

Liechtenstein Law Gazette

Year 2005

No. 156

published on 9 August 2005

Law
of 19 May 2005
on Investment Undertakings
(Investment Undertakings Act, IUA)

I hereby grant my consent to the following Resolution adopted by Parliament:

I. General provisions

Article 1

Object and scope

1) This Act circumscribes the organization and business activities of investment undertakings and their management companies; the object of the Act is to protect investors and ensure confidence in the Liechtenstein fund center and the Liechtenstein financial system.

2) This Act serves to implement Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS; EEA Compendium of Laws: Annex IX – 30.01), as amended by Directives 2001/107/EC and 2001/108/EC (EEA Compendium of Laws: Annex IX – 30.05 and Annex IX – 30.06).

3) This Act governs investment undertakings and their management companies whose registered office is in Liechtenstein or which offer or promote the sale of their units to the public in Liechtenstein or from Liechtenstein.

4) This Act does not govern:

- a) assets raised by the clients of a bank or of a finance company domiciled in Liechtenstein and managed separately for the purpose of collective capital investment on their account (bank-internal separate assets); banks or finance companies may not publicly solicit such separate assets and must indicate that they do not constitute investment undertakings for purposes of this Act;
- b) life insurance products whose benefits are directly linked to the value of investment undertaking units, of bank-internal or of other separate assets.

5) By ordinance, the Government may exempt other forms of collective capital investment from the scope of this Act, provided that the object of this Act is not endangered thereby.

Article 2

Definitions of terms

1) The following definitions of terms shall apply for the purposes of this Act:

- a) investment undertakings (funds): assets that are raised from the public for the purpose of collective capital investment and managed by a management company for the joint account of the investors and on the principle of risk-spreading, unless expressly determined otherwise, namely as an:
 - 1. investment fund; or
 - 2. investment company;
- b) management company: a legal person managing the investment undertaking for the account of the investors in accordance with this Act. A management company is:
 - 1. in the case of an investment fund: the fund management;
 - 2. in the case of an investment company: the investment company itself or a third company designated by the investment company;
- c) publicity: any solicitation, irrespective of the form, to the extent that it is not solely directed at a closely circumscribed group of persons, in particular the existing clientele;
- d) closed-end investment undertakings: investment undertakings that are not obliged to issue and/or redeem units. Procedures for issuing and/or redeeming units must be listed in the full and simplified prospectuses.
- e) segmented investment undertakings (umbrella funds): investment undertakings divided into segments; unit classes are permissible. Segments are

economically mutually independent partial assets of an investment undertaking. Unit classes are investment categories of an investment undertaking that comprise different rights and duties but that all refer to the same assets or segment;

- f) depositary: a qualified institution in Liechtenstein or abroad where the investments of the investment undertaking can be deposited;
- g) publication medium: printed or electronic medium designated in the full prospectus by means of which the management company makes available to the investors the information required by law or ordinance;
- h) home Member State: a Member State of the European Economic Area (EEA) in which the registered office of an investment undertaking or a management company is situated;
- i) host Member State: a Member State of the EEA that is not the home Member State, in which the management company maintains a branch or in which the management company or the investment undertaking is operating under the freedom to provide services.
- k) branch: an office constituting a legally dependent part of the management company and conducting activities in Liechtenstein for which it has been granted a license in the home Member State. If multiple branches are established in the same State, these branches are regarded as a single branch;
- l) close links: links in which two or more natural or legal persons are connected through:
 - 1. holding, i.e., direct holding or holding by means of control of 20% or more of the voting rights or of the capital in an undertaking; or
 - 2. control, i.e., the link between a parent undertaking and a subsidiary or an equivalent relationship between a natural or legal person and an undertaking; every subsidiary of a subsidiary is also regarded as a subsidiary of the parent undertaking that is at the top of these undertakings;

Close links between two or more natural or legal persons are also considered to obtain where the persons concerned are connected to one and the same person through a control relationship;

- m) qualifying holdings: direct or indirect holdings in another management company of 10% or more of the voting rights or of the capital or the possibility of exercising significant influence over the management of the management company in which a holding subsists. Article 4 of the Disclosure Act shall apply for the determination of voting rights;
- n) parent undertaking: a parent undertaking as defined in the accounting provisions of the Persons and Company Law (PCL) as well as every undertaking that exercises a controlling influence over another undertaking;

o) subsidiary: a subsidiary as defined in the accounting provisions of the Persons and Company Law (PCL) as well as every undertaking over which a parent undertaking exercises a controlling influence. Every subsidiary of a subsidiary is also regarded as a subsidiary of a parent company that is at the top of these undertakings.

2) The terms defined by this Article shall be supplemented by the terms defined by EEA law.

3) The terms designating persons and functions in this Act shall apply to both male and female genders.

Article 3

Types of investment undertakings

The following types of investment undertakings shall be distinguished, according to the type of investment:

- a) investment undertakings for transferable securities in accordance with articles 40 and 41, especially the following special forms:
 - 1. investment undertakings whose investment policy consists in investing their entire assets in other investment undertakings for transferable securities (funds of funds);
 - 2. investment undertakings whose investment policy consists in replicating a recognized stock or debt-security index (index funds);
- b) investment undertakings for other values in accordance with articles 42 and 43 as well as investment undertakings for other values with increased risk in accordance with article 44;
- c) investment undertakings for real estate in accordance with articles 45 to 52.

Article 4

Legal form and establishment

- 1) An investment undertaking is:
 - a) an investment fund in the legal form of a collective trusteeship in accordance with paragraph 2; or
 - b) an investment company in the legal form of a limited company (articles 261 to 367 of the PCL), which corresponds to articles 33 to 39;

2) A collective trusteeship is the conclusion of a trusteeship of identical content with an indeterminate number of trustors (investors), each of whom holds the trusteeship in part. To the extent not otherwise provided by this Act, the provisions of the Persons and Company Law on trusteeships (articles 897 to 932 of the PCL) apply to collective trusteeships.

3) The registration and deposit provisions of this Act shall apply and, to the extent not otherwise provided by this Act, the provisions of the Persons and Company Law shall apply supplementally to the establishment of investment undertakings.

4) In justified individual cases, the FMA may issue an order authorizing other legal forms for collective capital investments as defined in article 2, paragraph 1, subparagraph (a), if the object of this Act is not endangered thereby.

II. Conduct of business

A. General provisions

1. Full prospectus

Article 5

Principle

1) A full prospectus must be drawn up for each investment undertaking, allowing the investor to evaluate the envisaged investments in detail and to assess the associated risks.

2) The full prospectus must be drawn up as a written document or saved on a durable medium approved by the FMA.

3) The full prospectus must be made available free of charge to potential investors upon request before conclusion of the contract.

4) The full prospectus must be submitted to the FMA for approval. Upon approval, the management company shall publish the full prospectus, and only then may it be put into force.

Article 6

Content of the full prospectus

1) In the case of an investment fund, the full prospectus shall encompass the fund rules and the other minimum content determined by the Government by ordinance.

2) The fund rules shall determine the legal relationship between the investor and the fund management. The legally relevant content of the simplified prospectus shall constitute the fund rules and shall simultaneously suffice as the trust instrument as defined by the Persons and Company Law. By acquiring units, the investor shall be considered to have approved the fund rules.

3) At a minimum, the full prospectus shall contain provisions on:

- a) the duties and rights of the investors, the fund management, and the depositary bank;
- b) the names, the registered office, and the legal form of the investment fund, the management company, the depositary bank, the audit office, and mandated third parties;
- c) the term of the investment fund and the notice period for the fund management and the depositary bank;
- d) the guidelines of the investment policy as well as a clear and easily understandable explanation of the risk profile;
- e) the description of the permissible investment techniques and instruments and in particular the use of derivative financial instruments;
- f) the arrangements for issuing and redeeming units;
- g) the calculation of the issue and redemption prices;
- h) the suspension of the issue and/or redemption of units;
- i) the use of net income and profits;
- k) the type and calculation of all expenses charged to the investment fund;
- l) the accounting unit of the investment fund;
- m) the accounting year;
- n) the offices where the full and simplified prospectuses and the business and half-yearly reports are made available;
- o) the publication media and forms of publication;
- p) the division of the investment funds into segments;
- q) the States in which the sale of units of the investment fund is promoted to the public;
- r) the date of entry into force.

4) If other documents relating to the investment fund deviate from the essential components of the full prospectus, the full prospectus shall take priority.

5) The provisions of this Article shall apply *mutatis mutandis* to investment companies, unless otherwise provided by articles 33 to 39.

Article 7

Amendments to the full prospectus

1) Substantial amendments to the full prospectus must be submitted by the management company and the depositary bank to the FMA for approval.

2) Amendments shall be considered substantial if they concern components of the full prospectus that constitute the content of the simplified prospectus according to article 9. This provision is without prejudice to article 39, paragraph 2.

3) Amendments not subject to approval must be brought to the attention of the FMA on the occasion of the submission of an amendment subject to approval.

4) The full prospectus must be updated on the basis of the approved amendments, signed by the management company and the depositary bank, and submitted to the FMA within a period of two months after approval. In justified cases and upon request, the FMA may extend the deadline by a reasonable period.

5) Upon approval by the FMA, substantial amendments to the full prospectus must be published by the management company in the publication medium. Amendments may only be put into force after publication.

2. Simplified prospectus

Article 8

Principle

1) A simplified prospectus shall be drawn up for each investment undertaking, summarizing the content of the full prospectus and containing, in a clear and easily understandable form, the most important information, espe-

cially for purposes of evaluating the investment policy, and an explanation of the risk profile.

2) The simplified prospectus must be drafted either as an integrated component or as a removable part of the full prospectus. It must be conceived so that it can be used in all Member States of the EEA, apart from translation.

