MEMORIAL

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MEMORIAL

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COMPENDIUM OF LEGISLATION

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Summary

FINANCIAL SECTOR

We JEAN, by the grace of God, Grand Duke of Luxembourg, Duke of Nassau;

Our Council of State heard;

With the consent of the Chamber of Deputies;

Given the decision of the Chamber of Deputies of March 24, 1993 and that of the Council of State of April 2, 1993 that there is no no second vote;

Have ordered and order:

PART I : Access to professional activities in the financial sector

Chapter 1: Authorization of banks or credit institutions governed by Luxembourg law.

Art. 1. Scope.

This chapter applies to any legal person governed by Luxembourg law whose activity consists in receiving deposits or other repayable funds from the public and in granting loans for its own account. These people can be called credit institutions or banks without distinction.

Art. 2. The need for accreditation.

(1) No legal person governed by Luxembourg law may exercise the activity of a credit institution without being in possession of a written authorization from the Minister in charge of the Luxembourg Monetary Institute.

(2) No one may be authorized to exercise the activity of a credit institution either under the cover of another person, or as an intermediary for the exercise of this activity.

(3) No one other than a credit institution may exercise, on a professional basis, the activity of receiving deposits or other repayable funds from the public. This prohibition does not apply either to the receipt of deposits or other funds repayable by the State, by municipalities or by international public bodies of which one or more Member States of the EEC are members, or to the cases expressly referred to in national or Community legislation, provided that these activities are subject to regulations and controls aimed at the protection of depositors and investors and applicable to these cases.

Art. 3. The accreditation procedure.

(1) Authorization is granted upon written request and after instruction by the Luxembourg Monetary Institute, hereinafter referred to as “IML”, relating to the conditions required by this law.

(2) Must be the subject of prior consultation by the IML of the competent authorities of the other Member States of the EEC, the approval of a credit institution which is: - a

subsidiary of a credit institution approved in another Member State, or - a subsidiary

of the parent company of a credit institution approved in another State member, or - controlled by the same

natural or legal persons as a credit institution authorized in another Member state.

(3) The duration of the approval is unlimited.

(4) The application for approval must be accompanied by all the information necessary for its assessment, as well as a program of activities indicating the type and volume of operations envisaged and the administrative and accounting structure of the establishment.

(5) Authorization is likewise required before any change in the object, name or legal form, as well as for the creation or acquisition of agencies, branches or subsidiaries in Luxembourg or abroad. foreigner, without prejudice to the application of Article 36.

(6) The decision taken on an application for approval must be reasoned and notified to the applicant within six months of receipt of the application or, if the latter is incomplete, within six months of receipt of the information necessary for the decision. In any case, a decision is made within twelve months of receipt of the request, failing which the absence of a decision is equivalent to the notification of a decision of refusal. The decision may be referred, within one month under penalty of foreclosure, to the Council of State, Litigation Committee, which rules in the last instance and as judge of the merits.

(7) The application of the provisions of this article must, where appropriate, be adapted to the existence of measures decided by the authorities of the EEC and imposing a limitation or suspension of decisions on applications for authorization submitted by establishments from third countries to the EEC.

Art. 4. The legal form of the establishment.

Approval may only be granted to a legal person governed by Luxembourg law if it takes the form of an establishment governed by public law, a public limited company, a partnership limited by shares or a cooperative society.

Art. 5. Central administration and infrastructure.

(1) Authorization is subject to proof of the existence in Luxembourg of the state's central administration. bliss to be accepted.

(2) The institution must also demonstrate good administrative and accounting organization as well as procedures adequate internal controls.

Art. 6. Shareholding.

(1) Approval is subject to communication to the IML of the identity of the shareholders or partners, direct or indirect, natural or legal persons, who hold a qualifying holding in the establishment to be approved or enable them to exercise a significant influence on the conduct of business, and the amount of these participations. The capacity of said shareholders or associates must be satisfactory, taking into account the need to guarantee sound and prudent management of the credit institution.

(2) Authorization is subject to the establishment's direct and indirect shareholding structure being transparent and organized in such a way that the authorities responsible for the prudential supervision of the establishment and, where applicable, of the group to which it belongs are clearly determined; that this surveillance can be exercised without hindrance; and that supervision on a consolidated basis of the group to which the institution belongs is ensured.

(3) Any natural or legal person who plans to hold, directly or indirectly, a qualifying holding in a credit institution must inform the IML beforehand and communicate the amount of this holding. Any natural or legal person must likewise inform the 'IML if it plans to increase its qualifying holding in such a way that the proportion of voting rights or capital shares held by it reaches or exceeds the thresholds of 20, 33 or 50% or that the credit institution becomes its subsidiary company.

(4) The IML may, within three months from the date of the information provided for in the preceding paragraph, oppose the said project if, in order to take account of the need to guarantee sound and prudent management of the credit institution , he is not satisfied with the status of the person referred to in the preceding paragraph. When there is no opposition, the IML may set a maximum deadline for carrying out the project referred to in the preceding paragraph. When a stake is acquired despite the opposition of the IML, the latter may suspend the exercise of the corresponding voting rights or request the nullity or cancellation of the votes cast.

(5) If the acquirer of the participations referred to in paragraph (3) is a credit institution authorized in another Member State, or a parent company of a credit institution authorized in another Member State, or a natural or legal person which controls a credit institution authorized in another Member State, and if, by virtue of the acquisition, the institution in which the acquirer plans to hold a participation becomes a subsidiary or comes under its control, the assessment of the The acquisition must be subject to the prior consultation referred to in Article 3(2).

(6) Any natural or legal person who plans to cease to hold, directly or indirectly, a qualifying holding in a credit institution must inform the IML beforehand and communicate the planned amount of his holding. Any natural or legal person must likewise inform the IML of its intention to reduce its qualified participation in such a way that the proportion of voting rights or capital shares held by it falls below the thresholds of 20, 33 or 50% or that the establishment ceases to be its subsidiary.

(7) Credit institutions are required to communicate to the IML, as soon as they become aware of them, the acquisitions or disposals of holdings in their capital which cause one of the thresholds to be crossed above or below referred to in subsections (3) and (6). Likewise, they communicate at least once a year the identity of the shareholders or partners who have qualifying holdings as well as the amount of said holdings, as it results in particular from the data recorded at the annual general meeting of shareholders or partners, or information received in respect of obligations relating to companies listed on a stock exchange.

(8) The application of the provisions of this article must, where appropriate, be adapted to the existence of measures decided by the authorities of the EEC and imposing a limitation or suspension of decisions on applications for the acquisition of holdings submitted by direct or indirect parent companies governed by the law of a third country to the EEC.

Art. 7. Professional repute and experience.

(1) Approval is subject to the condition that the members of the administrative, management and supervisory bodies, as well as the shareholders or associates referred to in the preceding article, prove their professional integrity. Good repute is assessed on the basis of the criminal record and all the elements likely to establish that the persons concerned enjoy a good reputation and present all the guarantees of an irreproachable activity.

(2) The persons in charge of the management of the establishment must be at least two and must be empowered to effectively determine the orientation of the activity. They must have adequate professional experience by having already carried out similar activities at a high level of responsibility and autonomy.

(3) Any change in the persons who must fulfill the legal conditions of good repute or professional experience must be authorized in advance by the IML. To this end, the IML may request all necessary information on the persons likely to have to fulfill the legal conditions. The decision of the IML may be referred, within one month under penalty of foreclosure, to the Council of State, Litigation Committee, which rules in the last instance and as judge of the merits.

