in Luxembourg shall be fully effective in Luxembourg, without any further formalities, in accordance with the legislation of the home State. This rule shall also apply where Luxembourg law does not provide for such measures or makes their implementation subject to conditions which are not fulfilled.

The reorganisation measures shall be effective in Luxembourg once they become effective in the State where they have been taken.

(2) Notwithstanding paragraph 1, the *Tribunal* shall have jurisdiction to declare, upon application by the CSSF, a suspension of payments in respect of a Luxembourg branch of a non-Community establishment. The CSSF alone shall be competent to apply to the *Tribunal* for a declaration of suspension of payments, if it considers this necessary in order to preserve the interests of creditors of the Luxembourg branch.

A suspension of payments declared by the *Tribunal* shall be governed by Luxembourg law and shall operate in accordance with the procedures applicable in Luxembourg, save in so far as this Part otherwise provides.»

Art. 60-7 Reorganisation measures concerning non-Community credit institutions present in more than one location within the Community

⁷⁷ Law of 19 March 2004.

(Law of 19 March 2004)

- «(1) In the case of non-Community credit institutions present in more than one location within the EC, the CSSF shall without delay inform, by any available means, the competent authorities of the other EC host Member States in which the credit institution has branches which are included on the list of credit institutions authorised in the EC, as published in the *Official Journal of the European Union*, of the lodgement of the application or of service thereof on the institution in question. That information is to be communicated to the competent authorities of the other host Member States concerned, if possible prior to lodgement of the application or service thereof on the institution or otherwise immediately thereafter. It must mention, in particular, the effects of the measure.
- (2) The *Tribunal* shall contact the administrative or judicial authorities of the other host Member States concerned, with a view to coordinating the action taken by them.»

«Chapter 2: Winding up»⁷⁸

«Section 1: Voluntary winding up»⁷⁹

Art. 60-8 Voluntary winding up

(Law of 19 March 2004)

- «(1) An establishment may not place itself in voluntary liquidation without first having notified the CSSF of its intention so to do at least one month before the calling of the general meeting which is to decide upon such winding up. The notice calling such meeting shall contain the agenda and shall be given by means of advertisements published twice, on dates at least eight days apart and not less than eight days before the meeting, in the *Mémorial* [Luxembourg Official Journal] and in at least two Luxembourg newspapers and one foreign newspaper having a sufficiently large circulation; failure to comply with these provisions shall render such notice null and void.
- (2) A voluntary winding-up decision shall not preclude the CSSF or the State Prosecutor from applying to the *Tribunal* for an order declaring applicable the procedure for judicial winding up as provided for in Section 2.»

«Section 2: Provisions governing proceedings for the judicial winding up of establishments governed by Luxembourg law»⁸⁰

Art. 61 Winding-up proceedings

(Law of 19 March 2004)

- «(1) An establishment may be dissolved and wound up where:
- (a) it is apparent that the suspension of payments scheme provided for by the preceding chapter, as previously decided upon, is not able to rectify the situation which caused it to be ordered;

⁷⁸ Law of 19 March 2004.

⁷⁹ Law of 19 March 2004.

⁸⁰ Law of 19 March 2004.

- (b) the financial situation of the establishment is undermined to such an extent that it can no longer meet the commitments which it owes to all its debtors, obligees and holders of participatory rights;
 - (c) the authorisation of the establishment has been withdrawn and the withdrawal decision has become final and definitive.
- (2) Only the CSSF or the State Prosecutor, with the CSSF being duly joined as a party to the proceedings, may apply to the *Tribunal* for an order for the dissolution and winding up of an establishment.
 - (3) The application, duly supported by a statement of reasons and by documentary evidence, shall be lodged in the Registry of the *Tribunal* and served by the applicant on the establishment.
 - (4) The CSSF or the State Prosecutor shall be required to serve the notice of lodgement of the application on the establishment by means of service by a bailiff/process-server. The record of service by bailiff/process-server shall be exempt from stamp duty and registration fees and from the formality of registration.
 - (5) The *Tribunal* shall adjudicate speedily on the application, at a hearing in open court taking place on a date and at a time previously communicated to the parties. It shall call upon the establishment and the CSSF, through the Registrar, to appear before it no later than three days after lodgement of the application. It shall hear them in chambers and shall deliver its ruling in open court. The judgment shall state the time at which it was delivered.
 - (6) The Registry shall forthwith inform the CSSF of the essential content of the judgment. It shall notify the judgment to the CSSF and to the establishment by registered post.
 - (7) When ordering the winding up, the *Tribunal* shall appoint an official receiver and one or more liquidators. It shall determine the manner in which the winding up is to be carried out. It may order, in such measure as it shall determine, that the rules governing bankruptcy are to apply. In that event, it may fix the point in time at which the cessation of payments took place as being a date preceding, by no more than six months, the date of lodgement of the application referred to in Article 60-2(3). The manner in which the winding up is to be carried out may be modified subsequently, either by the *Tribunal* of its own motion or upon application by the liquidators or by the CSSF.
 - (8) Save where otherwise provided for by any contrary legal provision, payments, operations and other acts, including those relating to the furnishing by an establishment of collateral and the realisation of such collateral, shall be valid and enforceable as against third parties and as against the liquidators, provided that such payments, operations and acts were effected prior to delivery of the judgment ordering the winding up or were effected in ignorance of the winding up.»
 - (9) No application may be brought by any of the parties or by any third party to set aside the judgment declaring the dissolution and ordering the winding-up on the grounds of its having been given in default or in the absence of any party. It shall be immediately enforceable on the authority of the original thereof, prior to registration and without the furnishing of any security, notwithstanding the bringing of any appeal.
 - (10) The CSSF, the State Prosecutor or the establishment may appeal against the judgment by notice to the Registrar of the *Tribunal*. The time-limit for appealing shall be fifteen days from notification of the judgment in accordance with paragraph 6., Any such appeal shall be determined as a matter of urgency by one of the chambers of the *Cour Supérieure de Justice* [High Court of Justice] having jurisdiction to adjudicate on civil and commercial cases. The parties to the appeal shall not be

required to appear through counsel. The parties shall be called upon, through the Registrar of the *Cour Supérieure de Justice*, to appear before it within a period not exceeding eight days. The parties shall be heard in chambers. The *Cour Supérieure de Justice* shall deliver its ruling at a hearing in open court taking place on a date and at a time previously communicated to the parties.

(11) Where any party fails to appear, no application may be brought to set aside the appellate judgment on the grounds of its having been given in default or in the absence of any party.

(12) Within eight days after delivery thereof, any first-instance judgment declaring the dissolution and ordering the winding up of an establishment and appointing an official receiver and one or more liquidators, and any first-instance judgment modifying the terms of an earlier judgment, shall be published in the form of extracts, at the expense of the establishment and through the offices of the liquidators, in the *Mémorial* [Luxembourg Official Journal] and in at least two Luxembourg newspapers and one foreign newspaper having a sufficiently large circulation, to be specified by the *Tribunal*.

Any first-instance judgment declaring the dissolution and ordering the winding up of an establishment and appointing an official receiver and one or more liquidators and any first-instance judgment modifying the terms of an earlier judgment shall in addition be published in the form of extracts in two national newspapers in each host State. Where branches of credit institutions are located in other EC Member States, publication shall also take place in the *Official Journal of the European Union*. To that end, the liquidators shall, within eight days from delivery of the same, forward extracts from any first-instance judgment declaring the dissolution and ordering the winding up of an establishment and appointing an official receiver and one or more liquidators and from any first-instance judgment modifying the terms of an earlier judgment to the Office for Official Publications of the European Communities.

The notices published in the newspapers must in particular indicate, in the official language or languages of Luxembourg and of the host States, the purpose and legal basis of the measure taken and the appeal remedies available.

(13) The *Tribunal* shall determine the amount of the costs and fees payable to the liquidators; it may order that advance payments be made to them. In the event that the official receiver establishes any non-existence or insufficiency of assets, the procedural formalities shall be exempt from all court fees and registration charges and the costs and fees of the liquidators shall be borne by the Treasury.

(14) The liquidators shall each year provide the creditors with information in an appropriate manner, particularly with regard to progress in the winding up.

(15) Sums or assets owed to creditors who have not come forward by the close of the winding up shall be lodged in the *Caisse des Consignations* [State Fund for Official Deposits], for the benefit of whomever may be entitled thereto.

(16) Upon completion of the winding up, the liquidators shall furnish to the *Tribunal* a report on the use made of the assets of the establishment and shall submit the accounts and supporting documentation. The *Tribunal* shall appoint one or more auditors to examine the documents. Following receipt of the auditors' report, a ruling shall be given on the management by the liquidators and on the closure of the winding up, details of which shall be published in accordance with paragraph 12.

Such publication shall in addition cover the following matters:

(a) it shall specify the place designated by the *Tribunal* in which the company's books and documents are to be lodged for a period of not less than five years;

- (b) it shall specify the measures taken in accordance with paragraph 15 with a view to the deposit in the *Caisse des Consignations* of sums and assets owed to creditors and shareholders which it has not been possible to remit or return to them.
- (17) All actions which may be brought against the liquidators acting in that capacity shall become time-barred five years after publication of the closure of the winding up.

Actions brought against the liquidators in relation to facts and matters arising from the performance of their duties shall become time-barred five years after the occurrence of those facts and matters or, if they have been deceitfully concealed, five years after they are discovered.

- (18) Without prejudice to paragraph 7, Book III of the Commercial Code, the provisions of the Law of 4 April 1886 on court-approved compositions and arrangements with creditors aimed at preventing bankruptcy, as amended, and the provisions of the Grand-Ducal Decree of 24 May 1935 supplementing the legislation relating to suspensions of payments, court-approved compositions and arrangements with creditors aimed at preventing bankruptcy and bankruptcy following on from the setting-up of a controlled management scheme, shall not apply to establishments.
- (19) Any deeds or documents which may enlighten the *Tribunal* in its consideration of the application may be produced or lodged without needing first to be endorsed with an official stamp and without needing to undergo the formality of registration. Orders and judgments given in winding-up proceedings shall be exempt from stamp duties and registration fees.
- (20) The fees of the liquidators and all other expenses occasioned by the winding-up proceedings shall be borne by the establishment in question. The fees and expenses shall be regarded as administration expenses and shall be deducted from the assets before any distribution of funds takes place.»

Art. 61-1 Competent jurisdiction

(Law of 19 March 2004)

- «(1) The *Tribunal* shall have exclusive jurisdiction to order the dissolution and winding up of an establishment governed by Luxembourg law, including its branches established outside Luxembourg.
- (2) The CSSF shall without delay inform, by any available means, the competent authorities of the host States of the lodgement of the application or of service thereof on the establishment. That information is to be communicated to the competent authorities of the States concerned, if possible prior to lodgement of the application or service thereof on the establishment or otherwise immediately thereafter. It must mention, in particular, the effects of the judgment declaring the dissolution and ordering the winding up.»