3) The simplified prospectus shall be offered to potential investors before conclusion of the contract in an appropriate manner and be made available free of charge upon request.

4) Article 5, paragraphs 2 and 4 shall apply *mutatis mutandis*.

Article 9

Content of the simplified prospectus

1) In particular, the simplified prospectus shall contain provisions on:

- a) the short portrait of the investment undertaking, the management company, the depositary bank, and the audit office;
- b) the portrait of the investment strategy and a short assessment of the risk profile;
- c) the delegation of investment decisions;
- d) the economic information on the investment undertaking;
- e) information concerning the public trade in units of the investment undertaking;
- f) the offices where the prospectuses and public period reports are made available;
- g) the competent supervisory authority;
- h) the date of entry into force of the full prospectus.

2) The Government shall issue an ordinance with details concerning the content of the simplified prospectus according to paragraph 1 and additional minimum content.

Article 10

Incorporation of approved amendments; submission

1) Approved amendments to the full prospectus must be incorporated immediately into the simplified prospectus.

2) The updated simplified prospectus must be signed by the management company and the depositary bank and submitted to the FMA within two months after approval of the amendments to the full prospectus. In justified cases and upon request, the FMA may extend the deadline by a reasonable period.

3. Rules of conduct and other obligations

Article 11

Fiduciary duty and Code of Conduct

1) The management company, the depositary bank, and any mandataries shall safeguard the interests of the investors exclusively.

2) In connection with the purchase and sale of property and rights for the investment undertaking, the management company, the depositary bank, and any mandataries shall ensure that retrocessions in particular directly or indirectly benefit the investment undertaking. They shall also ensure that they do not accept unwarranted pecuniary advantages of any kind for themselves or third parties, with the exception of any payments provided for in the full and simplified prospectuses.

3) The management company, the depositary bank, any mandataries and the persons acting on their behalf or close to them may only purchase investments from the investment undertaking for their own account at market price and may only sell investments from their own portfolio to the investment undertaking at market price.

4) The management company, the depositary bank, and any mandataries shall perform their activities in accordance with the Code of Conduct issued by the supervisory authority. This Code of Conduct shall serve as an interpretation aid and may be consulted to interpret rights and duties.

Article 12

Publicity

All publicity for the purchase of units of investment undertakings must indicate that the full and simplified prospectuses exist and where they may be obtained.

Article 13

Particulars in letters

1) An indication of the legal form of the investment undertaking (article 4) must be included in business letters from management companies. Investment companies with variable capital may use the designation ICVC.

2) If the company capital is stated in these documents, the subscribed capital and the paid-up capital must always be kept up to date. In the case of investment companies with variable capital, the net assets must be updated annually.

Article 14

Periodic reports

1) The management company must publish a business report on the investment undertaking at the latest four months after the end of the fiscal year and a half-yearly report two months after the end of the first six months of a fiscal year and submit them to the FMA.

2) The business report and the half-yearly report must contain all information enabling the investor to adequately assess the development and the results of the investment undertaking.

3) The business report shall be accompanied by a short report by the audit office on the most important particulars in the business report.

4) The management company is obliged to report to the FMA every quarter on the development of the investment undertakings it manages.

5) By ordinance, the Government shall determine the content and the structure of the business report and of the half-yearly report, the reports according to article 4, and the short report of the audit office.

Article 15

Protection of secrecy

1) The members of the board of directors and of the general management of management companies and their staff members, as well as any other persons acting on behalf of such companies, shall be obliged to maintain the secrecy of facts that have been entrusted or made available to them pursuant to their business relationships with clients. The obligation to maintain secrecy shall not be limited in time.

2) If facts covered by paragraph 1 come to the attention of representatives of authorities in the course of their official activities, they must treat these facts as official secrets.

3) This Article is without prejudice to the legal provisions concerning the duty to give information or evidence to criminal courts.

4. Restructuring and liquidation

Article 16

Restructuring

1) Subject to paragraph 2, investment undertakings may be merged, split, transformed into different legal forms, or their assets may be transferred to other investment undertakings. In all cases, the protection of all affected investors must be taken adequately into account.

2) The transformation of an investment undertaking into a different legal form without liquidation as well as the transfer of the assets of an investment undertaking to another investment undertaking shall require approval by the FMA.

3) The Government shall provide further details by ordinance.

Article 17

Liquidation

1) The relevant provisions of the Persons and Company Law shall apply to the liquidation of investment undertakings and their management companies.

2) In individual cases and on an exceptional basis, the FMA may issue an order approving other liquidation procedures, if the object of this Act is not endangered thereby.

5. Marketing of units

Article 18

Persons entitled to market units

1) Only persons shall be entitled to market units of an investment undertaking who hold a license pursuant to special legislation and for whom it is ensured that they have the requisite expertise (persons entitled to market units).

2) The Government shall designate persons entitled to market units according to paragraph 1 by ordinance. Under certain conditions, the Government may approve other persons as entitled to market units.

B. Investors

Article 19

Acquisition and return of units

1) Through his payment, the investor shall acquire claims vis-à-vis the investment undertaking for a share in the assets and income of the investment undertaking. In the case of segmented investment undertakings, the claims shall be in relation to the relevant segment.

2) The investor may demand that his units be paid out in cash, to the extent that the full prospectus does not provide an exception.

3) In the case of segmented investment undertakings, income and costs for the investor must be calculated separately for each segment.

4) The Government shall determine by ordinance in which cases the full prospectus may provide a time-limited suspension of issue and repayment of the units, in the interest of the entirety of the investors.

5) In exceptional circumstances, the FMA may, upon application and taking into account the interests of the investors, grant a time-limited suspension of issue and repayment of the units. The Government shall determine by ordinance the grounds for and maximum duration of a suspension.

6) The right to payment of units in cash shall apply to investment undertakings for other values only subject to article 43 and for investment undertakings for real estate only subject to article 46. It shall not apply to closed-end investment undertakings.

Article 20

Right to information

1) Upon request, the management company shall provide the investor with information concerning the bases for calculating the net asset value per unit. If the investor asserts a justified interest in more detailed particulars concerning individual business incidents, the management company shall also always provide information to the investor in this regard.

2) The investor may demand information from the management company concerning risk management. Such information shall include, in particular, information on the investment limits of risk management, the risk management methods, and the current developments with respect to risks and returns.

Article 21

Right to fulfillment

1) If the management company or the depositary bank does not fulfill its obligations or does not fulfill them properly, the investor may sue for fulfillment, even if the judgment could have consequences for all investors.

2) If the management company or the depositary bank or those natural or legal persons acting on their behalf or close to them have unlawfully withdrawn assets from the investment undertaking or failed to disclose pecuniary advantages or otherwise harmed the investment undertaking, then the lawsuit shall be directed against the management company and/or the depositary bank for the benefit of the investment undertaking.

Article 22

Payments to the management company and the depositary bank

1) The management company and the depositary bank shall have a claim to the payments provided for in the full and simplified prospectuses, to release from the obligations they have assumed in executing the full and simplified prospectuses, and to restitution of the expenses they have made in fulfilling such obligations.

2) These claims shall be fulfilled from the resources of the investment undertaking. Personal liability of the investors shall be excluded.

Article 23

Qualified investors

1) The Government may exempt from the provisions of this Act investment undertakings in whole or in part that are intended for one or more qualified investors, to the extent that the object of the Act is not endangered thereby.

2) The Government shall define the term of qualified investor by means of an ordinance.

C. Management company

Article 24

Responsibilities

1) The management company shall conduct its activities in accordance with the guidelines of the investment undertaking and the provisions of the full and simplified prospectuses.

2) Subject to paragraph 3, the activities of the management company shall consist exclusively in the management of investment undertakings and related responsibilities (fund business). The Government shall determine by ordinance which activities constitute the fund business.

3) With approval by the FMA, a fund management may additionally:

- a) assume the management of individual portfolios and other assets similar to investment funds, especially of pension funds or investment foundations; the Government shall specify the details by ordinance;

b) in connection with the activities according to paragraph 2 and paragraph 3, subparagraph (a), provide investment advice and assume the technical safekeeping of investment undertaking units; the Government shall specify the details by ordinance.

4) A fund management may only obtain approval in accordance with paragraph 3 if it is in possession of an entitlement to undertake activities according to paragraph 2.

5) Paragraph 3 is subject to the provisions concerning any schemes for the compensation of the investors.

Article 25

Delegations

1) The FMA may authorize a management company to delegate one or more of its responsibilities to third parties for the purpose of efficient general management.

2) A delegation shall be approved if the specified person fulfills the necessary preconditions.

3) Delegation of investment decisions to the depositary bank shall be excluded.

4) The management company shall not be released from liability through delegation to third parties. The management company shall provide the necessary instructions and effective monitoring and oversight of the mandated third party.

5) The Government shall specify the further preconditions of delegation by ordinance.

6) Approval may be withdrawn if the preconditions of delegation are not or no longer fulfilled.

Article 26

Calculation of net assets and of the issue and redemption prices

1) The net assets correspond to the market value of the assets, reduced by any obligations of the investment undertaking and by the taxes expected to become due upon liquidation of the assets.

2) The issue price of new units is equal to the market value of the net assets at the time of issue, divided by the number of units in circulation, plus any issue surcharge. The issue price shall be paid upon purchase. The redemption price shall be calculated analogously at the time of redemption, minus any redemption reduction. Any costs specified in the full prospectus shall be taken into account.

3) The net asset value of the units shall be published in the publication medium upon each purchase or sale of units, and at least twice a month in the case of investment undertakings for transferable securities. Any additional costs must be indicated.

4) Depending on the type of the investments, the FMA may authorize exceptions or lay down special publication requirements.