Art. 8. Financial foundations.

(1) Approval is subject to proof of share capital of a value of 350 million francs, of which 250 million francs must be paid up. A Grand-Ducal regulation may modify these amounts.

(2) The own funds of a credit institution may not fall below the amount of the share capital required under the preceding paragraph. If equity falls below this amount, the IML may, when the circumstances justify it, grant a limited period for the institution to rectify its situation or cease its activities.

Art. 9. Sufficient credit.

Approval is subject to proof of sufficient credit depending on the program of activities.

Art. 10. External review.

(1) Approval is subject to the condition that the institution entrusts the audit of its annual accounting documents to one or more company auditors, who can demonstrate adequate professional experience. These external auditors are appointed by the body in charge of the administration of the credit institution.

(2) Any change on the part of the external auditors must be authorized in advance by the IML in accordance with section 7(3).

(3) The institution of statutory auditors provided for in the law on commercial companies, as well as article 137 of the amended law of August 10, 1915, do not apply to credit institutions.

Art. 11. Withdrawal of accreditation.

(1) Approval is withdrawn if the conditions for granting it are no longer met.

(2) The approval lapses if it is not used for an uninterrupted period of more than twelve months.

(3) The decision on the withdrawal of approval may be referred, within one month, under pain of foreclosure, to the Council of State, Litigation Committee, which rules in the last instance and as judge of the merits.

Art. 12. Special provisions for rural banks.

(1) The group formed by the central credit institution of the rural banks and by the rural banks affiliated since before December 15, 1977 to this central credit institution or resulting from the merger of such banks shall be considered as a single credit institution. caisses and still affiliated with the central establishment. Affiliation within the meaning of this article means the holding of one or more shares in the social funds of the central establishment.

(2) The commitments of the central establishment and the affiliated funds constitute joint and several commitments.

(3) The management of the central credit institution exercises administrative, technical and financial control over the organization and management of each affiliated fund. It is empowered to give instructions to the management of the affiliated funds.

(4) The members of the administrative, management and supervisory bodies of each affiliated fund must provide evidence of their professional integrity and, as regards the persons responsible for the management of a fund, also of adequate professional experience. .

Chapter 2: Authorization of other professionals of the financial sector governed by Luxembourg law.

Art. 13. Scope.

This chapter applies to any legal person governed by Luxembourg law carrying out a financial sector activity on a professional basis. However, it does not apply to the credit institutions referred to in the previous chapter, nor to other persons exercising an activity whose access and exercise are governed by specific laws.

Art. 14. The need for accreditation.

(1) No legal person governed by Luxembourg law may exercise a financial sector activity on a professional basis without being in possession of a written authorization from the Minister in charge of the IML.

(2) No one may be authorized to exercise a professional activity in the financial sector either under cover of another person or as an intermediary for the exercise of this activity.

Art. 15. The accreditation procedure.

(1) Approval is granted upon written request and after instruction by the IML concerning the conditions required by the this law.

(2) The duration of the approval is unlimited.

(3) The application for approval must be accompanied by all the information necessary for its assessment, as well as a program of activities indicating the type and volume of operations envisaged and the administrative and accounting structure of the establishment.

(4) Authorization is likewise required before any change in the object, name or legal form, as well as for the creation or acquisition of agencies, branches or subsidiaries in Luxembourg or abroad. 'foreign.

(5) The decision taken on an application for approval must be substantiated and 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 necessary for the decision. In any case, a decision is made within twelve months of receipt of the request, failing which the absence of a decision is equivalent to the notification of a decision of refusal. The decision may be referred, within one month under penalty of foreclosure, to the Council of State, Litigation Committee, which rules in the last instance and as judge of the merits.

Art. 16. The legal form of the establishment.

Approval for an activity which implies that the applicant will manage third-party funds cannot be granted only to legal persons in the form of a public law establishment or a commercial company.

Art. 17. Central administration and infrastructure.

(1) Authorization is subject to proof of the existence in Luxembourg of the central administration of the applicant. hard.

(2) The applicant must also demonstrate good administrative and accounting organization as well as procedures adequate internal controls.

Art. 18. Shareholding.

(1) Approval is subject to communication to the IML of the identity of the shareholders or partners, direct or indirect, natural or legal persons, who hold a qualifying holding in the establishment to be approved or enable them to exercise a significant influence on the conduct of business, and the amount of these participations. The quality of the said shareholders or associates must be satisfactory, taking into account the need to guarantee sound and prudent management of the establishment.

(2) Authorization is subject to the establishment's direct and indirect shareholding structure being transparent and organized in such a way that the authorities responsible for the prudential supervision of the establishment and, where applicable, of the group to which it belongs are clearly determined; that this surveillance can be exercised without hindrance; and that supervision on a consolidated basis of the group to which the institution belongs is ensured.

Art. 19. Professional repute and experience.

(1) With a view to obtaining approval, natural persons and, in the case of legal persons, members of the administrative, management and supervisory bodies as well as the shareholders or partners referred to in Article precedent, must prove their professional integrity. Good repute is assessed on the basis of the criminal record and all the elements likely to establish that the persons concerned enjoy a good reputation and present all the guarantees of an irreproachable activity.

(2) The persons responsible for management must be empowered to effectively determine the direction of the activity and must have adequate professional experience by virtue of having already carried out similar activities at a high level of responsibility and autonomy.

(3) In the case of an authorization granted to a legal person, the persons referred to in the preceding paragraph must be at least two.

(4) Any change in the persons who must meet the legal conditions of good repute and professional experience must be authorized in advance by the IML. To this end, the IML may request all necessary information on the persons likely to to have to fulfill the legal conditions. The decision of the IML may be referred, within one month under penalty of foreclosure, to the Council of State, Litigation Committee, which rules in the last instance and as judge of the merits.

Art. 20. Financial foundations.

(1) Approval for any professional activity in the financial sector, which excludes that the applicant will manage third-party funds, is subject to proof of a financial base of at least five million francs.

(2) Approval for any professional activity in the financial sector, which implies that the applicant institution will manage third-party funds, is subject to proof of paid-up share capital of a value of twenty million francs at less.

(3) A Grand-Ducal regulation determines the form of the financial basis and lays down the terms and conditions thereof. It may increase the amounts set in the preceding paragraphs as well as the amounts required in the subsequent articles of this chapter for certain specific activities.

Art. 21. Sufficient credit.

Approval is subject to proof of sufficient credit depending on the program of activities.

Art. 22. External review.

(1) Approval for an establishment that will manage third-party funds, as well as for a broker or commission agent, is subject to the condition that the establishment entrusts the control of its annual accounting documents to one or more auditors. companies that can demonstrate adequate professional experience. The appointment of these external auditors is made by the body responsible for the administration of the institution.

(2) Any change on the part of the external auditors must be authorized in advance by the IML in accordance with section 19(4).

(3) The institution of auditors provided for in the law on commercial companies, as well as article 137 of the amended law of August 10, 1915, do not apply to the establishments referred to in this article.

Art. 23. Withdrawal of accreditation.

(1) Approval is withdrawn if the conditions for granting it are no longer met.

(2) The approval lapses if it is not used for an uninterrupted period of more than twelve months.

(3) The decision on the withdrawal of approval may be referred, within one month, under pain of foreclosure, to the Council of State, Litigation Committee, which rules in the last instance and as judge of the merits.