Art. 61-2 Applicable law

(Law of 19 March 2004)

- «(1) An establishment managing funds for third parties shall be wound up in accordance with Luxembourg laws and the procedures applicable Luxembourg, save in so far as this Part otherwise provides.
- (2) Luxembourg law shall determine in particular:
- (a) the goods subject to administration and the treatment of goods acquired by the establishment after the opening of winding-up proceedings;
 - (b) the respective powers of the establishment and the liquidator;

- (c) the conditions under which set-offs may be invoked;
- (d) the effects of winding-up proceedings on current contracts to which the establishment is party;
- (e) the effects of winding-up proceedings on proceedings brought by individual creditors, with the exception of lawsuits pending, as provided for in Article 61-21;
- (f) the claims which are to be lodged against the establishment and the treatment of claims arising after the opening of winding-up proceedings;
- (g) the rules governing the lodging, verification and admission of claims;
- (h) the rules governing the distribution of the proceeds of the realisation of assets, the ranking of claims and the rights of creditors who have obtained partial satisfaction after the opening of insolvency proceedings by virtue of a right in rem or through a set-off;
- (i) the conditions for, and the effects of, the closure of insolvency proceedings;
- (j) creditors' rights after the closure of winding-up proceedings;
- (k) who is to bear the costs and expenses incurred in the winding-up proceedings;
- (l) the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to all the creditors, subject to Article 61-19.»

Art. 61-3 Withdrawal of an establishment's authorisation

(Law of 19 March 2004)

- «(1) Where an establishment is wound up, its authorisation shall be withdrawn. In that event, the CSSF shall inform the competent authorities of the States in which the establishment has branches of such withdrawal.
- (2) The withdrawal of authorisation provided for in the preceding paragraph shall not prevent the liquidator or liquidators from carrying on some of the establishment's activities insofar as that is necessary or appropriate for the purposes of winding up. Such activities shall be carried on with the consent, and under the supervision, of the CSSF.»

Art. 61-4 Provision of information to known creditors

(Law of 19 March 2004)

- «(1) The liquidator or liquidators shall without delay individually inform, by letter sent by registered post, known creditors who have their domiciles, normal places of residence or head offices outside Luxembourg of the judgment declaring the dissolution and ordering the winding up of the establishment.
- (2) The letter sent by registered post shall state that the Registry of the *Tribunal* is empowered to accept the lodgement of claims, accompanied by documents evidencing entitlement thereto. That communication shall in particular deal with time limits, the penalties laid down in regard to those time limits and the other measures laid down. It shall also state that creditors whose claims are preferential or secured in rem need to lodge their claims.
- (3) The information shall be provided to the creditors in one of the official languages of Luxembourg. For that purpose, a form shall be used bearing, in all the official languages of the European Union, the heading "Invitation to lodge a claim. Time limits to be observed".»

Art. 61-5 Lodgement of claims

(Law of 19 March 2004)

- «(1) Any creditor, including public authorities, shall have the right and the obligation to lodge in the Registry of the *Tribunal* a statement of his claims, within the period prescribed in the judgment ordering the winding up. The Registry shall keep a record of such statement and shall provide an acknowledgement of receipt thereof.
- (2) Any creditor who has his domicile, normal place of residence or head office outside Luxembourg may lodge his claim in the official language or one of the official languages of his home State. In that event, however, the lodgement of his claim shall bear the heading "Lodgement of claim" in one of the official languages of Luxembourg. In addition, he may be required by the *Tribunal*, at his own expense, to provide a translation of the lodgement of claim into one of the official languages of Luxembourg.
- (3) The claims of all creditors whose domiciles, normal places of residence or head offices are outside Luxembourg shall be treated in the same way and accorded the same ranking as claims of an equivalent nature which may be lodged by creditors having their domiciles, normal places of residence, or head offices in Luxembourg.
- (4) A creditor shall send copies of supporting documents, if any, and shall indicate the nature of the claim, the date on which it arose and its amount, as well as whether he alleges preference, security in rem or reservation of title in respect of the claim and what assets are covered by his security.»

«Section 3: Special provisions applicable to Luxembourg branches of Community establishments»⁸¹

Art. 61-6 Competent jurisdiction and applicable law

(Law of 19 March 2004)

- «(1) The administrative or judicial authorities of the home Member State shall alone be empowered to decide on the opening of winding-up proceedings concerning an establishment, including branches of that establishment in Luxembourg.
- (2) The Luxembourg branch shall be wound up in accordance with the laws, regulations and procedures applicable in the home Member State, save in so far as this Part otherwise provides.
- (3) A decision to open winding-up proceedings taken by the administrative or judicial authority of the home Member State shall be recognised, without further formality, within the territory of Luxembourg and shall be effective there when the decision is effective in the State in which the winding-up proceedings are opened.
- (4) The CSSF shall be the competent authority for the purposes of receiving from a competent authority abroad notification of a decision to open winding-up proceedings taken by the administrative or judicial authority of the Member State concerned in relation to an establishment having one or more branches in Luxembourg.»

⁸¹ Law of 19 March 2004.

«Section 4: Special provisions applicable to Luxembourg branches of non-Community establishments»⁸²

Art. 61-7 Competent jurisdiction and applicable law

(Law of 19 March 2004)

«(1) The administrative or judicial authorities of the State in which the establishment has its head office shall be empowered to order the winding up of that establishment, including branches of that establishment in Luxembourg.

The Luxembourg branch shall be wound up in accordance with the laws, regulations and procedures applicable in the home State, save in so far as may be otherwise provided for by Luxembourg law.

A decision ordering winding up which, according to the law of the home State, is effective in Luxembourg shall be effective in Luxembourg, without further formality, in accordance with the legislation of the home State.

(2) Notwithstanding paragraph 1, the *Tribunal* shall have jurisdiction to order, upon application by the CSSF, the dissolution and winding up of a Luxembourg branch of a non-Community establishment. The CSSF alone shall be competent to apply to the *Tribunal* for a dissolution and winding-up order, if it considers this necessary in order to preserve the interests of creditors of the Luxembourg branch.

In that event, the Luxembourg branch shall be wound up in accordance with Luxembourg law and in conformity with the procedures applicable in Luxembourg, save in so far as this Part otherwise provides.»

Art. 61-8 Non-Community credit institutions present in more than one location within the Community

(Law of 19 March 2004)

«(1) In the case of non-Community credit institutions present in more than one location within the EC, the CSSF shall without delay inform, by any available means, the competent authorities of the other host Member States in which the credit institution has branches which are included on the list of credit institutions authorised in the EC, as published in the *Official Journal of the European Union*, of the decision to open winding-up proceedings in respect of the Luxembourg branch of a non-Community credit institution. That information is to be communicated to the competent authorities of the other host Member States concerned, if possible before the opening of the winding-up proceedings or otherwise immediately thereafter. It must mention, in particular, the effects of the ordering dissolution and winding up.

(2) The *Tribunal* shall contact the administrative or judicial authorities of the other host Member States concerned, with a view to coordinating the action taken by them.»

⁸²

Law of 19 March 2004.

«Chapter 3: Provisions common to reorganisation measures and winding-up proceedings»⁸³

Art. 61-9 Effects on certain contracts and rights

(Law of 19 March 2004)

«The effects of a suspension of payments or the opening of winding-up proceedings on:

- (a) employment contracts and relationships shall be governed solely by the law of the State applicable to the employment contract;
- (b) a contract conferring the right to make use of or acquire immovable property shall be governed solely by the law of the State within the territory of which the immovable property is situated. That law shall determine whether property is movable or immovable;
- (c) rights in respect of immovable property, a ship or an aircraft subject to registration in a public register shall be governed solely by the law of the State under the authority of which the register is kept.»

Art. 61-10 Third parties' rights in rem

(Law of 19 March 2004)

- «(1) The opening of proceedings for a suspension of payments or of winding-up proceedings shall not affect the rights in rem of creditors or third parties in respect of tangible or intangible, movable or immovable assets – both specific assets and collections of indefinite assets as a whole which change from time to time – belonging to the establishment which are situated outside Luxembourg at the time of the adoption of the opening of such proceedings.
- (2) The rights in rem referred to in preceding paragraph shall in particular include:
 - (a) the right to dispose of assets or have them disposed of and to obtain satisfaction from the proceeds of or income from those assets, in particular by virtue of a lien or a mortgage;
 - (b) the exclusive right to have a claim met, in particular a right guaranteed by a lien in respect of the claim or by assignment of the claim by way of a guarantee;
 - (c) the right to demand the assets from, or to require restitution by, anyone having possession or use of them contrary to the wishes of the party so entitled;
 - (d) a right in rem to the beneficial use of assets.
- (3) The right, recorded in a public register and enforceable against third parties, under which a right in rem within the meaning of paragraph 1 may be obtained, shall be considered a right in rem.
- (4) Paragraph 1 shall not preclude the actions for voidness, voidability or unenforceability laid down in Article 61-2(2)(l).»

Art. 61-11 Reservation of title

⁸³ Law of 19 March 2004.

(Law of 19 March 2004)

- «(1) The opening of proceedings for a suspension of payments or of winding-up proceedings concerning an establishment purchasing an asset shall not affect the seller's rights based on a reservation of title where at the time of the opening of such proceedings the asset is situated outside Luxembourg.
- (2) The opening of proceedings for a suspension of payments or of winding-up proceedings concerning an establishment selling an asset, after delivery of the asset, shall not constitute grounds for rescinding or terminating the sale and shall not prevent the purchaser from acquiring title where at the time of the opening of such proceedings the asset sold is situated outside Luxembourg.
- (3) Paragraphs 1 and 2 shall not preclude the actions for voidness, voidability or unenforceability laid down in Article 61-2(2)(l).
- (4) Where at the time of the opening of the proceedings an asset referred to in paragraphs 1 or 2 is situated in Luxembourg, Article 567-1 of the Commercial Code shall apply.»

Art. 61-12 Set-off

(Law of 19 March 2004)

- «(1) The opening of proceedings for a suspension of payments or of winding-up proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of the establishment managing funds for third parties, where such a set-off is permitted by the law applicable to that establishment's claim.
- (2) The preceding paragraph shall not preclude the actions for voidness, voidability or unenforceability laid down in Article 61-2(2)(l).»