Article 27

Obligation of external audit

1) Each year, the investment undertakings and the management company must submit to an audit of their conduct of business by an independent audit office recognized by the FMA.

2) The management company must provide the audit office with all information necessary for a proper audit.

3) In particular, the management company shall have the following obligations vis-à-vis the audit office:

- a) to make available the documents necessary to ascertain and evaluate assets and liabilities;
- b) to grant access to the books, vouchers, business correspondence, and minutes of the meetings of the board of directors and the general management.

Article 28

Change of management company

1) The rights and obligations of a management company may be transferred to a different management company on approval of the FMA.

2) The Government shall specify the preconditions for licensing of a change of management company by ordinance.

Article 29

Submission and reporting requirements

1) Prior to publication in the publication medium, the management company shall submit the following to the FMA for approval:

- a) a change of the management company, of the depositary bank, of the audit office, and of third parties mandated in the framework of a delegation in accordance with article 25;
- b) the creation and closing of segments.

2) Immediately upon approval, changes according to paragraph 1 must be taken into account in the full and simplified prospectuses. They may only be entered in the Public Register after approval.

3) Articles 7 and 10 shall apply to changes affecting the full and simplified prospectuses.

4) Prior to publication in the publication medium, the management company shall immediately report the following to the FMA with the necessary supporting documents:

- a) a change to the composition of the board of directors and the general management of the management company;
- b) a change of the responsible contact person at the depositary bank of an investment undertaking;
- c) a change of the head of the mandate and/or the head auditor of the audit office;
- d) a change to the possession of voting capital of the management company, especially qualifying holdings, in order to meet the requirements necessary to fulfill the interest of ensuring solid and prudent management of the company.
- e) the intended promotion of the sale of the units to the public or the intended establishment of a branch abroad.

5) The reports to be submitted by the management companies pursuant to the Currency Treaty with Switzerland for statistical purposes shall be submitted to the FMA, which shall forward the data to the Swiss National Bank. The Government shall specify the details by ordinance.

D. Depositary bank

Article 30

Depositary bank and responsible persons

- 1) Only a bank that holds a license in accordance with the Banking Act or a domestic branch of a bank from the EEA established in accordance with article 30(d) of the Banking Act may be appointed as a depositary bank.
- 2) The managers of the depositary bank must have a good reputation as businesspersons and the necessary qualifications and sufficient experience with respect to the type of the investment undertaking to be managed.
- 3) Managers for the purposes of paragraph 2 are persons who represent the depositary bank pursuant to the legislative requirements or the charter or who determine its conduct of business.
- 4) The persons at a depositary bank who at any time are responsible for the depositary bank function of an investment undertaking must be disclosed to the FMA.

Article 31

Responsibilities of the depositary bank

- 1) The depositary bank shall be responsible for the safekeeping of the assets of the investment undertaking in the framework of the usual depositary functions of the bank.
- 2) The depositary bank shall ensure that:
 - a) the calculation of the net asset value and of the issue and redemption prices of the units conform to this Act and the prospectuses;
 - b) the investment decisions comply with this Act and the prospectuses;
 - c) the profits of the investment undertaking are used in accordance with the prospectuses.
- 3) The depositary bank shall furthermore and in particular be responsible for the issue and redemption of units and for payment transactions.
- 4) The depositary bank must carry out the instructions of the management company. If an instruction is in breach of legislative provisions and/or the full prospectus, the depositary bank must call this to the attention of the manage-

ment company in writing and, provided that the instruction is not withdrawn, inform the audit office of this breach within a useful period of time.

5) The depositary bank may delegate one or more of its responsibilities to third parties (e.g., safekeeping of assets domestically or abroad). Delegation to third parties shall not release the depositary bank from liability. The provisions of banking legislation concerning the outsourcing of business areas shall apply *mutatis mutandis*.

Article 32

Change of depositary bank

The provisions concerning change of management company (article 28) shall apply *mutatis mutandis* to a change of the depositary bank.

E. Special provisions for investment companies

Article 33

Organization

1) The investment company must be a limited company with variable or fixed capital.

2) The relationship between the company and the investors shall be determined by the articles of incorporation, any bylaws, and the full prospectus. The investors share in the capital of the investment company.

3) The articles of incorporation and the full prospectus shall determine in each case how the company shall be structured.

4) The company name must clearly indicate what type of investment company it is and whether it has fixed or variable capital.

Article 34

Applicable law

1) Unless otherwise determined below, the provisions of this Act and, supplementally, the provisions of the Persons and Company Law concerning

limited companies (articles 261 to 367 of the PCL) shall apply to the investment company.

2) The provisions concerning the acquisition of a limited company's own shares (articles 306 et seq. of the PCL) shall not be applicable to the investment company. By means of an ordinance, the Government may declare that further provisions of the Persons and Company Law shall not be applicable, to the extent that the object and purpose of the investment company so require.

Article 35

Structure of the investment company

1) An investment company that has designated a third company as a management company for the purposes of this Act shall receive a license if the provisions of the Persons and Company Law concerning own funds are fulfilled.

2) An investment company acting as a management company itself shall receive a license if it has initial capital of at least 500,000 Swiss francs as own funds and if this amount is fully paid-up or covered by a bank guarantee.

3) The investment company shall have own funds at its disposal as well as assets under management. The own funds shall be identified separately and clearly separated from the assets under management. Article 59 shall apply to assets under management.

4) The investment company may issue the own funds as founders' shares with a par value and, as a rule, as unregistered units with no par value. The units may be structured without the right to vote, and the founders' shares may be structured as registered shares.

Article 36

Prohibition of third-party management

1) The investment company may only manage the investment assets of its own portfolios, but not the investment assets of third parties.

2) The investment company may not engage in any activities according to article 24, paragraph 3.

Article 37

Separation in the case of bankruptcy

Assets managed for the purpose of collective capital investment for the account of the investors shall not be considered part of the bankruptcy assets in the case of bankruptcy of the investment company.

Article 38

Content of the full prospectus

1) The full prospectus for the investment company shall be composed of the articles of incorporation, the further minimum content determined by the Government by ordinance, and any bylaws.

2) The investment company must:

- a) integrate the content of the simplified prospectus into the articles of incorporation of the limited company in accordance with the Persons and Company Law; or
- b) record the content of the simplified prospectus as bylaws and the minimum content of the articles of incorporation in accordance with the Persons and Company Law in two separate documents.

3) The investment company must officially authenticate the articles of incorporation and any bylaws.

Article 39

Amendments to the full prospectus

1) Subject to paragraph 2, the provisions of article 7 shall apply *mutatis mutandis* to amendments to the full prospectus.

2) Amendments are substantial if they concern parts of the full prospectus that correspond to the content of the simplified prospectus, the articles of incorporation, or any bylaws according to the Persons and Company Law.

F. Investment rules

1. Investment undertakings for transferable securities

Article 40

Principle

- 1) Investment undertakings for transferable securities may invest:
 - a) in mass-issued transferable securities, money market instruments, and in non-securitized rights with the same function (book-entry securities) that are traded on an exchange or another regulated market open to the public;
 - b) in transferable securities from new issues that are intended for trading at an exchange or another regulated market open to the public and that are admitted for trading after at most one year;
 - c) in units of other investment undertakings for transferable securities or of equivalent investment undertakings, sight deposits, or callable deposits, derivative financial instruments and money market instruments that are not traded on a regulated market; the Government shall lay down the pre-conditions for such investments by ordinance.
- 2) By ordinance, the Government may authorize further investments for investment undertakings for transferable securities, namely those that are authorized in accordance with EEA law for undertakings for the collective investment of transferable securities.
- 3) Investment undertakings for transferable securities may to a limited extent also hold other transferable securities, money market instruments, and book-entry securities as well as reasonable liquid assets. The Government shall provide further details by ordinance.
- 4) The investment strategy of investment undertakings for transferable securities may replicate stock indices or debt-security indices recognized by the FMA. Differing investment restrictions may apply. The Government shall provide further details by ordinance.
- 5) In view of an efficient management of the portfolio, investment undertakings for transferable securities may employ derivative financial instruments if:
 - a) the investment undertaking does not deviate from its investment objectives with such transactions;
 - b) in the case that the derivative financial instruments are embedded in a transferable security or a money market instrument (structured financial

instruments), all relevant rules are complied with, especially the investment rules concerning risk diversification for the underlying asset and the transferable security or the money market instrument.

Article 41

Risk diversification

- 1) The investment undertakings for transferable securities may:
 - a) only take out loans temporarily and up to a maximum percentage of the net assets;
 - b) invest at most part of the net assets with the same issuer;
 - c) acquire transferable securities and book-entry securities associated with voting rights from the same issuer only up to a maximum percentage;
 - d) invest their assets with an investment undertaking of the open-ended type;
 - e) lend investments from their assets only in accordance with the generally recognized principles of the banking industry;
 - f) employ derivative financial instruments only for purposes of investment or hedging, to the extent this is permitted by the full prospectus.
- 2) Paragraph 1, subparagraph (b) shall not apply to investments that are guaranteed by a member State of the OECD, the subdivisions of such a member State, or international organizations.
- 3) In the case of segmented investment undertakings, the maximum percentages specified in paragraph 1, subparagraphs (b) to (d) shall apply to each individual segment.
- 4) The Government shall provide further details by ordinance.

2. Investment undertakings for other values

Article 42

Principle

- 1) Investment undertakings that are neither investment undertakings for transferable securities nor investment undertakings for real estate shall be considered investment undertakings for other values.

2) Investment undertakings for other values may also invest in investments that are marketable only to a limited extent, that are subject to high price fluctuations, that exhibit limited risk diversification, or the valuation of which is difficult. Permissible in particular are investments in precious metals, commodities, and derivative financial instruments.