Art. 24. Advisors in financial operations.

(1) Financial transaction advisers are professionals whose activity consists in providing, on an individual basis, advice relating to financial transactions, in particular investments.

(2) Financial transaction advisers are remunerated exclusively by their clients. They are not allowed to intervene directly or indirectly in the execution of the advice they provide.

(3) A mere information activity is not covered by this law.

Art. 25. Brokers and commission agents.

(1) Brokers are professionals whose activity consists in bringing the parties into contact with a view to concluding of a specific financial transaction.

(2) Commission agents are professionals whose activity consists in carrying out specific financial transactions in their name, but on behalf of their clients. The agent has the right to act as counterparty for his client only with the latter's specific agreement for each operation.

(3) Approval for the activity of broker or commission agent is subject to proof of the financial basis. companies worth fifteen million francs at least.

(4) Brokers and commission agents are ipso jure authorized to also exercise the activity of financial adviser. financial operations.

Art. 26. Wealth managers.

(1) Wealth managers are professionals whose activity consists in managing the assets of their clients under mandate or commission and on a non-collective basis.

(2) The contract concluded between the manager and his client must specify all the accounts and other assets of the client to which it relates. Under no circumstances does the manager have the right to dispose of the client's assets in his favour. He can only act as the client's counterparty with the client's specific agreement for each transaction. Assets under management must be deposited with an authorized depository and subject to official supervision.

(3) The managed assets do not form part of the estate in the event of collective liquidation of the manager. They cannot be seized by the personal creditors of the manager. The latter must account for them separately from its own assets.

(4) Approval for the activity of portfolio manager can only be granted to legal persons. It is subject to proof of share capital of at least twenty-five million francs.

(5) Asset managers are ipso jure authorized to also exercise the activities of adviser in financial transactions, broker and commission agent.

Art. 27. Professionals acting for their own account.

(1) Professionals acting on their own account are persons whose activity consists of intervening on the markets by carrying out securities transactions for their own account and at their own risk with a view to profiting therefrom.

(2) Approval for own-account activity may only be granted to legal persons. He is subordinate to the justification of a share capital of a value of at least fifty million francs.

(3) Professionals acting for their own account are automatically authorized to also exercise the activities of adviser in financial transactions, broker and commission agent, as well as portfolio manager.

Art. 28. Distributors of UCI units.

(1) Distributors of UCI units are professionals whose activity consists of distributing units of undertakings of collective investment admitted to marketing in Luxembourg.

(2) Authorization for the activity of distribution of UCI units may only be granted to legal persons. It is subject to proof of share capital of at least ten million francs and at least fifty million francs if the distributor accepts or makes payments.

Art. 29. Professional custodians of securities or other financial instruments.

(1) Professional custodians of securities or other financial instruments are professionals whose activity consists in receiving securities or other financial instruments on deposit solely from professionals of the financial sector, in charge of ensuring the custody and administration and to facilitate its circulation.

(2) Authorization for the activity of professional depositary may only be granted to legal persons. It is subject to proof of share capital of at least one hundred million francs.

Art. 30. Underwriters and Market Makers.

(1) Underwriters and market makers are respectively professionals whose activities consist, on the one hand, in trading and offering underwriting services for the issue and placement of financial instruments, and, on the other hand, in providing purchases and sales market making of financial instruments.

(2) Authorization for the activity of underwriter or market maker may only be granted to legal persons. It is subject to proof of share capital of at least one hundred million francs.

Art. 31. Persons carrying out currency exchange transactions.

(1) Persons carrying out cash exchange transactions are professionals who carry out transactions purchase or sale of foreign currencies in cash.

(2) These persons are required to display the rates applied to the various currencies transacted, and to deliver to customers for each transaction a statement indicating the name of the exchange office, the amounts in the currencies transacted, the rates applied and the date of the operation.

(3) Approval to carry out cash exchange transactions is not subject to proof of the basis financial.

Art. 32. Debt collection.

The activity of collecting debts from third parties, insofar as it is not reserved by law to bailiffs Justice, is authorized only on the assent of the Minister of Justice.

Chapter 3: Authorization for the establishment of branches and for the freedom to provide services in Luxembourg by credit institutions or other financial professionals governed by foreign law.

Art. 33. Credit institutions of Community origin.

Any credit institution approved and supervised by the competent authorities of another Member State of the EEC may carry out its activities in Luxembourg, either by establishing a branch or by providing services, provided that its activities are covered by its approval. The exercise of these activities is not subject to approval by the Luxembourg authorities.

Art. 34. Financial institutions of Community origin.

(1) The provisions of the preceding article are also applicable to financial institutions of another Member State of the EEC, if they fulfill each of the conditions indicated in the following paragraph. By financial institution within the meaning of this law, it is necessary to understand a company, other than a credit institution, whose principal activity consists in taking participations or carrying out one or more activities referred to in points 2 to 12 of the list listed in the schedule to this law. The list appended to this law may be modified by a Grand-Ducal regulation to adapt it to changes in Community law.

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

- the financial institution is the subsidiary of a credit institution, or the joint subsidiary of several institutions credit ments;
- the financial institution has a legal status allowing the exercise of the activities defined in the preceding paragraph tooth;
- the parent undertaking or undertakings are approved as credit institutions in the Member State under whose law the subsidiary is subject;
- the activities in question are actually carried out on the territory of the same Member State;
- the parent company or companies hold 90% or more of the voting rights attached to the holding of shares or shares in the subsidiary;

- the parent company(ies) must, to the satisfaction of the competent authorities, provide proof of the prudent management of the subsidiary and have declared themselves, with the agreement of the competent authorities of the home Member State, joint and several guarantors of
- the commitments made by the subsidiary; the subsidiary is effectively included, in particular for the activities in question, in the supervision on a consolidated basis to which its parent company, or each of its parent companies, is subject, in particular for the calculation of the solvency ratio, for the control of major risks and limitation of holdings.

Art. 35. Credit institutions of non-Community origin, other financial sector professionals of Community or non-Community origin.

(1) Credit institutions and other professionals of the financial sector of non-Community origin, as well as professionals of the financial sector of Community origin other than those referred to in Articles 33 and 34 of this law, who wish to establish a branch in Luxembourg, are subject to the same authorization rules as the credit institutions and other professionals governed by Luxembourg law referred to respectively in Chapters 1 and 2 of this part.

(2) For the purposes of the application of the preceding paragraph, compliance with the conditions required for approval is assessed on the part of the foreign establishment.

(3) Approval for an activity involving the applicant managing third-party funds may only be granted to branches of companies governed by foreign law, if these companies have own funds separate from the assets of their associates. The branch must also have at its permanent disposal an endowment capital or financial bases equivalent to those required from a person governed by Luxembourg law exercising the same activity.

(4) The requirement of professional good repute and experience is extended to branch managers.
The latter must also, instead of the condition relating to the central administration, provide proof of an adequate administrative infrastructure in Luxembourg.

Chapter 4: Authorization for the establishment of branches and for the provision of services in another Member State of the EEC by credit institutions or certain financial institutions governed by Luxembourg law.

Art. 36. The establishment of branches in the EEC.