Art. 61-13 Lex rei sitae

(Law of 19 March 2004)

«The enforcement of proprietary rights in instruments or other rights in such instruments the existence or transfer of which presupposes their recording in a register, an account or a centralised deposit system shall be governed by the law of the State where the register, account, or centralised deposit system in which those rights are recorded is held or located.»

Art. 61-14 Netting agreements

(Law of 19 March 2004)

«Netting agreements shall be governed solely by the law of the contract which governs such agreements.»

Art. 61-15 Repurchase agreements

(Law of 19 March 2004)

«Without prejudice to Article 61-13, repurchase agreements shall be governed solely by the law of the contract which governs such agreements.»

Art. 61-16 Regulated markets

(Law of 19 March 2004)

«Without prejudice to Article 61-13, transactions carried out in the context of a regulated market shall be governed solely by the law of the contract which governs such transactions.»

Art. 61-17 Proof of the appointment and powers of administrators and liquidators

(Law of 19 March 2004)

«(1) The administrator's or liquidator's appointment shall be evidenced by a certified copy of the original decision appointing him or by any other certificate issued by the administrative or judicial authority of the home State.

Where the liquidator wishes to act in Luxembourg, the certificate shall be translated into one of the official languages of Luxembourg. No legalisation or other similar formality shall be required.

(2) Subject to their being compatible with public order, and subject to the provisions of paragraph 3, administrators and liquidators shall be entitled to exercise in Luxembourg all the powers which they are entitled to exercise within the territory of the home State. They may also appoint persons to assist or, where appropriate, represent them in the course of the reorganisation procedure or winding-up proceedings, in particular in order to help overcome any difficulties encountered by creditors in Luxembourg.

(3) In the exercise of his powers, acts lodged by an administrator or liquidator must be in conformity with Luxembourg law where he is acting in Luxembourg, in particular with regard to procedures for the realisation of assets and the provision of information to employees. Those powers may not include the use of force or the right to rule on legal proceedings or disputes.»

Art. 61-18 Registration in a public register

(Law of 19 March 2004)

«(1) The administrator, liquidator or any administrative or judicial authority of the home State must request that a reorganisation measure or the decision to open winding-up proceedings be registered in the Luxembourg Commercial and Companies Register and published in the C Series of the *Mémorial* [Luxembourg Official Journal].

The provisions of the Law on the Commercial and Companies Register shall apply.

(2) Where compulsory registration is provided for by the legislation or procedures of the State in which the Luxembourg establishment has branches or assets, the administrator or liquidator appointed by the *Tribunal* must take such measures as are necessary in order to ensure such registration.

The costs of registration shall be regarded as costs and expenses incurred in the proceedings.»

Art. 61-19 Detrimental acts

(Law of 19 March 2004)

«(1) Article 61-2 shall not apply as regards the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to the creditors as a whole, where the beneficiary of those acts provides proof that:

- the act detrimental to the creditors as a whole is subject to a system of law other than Luxembourg law, and
- that foreign law does not allow any means of challenging that act in the case in point.

- (2) Where the decision of the Tribunal ordering a suspension of payments prescribes rules relating to the voidness, voidability or unenforceability of legal acts detrimental to the creditors as a whole performed before lodgement of the application in the Registry of the *Tribunal* or service thereof on the establishment, Article 60-3(2) shall not apply in the cases provided for in the preceding paragraph.»

Art. 61-20 Protection of third parties

(Law of 19 March 2004)

«Where, by an act concluded after the opening of proceedings for a suspension of payments or the opening of winding-up proceedings, the establishment disposes, for consideration, of:

- an immovable asset,
- a ship or an aircraft subject to registration in a public register, or
- instruments or rights in such instruments the existence or transfer of which presupposes their being recorded in a register, an account or a centralised deposit system,

the validity and enforceability of that act shall be governed by the law of the State within the territory of which the immovable asset is situated or under the authority of which that register, account or deposit system is kept.»

Art. 61-21 Lawsuits pending

(Law of 19 March 2004)

«The effects of a reorganisation measure or of winding-up proceedings on a pending lawsuit concerning an asset or a right of which the establishment has been divested shall be governed solely by the law of the State in which the lawsuit is pending.»

Art. 61-22 Professional secrecy

(Law of 19 March 2004)

«All persons required to receive or divulge information in connection with the information or consultation procedures laid down in Articles 60-4, 60-5(4), 60-7, 61(18), 61-1, 61-6 and 61-8 shall be bound by professional secrecy, in accordance with the rules and conditions laid down in Article 44 of this Law, with the exception of any judicial authorities to which existing national provisions apply.»

«Art. 61-23»⁸⁴ (repealed by the law of 5 August 2005)

«Chapter 4: Special provisions applicable to payment and securities settlement systems»⁸⁵

«Art. 61-24»⁸⁶ Provisions specific to settlement finality in payment and securities settlement systems authorised in Luxembourg

(Law of 12 January 2001)

- «(1) A transfer order may no longer be revoked or called in question by a participant in a system authorised in Luxembourg, or by a third party, from the moment of its entry

⁸⁴ Law of 19 March 2004.

⁸⁵ Law of 19 March 2004.

⁸⁶ Law of 19 March 2004.

into that system. By the same token, from that moment on, the netting may no longer be called in question for any reason whatever, notwithstanding any legislative provision, regulation, contractual term or custom providing for the setting aside of contracts and transactions concluded before the moment of opening of insolvency proceedings as defined in Article 34-2(l).

The moment of entry of a transfer order into a system authorised in Luxembourg shall be defined by the rules of that system.

- (2) Even in the event of insolvency proceedings against a participant, transfer orders and netting within systems authorised in Luxembourg shall be legally enforceable as between the parties and binding on third parties, provided that transfer orders were entered into a system before the moment of opening of such insolvency proceedings as defined in Article 34-2(l).

Transfer orders entered into a system after the moment of opening of insolvency proceedings and carried out on the day of opening of such proceedings shall be legally enforceable as between the parties and binding on third parties only if, after the time of settlement, the system operator, the settlement agent, the central counterparty or the clearing house can prove that they were not aware, nor should have been aware, of the opening of such proceedings.

- (3) Insolvency proceedings shall not have retroactive effects on the rights and obligations of a participant arising from, or in connection with, its participation in a system earlier than the moment of opening of such proceedings as defined in Article 34-2(l).

- (4) The opening of insolvency proceedings against a participant shall not prevent funds or securities available on that participant's own settlement account from being used to fulfil that participant's obligations in the system on the day of the opening of the insolvency proceedings.

Any credit facility of such a participant connected to the system may be used against available, existing collateral security to fulfil that participant's obligations in the system.

- (5) No settlement account maintained with a system operator or settlement agent may be seized, sequestered or blocked in any way by a participant (other than the system operator or settlement agent), a counterparty or a third party.»

«Art. 61-25»⁸⁷ Provisions specific to insulation of the rights of holders of collateral security provided in the context of Community payment or securities settlement systems or in the context of operations of central banks of the Member States or the European Central Bank from the effects of the insolvency of the provider

(Law of 12 January 2001)

- «(1) For the purposes of this article "collateral security" shall mean all realisable assets, including money, provided under a pledge, a repurchase agreement, a fiduciary transfer or otherwise, for the purpose of securing rights and obligations potentially arising in connection with a system within the meaning of Article 34-2(a), or provided to central banks of the Member States or to the European Central Bank.

- (2) The rights of:

⁸⁷ Law of 19 March 2004.

- a participant to collateral security provided to it in connection with a system within the meaning of Article 34-2(a), and
- central banks of the Member States or the European Central Bank to collateral security provided to them in the context of operations carried out in their capacity as central banks,

shall not be affected by insolvency proceedings against the participant or counterparty to those central banks which provided the collateral security. Notwithstanding any provision to the contrary laid down by the law relating to insolvency proceedings, such collateral security may be realised for the satisfaction of the rights covered thereby.

- (3) Where securities, including rights in securities, are provided as collateral security to participants or central banks of the Member States or the European Central Bank as described in the preceding paragraph, and their right (or that of any nominee, agent or third party acting on their behalf) with respect to the securities is legally recorded on a register, account or centralised deposit system located in a Member State, the determination of the rights of such entities as holders of collateral security in relation to those securities shall be governed by the law of that Member State.»

«Art. 61-26»⁸⁸ Provisions specific to the opening of insolvency proceedings against a participant in a payment or securities settlement system

(Law of 12 January 2001)

- «(1) In the event of insolvency proceedings being opened against a participant in a system authorised in Luxembourg, the rights and obligations arising from, or in connection with, the participation of that participant shall be determined by Luxembourg law.

In the event of insolvency proceedings being opened against a Luxembourg participant in a system (within the meaning of Article 34-2(a)) of another Member State, the rights and obligations arising from, or in connection with, the participation of that participant shall be determined by the law governing that system.

- (2) Where, in relation to a Luxembourg participant in a system within the meaning of Article 34-2(a), an application is made to the «*Tribunal*»⁸⁹, or that court delivers a judgment which, by application of «Chapters 1 and 2 of Part IV»⁹⁰ of this Law or of the provisions referred to in Article «61(20)»⁹¹ of this Law, has the effect of suspending payments by that participant, the Registry of the *Tribunal* shall forthwith notify the CSSF of the application or decision in question, stating the time at which it was respectively lodged or delivered.

The Registry of the *Tribunal d'Arrondissement* shall similarly notify the CSSF of any subsequent decision the effect of which is to terminate the suspension of payments by the participant or to modify the legal basis thereof.

- (3) The CSSF shall in turn ensure that it takes steps without delay to notify the Central Bank and the operator of the system authorised in Luxembourg of any application or decision to open insolvency proceedings in respect of a Luxembourg participant.

Where the matter concerns a Luxembourg participant in a system of another Member State, the CSSF shall without delay notify the decision to the competent authorities, designated for that purpose, of the other Member States concerned.

⁸⁸ Law of 19 March 2004.

⁸⁹ Law of 19 March 2004.

⁹⁰ Law of 19 March 2004.

⁹¹ Law of 19 March 2004.

The CSSF shall be the competent authority for the purposes of receiving, from an authority of another Member State or of a third country designated for that purpose, notification of a decision to open insolvency proceedings taken by the competent judicial or administrative authority of that Member State or third country in relation to a participant in a system authorised in Luxembourg.»

Art. 62 (repealed by the Law of 19 March 2004)

«PART IVa: Deposit-guarantee schemes in credit institutions

Chapter 1: Protection of persons depositing funds with credit institutions governed by Luxembourg law and with Luxembourg branches of credit institutions having their head office outside the European Community»⁹²

Art. 62-1 Subject-matter of guarantees

(Law of 11 June 1997)

«(1) In order to be recognised by the CSSF, deposit-guarantee schemes set up in Luxembourg must ensure, in the event of unavailability of deposits, that compensation is provided to natural and legal persons that have deposited funds with credit institutions governed by Luxembourg law, including their branches in other Member States of the European Community, and to natural and legal persons that have deposited funds with Luxembourg branches of credit institutions having their head office outside the European Community, within the limits, subject to the conditions and in accordance with the detailed rules laid down in this Part.