Article 43

Issue and redemption of units

Depending on the type of investment, investment undertakings for other values may impose reasonable restrictions on the issue and/or redemption of units. These restrictions must be clearly indicated in the full and simplified prospectuses.

Article 44

Investment undertakings for other values with increased risk

Investment undertakings for other values with increased risk are those exhibiting a risk profile that – due to the investment policy, structure, or techniques and restrictions of the investment undertaking – is clearly higher than that of investment undertakings for other values. Investment undertakings for other values with increased risk require special licensing conditions, checks, and descriptions of their investment policy and investment risk. The Government shall provide further details by ordinance.

3. Investment undertakings for real estate

Article 45

Principle

1) Investment undertakings for real estate invest their resources in real estate, complying with the principle of risk diversification, to the extent permitted by the applicable national rules.

2) Investment undertakings for real estate may, counting from the time of purchase, invest at most a certain percentage of their net assets in the same investment. The Government shall specify the percentage by ordinance.

Article 46

Issue and redemption of units

- 1) The rules concerning the issue and redemption of units shall be at the discretion of the management company.
- 2) The management company may specify a subscription period and/or notice period for the investor of at most twelve months until the end of a fiscal year. This provision is subject to article 19, paragraphs 5 and 6.

Article 47

Appointment of experts

With the approval of the FMA, the investment undertaking for real estate shall appoint an expert committee to value investments, composed of at least three independent experts.

Article 48

Valuation of real estate

- 1) By the end of each fiscal year and also before each planned purchase or sale, the current market value of the investments must be estimated or verified by at least two independent experts. The Government shall provide further details by ordinance.
- 2) The market value estimated at the end of the preceding fiscal year shall be valid for the current year, unless the general economic development or the state of a property requires a new estimate.
- 3) If the price upon the purchase or sale of real estate deviates significantly from the estimated value, this must be justified in detail in the next periodic report.

Article 49

Securing liabilities

To secure its liabilities, the investment undertaking for real estate must hold an appropriate part of its assets in short-term fixed-interest securities and/or in resources available at short notice or via irrevocably approved credit limits.

Article 50

Limitations on encumbrances

The sum of the bond issues or loans taken on by an investment undertaking for real estate may on average not exceed a certain part of the market value of all real estate holdings. The Government shall specify the percentage by ordinance.

Article 51

Auditing of accounts

The business reports of the investment undertakings for real estate and of the real estate companies controlled by them shall be audited by the same auditing company.

Article 52

Additional particulars in the full and simplified prospectuses

1) The full prospectus must contain detailed particulars on how payments owed to or by the investment undertaking for real estate are calculated and charged; the simplified prospectus shall contain a summary of this information.

2) The full and simplified prospectuses must describe the risks associated with the investment policy of the investment undertaking for real estate.

4. Segmented investment undertakings

Article 53

Principle

1) An investment undertaking may be divided into several economically independent segments. The Government shall provide further details by ordinance.

2) Claims by investors and creditors concerning a segment or arising during the formation, existence, or liquidation of a segment shall be limited to the assets of this segment.

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

Article 54

Principle

By ordinance, the Government may specify certain investment products, types, and techniques for the different types of investment undertakings.

III. Licenses

A. Grant of a license

1. General provisions

Article 55

Licensing requirement

1) Before taking up business activities, the following shall require a license from the FMA:

- a) the management company; and
- b) the investment undertaking described in the full prospectus.

2) Business activities may be taken up immediately after the licenses have been granted in accordance with paragraph 1. The licenses may be subject to conditions.

3) The relationship of management companies and investment undertakings to the EEA and third States shall be governed by articles 76 et seq.

Article 56

Licensing conditions and procedures for the management company

1) The license for the management company shall be granted if:

- a) the organization of the management company conforms to the requirements of this Act;
- b) the legal form is in accordance with article 65;

- c) capitalization is adequate;
- d) sound and proper business operation is guaranteed; and
- e) the additional licensing conditions according to the relevant provisions of this Act are met.

2) The licensing conditions according to paragraph 1 must be met on a continuous basis.

3) If the management company constitutes part of a foreign group operating in the financial sector, the license shall only be granted in addition to the aforementioned conditions if:

- a) the group is subject to consolidated supervision comparable to Liechtenstein supervision;
- b) the supervisory authority of the home Member State has been consulted.

4) The license shall not be granted if the management company is barred from engaging in business activities in its home Member State for legal reasons.

5) The FMA shall inform the applicant within ten working days from receipt of the application whether the submitted application materials are formally complete in accordance with the instructions of the FMA and, if this is the case, the FMA shall issue a confirmation.

6) The application for the grant of a license shall be decided on at most three months after issue of the confirmation in accordance with paragraph 5.

7) If the deadline laid down in paragraph 6 cannot be met due to special circumstances, especially in the case of complex fundamental questions and questions concerning the organizational structure or the distribution of holdings or in other cases particularly worthy of consideration, then the FMA must inform the applicant without delay, and in any event within the period laid down in paragraph 6. In this case, the FMA must decide on granting the license at most six months after receipt of the application materials.

8) If further materials or information are necessary to evaluate the application, the FMA may request the applicant to submit them additionally. The deadlines shall be deferred from the time of the request until the materials are received.

Article 57

Licensing conditions and procedures for investment undertakings for transferable securities

1) The FMA shall approve an investment undertaking for transferable securities if:

- a) its full prospectus conforms to the requirements of this Act;
- b) its legal form is in accordance with article 4;
- c) the investment policy of the undertaking is designed in conformity with its type and in accordance with this Act and the relevant provisions are complied with; and
- d) the additional licensing conditions according to the relevant provisions are fulfilled.

2) The licensing conditions according to paragraph 1 must be met on a continuous basis.

3) The FMA shall inform the applicant within ten working days from receipt of the application whether the submitted application materials are formally complete in accordance with the instructions of the FMA and, if the materials are formally complete, the FMA shall issue a confirmation.

4) The application for the grant of a license shall be decided on at most six weeks after issue of the confirmation in accordance with paragraph 3.

5) If the deadline laid down in paragraph 4 cannot be met due to special circumstances, especially in the case of fundamental questions and complex questions concerning specific investment products, types, and techniques and in other cases particularly worthy of consideration, then the FMA must inform the applicant without delay, and in any event within the period laid down in paragraph 4. In this case, the FMA must decide on granting the license at most twelve weeks after issue of the confirmation in accordance with paragraph 3.

6) Article 56, paragraph 8 shall apply to the submission of additional materials and the deferment of deadlines.

Article 58

Licensing conditions and procedures for investment undertakings for other values or for real estate

1) Article 57, paragraphs 1 and 2 shall apply *mutatis mutandis* to the licensing conditions for investment undertakings for other values or for real estate.

2) The FMA shall inform the applicant within ten working days from receipt of the application whether the submitted application materials are formally complete in accordance with the instructions of the FMA and, if the materials are formally complete, the FMA shall issue a confirmation.

3) The application for the grant of a license shall be decided on at most four months after issue of the confirmation in accordance with paragraph 2.

4) If special circumstances exist, especially in the case of complex questions concerning specific investment products, types, and techniques and in other cases particularly worthy of consideration, the FMA shall not be bound by the deadline laid down in paragraph 3. The FMA shall inform the applicant without delay, and in any event within the period laid down in paragraph 3.

5) Article 56, paragraph 8 shall apply to the submission of additional materials and the deferment of deadlines.

Article 59

Net assets

1) The net assets of an investment undertaking must reach a certain minimum amount at most six months after the license has been granted. The Government shall specify the minimum amount by ordinance.

2) In the case of segmented investment undertakings, paragraph 1 shall apply to each individual segment.

3) On important grounds, the FMA may grant a deferment of the deadline.

Article 60

Terms

Both within the enterprise and in reference to the purpose of the business and in business advertisements, terms indicating activities as an investment undertaking or as a management company may only be used by enterprises that have received a license in accordance with this Act.

Article 61

Data processing

1) The FMA may process all data necessary to fulfill its responsibilities in accordance with article 96, including personal profiles and particularly sensitive data concerning administrative or criminal prosecutions of and penalties imposed on persons responsible for the administration and general management of an investment undertaking.

2) The FMA may only disclose data if disclosure is necessary for supervision or official assistance or is otherwise expressly provided for by law.

3) The FMA shall keep an updated list of the investment undertakings and their management companies licensed in accordance with articles 55 et seq. This directory shall be open to the public and shall be updated monthly. It may be viewed by means of a retrieval procedure.

4) The FMA shall take all technical and organizational measures necessary to protect the collected data from abuse.

5) After termination and deregistration of the management company, the processed personal data shall be archived in accordance with the provisions of the Archives Act.

Article 62

Communication requirement in the case of a foreign connection

Before granting a license to a management company, the FMA shall consult the competent authorities of another Member State of the EEA if:

- a) the management company is the subsidiary of another management company or a subsidiary of a parent enterprise of another management company, of a credit institution, or of an insurance company that is licensed in another Member State;

- b) the management company is controlled by the same parties as another management company, another credit institution, or another insurance company that is licensed in a Member State of the EEA.

Article 63

Supervision taxes and fees

Supervision taxes and fees shall be in accordance with financial market supervision legislation.

2. Detailed licensing conditions

Article 64

Organization of the investment undertaking

- 1) An investment undertaking shall require a management company and a depositary bank.
- 2) The responsibilities of the management company shall be fulfilled:
 - a) in the case of an investment fund: by the fund management;
 - b) in the case of an investment company: by the board of directors and the general management.
- 3) The leading persons in the management company and the depositary bank must be legally separated from each other and independent with respect to instructions.
- 4) The investment undertaking and the management company must have an organization suited to fulfilling their responsibilities and shall always be obliged to comply with the Code of Conduct issued by the supervisory authority. The Government shall provide further details by ordinance.
- 5) If an investment undertaking is divided into segments, the same management company, the same depositary bank, and the same audit office must be responsible for all segments.
- 6) The management company must be domiciled in Liechtenstein.
- 7) The investment undertaking shall employ a generally recognized risk management procedure that is appropriate for the intended business purpose. The Government shall provide further details by ordinance.