(1) A credit institution authorized in Luxembourg or a financial institution governed by Luxembourg law meeting the definition and conditions of Article 34, which wishes to establish a branch in the territory of another Member State of the EEC, must first notify the IML of its intention, accompanying this notification with the following information:

a) the Member State on whose territory it intends to establish a branch; (b) a

program of activities indicating in particular the type of operations envisaged and the structure ture of branch organization; (c) the

address at which the documents can be requested from him in the host Member State; (d) the

name of the officers responsible for the branch.

(2) Unless the IML has reason to doubt, taking into account the project in question, the adequacy of the administrative structures or the financial situation of the applicant professional, it communicates the information referred to in the preceding paragraph, in three months from the receipt of all this information, to the competent authority of the host Member State and notifies the applicant thereof. The IML also communicates, where applicable, the amount of the applicant's own funds and solvency ratio, as well as details of any deposit guarantee scheme which aims to ensure the protection of the depositors of the branch. The IML notifies the applicant of the communication made.

(3) When the IML refuses to communicate the information referred to in paragraph (1) to the competent authority of the host Member State, it shall inform the applicant of the reasons for this refusal within three months of receiving the all of the information. This refusal or lack of response may be referred, within one month under penalty of foreclosure, to the Council of State, Litigation Committee, which rules in the last instance and as judge of the merits.

Art. 37. The provision of services in the EEC.

A credit institution approved in Luxembourg or a financial institution governed by Luxembourg law meeting the definition and conditions of Article 34, which wishes to carry out its activities for the first time on the territory of another Member State of the EEC under the form of the provision of services, must notify the IML of the activities that it plans to exercise.

Art. 38. Scope.

(1) This part applies to credit institutions and other professionals of the financial sector admitted to exercise their activity under Chapters 1, 2 or 3 of Part I of this Law.

(2) Credit institutions and other professionals of the financial sector are obliged to ensure compliance with the professional obligations defined in this Part also by their branches and subsidiaries abroad, in which they hold a qualifying holding.

(3) "Laundering" within the meaning of this Part means any act, in particular concealment, disguise, acquisition, possession, use, investment, storage, transfer, to which the law expressly confers, in relation to the crimes or misdemeanors specified therein, the character of a specific criminal offense and which relates to the proceeds, that is to say any economic advantage, derived from another criminal offence.

Art. 39. The obligation to know the customers.

(1) A credit institution or other professional of the financial sector is obliged to require the identification of its customers by means of a documentary evidence when establishing business relations, in particular when opening an account or passbooks , or provides custodial services.

(2) The identification requirement also applies to any transaction with customers other than those referred to in paragraph (1), the amount of which reaches or exceeds the value of 500,000 francs, whether carried out in one or into several operations between which a link seems to exist. In the event that the amount is not known at the time the transaction is entered into, the professional concerned will carry out the identification as soon as he becomes aware of it and observes that the threshold has been reached. A Grand-Ducal regulation may modify the amount of this threshold.

(3) In the event of doubt as to whether the clients referred to in the preceding paragraphs are acting on their own account or in the event of certainty that they are not acting on their own account, credit institutions and other professionals of the financial sector take reasonable steps to obtain information on the real identity of the persons on whose behalf these clients are acting.

(4) Credit institutions and other professionals of the financial sector are required to carry out this identification even if the amount of the transaction is below the aforementioned threshold as soon as there is a suspicion of money laundering.

(5) Credit institutions and other professionals of the financial sector are not subject to the identification obligations provided for in this article in the event that the client is also a credit institution or another professional of the financial sector subject to an obligation of equivalent identification.

(6) Credit institutions and other professionals of the financial sector are obliged to keep, for the purpose to serve as evidence in any money laundering investigation: - with regard to the

identification, copy or references of the documents required, for a period of at least 5 years after the end of the relationship with their client , without prejudice to longer retention periods prescribed by other laws;

- with regard to transactions, supporting documents and records consisting of original documents or copies having similar probative value under Luxembourg law, for a period of at least 5 years from the execution of the transactions, without prejudice to longer retention periods prescribed by other laws.

(7) Credit institutions and other professionals of the financial sector are obliged to examine with particular attention any transaction which they consider particularly likely, by its nature, to be linked to money laundering.

Art. 40. The obligation to cooperate with the authorities.

(1) Credit institutions and other professionals of the financial sector are obliged to provide as complete a response and cooperation as possible to any legal request addressed to them by law enforcement authorities in the exercise of their SKILLS.

(2) Credit institutions and other professionals of the financial sector, their managers and employees are more particularly required to cooperate fully with the Luxembourg authorities responsible for the fight against money laundering:

- by providing these authorities, at their request, with all the necessary information in accordance with the procedures periods provided for by the applicable legislation;
- by informing, on their own initiative, the State Prosecutor at the Luxembourg district court village of any fact which could be the index of money laundering.

The transmission of the information referred to in the first subparagraph shall normally be carried out by the person or persons designated by the credit institutions and the other professionals of the financial sector in accordance with the procedures provided for in paragraph (5). The information provided to the authorities, other than the judicial authorities, pursuant to the first paragraph may be used solely for the purposes of combating money laundering.

By way of derogation from the rules of territorial jurisdiction, the State Prosecutor and the courts of the judicial district of Luxembourg have sole jurisdiction for cases concerning offenses consisting of acts of money laundering.

(3) Credit institutions and other professionals of the financial sector shall refrain from carrying out the transaction which they know or suspect to be linked to money laundering before having informed the State Prosecutor in accordance with the subsection (2). The State Prosecutor may give the instruction not to carry out the operation. In the event that the transaction in question is suspected of giving rise to a money laundering operation and where such abstention is not possible or is likely to prevent the prosecution of the beneficiaries of a suspected money laundering operation, the institutions and the other professionals concerned provide the required information immediately afterwards.

The terms of application of this paragraph may be the subject of a Grand-Ducal regulation.

(4) Credit institutions and other professionals of the financial sector, their managers and employees may not communicate to the client concerned or to third parties that information has been transmitted to the authorities pursuant to paragraphs (2) and (3) or that a money laundering investigation is underway.

(5) Credit institutions and other professionals of the financial sector are required:

To. to establish adequate internal control and communication procedures in order to prevent and prevent the carrying out of operations linked to money laundering; b. to take

the appropriate measures to make their employees aware of the provisions contained in this part. These measures include the participation of their relevant employees in special training programs to help them recognize operations that may be linked to money laundering and to instruct them on how to proceed in such cases.

Art. 41. The obligation of professional secrecy.

(1) Directors, members of the governing and supervisory bodies, managers, employees and other persons who are in the service of credit institutions and other professionals of the financial sector referred to in Part I of this law, are obliged to keep secret the information entrusted to them in the course of their professional activity. The disclosure of such information is punishable by the penalties provided for in article 458 of the Penal Code.

(2) The obligation of secrecy ceases when the disclosure of information is authorized or imposed by or under of a legislative provision, even prior to this law.

(3) The obligation of secrecy does not exist with regard to the national and foreign authorities responsible for the prudential supervision of the financial sector if they act within the framework of their legal competences for the purposes of this supervision and if the information communicated is covered by the professional secrecy of the supervisory authority which receives them. The transmission of the information necessary to a foreign authority for the purpose of prudential supervision must be done through the intermediary of the parent company or the shareholder or partner included in this same supervision.

(4) The obligation of secrecy does not exist with regard to shareholders or partners, whose status is a condition of the approval of the establishment in question, insofar as the information communicated to these shareholders or partners are necessary for the sound and prudent management of the institution and do not directly reveal the institution's commitments with regard to a client other than a professional of the financial sector.