The CSSF shall keep an official list of the deposit-guarantee schemes set up in Luxembourg which are recognised by it.

(2) For the purposes of this Part, "deposit" shall mean any credit balance which results from funds left in an account or from temporary situations deriving from normal banking transactions and which a credit institution must repay under the legal and contractual conditions applicable, and any debt evidenced by a certificate issued by a credit institution.

Mortgage bonds and public sector bonds issued by credit institutions shall not constitute deposits.

For the purposes of calculating a credit balance, the rules and regulations relating to set-off and counterclaims shall apply, in accordance with the legal and contractual conditions applicable to the deposit concerned.

(3) The following deposits shall be excluded from any compensation by deposit-guarantee schemes:

- deposits made by other credit institutions on their own behalf and for their own account,
- funds constituting "own funds" as defined by the CSSF pursuant to Article 56 of this Law,
- deposits arising out of transactions in connection with which there has been a criminal conviction for money laundering (...)»⁹³.

⁹² Law of 11 June 1997.

⁹³ Repealed by the Law of 12 November 2004.

- (4) The following deposits may be excluded from cover or subject to a lower level of cover by deposit-guarantee schemes:
- deposits by financial institutions as defined in Article «31(1)»⁹⁴ of this Law,
 - deposits by insurance undertakings,
 - deposits by government and central administrative authorities,
 - deposits by provincial, regional, local and municipal authorities, whether they are Luxembourg or foreign authorities,
 - deposits by collective investment undertakings,
 - deposits by pension and retirement funds,
 - deposits by members of a credit institution's own administrative and management bodies, deposits by members personally liable, deposits by natural and legal persons holding at least 5% of the credit institution's capital and deposits by natural and legal persons of similar status in other companies in the same group as that of which the credit institution forms part,
 - deposits by close relatives and kin of the depositors referred to in the preceding indent, and deposits by third parties acting on behalf of such depositors and of their close relatives and kin,
 - deposits by other companies in the same group as that of which the credit institution forms part,
 - non-nominative deposits,
 - deposits for which the depositor has, on an individual basis, obtained from the same credit institution rates and financial concessions which have helped to aggravate the financial situation of that institution,
 - debt securities issued by the same institution and liabilities arising out of own acceptances and promissory notes,
 - deposits by companies other than those which may be permitted to draw up abridged balance sheets pursuant to Article 215 of the Law of 10 August 1915 on commercial companies, as amended, and those which are of a comparable size under the law of another Member State of the European Community.
- (5) Deposits maintained with a credit institution when its authorisation is withdrawn shall continue to be covered by the deposit-guarantee scheme.

Where the authorisation of a credit institution is withdrawn, it shall remain obliged to participate in the deposit-guarantee scheme and to fulfil its obligations *vis-à-vis* that scheme for as long as the funds deposited with that credit institution are covered by the deposit-guarantee scheme. In particular, the credit institution shall remain liable to pay sums owed to the scheme and to make a contribution in the event of any recourse to the guarantee offered by the scheme.»

Art. 62-2 Level and scope of the guarantee

(Law of 11 June 1997)

- «(1) For the purposes of calculating the amount of compensation to be paid to the depositor under the guarantee, account shall be taken of all deposits as defined in Article 62-1(2), subject to the provisions of Article 62-1(3) and (4).
- (2) Subject to the provisions of Article 62-1(3) and (4), deposit-guarantee schemes must cover the aggregate deposits of each depositor, regardless of the number thereof,

⁹⁴ Law of 27 July 2000.

the currency in which they are denominated and their location within the European Community, up to a value equivalent to 20 000 «euros»⁹⁵.

(...)⁹⁶

- (3) Deposit-guarantee schemes may limit the guaranteed amounts to a specified percentage of deposits. The percentage guaranteed must, however, be equal to or exceed 90 % of the aggregate deposits of each depositor until the amount to be paid under the guarantee reaches a value equivalent to 20 000 «euros»⁹⁷.

(...)⁹⁸

- «(4)»⁹⁹ Where an account is opened in the names of two or more persons, or two or more persons have rights over an account that may operate against the signature of one or more of those persons acting in a capacity other than that of authorised agent, the share of each depositor shall be taken into consideration for the purposes of calculating the amount to be paid under the guarantee.

In the absence of special provisions, the deposit shall be deemed to be held in equal shares by the depositors.

- «(5)»¹⁰⁰ Where two or more persons have rights over an account as members of a business partnership, association or grouping of a similar nature, without legal personality, the deposit shall be treated, for the purposes of calculating the amount to be paid under the guarantee, as if made by a single depositor and only one amount of compensation shall be due under the guarantee.

- «(6)»¹⁰¹ Where the depositor is not absolutely entitled to the sums held in an account, the person who is absolutely entitled shall be covered by the guarantee, provided that that person has been identified or is identifiable before the date on which the CSSF makes the determination described in Article 62-3(1) or on which the «Luxembourg *Tribunal d'Arrondissement* [District Court], sitting as a commercial court»¹⁰², orders «the suspension of payments»¹⁰³ or the liquidation of the credit institution, if its judgment making such order is delivered prior to the determination by the CSSF.

The persons absolutely entitled shall be deemed to be identifiable only if the depositor has informed the credit institution that he is acting on behalf of third parties and has communicated to it the number of persons absolutely entitled who have a right to repayment, as well as the share due to each person absolutely entitled to the account. Payment of compensation under the guarantee shall be conditional on communication of the identity of the persons absolutely entitled.

Where there are several persons who are absolutely entitled to the sums deposited in an account, the share of each of them shall be taken into account for the purposes of calculating the amount to be paid under the guarantee.

In the absence of special provisions, the deposit shall be deemed to be held in equal shares by the persons absolutely entitled.

This paragraph shall not apply to collective investment undertakings.

⁹⁵ Article 2 of Council Regulation (EC) No 1103/97 of 17 June 1997 on certain provisions relating to the introduction of the euro (OJ L 162, 19.6.1997, p. 1).

⁹⁶ Repealed by the Law of 2 August 2003.

⁹⁷ Article 2 of Council Regulation (EC) No 1103/97 of 17 June 1997 on certain provisions relating to the introduction of the euro (OJ L 162, 19.6.1997, p. 1).

⁹⁸ Repealed by the Law of 2 August 2003.

⁹⁹ Law of 2 August 2003.

¹⁰⁰ Law of 2 August 2003.

¹⁰¹ Law of 2 August 2003.

¹⁰² Law of 19 March 2004.

¹⁰³ Law of 19 March 2004.

«(7)»¹⁰⁴ Where a depositor is the holder or joint holder of, or the person absolutely entitled to, more than one account with the same credit institution, he shall have the right to receive only one amount of compensation under the guarantee.»

Art. 62-3 Compensation procedures and time-limits

(Law of 11 June 1997)

«(1) Deposit-guarantee schemes must be in a position to pay duly verified claims by depositors in respect of deposits due and payable within three months of the date on which the CSSF determines the unavailability of deposits or on which the «Luxembourg *Tribunal d'Arrondissement* [District Court], sitting as a commercial court»¹⁰⁵, orders «the suspension of payments»¹⁰⁶ or the liquidation of the credit institution, if its judgment making such order is delivered prior to the determination by the CSSF.

The CSSF shall determine the unavailability of deposits where it forms the view that a credit institution is no longer in a position, for reasons connected with its financial situation, to repay those deposits which are due and payable in accordance with the legal and contractual terms applicable to repayment thereof and that there is no early prospect of the institution being able to do so. That determination shall be made as soon as possible, and in any event by no later than twenty one days after it has been established for the first time that the credit institution has not repaid the deposits which are due and payable.

(2) The CSSF shall determine any request by the scheme for an extension of the time-limit within which the amount due under the guarantee is to be paid to the depositors. No more than three extensions of time may be granted, none of which shall exceed three months. Decisions granting such extensions may be made only in very exceptional circumstances and in special cases.

(3) The time-limits laid down in paragraphs 1 and 2 shall not prejudice the right of deposit-guarantee schemes to verify the right to compensation of depositors and persons absolutely entitled, and the claims submitted, in accordance with the standards and procedures laid down by them, before paying the compensation due under the guarantee.

(4) Where a depositor has been unable to assert his claim to payment of compensation under the guarantee within the time-limits laid down in paragraphs 1 and 2, he shall retain his right thereto notwithstanding the expiration of those time-limits.

(5) The documents relating to the conditions to be fulfilled and the formalities to be completed to be eligible for a payment under the guarantee shall be drawn up in detail in one of the official languages of Luxembourg. Those documents shall in addition be made available in the official language or languages of the Member States of the European Community in which the credit institutions governed by Luxembourg law maintain branches, in the manner prescribed by the law of the Member State in which the branch is established.

(6) Notwithstanding the time-limits laid down in paragraphs 1 and 2, where a depositor or any person entitled to sums held in an account has been charged with the offence of money laundering (...)¹⁰⁷, the deposit-guarantee scheme concerned may suspend any payment pending the judgment of the court.

¹⁰⁴ Law of 2 August 2003.

¹⁰⁵ Law of 19 March 2004.

¹⁰⁶ Law of 19 March 2004.

¹⁰⁷ Repealed by the Law of 12 November 2004.

- (7) Deposit-guarantee schemes which make payments under guarantee shall be subrogated, up to an amount equal to the payment made, to the rights of the depositors and persons absolutely entitled who have obtained payment. Deposit-guarantee schemes shall be reimbursed in priority to such depositors and persons absolutely entitled.
- (8) Deposit-guarantee schemes shall obtain from their members all information needed for the implementation of the guarantee.
- (9) (Law of 27 July 2000) «The liquidators of a credit institution shall be required to collaborate with the deposit-guarantee schemes concerned, so as to enable the latter to meet their obligations within the time-limits laid down.»
- «(10)»¹⁰⁸ The right to compensation of the depositor and, as the case may be, of the person absolutely entitled to the sums deposited in an account may be the subject of an action by that depositor or person against the deposit-guarantee scheme.
- «(11)»¹⁰⁹ Without prejudice to paragraph 1, the amount of the contribution which a credit institution is required to pay to a deposit-guarantee scheme as a member of that scheme may not exceed, on an annual basis, five per cent of its own funds as defined by the CSSF pursuant to Article 56 of this Law.
- «(12)»¹¹⁰ Deposits shall be guaranteed neither by the [Luxembourg] State nor by the CSSF. The responsibility of the State and of the CSSF shall be limited, *vis-à-vis* depositors, to ensuring the establishment and recognition in Luxembourg of at least one deposit-guarantee scheme fulfilling the conditions laid down in this Part.»