8) By means of an ordinance, the Government shall provide more detailed provisions concerning the general management, the business plan, the organizational structure, and the head office and its domicile.

9) The investment undertaking shall comply on a continuous basis with the supervisory rules (internal control mechanisms) issued by the FMA. The Government shall provide further details by ordinance.

Article 65

Legal form

1) The fund management of an investment fund must be constituted as a limited company or as an establishment under Liechtenstein law.

2) An investment company must be constituted as a limited company with variable or fixed capital (article 33, paragraph 1).

Article 66

Capitalization

1) In application of the provisions of banking legislation concerning own funds *mutatis mutandis*, the own funds of a management company consist of:

- a) its share capital;
- b) its voluntary and legal reserves; and
- c) any profits and losses carried forward from previous fiscal years.

2) Upon founding a management company, own funds are called initial capital, in application of the provisions of banking legislation concerning own funds *mutatis mutandis*.

3) The initial capital must be fully paid-up or covered by a bank guarantee and must be at least:

- a) in the case of a fund management: one million Swiss francs;
- b) in the case of an investment company: 500,000 Swiss francs.

4) The assets under management by an investment undertaking shall not count towards the own funds of the management company.

5) If the assets under management by a management company exceed one thousand million Swiss francs, the own funds must additionally be supported by 0.02% of the assets under management. The assets under management consist of the management companies' own investment undertakings, inde-

pendently of whether they are managed by the management company itself or by third parties, including the assets of investment companies that they have themselves appointed as management companies, but not of investment undertakings that they manage themselves on behalf of third parties.

6) The FMA may reduce the obligation to deposit additional own funds according to paragraph 5 to 0.01% of the assets under management, as long as the management company has an additional guarantee by a credit institution or insurance undertaking.

7) The institution providing the guarantee must be domiciled in an EEA Member State or in a third State with equivalent supervisory provisions.

8) The own funds of a management company may never fall below the amount prescribed in Annex IV of Directive 93/6/EEC. If the required amount of own funds is not met, the FMA may set a deadline before which the amount must be increased appropriately, or else activities must be discontinued.

9) The legislative requirements on the own funds of a management company may not exceed fifteen million Swiss francs.

Article 67

Voting capital of the management company

The identity and the amount of the holdings of the shareholders or partners of the management company who hold qualifying holdings as natural or legal persons must be reported to the FMA and must meet the requirements necessary to fulfill the interest of ensuring solid and prudent management of the company.

Article 68

Guarantee of sound and proper business operation

Both in terms of expertise and personal qualities, the persons mandated to administer and manage an investment undertaking must at all times guarantee sound and proper business operation .

Article 69

Incompatibility, close links

1) The persons mandated to administer and manage an investment undertaking may neither belong to the Government nor, subject to article 7, paragraph 3 of the Financial Market Authority Act, the FMA.

2) If close links exist between the management company and other natural or legal persons, this may not interfere with proper supervision of the investment undertaking.

3) Furthermore, proper supervision of the investment undertaking may not be interfered with by:

- a) legal and administrative provisions of a third State to which natural or legal persons are subject who have close links with the management company;
- b) difficulties arising in application of the provisions within the scope of subparagraph (a).

4) The management company shall submit the necessary information and documents to the FMA in order to ensure continuous verification of compliance with the provisions of this article.

Article 70

Fulfillment of purpose

The management company may only obtain a license if it is able to fulfill its purpose according to its articles of incorporation from the start and if it complies with the conditions of article 59, paragraph 1 *mutatis mutandis*.

B. Amendment, revocation, expiration, withdrawal, termination, and deregistration

Article 71

Amendment and revocation

Licenses may be amended or revoked if the owner of the license obtained the license by providing false information or if significant circumstances were not known.

Article 72

Expiration

1) Licenses for a management company shall expire if the management company does not start business within twelve months of receiving the license.

2) Licenses for an investment undertaking shall expire if:

- a) the minimum net assets according to article 59 are not reached within six months of receiving the license, unless a deferment of the deadline has been granted in accordance with article 59, paragraph 3;
- b) after redemption of all units, no new units have been issued during at least six months;
- c) the management company renounces the license in writing, with no units in circulation.

3) Expiration of a license must be published by the management company and reported to the Office of Land and Public Registration.

4) With the expiration of a license, the management company shall lose its right of disposal over the objects and rights of the investment undertaking. At this time, a liquidator must be appointed in accordance with the provisions of the Persons and Company Law. The FMA shall supervise the liquidator.

5) In addition, the expiration of a license shall entail the termination and deregistration of the management company or the investment undertaking in the Public Register.

Article 73

Withdrawal

1) Licenses shall be withdrawn and the withdrawal published if:

- a) the conditions for granting them are no longer fulfilled;
- b) the owner of the license has grossly violated legal or contractual duties;
- c) the owner of the license repeatedly breaches legal or contractual duties;
- d) general interests of the financial center are breached.

2) Licenses according to article 24, paragraph 3 shall be withdrawn if the management company no longer fulfills the requirements for adequate own funds.

3) The withdrawal of a license must be published by the management company and reported to the Office of Land and Public Registration.

4) With the withdrawal of a license, the management company shall lose its right of disposal over the property and rights of the investment undertaking. At this time, a liquidator must be appointed in accordance with the provisions of the Persons and Company Law. The FMA shall monitor the liquidator.

5) In addition, the withdrawal of a license shall entail the termination and deregistration of the management company or the investment undertaking in the Public Register.

6) A company conducting activities covered by this Act without a license may be terminated by the FMA if the object of this Act so requires. In urgent cases, this may be done without prior warning or deadline.

Article 74

Termination

1) Investment undertakings shall be terminated if:

- a) their term has expired pursuant to the full prospectus;
- b) a license expires or the FMA withdraws a license;
- c) the depositary bank cancels and succession cannot be secured before expiry of the notice period;

2) In addition to the grounds according to paragraph 1, investment undertakings shall be terminated if the management company:

- a) cancels and succession cannot be secured before expiry of the notice period;
- b) requests its own premature termination.

3) Cancellation and termination shall be published in the publication medium.

Article 75

Prohibition of issue and redemption of units

1) Units may neither be redeemed or reissued in the case of:

- a) cancellation of a management company or a depositary bank without securing succession;

- b) a request for premature termination of an investment undertaking; or
 - c) a withdrawal or revocation of a license to conduct business.
- 2) The prohibition of issue and redemption of units shall be maintained until the termination of the investment undertaking is averted.
- 3) The management company shall publish the prohibition of issue and redemption of units.

IV. Relationship to the EEA and third States

A. Management companies

1. Management companies domiciled in Liechtenstein

Article 76

Principle

1) Management companies domiciled in Liechtenstein that have been granted a license to engage in certain business activities pursuant to this Act may engage in those activities in another Member State of the EEA in accordance with the following provisions, either by the establishment of a branch or under the free movement of services.

2) Upon request, the FMA shall attest that the management company is licensed in Liechtenstein and conforms to the requirements of Directive 85/611/EEC as amended (European passport).

Article 77

Establishment of a branch

1) A management company domiciled in Liechtenstein wishing to establish a branch in another Member State of the EEA must notify the FMA in advance (article 29, paragraph 4) and simultaneously submit the following information and documents:

- a) the Member State in which the management company plans to establish a branch;
- b) a business plan setting out the activities and services envisaged and the organizational 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) Within three months of receiving all the information and documents referred to in paragraph 1, the FMA shall forward these to the competent authority of the host Member State and shall communicate details concerning any compensation scheme intended to protect investors. The management company shall simultaneously be notified that the information and documents are being forwarded.

3) If there are reasons to doubt the adequacy of the administrative structure or the financial situation of the management company, the FMA shall refuse to forward the information and documents referred to in paragraph 2 and shall give reasons in writing to the management company within two months of receipt of the information and documents.

4) Either upon receipt of a positive notification by the host Member State or upon expiry of a period of two months after receiving all the information and documents referred to in paragraph 2, the branch may be established at the competent authority of the host Member State and take up its business activities. From this point on, the management company may also begin with the marketing of the units of the investment undertaking that it manages and that fulfill the conditions for marketing in the host Member State in accordance with articles 87 to 89.

5) The management company shall communicate in writing to both the FMA and the competent authority of the host Member State any changes to the particulars according to paragraph 1, subparagraphs (b) to (d) at least one month before the changes are made.

6) The FMA shall notify the competent authority of the host Member State of changes to the particulars according to paragraph 1, subparagraphs (b) to (d), and paragraph 2.

Article 78

Free movement of services

1) A management company domiciled in Liechtenstein that intends to operate in another Member State of the EEA under the free movement of services must notify the FMA in advance and simultaneously submit the following information and documents:

- a) the Member State in which the management company intends to operate;
- b) a business plan setting out the activities and services envisaged.

2) The notification requirement according to paragraph 1 shall also apply to management companies that have mandated a third party to market units in the host State.

3) Within one month of receipt of the information and documents according to paragraph 1, the FMA shall bring these facts to the attention of the competent authority of the host Member State and shall communicate details concerning any compensation scheme intended to protect investors.

4) Notwithstanding article 88, the management company may take up its business activities in the host Member State if the conditions of article 87 are met.

5) The management company shall communicate in writing to both the FMA and the competent authority of the host Member State any changes to the particulars according to paragraph 1 before the changes are made.