(5) Subject to the rules applicable in criminal matters, the information referred to in subsection (1), once disclosed, may only be used for purposes for which the law permits their disclosure.

(6) Anyone who is bound by the obligation of secrecy referred to in paragraph (1) and has legally revealed information covered by this obligation, may not incur criminal or civil liability for this sole fact.

PART III: **Prudential supervision of the financial sector Chapter 1:**

The competent supervisory authority and its mission.

Art. 42. Competent authority.

The Luxembourg Monetary Institute is the competent authority for the prudential supervision of all persons who exercise the activity of a credit institution or one of the activities defined in Articles 24 to 30 of this law. A Grand-Ducal regulation issued on the advice of the Council of State and with the consent of the Labor Commission of the Chamber of Deputies may extend the scope of IML supervision to other categories of professionals. of the financial sector.

Art. 43. Purpose of monitoring.

(1) The IML exercises its powers of prudential supervision exclusively in the public interest. If the public interest justified, it may make its decisions public.

(2) The IML ensures the application by the persons subject to its supervision of the laws and regulations relating to the sector financial.

(3) The IML shall ensure compliance with the execution of international conventions and of the law of the European Communities applicable to the area of its attribution. To this end, it is also required to carry out all consultations and communications prescribed by international conventions or by Community law in the area of its competence.

Art. 44. IML's professional secrecy.

(1) Without prejudice to the application of Article 37 of the amended law of 20 May 1983 establishing a Luxembourg Monetary Institute, all persons exercising or having exercised an activity for the IML, as well as auditors or experts mandated by the IML, are bound by professional secrecy and liable to the penalties provided for in article 458 of the Penal Code in the event of violation of this secrecy. This secrecy implies that the confidential information they receive in a professional capacity cannot be disclosed to any person or authority whatsoever, except in a summary or aggregated form so that no financial sector professional can be identified. individually, all without prejudice to cases under criminal law.

(2) The obligation of secrecy does not prevent the IML from exchanging with other supervisory authorities the information necessary for the supervision of the financial sector, provided that this information falls under the secrecy incumbent on the authority that receives them, and only to the extent that the other authority grants the same right of information to the IML.

(3) The IML which, under paragraphs (1) or (2), receives confidential information may use it only in the exercise of its functions:

- for the examination of the conditions of access to the professional activity and to facilitate the control, on an individual basis and on a consolidated basis, of the conditions of the exercise of the activity, in particular with regard to the supervision of the liquidity, solvency, major risks, administrative and accounting organization, and internal control; or - for the imposition of

sanctions; or - in the context of an

administrative appeal against a decision of the IML; or - in the context of legal

proceedings initiated against the IML under this law.

(4) Paragraphs (1) and (3) do not prevent the exchange and transmission of information in Luxembourg or abroad, for the performance of their respective missions by the IML and: a) the

authorities entrusted with the public mission of supervising other financial institutions and compa insurance companies as well as the authorities responsible for supervising the financial markets,

b) the bodies involved in the liquidation and bankruptcy of financial professionals and other similar procedures lar,

c) the persons in charge of the statutory audit of the accounts of financial professionals, d)

the organizations in charge of the management of deposit guarantee schemes or central risk offices.

The information received by these authorities, bodies and persons falls under the professional secrecy referred to in paragraph (1).

Chapter 2: Supervision of credit institutions and certain financial institutions carrying out their activities in several EEC States.

Art. 45. Competence for the supervision of credit institutions carrying out their activities in several EEC states.

(1) The prudential supervision of a credit institution governed by Luxembourg law by the IML, as the competent authority of the home State, also extends to the activities that this institution carries out in another Member State of the EEC, both through the establishment of a branch and through the provision of services.

(2) The prudential supervision of a credit institution originating from another Member State of the EEC, including that of its activities which it exercises in Luxembourg in accordance with the provisions of Article 34, is the responsibility of the competent authorities of that country. home Member State.

Art. 46. The procedures for the supervision of credit institutions carrying out their activities in several EEC states.

(1) For the purposes of the supervision referred to in the preceding Article, the competent authorities of the home Member State may, after first informing the competent authorities of the host Member State, carry out themselves or through persons authorized by them for this purpose, on-site verification of information relating to the direction, management and ownership of the credit institutions in question, likely to facilitate their supervision and examination the conditions of their approval, as well as all the information likely to facilitate the control of these establishments, in particular with regard to liquidity, solvency, guarantee of deposits, limitation of large risks, administrative and accounting organization and internal control .

(2) The competent authorities of the home Member State may also, in order to verify this information, request the competent authorities of the host Member State to carry out this verification.
These latter authorities must, within the framework of their powers, follow up on this request, either by carrying out the verification themselves, or by appointing an auditor or an expert for this purpose and at the expense of the establishment.

(3) The competent authorities of the host Member State remain responsible, in collaboration with the competent authorities of the home Member State, for supervising the liquidity of the branch of a credit institution.

(4) Where risks arise from transactions carried out on the financial markets of the host Member State, the competent authorities of the latter shall cooperate with the competent authorities of the home Member State so that the institutions concerned are required to take measures to cover these risks.

(5) Any credit institution of Community origin having a branch in another Member State shall, upon request, send the competent authorities of the latter for statistical purposes a periodic report on the operations carried out in that State. For the exercise of the responsibilities incumbent on the competent authorities of the host Member State under paragraphs (3) and (4), the branches of credit institutions originating from other Member States of the EEC shall be held on requests that they be provided with the same information as that which these authorities require for this purpose from their national credit institutions.

(6) When the competent authorities of the host Member State find that an establishment of Community origin having a branch or operating in the provision of services in their State does not comply with the legal provisions of their State, which confer on them jurisdiction, they enjoin the establishment concerned to put an end to this irregular situation.

(7) If the institution concerned does not take the necessary steps, the competent authorities of the host Member State shall inform the competent authorities of the home Member State. If, despite the measures taken by the home Member State or because these measures appear to be inadequate or lacking in that State, the establishment persists in infringing the legal provisions of the host Member State, the competent authorities of the latter may, after informing the competent authorities of the home Member State, take the appropriate measures at their disposal to prevent or repress further irregularities and, insofar as necessary, prevent that establishment from commencing new operations in their state. The competent authorities of the host Member State may take the same measures to prevent or punish acts contrary to legal provisions adopted for reasons of general interest.

(8) Any measure taken pursuant to the provisions of the preceding paragraph, which includes penalties and restrictions on the exercise of the provision of services, must be duly substantiated and communicated to the establishment concerned. Each of these measures may be referred, within one month under penalty of foreclosure, to the Council of State, Litigation Committee, which rules in the last instance and as judge of the merits.

(9) Before following the procedure provided for in paragraphs (6) and (7), the competent authorities of the host Member State may, in the event of an emergency, take the precautionary measures essential for the protection of depositors, investors or other persons to whom services are provided.

(10) In the event of withdrawal of authorization in the home State, the competent authorities of the host Member State are required to take appropriate measures to prevent the establishment concerned from commencing new operations in their State and to safeguard the interests of depositors.

Art. 47. Supervision of certain financial institutions of Community origin.

Articles 45 and 46 apply by analogy to the supervision of financial institutions of Community origin, including Luxembourg law, which carry out their activities in a Member State other than their State of origin both by means of the establishment of a branch only through the provision of services, under the conditions defined in Article 34.