Art. 62-4 Obligation to supply information to clients

(Law of 11 June 1997)

- «(1) Credit institutions governed by Luxembourg law, their branches established in other Member States of the European Community and the Luxembourg branches of credit institutions having their head office outside the Community shall on request make available to actual and intending depositors information relating to the deposit-guarantee scheme of which they are members or relating to an alternative arrangement as provided for in Article 62-5(4). The depositors shall be informed, at the very least, of the percentage guaranteed and the scope of the cover offered by the guarantee scheme or, as the case may be, by an alternative arrangement, and of the conditions for compensation and the formalities which must be completed to obtain compensation.
- (2) Credit institutions governed by Luxembourg law, their branches established in other Member States of the European Community and the Luxembourg branches of credit institutions having their head office outside the Community shall make the information referred to in paragraph 1 available to depositors in one of the official languages of Luxembourg. Branches established by credit institutions governed by Luxembourg law in other Member States of the European Community shall in addition make that information available to depositors in the official language or languages of the Member State in which the branch is located, in the manner prescribed by national law.
- (3) Credit institutions governed by Luxembourg law, their branches established in other Member States of the European Community and the Luxembourg branches of credit institutions having their head office outside the Community shall inform actual depositors when they join another deposit-guarantee scheme. Where the level or scope, including the percentage, of cover offered by the scheme which the credit

¹⁰⁸ Law of 27 July 2000.

¹⁰⁹ Law of 27 July 2000.

¹¹⁰ Law of 27 July 2000.

institution joins is lower than the level or cover offered by the guarantee scheme which the credit establishment has left, this shall not vest any acquired rights in persons who have deposited funds with that credit institution.

- (4) Credit institutions governed by Luxembourg law, their branches established in other Member States of the European Community and the Luxembourg branches of credit institutions having their head office outside the Community shall not be authorised to mention in any advertising the amount and scope, including the percentage, of the guarantee or details of the operation of the guarantee scheme of which they are members. A factual reference by a credit institution to the deposit-guarantee scheme of which it is a member shall not constitute advertising.»

Art. 62-5 Intervention by the CSSF

(Law of 11 June 1997)

- «(1) If a credit institution governed by Luxembourg law or a Luxembourg branch of a credit institution having its head office outside the European Community fails to comply with the obligations incumbent on it as a member of a deposit-guarantee scheme entered in the official list maintained by the CSSF, the deposit-guarantee scheme shall inform the CSSF accordingly. The CSSF shall call upon the credit institution in writing to remedy the situation found to exist within a time-limit fixed by it.
- (2) If, upon expiry of the time-limit fixed by the CSSF, the credit institution has not regularised its situation, the CSSF may impose the administrative fines provided for in Article 63 of this Law or take the suspension measures referred to in Article 59(2).
- (3) In the absence of any rectification of the situation following the measures taken in accordance with paragraphs 1 and 2, the deposit-guarantee scheme may, with the prior consent of the CSSF, notify the credit institution in writing of its intention to exclude it on the expiry of a period of notice of not less than twelve months.
- If, upon the expiry of the notice period, the credit institution has not fulfilled its obligations, the guarantee scheme may, subject to the express agreement of the CSSF, proceed to exclude it. However, deposits made before the expiry of the notice period shall continue to be covered by the scheme.
- (4) A credit institution excluded from the deposit-guarantee schemes entered in the official list maintained by the CSSF may continue, with the express agreement of the CSSF, to take deposits if, before its exclusion, it has made alternative guarantee arrangements which, in the opinion of the CSSF, ensure that depositors will enjoy a level and scope of protection at least equivalent to that offered by the deposit-guarantee schemes entered in the official list maintained by the CSSF.»

Art. 62-6 Supplementary cover for persons depositing funds with branches set up by credit institutions governed by Luxembourg law in other Member States of the European Community

(Law of 11 June 1997)

- «(1) Branches established by credit institutions governed by Luxembourg law in other Member States of the European Community may voluntarily join one of the official deposit-guarantee schemes set up in the Member State in which the branch is established, in order to supplement the cover which their depositors enjoy pursuant to Article 62-1(1).

Branches of credit institutions governed by Luxembourg law shall be required to comply with the membership conditions laid down by the deposit-guarantee scheme

of the host Member State, including in particular payment of any contributions and other charges.

- (2) Where the CSSF is informed that a branch of a credit institution governed by Luxembourg law which has made use of the option provided for in paragraph 1 is not complying with its obligations *vis-à-vis* the deposit-guarantee scheme of the host Member State, it shall take, in collaboration with the deposit-guarantee scheme of the host Member State, all appropriate measures to ensure that the aforementioned obligations are complied with.
- (3) In the absence of any rectification of the situation following the measures taken, the CSSF may give its consent to the possible exclusion of the branch by the deposit-guarantee scheme of the host Member State on the expiry of a period of notice of not less than twelve months.»

«Chapter 2: Protection of persons depositing funds with Luxembourg branches of credit institutions governed by the law of another Member State of the European Community»¹¹¹

Art. 62-7 Subject-matter of guarantees

(Law of 11 June 1997)

- «(1) «(...)»¹¹² Natural and legal persons depositing funds with Luxembourg branches of credit institutions governed by the law of another Member State of the European Community shall be covered by one of the official deposit-guarantee schemes established in the Member State which granted authorisation to the credit establishment having the Luxembourg branch.
- (2) Where the level or scope, including the percentage, of the cover enjoyed by depositors in Luxembourg branches of credit institutions governed by the law of another Member State of the European Community is lower than the level or scope of the cover offered by the deposit-guarantee schemes entered in the official list maintained by the CSSF, such branches may join the Luxembourg schemes in order to supplement the cover which their depositors enjoy pursuant to paragraph 1.»

Art. 62-8 Principles governing supplementary cover

(Law of 11 June 1997)

- «(1) Deposit-guarantee schemes shall take such measures and steps as may be necessary to enable Luxembourg branches of credit institutions governed by the law of another Member State of the European Community to join them in order to supplement the cover which their depositors enjoy pursuant to Article 62-7. In particular, they shall lay down objective and generally applied conditions for membership of such branches.

The admission of Luxembourg branches of credit institutions governed by the law of another Member State of the European Community shall be conditional on compliance with the membership conditions laid down by the deposit-guarantee schemes, including in particular payment of any contributions and other charges. Branches' membership of one of the deposit-guarantee schemes entered in the official list maintained by the CSSF shall be governed by the guiding principles set out in Article 62-9.

¹¹¹ Law of 11 June 1997.

¹¹² Law of 27 July 2000.

- (2) Where a Luxembourg branch of a credit institution governed by the law of another Member State of the European Community which has made use of the option provided for in Article 62-7(2) is not complying with its obligations *vis-à-vis* the Luxembourg deposit-guarantee scheme, that scheme shall refer the matter to the prudential supervision authority of the Member State which granted authorisation to the credit institution having the Luxembourg branch. The Luxembourg deposit-guarantee scheme shall take, in collaboration with the prudential supervision authority of the Member State of origin, all appropriate measures to ensure that the aforementioned obligations are complied with.

In the absence of any rectification of the situation, the Luxembourg deposit-guarantee scheme may, with the consent of the prudential supervision authority of the Member State of origin, exclude the branch on the expiry of a period of notice of not less than twelve months. Deposits made before the date of exclusion shall continue to be covered, until their maturity, by the scheme voluntarily joined by the branch.

Depositors in the Luxembourg branch shall be informed by that branch or, in default, by the CSSF of the cessation of the supplementary cover.»

Art. 62-9 Relationship between Luxembourg deposit-guarantee schemes and schemes established and officially recognised in other Member States of the European Community

(Law of 11 June 1997)

- «(1) For the purposes of applying Article 62-8, Luxembourg deposit-guarantee schemes shall lay down, bilaterally with the relevant deposit-guarantee scheme in the Member State of origin, appropriate rules and procedures for the payment of compensation to depositors in the Luxembourg branch. Those procedures, and the conditions of membership applicable to a Luxembourg branch of a credit institution governed by the law of another Member State of the Community, shall be determined in conformity with the guiding principles set out in paragraph 2 et seq.
- (2) Luxembourg deposit-guarantee schemes shall retain full rights to impose their objective and generally applied rules on branches of credit institutions governed by the law of another Member State of the European Community. They may demand from such branches all such information as may be considered relevant and shall have the right to verify such information with the prudential supervision authorities of the Member State which granted authorisation to the credit institution having the Luxembourg branch.
- (3) Luxembourg deposit-guarantee schemes shall meet claims for supplementary compensation upon a declaration from the prudential supervision authority of the Member State of origin that deposits are unavailable. Luxembourg schemes shall retain full rights to verify depositors' entitlement to compensation and claims made therefor according to their own standards and procedures before paying supplementary compensation.
- (4) Luxembourg deposit-guarantee schemes and the deposit-guarantee schemes in the Member State of origin shall cooperate fully with each other to ensure that depositors promptly receive the compensation due. In particular, they shall agree on how the existence of a counterclaim which may give rise to set-off under either scheme is to affect the compensation paid to the depositor by each scheme.
- (5) Luxembourg deposit-guarantee schemes shall be entitled to demand contributions from, and to charge, Luxembourg branches of credit institutions governed by the law of another Member State for supplementary cover on an appropriate basis which takes into account the guarantee funded by the home Member State's scheme. To facilitate the levying of such contributions and charges, the Luxembourg deposit-

guarantee schemes shall be entitled to assume that their liability will in all circumstances be limited to the excess of the guarantee they have offered over the guarantee offered by the home Member State's deposit-guarantee scheme regardless of whether the home Member State actually pays any compensation in respect of deposits held in Luxembourg branches.»

Art. 62-10 Obligation to supply information to clients

(Law of 11 June 1997)

- «(1) Luxembourg branches of credit institutions governed by the law of another Member State of the European Community shall on request make available to actual and intending depositors information concerning the amount and scope, including the percentage, of the cover offered by the home Member State's guarantee scheme, the amount and scope, including the percentage, of the supplementary cover offered by the Luxembourg guarantee scheme, and the conditions for compensation and the formalities which must be completed to obtain compensation. That information shall be presented in one of the official languages of Luxembourg.
- (2) Luxembourg branches of credit institutions governed by the law of another Member State of the European Community shall not be authorised to mention in any advertising the amount and scope, including the percentage, of the guarantee or details of the operation of the guarantee scheme of which they are members. A factual reference by a branch to the deposit-guarantee scheme by which it is covered shall not constitute advertising.»