2. Management companies domiciled in a different Member State of the EEA

Article 79

Principle

1) Management companies domiciled in a different Member State of the EEA that have been granted a license to engage in certain business activities by the competent authorities may engage in those activities in Liechtenstein in accordance with the following provisions, either by the establishment of a branch or under the free movement of services.

2) The management company shall present a certification to the FMA that it is licensed in the home Member State and that it conforms to the requirements of Directive 85/611/EEC as amended (European passport).

Article 80

Establishment of a branch

1) The establishment of a branch may not be made subject to any domestic authorization, endowment capital, or any other condition having an equivalent effect.

2) Within two months of receipt of the information and documents forwarded by the competent authority of the home Member State, the FMA shall notify the management company of any requisite conditions and codes of conduct in the public interest that apply to the conduct of the intended activities in Liechtenstein.

3) Upon receipt of the notification by the FMA, at the latest upon expiry of the period specified in paragraph 2, the branch may be established and take up its business activities. From this point on, the management company may also begin with the marketing of the units of the investment undertaking that it manages and that fulfill the conditions for marketing in Liechtenstein in accordance with articles 91 to 93.

4) The management company shall communicate in writing to both the FMA and the competent authority of the home Member State any changes to the information and documents forwarded according to paragraph 2 at least one month before the changes are made.

Article 81

Free movement of services

1) A management company domiciled in a different Member State of the EEA that intends to operate in Liechtenstein under the free movement of services shall submit to the competent authority of the home Member State the information and documents required by the home Member State.

2) Upon receipt of the information and documents according to paragraph 1 forwarded by the competent authority of the home Member State, the FMA may notify the management company of the conditions and codes of conduct that must be complied with in Liechtenstein in the public interest.

3) Notwithstanding article 92, the management company may take up its business activities in Liechtenstein if the conditions of article 91 are met.

4) The management company shall communicate in writing to both the FMA and the competent authority of the home Member State any changes to the particulars according to paragraph 1 before the changes are made.

Article 82

Information and reporting requirement

The FMA may:

- a) in exercising the powers granted by this Act, demand all information and documents from the branches of the foreign management company that it also demands of domestic management companies for this purpose.
- b) for statistical purposes, demand from every management company with a branch in Liechtenstein that it report regularly on the business activities it conducts in Liechtenstein;
- c) demand from the management companies that are operating in Liechtenstein under the free movement of services the information and documents necessary to monitor compliance with the provisions applicable in Liechtenstein to these management companies. These requirements may not, however, be more stringent than the requirements that the FMA imposes on management companies established in Liechtenstein for purposes of monitoring compliance with the same standards.

Article 83

Breach of Liechtenstein law

1) If the management company that is offering services in Liechtenstein through the establishment of a branch or under the free movement of services is in breach of the provisions of this Act and the ordinance issued in connection herewith or other laws, then the FMA shall order the management company to restore a lawful state of affairs.

2) If the management company does not comply with the order, the FMA shall bring this to the attention of the competent authorities of the home Member State.

3) If the management company persists in breaching the provisions referred to in paragraph 1, despite the measures taken by the home Member State to restore a lawful state of affairs, the FMA may, upon informing the competent authority of the home Member State, take appropriate measures to prevent or punish further breaches. In particular, it may prohibit the management company from initiating any further transactions in Liechtenstein.

4) Paragraph 3 shall also apply if the measures taken by the home Member State prove to be inadequate or if no measures have been taken.

5) Any measure involving penalties or restrictions of the activities of a management company must be justified and communicated to the management company concerned.

6) In urgent cases, the FMA may take precautionary measures before initiating the aforementioned procedure that are necessary to protect the interests of investors and other persons for whom services are rendered. The com-

petent authorities of the affected Member States of the EEA and the EFTA Surveillance Authority shall be informed immediately. Upon hearing the affected Member States, the EFTA Surveillance Authority may decide that the measure must be amended or abolished.

7) If the competent authority of the home Member State withdraws the license of the management company, the FMA shall take appropriate measures to ensure that the management company does not initiate any further transactions in Liechtenstein and that the interests of the investors are safeguarded.

8) The FMA shall communicate to the EFTA Surveillance Authority the number and types of cases in which measures are taken pursuant to this Article or in which a foreign management company has been refused.

3. Management companies domiciled in a third State

Article 84

Establishment of a branch

1) The establishment of a branch in Liechtenstein of a management company domiciled outside the EEA shall require a license.

2) The FMA shall grant the license if:

- a) the management company is subject to consolidated supervision equivalent to Liechtenstein supervision;
- b) the management company is sufficiently organized and has sufficient qualified personnel and financial resources to operate a branch in Liechtenstein;
- c) the supervisory authority of the home Member State does not voice any objections to the establishment of a branch and declares that it will inform the FMA without delay of any circumstances that could seriously endanger the interests of the investors; and
- d) the other provisions of this Act and of the ordinance issued in connection herewith are fulfilled *mutatis mutandis*.

3) These provisions are subject to any reciprocity agreements.

4) Article 15 of Directive 2004/39/EC shall apply *mutatis mutandis*.

Article 85

Information and reporting requirement

Article 82 shall apply *mutatis mutandis* to the information and reporting requirement vis-à-vis the FMA.

Article 86

Breach of Liechtenstein law

If a management company within the scope of article 84 is in breach of Liechtenstein law, article 83 shall apply *mutatis mutandis*.

B. Investment undertakings**1. Marketing of units of Liechtenstein investment undertakings in a Member State of the EEA***Marketing of units of investment undertaking for transferable securities*

Article 87

a) Principle

1) Units of Liechtenstein investment undertakings that conform to the requirements of Directive 85/611/EEC as amended (UCITS) may be marketed in another Member State of the EEA without an additional license, in accordance with the following provisions.

2) Upon request, the FMA shall attest to the management company that the investment undertaking for transferable securities licensed for the promotion of sale to the public in Liechtenstein conforms to the requirements of Directive 85/611/EEG (European passport).

3) The management company is obliged:

- a) to observe the rules applicable in the marketing State that concern the areas or publicity measures not governed by the Directive referred to in paragraph 1;
- b) in observation of the rules applicable in the marketing State, to ensure that the investors receive the benefit of the payments, that they can exer-

- cise the right to return units, and that they receive the information that must be provided by the management company; and
- c) to publish in the marketing State the full and simplified prospectuses, the yearly and half-yearly reports, and the other information according to articles 5 et seq. and articles 38 et seq.

4) The materials according to paragraph 3 and in article 88, paragraph 1, subparagraphs (b) to (d) shall be drafted in the official language or in one of the official languages of the marketing State or in another language approved by the competent authorities of the marketing State.

Article 88

b) Procedure

1) If the management company intends to market units of an investment undertaking publicly in another Member State of the EEA, it must report this intent to the FMA in accordance with article 29, paragraph 4. At the same time, the management company must notify the competent authority of the marketing State and submit the following information and documents:

- a) an attestation by the FMA that the investment undertaking conforms to the requirements of Directive 85/611/EEC as amended;
- b) its fund rules or articles of incorporation and bylaws;
- c) its full and simplified prospectuses;
- d) where appropriate, its latest yearly report and any subsequent half-yearly report; and
- e) details of the arrangements made for marketing of the units in that other Member State.

2) A management company may market the units of the investment undertaking in the marketing State upon expiry of two months after receipt of the information and documents specified in paragraph 1, unless the FMA or the competent authority of the marketing State determines within this period, in a reasoned decision, that the arrangements for marketing the units do not conform to the requirements according to article 87, paragraph 3.

Article 89

Marketing of units of investment undertakings for other values or for real estate

1) The intended marketing of units of investment undertakings for other values or for real estate (non-UCITS) in another Member State of the EEA must be reported to the FMA in accordance with article 29, paragraph 4. The marketing shall furthermore be governed by the legal and administrative provisions applicable in the marketing State concerned.

2) Upon request, the FMA shall attest to the management company that the investment undertaking for other values or for real estate approved in Liechtenstein is supervised by the FMA.

2. Marketing of units of Liechtenstein investment undertakings in a third State

Article 90

Principle

The intended marketing of units of Liechtenstein investment undertakings in a third State must be reported to the FMA in accordance with article 29, paragraph 4. The marketing shall furthermore be governed by the legal and administrative provisions applicable in the State concerned.

3. Marketing of units of investment undertakings from a Member State of the EEA in Liechtenstein*Marketing of units of investment undertakings in conformity with the Directive*

Article 91

a) Principle

1) Units of investment undertakings from a Member State of the EEA that conform to the requirements of Directive 85/611/EEC as amended (UCITS)

may be marketed in Liechtenstein without an additional license (European passport).

2) The management company shall be obliged:

- a) to observe the rules applicable in Liechtenstein that concern the areas or solicitation measures not governed by the Directive referred to in paragraph 1;
- b) to appoint a bank as a paying agent in Liechtenstein pursuant to the Banking Act;
- c) to appoint a person as representative who holds a license in accordance with special Liechtenstein legislation and who has the requisite expertise;
- d) to publish in Liechtenstein the full and simplified prospectuses, the yearly and half-yearly reports, and the other information according to articles 5 et seq. and articles 38 et seq.

3) The materials according to paragraph 2 and article 92, paragraph 1, subparagraphs (b) to (d) shall be drafted in a language approved by the FMA.

4) If there is a danger of mistaken identification, the FMA may demand an explanatory addition to the name of the investment undertaking.

5) By means of an ordinance, the Government shall determine the rights and duties of the paying agent and of the representative.