Chapter 3: Supervision of credit institutions on a consolidated basis.

Art. 48. The principle of supervision on a consolidated basis.

(1) The prudential supervision exercised by the IML on credit institutions is carried out on a consolidated basis for any credit institution incorporated in Luxembourg which directly or indirectly holds a stake of 25% or more in another credit institution. or a financial institution, to the extent and according to the procedures defined in the following paragraphs. This supervision does not affect supervision on a non-consolidated basis.

(2) When the IML is called upon pursuant to this chapter to exercise its prudential supervision over a credit institution on a consolidated basis, it may order the institution to organize the holding of the direct and indirect holdings included in the consolidation so that prudential supervision can be exercised in the simplest and most direct way.

Art. 49. Methods of supervision on a consolidated basis.

(1) When a credit institution holds a stake of more than 50% in a credit institution or in a financial institution, the IML carries out its supervision on the basis of full consolidation.

(2) Where a credit institution holds a participation equal to or less than 50% in another credit institution or in a financial institution within the meaning of Article 34(1), and there exists, according to the opinion of the IML, a situation of effective control, the IML exercises its supervision on the basis of either full or proportional consolidation.

Art. 50. Cases of waiver of supervision on a consolidated basis.

(1) The IML may waive supervision on a consolidated basis a)

when at least 75% of the activities of the credit institution which holds the participation are already consolidated with those of another credit institution which is itself - even subject to consolidated supervision by the competent authorities of another Member State of the EEC and that the credit institution in which the participation is held is included in this supervision on a consolidated basis; Or

b) when the credit institution or the financial institution in which the participation is held is located in a country outside the EEC where there are legal obstacles to the transfer of the necessary information; Or

c) when the balance sheet total of the credit institution or financial institution in which the holding is held represents less than the lower of the following two amounts: 2% of the balance sheet total of the credit institution which holds the participation or 400 million francs, this amount being able to be modified by a Grand-Ducal regulation to maintain it in conformity with the regulations of the EEC; Or

d) when the nature of the activity of the credit institution or the financial institution in which the participation is held is such that, in the opinion of the IML, the consolidation of its financial situation would be inappropriate or likely to mislead; Or

e) when a credit institution holds a participation equal to or less than 50% in another credit institution or in a financial institution and there is no situation of effective control according to the opinion of the IML . In the event of non-waiver on the part of the IML in this case, monitoring will be carried out on the basis of proportional consolidation; the IML will inform the foreign supervisory authorities competent for the credit institution or the financial institution in which the participation is held.

(2) In the case referred to in Article 49(2), the IML may waive supervision on a consolidated basis by mutual agreement with the foreign supervisory authority competent for the credit institution or the financial institution in which the participation is held.

(3) The IML may agree to the waiver of supervision on a consolidated basis by a competent foreign supervisory authority for a credit institution or a financial institution when this institution holds a participation of less than 50% in a credit institution or a financial institution constituted in Luxembourg and that there is a situation of effective control.

Art. 51. Arrangements for supervision on a consolidated basis by a foreign authority.

If, within the framework of the supervision on a consolidated basis, a foreign supervisory authority wishes, in specific cases, to verify information relating to a credit institution subject to the supervision of the IML, it sends the request to the IML, which takes action, either by carrying out the requested verification itself, or by appointing an auditor or an expert for this purpose and at the expense of the establishment. These checks may only relate to the information necessary for supervision on a consolidated basis and may not be used for any other purpose.

Chapter 4: Means of prudential supervision.

Art. 52. Official tables and protection of titles.

(1) The IML maintains the official registers of credit institutions and other categories of financial sector professionals authorized to carry out their activity through an establishment in Luxembourg and subject to its supervision. To this end, the competent Minister delivers a copy of the approval and withdrawal decisions.
The various official tables are drawn up and published in the Memorial at least at the end of each year.

(2) Persons other than those entered on an official register may not avail themselves of a title or a designation giving the appearance that they would be authorized to exercise one of the activities reserved for persons registered on the one of these tables. This prohibition does not apply when any misleading is excluded; or when it is a branch or a service provider of foreign origin, duly authorized to carry out its activities in Luxembourg and using a title or designation that it is authorized to use in his country of origin. These persons must, however, follow the title or appellation they use with an adequate specification if there is a risk of misleading.

(3) No one may mention for commercial purposes his registration on an official list and his submission to the IML monitoring.

Art. 53. IML's right of inspection and information.

The IML has the right to ask any person subject to its surveillance for any information useful to the pursuit of its assignments. He may inspect the books, accounts, registers or other deeds and documents of these persons.

Art. 54. Relations between the IML and company auditors.

(1) Each financial professional subject to the supervision of the IML, and whose accounts are subject to the audit of a company auditor, is required to communicate spontaneously to the IML the reports, analytical reports and written comments issued by the réviseur d'entreprises as part of his audit of the annual accounting documents. The IML may set rules regarding the scope of the audit mandate and regarding the content of the audit report on the annual accounting documents.

(2) The IML may ask a réviseur d'entreprises to carry out an audit relating to one or more specific aspects of the activity and operation of such a financial professional. This control is carried out at the expense of the professional concerned.

Art. 55. Accounting documents.

(1) In the absence of specific legislative provisions governing the publication of the annual accounts and consolidated accounts as well as the accounting documents of the branches, the IML sets the rules governing the content, filing and publication of the accounting documents of the persons subject to its surveillance. The communications or filings provided for by law or regulation, and in general any publication of the financial situation of a person subject to the supervision of the IML, may only be made in the forms thus prescribed.

(2) Unless otherwise provided by a specific law, the duly approved annual accounts and consolidated accounts, the management report and the consolidated management report, the reports prepared by the person responsible for controlling the annual accounts and consolidated accounts as well as the accounting documents of the branches must be filed with the court registry within one month of the approval.

Art. 56. Coefficients.

The IML sets structure coefficients that the various categories of credit institutions and other financial sector professionals subject to its supervision are required to observe. It defines the elements entering the calculation of these coefficients. It ensures compliance with the coefficients set by international conventions or by Community law.

Art. 57. Approval of holdings.

(1) A credit institution or other professional of the financial sector subject to the supervision of the IML, which wishes to have a qualified participation, must first obtain the approval of the IML.

(2) A credit institution may not hold a qualifying holding the amount of which exceeds 15% of its own funds in a company which is neither a credit institution, nor a financial institution, nor a company whose activity is referred to in Article 84 of the law of 17 June 1992 relating to the accounts of credit institutions. The limitation provided for in this paragraph does not apply to the holding of participations in insurance companies which are subject to harmonization in Community law.

(3) The total amount of qualifying holdings of a credit institution in the companies referred to in para. previous graph cannot exceed 60% of the credit institution's own funds.

(4) Shares or units held temporarily, due to a financial assistance operation with a view to reorganizing or rescuing a company, or due to the underwriting of an issue of securities during the term underwriting, or in its own name but on behalf of third parties, are not included in qualifying holdings for the calculation of the limits set out in paragraphs (2) and (3). Shares or units that do not have the character of financial fixed assets are not included.

(5) The limits laid down in paragraphs (2) and (3) may only be exceeded in exceptional circumstances. However, in this case, the IML requires the credit institution to increase its own funds or take other measures of equivalent effect.

Art. 58. Customer complaints.

The IML is competent to receive customer complaints from persons subject to its supervision and to inter come to these people, in order to settle these claims amicably.