«PART IVb: Compensation schemes for investors in credit institutions and investment firms

Chapter 1: Protection of investors in credit institutions and investment firms governed by Luxembourg law and with Luxembourg branches of credit institutions and investment firms having their head office outside the European Community»¹¹³

Art. 62-11 Subject-matter of guarantees

(Law of 27 July 2000)

«(1) In order to be officially recognised by the CSSF, investor-compensation schemes set up in Luxembourg must provide cover in respect of claims arising out of the inability of a credit institution or investment firm to:

- repay money owed to or belonging to investors and held on their behalf in connection with investment business,
- or
- return to investors any instruments belonging to them and held, administered or managed on their behalf in connection with investment business,

in accordance with the legal and contractual conditions applicable.

Recognised compensation schemes shall cover investors, whether natural or legal persons, in credit institutions or investment firms governed by Luxembourg law, branches located in another Member State of credit institutions or investment firms governed by Luxembourg law, or Luxembourg branches of credit institutions or investment firms having their head office outside the European Community, within the limits, subject to the conditions and in accordance with the detailed rules laid down in this Part.

The amount of an investor's claim shall be calculated in accordance with the legal and contractual conditions, in particular those concerning set-off and counterclaims, that are applicable to the assessment, on the date of the determination or ruling referred to in Article 62-13(1), of the amount of the money or the value, determined where possible by reference to the market value, of the instruments belonging to the investor which the credit institution or investment firm is unable to repay or return.

The CSSF shall keep an official list of the investor-compensation schemes set up in Luxembourg which are recognised by it.

- (2) For the purposes of this Part, "investment business" shall mean any investment service as referred to in Section A of Annex II and any investment service referred to in point 1 of Section C of Annex II relating to one of the instruments referred to in Section B of Annex II.
- (3) For the purposes of this Part, "instrument" shall mean any instrument listed in Section B of Annex II.
- (4) For the purposes of this Part, "investor" shall mean any person who has entrusted money or instruments to a credit institution or investment firm in connection with investment business.

¹¹³

Law of 27 July 2000.

- (5) Claims arising from business in connection with which there has been a criminal conviction for money laundering (...) ¹¹⁴ shall be excluded from all compensation under any investor-compensation scheme.
- (6) The following investors may be excluded from cover or subject to a lower level of cover by compensation schemes:
- investment firms,
 - credit institutions,
 - financial institutions within the meaning of Article 31(1),
 - insurance undertakings,
 - collective investment undertakings,
 - pension and retirement funds,
 - other professional and institutional investors,
 - supranational institutions, government and central administrative authorities,
 - provincial, regional, local and municipal authorities, whether they are Luxembourg authorities or foreign authorities,
 - directors, managers and personally liable members of credit institutions and investment firms, persons holding at least 5% of the capital of the credit institution or investment firm, and investors with similar status in other companies within the same group as that of which the credit institution or investment firm forms part,
 - close relatives and kin, and third parties acting on behalf of the investors referred to in the preceding indent,
 - other undertakings in the same group as that of which the credit institution or investment firm forms part,
 - investors who have any responsibility for or have taken advantage of certain facts relating to a credit institution or investment firm which gave rise to the financial difficulties of that institution or firm or contributed to the deterioration of its financial situation,
 - companies other than those which may be permitted to draw up abridged balance sheets pursuant to Article 215 of the Law of 10 August 1915 on commercial companies, as amended, and those which are of a comparable size under the law of another Member State.
- (7) After the withdrawal of the authorisation of a credit institution or investment firm, cover under paragraph 1 shall continue to be provided in respect of investment business transacted up to the time of that withdrawal.
- Where the authorisation of a credit institution or investment firm is withdrawn, it shall remain obliged to participate in the investor-compensation scheme and to fulfil its obligations *vis-à-vis* that scheme for as long as the investment business of that credit institution or investment firm is covered by the investor-compensation scheme. In particular, the credit institution or investment firm shall remain liable to pay sums owed to the scheme and to make a contribution in the event of any recourse to the cover offered by the scheme.»

¹¹⁴

Repealed by the Law of 12 November 2004.

Art. 62-12 Level and scope of the guarantee

(Law of 27 July 2000)

- «(1) For the purposes of calculating the amount of compensation to be paid to the investor, account shall be taken of the total claims, within the meaning of Article 62-11(1), made against the same credit institution or investment firm, subject to the provisions of Article 62-11(4) and (5).
- (2) Subject to the provisions of Article 62-11(5) and (6), compensation schemes must cover the aggregate investment business of each investor, regardless of the number of accounts, the currency in which they are denominated and their location within the European Community, up to a value equivalent to 20 000 euros.
- (3) Compensation schemes may limit the cover provided for in the preceding paragraph to a specified percentage of the amount of an investor's claim. The percentage guaranteed must, however, be equal to or exceed 90 % of the amount of the claim until the amount to be paid under the scheme reaches a value equivalent to 20 000 euros.
- (4) Each investor's share in joint investment business shall be taken into account for the purposes of calculating the cover referred to in the preceding paragraphs.
- In the absence of special provisions, claims shall be divided equally amongst investors.
- "Joint investment business" shall mean investment business carried out for the account of two or more persons or over which two or more persons have rights that may be exercised by means of the signature of one or more of those persons.
- (5) Claims relating to joint investment business to which two or more persons are entitled as members of a business partnership, association or grouping of a similar nature which has no legal personality may, for the purpose of calculating the limits provided for in the preceding paragraphs, be aggregated and treated as if arising from an investment made by a single investor, and only one amount of compensation shall be payable under the cover.
- (6) Where an investor is not absolutely entitled to the sums or securities held, the person who is absolutely entitled shall receive the compensation, provided that that person has been or can be identified before the date of the determination referred to in Article 62-13(1) or the date on which the «Luxembourg *Tribunal d'Arrondissement* [District Court], sitting as a commercial court»¹¹⁵, orders «the suspension of payments»¹¹⁶ or the liquidation of the credit institution or investment firm, if its judgment making such order is delivered prior to the determination by the CSSF.

The persons absolutely entitled shall be deemed to be identifiable only if the investor has informed the credit institution or investment firm that he is acting on behalf of third parties and has communicated to that institution or firm the number of persons absolutely entitled and the share due to each person absolutely entitled to the account. Payment of compensation under the guarantee shall be conditional on communication of the identity of the persons absolutely entitled.

If two or more persons are absolutely entitled, the share of each of them shall be taken into account for the purposes of calculating the amount to be paid under the guarantee.

In the absence of special provisions, the investment business shall be deemed to have been transacted on an equal basis by the persons absolutely entitled.

¹¹⁵ Law of 19 March 2004.

¹¹⁶ Law of 19 March 2004.

This paragraph shall not apply to collective-investment undertakings.

- (7) Any claim arising from a deposit within the meaning of Article 62-1(2) must be directed to the deposit-guarantee scheme. No claim shall be eligible for compensation more than once under the two schemes.»

Art. 62-13 Compensation procedures and time-limits

(Law of 27 July 2000)

- «(1) Compensation schemes shall provide cover for investors in accordance with Article 62-12 where the CSSF has determined that, in its view, a credit institution or investment firm appears, for the time being, for reasons directly related to its financial circumstances, to be unable to meet its obligations arising out of investors' claims and has no early prospect of being able to do so, or where the «Luxembourg *Tribunal d'Arrondissement* [District Court], sitting as a commercial court»¹¹⁷, orders «the suspension of payments»¹¹⁸ or the liquidation of the credit institution or investment firm, whichever is the earlier.
- (2) The compensation scheme shall take appropriate measures to inform investors of the determination or judgment referred to in paragraph 1 and, if they are to be compensated, to compensate them as soon as possible. It may fix a period during which investors shall be required to submit their claims. That period may not be less than five months from the date of the aforementioned determination or judgment or from the date on which that determination or judgment is made public.
- (3) Where an investor has been unable to assert his claim to payment of compensation under the scheme within the time-limits laid down in the preceding paragraphs, he shall retain his right thereto notwithstanding the expiration of those time-limits.
- (4) The scheme shall be in a position to pay an investor's claim as soon as possible and at the latest within three months of the establishment of the eligibility and of the amount of the claim.
- (5) The CSSF shall determine any request by the scheme for an extension of the time-limit within which the amount due under the guarantee is to be paid to the investors. That extension may not exceed three months. Decisions granting such extensions may be made only in very exceptional circumstances and in special cases.
- (6) The time-limits laid down in the preceding paragraphs shall not prejudice the right of compensation schemes to verify the right to compensation of investors and persons absolutely entitled, and the claims submitted, in accordance with the standards and procedures laid down by them, before paying the compensation due under the scheme.
- (7) The documents relating to the conditions to be fulfilled and the formalities to be completed to be eligible for a payment under the investor-compensation scheme shall be drawn up in detail in one of the official languages of Luxembourg. Those documents shall in addition be made available in the official language or languages of the Member States in which the credit institutions or investment firms governed by Luxembourg law maintain branches, in the manner prescribed by the law of the Member State in which the branch is established.
- (8) Notwithstanding the time-limits laid down in the preceding paragraphs, where an investor or any other person entitled to or having an interest in investment business has been charged with the offence of money laundering (...)¹¹⁹, the investor-

¹¹⁷ Law of 19 March 2004.

¹¹⁸ Law of 19 March 2004.

¹¹⁹ Repealed by the Law of 12 November 2004.

compensation scheme concerned may suspend any payment pending the judgment of the court.

- (9) Investor-compensation schemes which make compensation payments to investors shall be subrogated, up to an amount equal to the payment made by them, to the rights of the investors and persons absolutely entitled who have obtained payment. Investor-compensation schemes shall be reimbursed in priority to such investors and persons absolutely entitled.
- (10) Investor-compensation schemes shall obtain from their members all information needed for the implementation of the compensation scheme.
- (11) The liquidators of a credit institution or investment firm shall be required to collaborate with the investor-compensation schemes concerned, so as to enable the latter to meet their obligations within the time-limits laid down.
- (12) The right to compensation of an investor or, as the case may be, of a person absolutely entitled may be the subject of an action by that investor or person against the investor-compensation scheme.
- (13) The amount of the contribution which a credit institution or investment firm is required to pay to an investor-compensation scheme as a member of that scheme may not exceed, on an annual basis, five per cent of its own funds as defined by the CSSF pursuant to Article 56 of this Law.
- (14) Investment business shall be guaranteed neither by the [Luxembourg] State nor by the CSSF. The responsibility of the State and of the CSSF shall be limited, *vis-à-vis* investors, to ensuring the establishment and recognition in Luxembourg of at least one investor-compensation scheme fulfilling the conditions laid down in this Part.»