Article 92

b) Procedure

1) If the management company intends to market units of an investment undertaking in Liechtenstein, it must notify the FMA and simultaneously submit the following information and documents:

- a) an attestation by the competent authority of the home Member State that the investment undertaking conforms to the requirements of Directive 85/611/EEC as amended (European passport);
- b) its fund rules or articles of incorporation;
- c) its full and simplified prospectuses;
- d) where appropriate, its latest yearly report and any subsequent half-yearly report; and
- e) details of the arrangements made for marketing of its units in Liechtenstein.

2) A management company may market the units of the investment undertaking in Liechtenstein upon expiry of two months after receipt of the information and documents specified in paragraph 1, unless the FMA or the competent authority of the home Member State determines within this period, in a reasoned decision, that the arrangements for marketing the units do not conform to the requirements according to article 91, paragraphs 2 to 5.

Article 93

Marketing of units of investment undertakings not in conformity with the Directive

1) The marketing of units of investment undertakings not in conformity with the Directive (non-UCITS) shall require a license.

2) The FMA shall grant the license if:

- a) the investment undertaking is subject to consolidated supervision in the home Member State that is equivalent to Liechtenstein supervision;
- b) the name of the investment undertaking does not lead to deception or confusion;
- c) the other provisions of this Act and of the ordinance issued in connection herewith are fulfilled *mutatis mutandis*.

3) These provisions are subject to any reciprocity agreements.

4) Article 15 of Directive 2004/39/EC shall apply *mutatis mutandis*.

5) The Government shall provide further details by ordinance.

4. Marketing of units of investment undertakings from a third State in Liechtenstein

Article 94

Principle

1) The marketing of units of an investment undertaking from a third State shall require a license.

2) The FMA shall grant the license if:

- a) the conditions of article 91, paragraph 2 to 5 are met;
- b) the investment undertaking is subject to consolidated supervision in the home Member State that is equivalent to Liechtenstein supervision;
- c) the name of the investment undertaking does not lead to deception or confusion;
- d) the other provisions of this Act and of the ordinance issued in connection herewith are fulfilled *mutatis mutandis*.

3) The marketing of units of an investment undertaking from a third State shall not require a license in accordance with paragraphs 1 and 2 if:

- a) no publicity is engaged in;
- b) the circle of persons is specified and the persons approached are connected with the solicitor in a qualified manner;
- c) the circle of persons is small in number and limited, it being irrelevant over what time period these persons are approached and whether they are approached simultaneously or in stages and whether the solicitation is successful;
- d) publicity does not reach a certain frequency; or
- e) a contract for assets management exists that encompasses only procurement of units of an investment undertaking without any advisory activity.

4) These provisions are subject to any reciprocity agreements.

5) Article 15 of Directive 2004/39/EC shall apply *mutatis mutandis*.

6) The Government shall provide further details by ordinance. The Government may specify further exemptions from the license requirement.

V. Supervision

A. Organization and implementation

1. General provisions

Article 95

Principle

The following shall be mandated to implement this Act:

- a) the Financial Market Authority (FMA);
- b) the audit offices;
- c) the Court of Justice.

2. Financial Market Authority (FMA)

Article 96

Responsibilities

1) The FMA shall monitor the execution of this Act and of the ordinances issued in connection herewith as well as compliance with the full and simplified prospectuses, and it shall take the necessary measures.

2) In particular, the FMA may:

- a) demand all information and clarifications necessary for execution of this Act from the management companies, the audit offices, and the depositary banks;
- b) order extraordinary audits or conduct audits itself with respect to certain situations;
- c) issue decisions and orders and, after prior warning, publish them, if the management company fails to comply.

3) The FMA shall in particular be responsible for:

- a) issuing, amending, revoking, and withdrawing licenses;
- b) approving the full and simplified prospectuses of the investment undertakings and substantial amendments to the full prospectus;
- c) verifying audit reports;
- d) naming custodians and deciding on their remuneration;
- e) cooperating closely with the competent authorities of the Member States of the EEA, in order to facilitate supervision;
- f) punishing administrative offenses in accordance with article 111, paragraphs 4 and 5.

4) If the FMA learns of violations of this Act or of other abuses, it shall issue the measures necessary to bring about a lawful state of affairs and to remedy the abuses.

5) If there are grounds to assume that an activity subject to this Act is being conducted without a license, the FMA may demand information and documents from the persons concerned as if these persons were subject to this Act.

3. Audit offices

Article 97

Recognition

- 1) The audit offices that audit investment undertakings and their management companies shall require a license from the FMA for these activities.
- 2) The license shall be granted to audit offices if their general management, the head auditors, and the organization guarantee that they will fulfill audit mandates on a continuous basis and with due care.
- 3) The audit offices must dedicate themselves exclusively to audit activities and to immediately related business. Above all, they may not engage in assets management.
- 4) The audit office must be independent of the investment undertakings and management companies to be audited.
- 5) Article 15 shall apply *mutatis mutandis* to the secrecy obligations of the audit office.
- 6) The Government shall lay down more detailed provisions by ordinance.

Article 98

Responsibilities

- 1) The audit offices shall verify whether:
 - a) the business activities of the investment undertakings and their management companies conform to the laws, the articles of incorporation, and the full and simplified prospectuses;
 - b) the conditions for the grant of a license are continuously met; and
 - c) the business report conforms to the legal requirements.

2) The audit office of the investment undertaking must work together with the audit office of the depositary bank.

3) The audit report shall be transmitted simultaneously to the management company, the depositary bank, the audit office of the depositary bank, and the FMA.

Article 99

Complaints

1) If the audit office finds violations of legal provisions or other abuses, it shall impose an appropriate deadline on the management company to bring about a lawful state of affairs. If the deadline is not met, the audit office shall report to the FMA.

2) The audit office shall notify the FMA immediately if the imposition of a deadline appears useless or if it finds that the management company has committed criminal acts or that other serious abuses exist that run counter to the object of this Act.

3) A notification pursuant to paragraph 2 must always be made:

- a) in the case of serious violations by the general management against laws or the articles of incorporation, especially in the case of violations of the licensing conditions and the rules applicable to business operations;
- b) in the case of facts or decisions that could interfere with a continuation of activities;
- c) in the case of facts or decisions that could entail rejection of the business report or restrictions in the audit report;
- d) if close links arise from a control relationship with another enterprise within the meaning of article 2, paragraph 1, subparagraph (1).

Article 100

Audit costs

1) The investment undertaking and the management companies shall bear their own costs for each audit. The costs of the audit shall be calculated according to a generally recognized rate.

2) Agreement on lump-sum remuneration or a specific expenditure of time for the audit is prohibited.

4. Court of Justice

Article 101

Criminal jurisdiction

The Court of Justice shall have criminal jurisdiction for offenses according to article 111, paragraphs 1 to 3.

B. Official assistance

Article 102

Official information-sharing

1) The FMA may provide official information to foreign supervisory authorities of investment undertakings if:

- a) the public order, other significant national interests, and secrecy obligations pursuant to this Act are not violated thereby;
- b) the information does not conflict with the object of this Act;
- c) it is ensured that the requesting State would honor a similar request by Liechtenstein;
- d) it is ensured that the information received will only be used for the supervision of investment undertakings;
- e) it is ensured that the employees of the competent authorities and of the persons mandated by the competent authorities are subject to official and professional secrecy; and
- f) in the case of information that originates in another EEA Member State or a third State, the express assent of those authorities that have communicated this information is given and it is ensured that the information will, if applicable, only be forwarded for those purposes for which such authorities have given their assent.

2) Information according to paragraph 1 and information received from foreign authorities may only be used by the competent authorities for the following purposes:

- a) for verification of the authorization requirements for investment undertakings or for enterprises participating in their activities and for monitoring

- of the conduct of activities, of the administrative and accounting organization, and of internal control mechanisms;
- b) for the imposition of penalties;
- c) in the context of administrative proceedings concerning appeals against decisions of a competent authority;
- d) in the context of court proceedings.

3) The FMA may exchange information with the following domestic and foreign institutions, to the extent that these institutions need the information to fulfill their responsibilities pursuant to supervision law:

- a) the offices that are mandated by law or that have a State mandate to monitor banks, finance companies, securities firms, insurance undertakings, or financial markets, as well as persons mandated by these offices;
- b) the offices concerned with the liquidation, composition agreement, bankruptcy, or similar procedure of an investment undertaking or of an undertaking that takes part in its activities;
- c) the persons mandated to conduct the legal audit of the accounting of banks, finance companies, securities firms, and other financial institutions;
- d) the offices entrusted to manage deposit insurance and investor protection systems.

4) The information according to paragraph 3 shall be subject to official secrecy and/or professional secrecy. Information originating in another EEA Member State or a third State may only be forwarded with the express assent of those authorities that have communicated this information and, if applicable, only for purposes for which such authorities have given their assent.

5) At any time when necessary for the object of this Act, the FMA may obtain information concerning the activities of Liechtenstein investment undertakings abroad and the economic circumstances of foreign investment undertakings whose activities may affect the Liechtenstein monetary and credit system.

6) The provisions contained in paragraphs 1 to 5 shall only apply to the extent that international agreements do not otherwise provide.

Article 103

Cooperation between EEA Contracting Parties

1) The supervision of investment undertakings, including their activities conducted through branches and under the free movement of services, is

incumbent upon the competent authorities of the home Member State, unless competence is expressly assigned to the host Member State.

2) The FMA shall work closely together with the competent authorities of the Member States of the EEA.

3) The supervisory authority of the home Member State may either carry out the supervision of a branch in a host Member State itself or it may mandate the authority of the host Member State or auditors or experts to conduct investigations. This shall not affect the right of the host Member State to conduct investigations on the spot in accordance with its powers.

4) In the framework of cooperation and upon request, the FMA shall provide the competent supervisory authority with all information concerning the management and ownership situation of investment undertakings that may simplify the supervision thereof and all information suited to facilitate the oversight of investment undertakings.