Art. 59. The right of injunction and suspension of the IML.

(1) When a person subject to the supervision of the IML does not comply with the legal, regulatory or statutory provisions concerning him, or when his management or his financial situation does not offer sufficient guarantees for the successful completion of his commitments , the IML enjoins, by registered letter, this person to remedy the observed situation within the period it sets.

(2) If, at the end of the period set by the IML pursuant to the preceding paragraph, the situation has not been remedied observed, the IML

may: a) suspend the members of the administrative, management or management bodies or any other person who, by their act, their negligence or their imprudence, caused the observed situation or whose continued office risk of prejudicing the application of recovery or reorganization measures;

b) suspend the exercise of voting rights attached to shares or units held by shareholders or associates whose influence is likely to be to the detriment of prudent and sound management of the person;

c) suspend the continuation of the person's activities or, if the situation observed concerns a specific sector undermined by activities, the continuation of these.

(3) The decisions taken by the IML by virtue of the preceding paragraph take effect with regard to the person in question from the date of their notification by registered letter or their service by bailiff's writ.

(4) When, following a suspension pronounced pursuant to paragraph (2), an administrative, management or management body no longer has the legal or statutory minimum number of members, the IML sets by registered letter, the period within which the establishment concerned must provide for the replacement of the suspended persons.

(5) If, at the end of this period, the replacement of the suspended persons has not been provided, this will be provided provisionally by the president of the district court of Luxembourg, ruling at the request of the IML, the establishment in question duly heard or summoned. The persons thus appointed have the same powers as the persons they replace. Their mandate cannot exceed the duration of the suspension of these persons. Their fees are taxed by the magistrate who appointed them; they are, as well as any other costs incurred pursuant to this article, borne by the establishment in question.

PART IV: **Reorganization and liquidation of institutions in the financial sector**

Art. 60. Suspension of payment and controlled management.

(1) The suspension of any payment by an institution which manages third-party funds and which is subject to the supervision of the IML may intervene in the following cases: a) when

the credit of the institution in question is shaken or when it is in a liquidity impasse, whether or not there is a cessation of payment;

b) when full performance of the institution's commitments is compromised; c) when the approval of

the establishment has been withdrawn and this decision is not yet final.

(2) The IML or the establishment in question may ask the District Court sitting in commercial matters to pronounce the suspension referred to in sub (1) above.

(3) The reasoned request, supported by supporting documents, shall be filed for this purpose with the Registry of the Court in the district in which the establishment has its registered office.

(4) When the request emanates from the establishment, the latter is required, before seizing the judge, to inform the IML and to attach, except in urgent cases, the latter's observations to the motion.

(5) When the request comes from the IML, the latter must notify it or notify the establishment in question by letter recommended or by bailiff.

(6) The filing of the request referred to in paragraph (3) of this article at the Registry of the Commercial Court automatically entails, from the completion of the formalities provided for in the preceding paragraph, for the benefit of the establishment in question and until a final decision on the request, suspension of any payment by this establishment and prohibition, under pain of nullity, from carrying out any acts other than conservatory, except with the authorization of the IML.

(7) The Tribunal shall decide expeditiously. If he considers himself sufficiently informed, he pronounces immediately in public hearing without hearing the parties. If he deems it necessary, he convenes the parties at the latest within three days of the filing of the request, by the clerk. He hears the parties in the council chambers and pronounces in public hearing.

(8) The judgment shall determine, for a period not exceeding six months, the terms and conditions of the suspension of payment.

(9) The judgment, even rendered without hearing the parties or one of them, is not open to opposition. It is provisionally enforceable, notwithstanding any recourse, immediately, before registration and without security.

(10) The IML and the institution may lodge an appeal within fifteen days of notification of the judgment by declaration to the Registry of the Court. The appeal is judged urgently summarily and without procedure, by one of the chambers hearing civil and commercial cases of the Court of Appeal. The parties are summoned at the latest within eight days by the clerk of the Court. The latter hears the parties in chambers and decides in open court; the ministry of solicitor is not required.

(11) When a party does not appear, the judgment rendered by default is not subject to opposition.

(12) The judgment allowing the suspension of payment appoints one or more supervisory commissioners.

(13) On pain of nullity, the written authorization of the supervisory commissioners is required for all acts and decisions of the establishment. The Court may, however, limit the scope of operations subject to authorisation. The auditors may submit to the deliberation of the corporate bodies any proposals they deem appropriate. They may attend the deliberations of the administrative, management, management or supervisory bodies of the establishment.

(14) In the event of opposition between the bodies of the establishment and the commissioners, it shall be decided by the Court. His decision tion is not subject to any appeal.

(15) The IML automatically exercises the function of supervisory commissioner until a decision is made on the request provided for by the subsection (3).

(16) The Court arbitrates the costs and fees of the supervisory commissioners; it can grant them advances.

(17) The Tribunal may, at the request of any interested party, vary the terms of a judgment given under this section.

(18) Within eight days of its pronouncement, the judgment admitting the suspension of payment, and appointing one or more supervisory commissioners, as well as the amending judgments are published in full or by‚extract at the expense of the establishment and at the diligence supervisory commissioners at the Memorial and in at least three Luxembourg and foreign newspapers with adequate circulation, designated by the Court.

(19) The judgment reversing a judgment referred to in the preceding paragraph shall be published, without delay, in full or in part, at the expense of the losing party and at the behest of the IML at the Mémorial and in the same newspapers as those in which publication of the judgment has taken place.

Art. 61. Liquidation.

(1) The District Court sitting in commercial matters may, at the request of the State Prosecutor or the IML, order the dissolution and liquidation of an establishment referred to in the preceding article when: a) it appears that

the suspension of payment scheme provided for by the previous article, previously decided, does not allow the situation which justified it to be rectified; (b) the financial

situation of the institution is so shaken that it will no longer be able to meet the commitments to all holders of debt or equity interests; (c) the approval of the establishment

has been withdrawn and that decision has become final.

(2) In ordering the liquidation, the Court appoints a judge-commissioner as well as one or more liquidators. It stops the liquidation mode. It may make applicable, to the extent it determines, the rules governing bankruptcy.
In this case, he may fix the time at which the cessation of payment took place at a date preceding by a maximum of six months the filing of the request referred to in paragraph (3) of the preceding article. The method of liquidation may be modified later, either automatically or at the request of the liquidators.

(3) The judgment pronouncing the dissolution and ordering the liquidation is provisionally enforceable.

(4) From the judgment, all movable or immovable actions, all means of execution on movables or buildings, can only be followed, brought or exercised against the liquidators.

(5) The liquidators are liable both to third parties and to the establishment for the execution of their mandate and mistakes made by their management.

(6) Court decisions pronouncing the dissolution and ordering the liquidation of an establishment shall be published, in full or in extract, at the expense of the establishment and at the behest of the liquidators, in the Mémorial and in at least three Luxembourg or foreign newspapers. with adequate distribution, designated by the Court.

(7) The Court arbitrates the costs and fees of the liquidators; it can grant them advances. In the event of absence or insufficiency of assets noted by the supervising judge, the procedural acts are exempt from all court and registration fees and the costs and fees of the liquidators are borne by the Treasury and liquidated as costs. judicial.

(8) The sums or securities due to creditors and partners who did not show up at the close of the liquidation operations shall be deposited in the consignment fund for the benefit of whom it will belong.