Art. 62-14 Obligation to supply information to clients

(Law of 27 July 2000)

- «(1) Credit institutions and investment firms governed by Luxembourg law, their branches established in other Member States and the Luxembourg branches of credit institutions or investment firms having their head office outside the Community shall on request make available to actual and intending investors the information necessary for the identification of the investor-compensation scheme of which they are members or relating to an alternative arrangement as provided for in Article 62-15(4). The investors shall be informed of the amount, the percentage guaranteed and the scope of the cover offered by the compensation scheme or, as the case may be, by an alternative arrangement, and of the conditions for compensation and the formalities which must be completed to obtain compensation.

In addition, investors shall be informed of the rules laid down precluding entitlement to be compensated more than once.
- (2) Credit institutions and investment firms governed by Luxembourg law, their branches established in other Member States and the Luxembourg branches of credit institutions or investment firms having their head office outside the Community shall make the information referred to in paragraph 1 available to investors in one of the official languages of Luxembourg. Branches established by credit institutions or investment firms governed by Luxembourg law in other Member States shall in addition make that information available to investors in the official language or languages of the Member State in which the branch is located, in the manner prescribed by national law.
- (3) Credit institutions and investment firms governed by Luxembourg law, their branches established in other Member States and the Luxembourg branches of credit institutions or investment firms having their head office outside the Community shall inform actual investors when they join another investor-compensation scheme.

Where the level or scope, including the percentage, of cover offered by the scheme which the credit institution or investment firm joins is lower than the level or scope of cover offered by the guarantee scheme which the credit establishment or investment firm has left, this shall not vest any acquired rights in persons who have invested with that credit institution or investment firm.

- (4) Credit institutions and investment firms governed by Luxembourg law, their branches established in other Member States and the Luxembourg branches of credit institutions or investment firms having their head office outside the Community shall not be authorised to mention in any advertising the amount and scope, including the percentage, of the cover or details of the operation of the compensation scheme of which they are members. A factual reference by a credit institution or investment firm to the investor-compensation scheme of which it is a member shall not constitute advertising.»

Art. 62-15 Intervention by the CSSF

(Law of 27 July 2000)

- «(1) If a credit institution or investment firm governed by Luxembourg law, a branch of such an institution or firm located in another Member State or a Luxembourg branch of a credit institution or investment firm having its head office outside the European Community fails to comply with the obligations incumbent on it as a member of an investor-compensation scheme entered in the official list maintained by the CSSF, the investor-compensation scheme shall inform the CSSF accordingly. The CSSF shall call upon the credit institution or investment firm in writing to remedy the situation found to exist within a time-limit fixed by it.

- (2) If, upon expiry of the time-limit fixed by the CSSF, the credit institution or investment firm has not regularised its situation, the CSSF may impose the administrative fines provided for in Article 63 of this Law or take the suspension measures referred to in Article 59(2).

- (3) In the absence of any rectification of the situation following the measures taken in accordance with paragraphs 1 and 2, the investor-compensation scheme may, with the prior consent of the CSSF, notify the credit institution or investment firm in writing of its intention to exclude it on the expiry of a period of notice of not less than twelve months.

If, upon the expiry of the notice period, the credit institution or investment firm has not fulfilled its obligations, the investor-compensation scheme may, subject to the express agreement of the CSSF, proceed to exclude it. However, the cover provided for by Article 62-11(1) shall subsist in relation to investment business transacted during that period.

- (4) A credit institution or investment firm excluded from the investor-compensation schemes entered in the official list maintained by the CSSF may continue, with the express agreement of the CSSF, to provide investment services if, prior to its exclusion, it made alternative compensation arrangements which, in the opinion of the CSSF, ensure that investors will enjoy a level and scope of protection that is at least equivalent to that offered by the investor-compensation schemes entered in the official list maintained by the CSSF.»

Art. 62-16 Supplementary cover for investors with branches set up by credit institutions or investment firms governed by Luxembourg law in another Member State

(Law of 27 July 2000)

- «(1) Branches established by credit institutions or investment firms governed by Luxembourg law in other Member States may voluntarily join one of the official investor-compensation schemes set up in the Member State in which the branch is

established, in order to supplement the cover which their investors enjoy pursuant to Article 62-11(1).

Branches of credit institutions or investment firms governed by Luxembourg law shall be required to comply with the membership conditions laid down by the investor-compensation scheme of the host Member State, including in particular payment of any contributions and other charges.

- (2) Where the CSSF is informed that a branch of a credit institution or investment firm governed by Luxembourg law which has made use of the option provided for in paragraph 1 is not complying with its obligations *vis-à-vis* the investor-compensation scheme of the host Member State, it shall take, in collaboration with the compensation scheme of the host Member State, all appropriate measures to ensure that the aforementioned obligations are complied with.
- (3) In the absence of any rectification of the situation following the measures taken, the CSSF may give its consent to the possible exclusion of the branch by the investor-compensation scheme of the host Member State on the expiry of a period of notice of not less than twelve months.»

«Chapter 2: Protection of investors with Luxembourg branches of credit institutions or investment firms governed by the law of another Member State»¹²⁰

Art. 62-17 Subject-matter of guarantees

(Law of 27 July 2000)

- «(1) Natural and legal persons investing with Luxembourg branches of credit institutions or investment firms governed by the law of another Member State shall be covered by one of the official investor-compensation schemes established in the Member State which granted authorisation to the credit establishment or investment firm having the Luxembourg branch.
- (2) Where the level or scope, including the percentage, of the cover enjoyed by investors in Luxembourg branches of credit institutions or investment firms governed by the law of another Member State is lower than the level or scope of the cover offered by the investor-compensation schemes entered in the official list maintained by the CSSF, such branches may join the Luxembourg schemes in order to supplement the cover which their investors enjoy pursuant to paragraph 1.»

Art. 62-18 Principles governing supplementary cover

(Law of 27 July 2000)

- «(1) Investor-compensation schemes shall take such measures and steps as may be necessary to enable Luxembourg branches of credit institutions or investment firms governed by the law of another Member State to join them in order to supplement the cover which their investors enjoy pursuant to Article 62-17. In particular, they shall lay down objective and generally applied conditions for membership of such branches.

The admission of Luxembourg branches of credit institutions or investment firms governed by the law of another Member State shall be conditional on compliance with the membership conditions laid down by the investor-compensation schemes,

¹²⁰

Law of 27 July 2000.

including in particular payment of any contributions and other charges. Branches' membership of one of the investor-compensation schemes entered in the official list maintained by the CSSF shall be governed by the guiding principles set out in Article 62-19.

- (2) Where a Luxembourg branch of a credit institution or investment firm governed by the law of another Member State which has made use of the option provided for in Article 62-17(2) is not complying with its obligations *vis-à-vis* the Luxembourg investor-compensation scheme, that scheme shall refer the matter to the prudential supervision authority of the Member State which granted authorisation to the credit institution or investment firm having the Luxembourg branch. The Luxembourg investor-compensation scheme shall take, in collaboration with the prudential supervision authority of the Member State of origin, all appropriate measures to ensure that the aforementioned obligations are complied with.

In the absence of any rectification of the situation, the Luxembourg investor-compensation scheme may, with the consent of the prudential supervision authority of the Member State of origin, exclude the branch on the expiry of a period of notice of not less than twelve months. Investment business transacted before the date of exclusion shall continue to be covered, until its maturity, by the scheme voluntarily joined by the branch.

Investors in the Luxembourg branch shall be informed by that branch or, in default, by the CSSF of the cessation of the supplementary cover and of the date on which it takes effect.»

Art. 62-19 Relationship between Luxembourg investor-compensation schemes and schemes established and recognised in other Member States

(Law of 27 July 2000)

- «(1) For the purposes of application of Article 62-18, Luxembourg investor-compensation schemes shall lay down, bilaterally with the relevant investor-compensation scheme in the Member State of origin, appropriate rules and procedures for the payment of compensation to investors in the Luxembourg branch. Those procedures, and the conditions of membership applicable to a Luxembourg branch of a credit institution or investment firm governed by the law of another Member State, shall be determined in conformity with the guiding principles set out in paragraph 2 et seq.
- (2) Luxembourg investor-compensation schemes shall retain full rights to impose their objective and generally applied rules on branches of credit institutions or investment firms governed by the law of another Member State. They may demand from such branches all such information as may be considered relevant and shall have the right to verify such information with the prudential supervision authorities of the Member State which granted authorisation to the credit institution or investment firm having the Luxembourg branch.
- (3) Luxembourg investor-compensation schemes shall meet claims for supplementary compensation upon a declaration from the prudential supervision authority of the Member State of origin concluding that a credit institution or investment firm is unable to repay money owed to investors or to return to investors instruments belonging to them in accordance with Article 62-11(1). Luxembourg schemes shall retain full rights to verify investors' rights to compensation and claims made therefor according to their own standards and procedures before paying supplementary compensation.
- (4) Luxembourg investor-compensation schemes and the investor-compensation schemes in the Member State of origin shall cooperate fully with each other to ensure that investors promptly receive the compensation due. In particular, they shall agree on how the existence of a counterclaim which may give rise to set-off

under either scheme is to affect the compensation paid to the investor by each scheme.

- (5) Luxembourg investor-compensation schemes shall be entitled to demand contributions from, and to charge, Luxembourg branches of credit institutions or investment firms governed by the law of another Member State for supplementary cover on an appropriate basis which takes into account the guarantee funded by the home Member State's scheme. To facilitate the levying of such contributions and charges, the Luxembourg investor-compensation schemes shall be entitled to assume that their liability will in all circumstances be limited to the excess of the guarantee they have offered over the guarantee offered by the home Member State's investor-compensation scheme regardless of whether the home Member State actually pays any compensation in respect of investment business transacted with Luxembourg branches.»

Art. 62-20 Obligation to supply information to clients

(Law of 27 July 2000)

- «(1) Luxembourg branches of credit institutions or investment firms governed by the law of another Member State shall on request make available to actual and intending investors information concerning the amount and scope, including the percentage, of the cover offered by the home Member State's investor-compensation scheme, the amount and scope, including the percentage, of the supplementary cover offered by the Luxembourg investor-compensation scheme, and the conditions for compensation and the formalities which must be completed to obtain compensation. That information shall be presented in one of the official languages of Luxembourg.
- (2) Luxembourg branches of credit institutions or investment firms governed by the law of another Member State shall not be authorised to mention in any advertising the amount and scope, including the percentage, of the guarantee or details of the operation of the investor-compensation scheme of which they are members. A factual reference by a branch to the investor-compensation scheme by which it is covered shall not constitute advertising.»