C. Appointment of a custodian

Article 104

Principle

1) The FMA shall appoint a custodian for a management company incapable of conducting business.

2) The management company must communicate the appointment of a custodian to the investors.

3) Within one year, the custodian shall propose to the FMA that approval be given to continue the management company, that a new management company be founded, or that it be terminated.

4) The FMA shall decide on the custodian's remuneration.

VI. Liability

Article 105

Principle

1) Whoever neglects his duties as a management company, depositary bank, paying agent, auditor, valuation expert, or custodian of an investment undertaking shall be liable to the investors for the damage resulting from the neglect of duty, unless he proves that he bears no blame whatsoever.

2) The persons according to paragraph 1 shall also be liable for their auxiliary persons and for the persons they have mandated, unless they demonstrate that they have taken the appropriate care under the circumstances in selecting, instructing, and monitoring them. This provision is subject to article 25, paragraph 4, and article 31, paragraph 5.

3) Limitations of this liability shall be excluded.

4) Any personal liability of the investor shall be excluded.

Article 106

Joint and several liability, recourse

1) If multiple persons are liable for damages, each person shall be subject to joint and several liability to the extent that the damage is personally attributable due to individual blame and the circumstances.

2) Taking into account all the circumstances, the judge shall determine recourse to each of the persons involved.

Article 107

Jurisdictional venue

The Court of Justice shall have jurisdiction for claims of investors arising from a legal relationship with a domestic investment undertaking or for claims of a domestic investor arising from a legal relationship with a foreign investment undertaking that markets units in Liechtenstein.

Article 108

Statute of limitations

Compensation claims shall expire ten years after the damage has occurred and at the latest one year after a unit has been repaid.

VII. Procedure and legal remedies

Article 109

Decisions and orders

If violations of provisions of this Act or of the ordinances issued in connection herewith are found and, if the situation is not redressed despite warnings and the imposition of deadlines, the FMA shall issue the appropriate decisions and orders.

Article 110

Legal remedies

- 1) Decisions and orders of the FMA may be appealed within 14 days of service to the FMA Complaints Commission.
- 2) Decisions and orders of the FMA Complaints Commission may be appealed within 14 days of service to the Administrative Court.

VIII. Penal provisions

Article 111

Misdemeanors and administrative offenses

- 1) The Court of Justice shall punish with imprisonment of up to one year or with a fine of up to 360 daily rates for committing a misdemeanor anyone who:
 - a) performs an activity subject to this Act without a license;

- b) as a member of an organ of, an employee of, or any other person working for a management company or a depositary bank, as an auditor, as a member of the FMA Complaints Commission, or as an employee of the FMA, violates secrecy obligations or who induces such a violation or attempts to induce it.

2) The Court of Justice shall punish with imprisonment of up to six months or with a fine of up to 180 daily rates for committing a misdemeanor anyone who:

- a) violates conditions imposed in connection with a license;
- b) violates the provisions concerning minimum net assets and capitalization;
- c) violates a prohibition against using terms that indicate activities as an investment undertaking or as a management company;
- d) gives false or misleading information to the FMA or the audit office;
- e) does not keep account books properly or does not retain account books and receipts;
- f) as an auditor, grossly violates his responsibilities, in particular by making untrue statements in the audit report or withholding significant facts, by failing to make required requests to the management company, or by failing to submit required reports and notifications;
- g) makes false statements or withholds significant facts in the periodic reports, in the full or simplified prospectus, or with respect to other information.
- h) as a management company, conducts other business than the activities permitted by this Act.

3) The Court of Justice shall punish with imprisonment of up to one year or with a fine of up to 360 daily rates for committing a misdemeanor anyone who commits a criminal act according to paragraph 2 with respect to an investment undertaking for other values with increased risk.

4) The FMA shall punish with a fine of up to 100,000 Swiss francs for committing an administrative offense anyone who:

- a) fails to compile or publish the periodic reports as required;
- b) fails to have the regular audit or an audit required by the FMA conducted;
- c) fails to fulfill his responsibilities vis-à-vis the audit office;
- d) fails to submit the required notifications to the FMA;
- e) fails to comply with a demand to bring about a lawful state of affairs or with any other order by the FMA;

- f) provides impermissible, false, or misleading information while soliciting for an investment undertaking.
- 5) If the requirement according to article 13 to provide certain particulars in letters is not complied with, then the FMA shall punish the management company with a disciplinary fine of up to 5,000 Swiss francs. This disciplinary fine may be imposed repeatedly until a lawful state of affairs has been restored.
- 6) If the offenses are committed negligently, the maximum penalties shall be reduced by half.
- 7) The misdemeanors according to paragraphs 1 to 3 shall be subject to a statute of limitations of two years.
- 8) The general part of the Criminal Code shall apply *mutatis mutandis*.

Article 112

Responsibility

If violations are committed in the business operations of a legal person, a general or limited partnership, or a sole proprietorship in connection with an investment undertaking, then the penal provisions shall apply to the persons that acted or should have acted on their behalf, with joint and several liability of the legal person, the partnership, or the sole proprietorship for criminal and administrative fines.

IX. Transitional and final provisions

Article 113

Transitional provisions

- 1) Concessions and licenses according to existing legal provisions that do not conform to the requirements of this Act and of the ordinance issued in connection herewith shall be adapted to the new provisions or, if necessary, shall be withdrawn or revoked, within two years of entry into force of the relevant enactments.
- 2) The prospectus with integrated investment rules according to existing legal provisions shall be adapted within 18 months of entry into force of this

Act. The full and simplified prospectuses shall be submitted to the FMA for approval.

3) Any requisite internal guidelines shall be drafted, approved by the audit office, and submitted to the FMA within a useful period.

4) Investment undertakings that already received a license in their home Member State before 13 February 2004 under Directive 85/611/EEC shall be deemed licensed for the purposes of this Act if the laws of those Member States provide that to take up such activity the companies must comply with conditions equivalent to the licensing conditions of this Act.

5) Investment undertakings already authorized before 13 February 2004 that are not included among those referred to in paragraph 4 may continue their activities, provided that, no later than 13 February 2007, they obtain authorization to continue their activities in accordance with the provisions of Directives 2001/107/EC and 2001/108/EC.

Article 114

Repeal of existing law

The following enactments are hereby repealed:

- a) Law of 3 May 1996 on Investment Undertakings (Investment Undertakings Act, IUA), Liechtenstein Law Gazette 1996 No. 89;
- b) Law of 16 December 1998 concerning Amendment of the Investment Undertakings Act (IUA), Liechtenstein Law Gazette 1999 No. 43;
- c) Law of 18 June 2004 concerning Amendment of the Investment Undertakings Act, Liechtenstein Law Gazette 2004 No. 182;
- d) Law of 20 October 2004 concerning Amendment of the Investment Undertakings Act, Liechtenstein Law Gazette 2004 No. 266.

Article 115

Implementing ordinances

The Government shall issue the ordinances necessary to implement this Act, in particular concerning:

1. other forms of collective capital investment that are exempt from the scope of this Act (article 1, paragraph 5);
2. contents of the full and of the simplified prospectus (article 6, paragraph 1, article 9, paragraph 2, and article 38, paragraph 1);

3. content and structure of the business report and the half-yearly report, the short report of the audit office, and the report on the development of the assets under management (article 14, paragraph 5);
4. restructuring of investment undertakings (article 16, paragraph 3);
5. persons entitled to market units (article 18, paragraph 2);
6. grounds and maximum duration for a suspension of the repayment of units (article 19, paragraphs 4 and 5);
7. definition of the term of qualified investor (article 23, paragraph 2);
8. activities constituting the fund business (article 24, paragraph 2);
9. management of individual portfolios and other instruments similar to investment funds (article 24, paragraph 3, subparagraph (a));
10. investment advice and technical safekeeping of investment undertaking units (article 24, paragraph 3, subparagraph (b));
11. delegation of responsibilities of a management company (article 25, paragraph 5);
12. change of management company and depositary bank (article 28, paragraph 2, and article 32);
13. reports to the Swiss National Bank by the FMA (article 29, paragraph 5);
14. non-application of PCL provisions to investment companies (article 34, paragraph 2);
15. financial instruments on non-regulated markets (article 40, paragraph 1, subparagraph (c));
16. authorization of further investments (article 40, paragraph 2);
17. liquid assets (article 40, paragraph 3);
18. replication of an index and differing investment restrictions (article 40, paragraph 4);
19. risk diversification for investment companies for transferable securities (article 41, paragraph 4);
20. investment undertakings for other values with increased risk (article 44);
21. the percentage of net assets that real estate funds may invest in the same investment (article 45, paragraph 2);
22. requirements for experts (article 48, paragraph 1);
23. limitations on encumbrances (article 50);
24. division into segments (article 53, paragraph 1);
25. special investment products, types, and techniques (article 54);
26. minimum amounts of net assets (article 59, paragraph 1);

27. the Code of Conduct (article 64, paragraph 4);
28. risk management procedures (article 64, paragraph 7);
29. general management, business plan, organizational structure, and the head office (article 64, paragraph 8);
30. supervisory rules (article 64, paragraph 9);
31. rights and duties of the paying agent (article 91, paragraph 5);
32. conditions for the public marketing of units of other investment undertakings (article 93, paragraph 5);
33. conditions for the public marketing of units of investment undertakings from third States (article 94, paragraph 6);
34. detailed licensing conditions for audit offices (article 97, paragraph 6);

Article 116

Entry into force

- 1) This Act shall enter into force on 1 September 2005, subject to paragraph 2.
- 2) Article 24, paragraphs 3 to 5 shall enter into force at the same time as the Assets Management Act.

On behalf of the Reigning Prince:
signed *Alois*
Hereditary Prince

signed *Otmar Hasler*
Prime Minister