(9) When the liquidation is completed, the liquidators report to the Court on the use of the securities of the establishment and submit the accounts and supporting documents. The Tribunal appoints commissioners to review the documents. It is ruled, after the report of the auditors, on the management of the liquidators and on the closing of the liquidation. This is published in accordance with paragraph (6) above.

This publication also includes: a) The

indication of the place designated by the Court where the books and social documents must be deposited for at least five years.

b) An indication of the measures taken in accordance with the preceding paragraph (8) with a view to depositing the sums and securities due to creditors and shareholders which could not have been remitted to them.

(10) All actions against the liquidators taken in this capacity are time-barred after five years from the publication of the closure of the liquidation operations provided for in paragraph (8).

The actions against the liquidators for facts of their functions are prescribed by five years from these facts, or, if they were concealed by fraud, from the discovery of these facts.

(11) An institution may only go into voluntary liquidation after notifying the IML at least one month before the convening of the extraordinary general meeting. Under penalty of nullity, this convocation contains the agenda and is made by announcements inserted twice at eight-day intervals at least and eight days before the meeting in the Memorial and in a newspaper printed and published in Grand- Duchy.

(12) A voluntary liquidation decision does not deprive the IML and the State Prosecutor of the right to ask the Court to order the dissolution and liquidation of an establishment in accordance with this article.

(13) Without prejudice to the provisions of paragraph (2) are inapplicable to the establishments referred to in Article 1 of Book III of the Commercial Code, the provisions of the law of April 4, 1886 concerning the composition to prevent bankruptcy as it has been amended as well as the provisions of the Grand-Ducal decree of 24 May 1935 supplementing the legislation relating to the suspension of payment, the arrangement to prevent bankruptcy and bankruptcy by the institution of the controlled management regime.

Art. 62. Provisions common to suspension and liquidation.

(1) All deeds, exhibits or documents intended to enlighten the Tribunal on the applications referred to in Articles 60 and 61 may be produced and filed without it being necessary to have them previously stamped or stamped. 'registration.

(2) The fees of supervisory auditors and liquidators as well as all other costs incurred pursuant to this chapter shall be borne by the establishment in question. Fees and expenses are considered administrative expenses and are deducted from the assets before any distribution of funds.

PART V: **Penalties**

Art. 63. Order fines.

The persons in charge of the administration or management of the establishments subject to the supervision of the IML by virtue of this law as well as the natural persons subject to this same supervision, may be fined by the IML. from 5,000 to 500,000 francs in the event that they refuse to provide the accounting documents or other information requested or when these prove to be incomplete, inaccurate or false; in case they prevent or hinder the inspections of the IML; in the event that they contravene the rules governing the publication of balance sheets and accounting statements; in case they do not comply with the IML's injunctions.

Art. 64. Penal sanctions.

(1) Those who have contravened or attempted to contravene the provisions of Articles 2 respectively , 3(5), 14, 15(4) or 35(1) as well as section 52(2).

(2) A fine of twenty thousand to two million francs shall be imposed on those who contravene the provisions of the sections 7(3) or 19(4).

(3) A fine of ten thousand to one million francs shall be imposed on those responsible for financial professionals who have not filed the accounting documents referred to therein within the publication period set in accordance with Article 55(2).

(4) Shall be punished by imprisonment from eight days to five years and a fine of fifty thousand to five million francs or one of these penalties only, the members of the administrative, management or financial institutions, - which, notwithstanding their suspension pursuant to Article

59(2)a) have carried out acts of disposal, administration ration or management;

- who, notwithstanding the suspension of the continuation of the establishment's activities pursuant to Article 59(2)c) have performed acts of disposal, administration or management;
- who, notwithstanding the provisions of Article 60(6), have made payments without being authorized to do so by the judgement;
- who, notwithstanding the provisions of Article 60(6), have performed acts other than conservatory acts, without being there authorized by IML management, or
- who, in the case referred to in Article 60(13) have carried out acts of disposal, administration or management or who made decisions, without being authorized to do so by the judgment.

(5) Those who contravene the provisions of Article 31(2) shall be punished by imprisonment from eight days to three months and a fine of 2,501 to one million francs.

(6) This section shall apply without prejudice to the penalties enacted by the Penal Code or by other specific laws. ties.

(7) The provisions of Book I of the Penal Code and those of the amended law of June 18, 1879 assigning to Courts and tribunals the assessment of mitigating circumstances are applicable to the penalties to be imposed on the basis of this article.

PART VI: **Amending, Repealing and Transitional Provisions**

Art. 65. Modification of the amended law of 20 May 1983 creating a Luxembourg Monetary Institute.

(1) In the law of 20 May 1983 establishing a Luxembourg Monetary Institute, paragraph (2) of article 30, as amended by the law of 21 September 1990, replaces article 31 whose current content is repealed.

(2) Two new paragraphs (2) and (3) are inserted in Article 30 of the law of 20 May 1983 establishing a Luxembourg Monetary Institute, with the following wording: "(2)

The supervision of the financial sector by the Institute is not intended to guarantee the individual interests of the financial professionals supervised or of their clients, but it is carried out exclusively in the public interest.

(3) In order for the Institute to be held civilly liable for individual damage suffered by supervised professionals or by their clients, it must be proven that the damage was caused by gross negligence in the choice and application of the means implemented for the accomplishment of the public service mission of the Institute.

(3) In Article 37 of the amended law of 20 May 1983 creating a Luxembourg Monetary Institute,

- the last part of the sentence of paragraph (2), worded “in particular on the basis of Articles 14 and 15 of the law of 23 April 1981 concerning access to the activity of credit institutions and its exercise”, is repealed; the number “29” in
- subsection (3) is replaced by “23”.

Art. 66. Repealing provisions.

Are repealed:

a) the amended law of 27 November 1984 on access to and supervision of the financial sector, and the regulations adopted thereunder;

b) Article 41 of the law of 24 March 1989 on the Banque et Caisse d'Epargne de l'Etat, Luxembourg; c)

the law of 16 pluviose year XII relating to mortgage lending houses;

d) point 8 in article 1 of the amended Grand-Ducal decree of 17 September 1945 revising the law of 27 March 1900 on the organization of agricultural associations.

ANNEX

List of activities referred to in Article 34(1):

1. Receipt of deposits or other repayable funds 2. Loans,

including but not limited to consumer credit, mortgage credit, factoring with or without recourse, financing of commercial transactions (including fixed price)

3. Leasing

4. Payment transactions 5.

Issuance and management of means of payment (credit cards, travelers cheques, letters of credit)

6. Granting of guarantees and subscription of commitments

7. Transactions for the institution's own account or on behalf of its customers on: a) money market

instruments (cheques, bills, certificates of deposit, etc.) b) foreign exchange markets c)

financial futures and options

d) currency or interest rate instruments e)

transferable securities

8. Participation in securities issues and provision of related services 9. Advice to

companies on capital structure, industrial strategy and related matters and advice and services in the field of mergers and takeovers of companies

10. Intermediation on interbank markets

11. Wealth management or advice

12. Custody and administration of securities

13. Commercial information 14.

Rental of safes

Mandate and order that this law be inserted in the Memorial to be executed and observed by all whom the thing concerns.

The Minister of the Treasury,

Jacques Santer

Berg Castle, April 5, 1993.

Jeans

Doc. speak. No. 3600; sess. ord. 1991-1992 and 1992-1993; dir. 89/646/EEC.

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