PART V: Penalties

Art. 63 Administrative fines

An administrative fine of between «125 and 12 500 euros»¹²¹ may be imposed by the CSSF on persons responsible for the administration or management of institutions subject to supervision by the CSSF under this Law, and on natural persons subject to such supervision, in the event that they refuse to provide the accounting documents or other information requested or where that documentation or information proves to be incomplete, incorrect or false; in the event that the persons concerned prevent or impede inspections by the CSSF; in the event that they contravene the rules governing publication of balance sheets and accounts; or in the event that they fail to act in response to directions or instructions addressed to them by the CSSF.

Art. 64 Criminal sanctions

- (1) Any person who contravenes or attempts to contravene the provisions of, respectively, Articles 2, 3(5), 14, «15(6)»¹²² or «32(1)»¹²³, or of Article 52(2), shall be

¹²¹ Art. 9 of the Law of 1 August 2001 on the changeover to the euro on 1 January 2002 and amending certain legislative provisions (Mém. A 2001, p. 2440).

¹²² Law of 12 March 1998.

punishable by a term of imprisonment of between eight days and five years and/or a fine of between ««5 000»¹²⁴ and 125 000 euros»¹²⁵.

- (2) (Law of 11 August 1998) «Any person who contravenes the provisions of Articles 7(3) or 19(4) (...)»¹²⁶ shall be punishable by a fine of between «1 250 and 125 000 euros»¹²⁷.»
- (3) Any person responsible for a financial professional or professionals who fails within the time-limit for publication laid down pursuant to Article 55(2) to lodge the accounting documents referred to therein shall be punishable by a fine of between ««500»¹²⁸ and 25 000 euros»¹²⁹.
- (4) Any member of an administrative, executive or management body of a financial institution who
- despite having been suspended pursuant to Article 59(2)(a), carries out any act of disposal, administration or management;
 - notwithstanding suspension of the pursuit of the institution's activities pursuant to Article 59(2)(c), carries out any act of disposal, administration or management;
 - notwithstanding the provisions of Article «60-2(6)»¹³⁰, proceeds to make any payment without being authorised by a judgment so to do;
 - notwithstanding the provisions of Article «60-2(6)»¹³¹, carries out any act other than a preventive or precautionary act without being authorised by the executive body of the CSSF so to do; or
 - in any case covered by Article «60-2(15)»¹³², carries out any act of disposal, administration or management without being authorised by a judgment so to do;
 - «issues any pledge certificate without being authorised so to do by Section 3 of Chapter 1 of Part I»¹³³;
 - «deliberately or negligently omits to provide or maintain assets by way of collateral security pursuant to Section 3 of Chapter 1 of Part I or provides assets by way of collateral security in the knowledge that those assets are insufficient»¹³⁴;
 - «fails to comply with the rules regarding the keeping of registers of pledges»¹³⁵,
- shall be punishable by a term of imprisonment of between eight days and five years and/or a fine of between ««5 000»¹³⁶ and 125 000 euros»¹³⁷.

¹²³ Law of 12 March 1998.

¹²⁴ Art. IX of the Law of 13 June 1994 on the system of penalties (Mém. A 1994, p. 1096).

¹²⁵ Art. 6 of the Law of 1 August 2001 on the changeover to the euro on 1 January 2002 and amending certain legislative provisions (Mém. A 2001, p. 2440).

¹²⁶ Repealed by the Law of 12 November 2004.

¹²⁷ Art. 6 of the Law of 1 August 2001 on the changeover to the euro on 1 January 2002 and amending certain legislative provisions (Mém. A 2001, p. 2440).

¹²⁸ Art. IX of the Law of 13 June 1994 on the system of penalties (Mém. A 1994, p. 1096).

¹²⁹ Art. 6 of the Law of 1 August 2001 on the changeover to the euro on 1 January 2002 and amending certain legislative provisions (Mém. A 2001, p. 2440).

¹³⁰ Law of 19 March 2004.

¹³¹ Law of 19 March 2004.

¹³² Law of 19 March 2004.

¹³³ Law of 21 November 1997.

¹³⁴ Law of 21 November 1997.

¹³⁵ Law of 21 November 1997.

¹³⁶ Art. IX of the Law of 13 June 1994 on the system of penalties (Mém. A 1994, p. 1096).

(5) Any person who contravenes the provisions of Article 28-2(2)¹³⁸ shall be punishable by a term of imprisonment of between eight days and three months and a fine of between ««251»¹³⁹ and 25 000 euros»¹⁴⁰.

(6) This article shall apply without prejudice to the penalties laid down by the Penal Code or by other individual laws.

(7) (...)¹⁴¹

«Art. 64-1 (Law of 13 January 2002)

Any director or employee of a credit institution or of any other institution who participates in a professional capacity in the handling and supply to the public of banknotes and coins, including institutions engaging in the business of exchanging banknotes and coins of different currencies, such as bureaux de change, and who fails to withdraw from circulation any euro banknotes and coins which he receives and which he knows or has sufficient grounds to think are false, shall be punishable by a fine of between 1 250 and 125 000 euros.

The same penalties may be imposed on any person who fails to hand over to the competent authorities the banknotes and coins referred to in the preceding paragraph.»

PART VI: Amendments, repeals and transitional provisions

(token entry)

¹³⁷ Art. 6 of the Law of 1 August 2001 on the changeover to the euro on 1 January 2002 and amending certain legislative provisions (Mém. A 2001, p. 2440).

¹³⁸ Law of 12 March 1998 and Law of 2 August 2003.

¹³⁹ Art. IX of the Law of 13 June 1994 on the system of penalties (Mém. A 1994, p. 1096).

¹⁴⁰ Art. 6 of the Law of 1 August 2001 on the changeover to the euro on 1 January 2002 and amending certain legislative provisions (Mém. A 2001, p. 2440).

¹⁴¹ Repealed by the Law of 11 August 1998.

«ANNEX I¹⁴²»

List of activities referred to in Article 31(1):

1. Acceptance of deposits and other repayable funds.
2. Lending, including, *inter alia*, consumer credit, mortgage credit, factoring, with or without recourse, financing of commercial transactions (including forfeiting).
3. Financial leasing.
4. Money transmission services.
5. Issuing and administering means of payment (e.g. credit cards, travellers' cheques and bankers' drafts).
6. Guarantees and commitments.
7. Trading for own account or for account of customers in:
 - (a) money-market instruments (cheques, bills, certificates of deposit, etc.);
 - (b) foreign exchange;
 - (c) financial futures and options;
 - (d) exchange and interest-rate instruments;
 - (e) transferable securities.
8. Participation in securities issues and the provision of services related to such issues.
9. Advice to undertakings on capital structure, industrial strategy and related questions and advice as well as services relating to mergers and the purchase of undertakings.
10. Money broking.
11. Portfolio management and advice.
12. Safekeeping and administration of securities.
13. Credit reference services.
14. Safe-custody services.»

¹⁴²

Law of 12 March 1998.

«ANNEX II¹⁴³»

Section A

Services

1. (a) Reception and transmission, on behalf of investors, of orders in relation to one or more of the instruments listed in Section B.
(b) Execution of such orders other than for own account.
2. Dealing in any of the instruments listed in Section B for own account.
3. Managing portfolios of investment portfolios in accordance with mandates given by investors on a discretionary, client-by-client basis where such portfolios include one or more of the instruments listed in Section B.
4. Underwriting in respect of issues of any of the instruments listed in Section B and/or the placing of such issues.

Section B

Instruments

1. (a) Transferable securities.
(b) Units in collective investment undertakings.
2. Money-market instruments.
3. Financial-futures contracts, including equivalent cash-settled instruments.
4. Forward interest-rate agreements (FRAs).
5. Interest-rate, currency or equity swaps.
6. Options to acquire or dispose of any instrument falling within this Section of this Annex, including equivalent cash-settled instruments. This category includes in particular options on currency and on interest rates.

Section C

Ancillary services

1. Safekeeping and administration in relation to one or more of the instruments listed in Section B.
2. Safe-custody services.
3. Granting credits or loans to an investor to allow him to carry out a transaction in one or more of the instruments listed in Section B, where the firm granting the credit or loan is involved in the transaction.
4. Advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings.
5. Services relating to underwriting.
6. Investment advice concerning one or more of the instruments listed in Section B.

¹⁴³

Law of 12 March 1998.

7. Foreign-exchange services where these are connected with the provision of investment services.»

- Doc. parl. No 3600; ord. sessions 1991-1992 and 1992-1993; Dir. 89/646/EEC
- Doc. parl. No 3766; ord. sessions 1992-1993 and 1993-1994; Dir. 92/30
- Doc. parl. No 4032; ord. sessions 1994-1995 and 1995-1996
- Doc. parl. No 4093; ord. sessions 1995-1996 and 1996-1997; Dir. 94/19
- Doc. parl. No 4090; ord. sessions 1995-1996 and 1996-1997
- Doc. parl. No 4066; ord. sessions 1994-1995, 1995-1996, 1996-1997 and 1997-1998; Dir. 93/22
- Doc. parl. No 4294; ord. sessions 1996-1997 and 1997-1998
- Doc. parl. No 4478; ord. session 1998-1999; Dir. 97/5
- Doc. parl. No 4370; ord. sessions 1997-1998 and 1998-1999; Dir. 95/26 and 93/6
- Doc. parl. No 4328; ord. sessions 1996-1997, 1997-1998 and 1998-1999
- Doc. parl. No 4632; ord. session 1999-2000
- Doc. parl. No 4553; ord. session 1999-2000; Dir. 97/9/EC
- Doc. parl. No 4611; ord. session 2000-2001; Dir. 98/26/EC
- Doc. parl. No 4696; ord. sessions 1999-2000, 2000-2001
- Doc. parl. No 4708; ord. session 2000-2001; Dir. 98/33, 77/780, 85/611, 89/647, 92/49, 92/96, 93/6, 93/22
- Doc. parl. No 4785; ord. sessions 2000-2001 and 2001-2002
- Doc. parl. No 4813; ord. sessions 2000-2001, 2001-2002; Dir. 2000/12/EC, 2000/28/EC, 2000/46/EC
- Doc. parl. No 4581; ord. sessions 1998-1999, 1999-2000, 2000-2001, 2001-2002 and 2002-2003
- Doc. parl. No 5085; ord. session 2002-2003
- Doc. parl. No 5153; ord. sessions 2002-2003 and 2003-2004; Dir. 2001/24/EC
- Doc. parl. No 5199; ord. sessions 2002-2003 and 2003-2004
- Doc. parl. No 5165; ord. sessions 2002-2003, 2003-2004 and 2004-2004; Dir. 2001/97/EC