Frequently Asked Questions

(version 4, 10 January 2014)

concerning the Luxembourg Law of 12 July 2013 on alternative investment fund managers as well as the Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage transparency and supervision

TABLE OF CONTENTS

Preliminary remarks:

The following Frequently Asked Questions (FAQs) aim at highlighting some of the key aspects of the AIFMD regulation from a Luxembourg perspective. The FAQs are therefore primarily addressed to managers of alternative investment funds (AIFMs) and alternative investment funds (AIFs) that are established in Luxembourg.

This document will be updated from time to time and the CSSF reserves the right to alter its approach to any matter covered by the FAQs at any time. You should regularly check the website of the CSSF in relation to any matter of importance to you to see if questions have been added and/or positions have been altered.

(10 January 2014)

I. Definitions:

Above-threshold AIFM:	AIFM that manages portfolios of AIFs whose assets under management in total exceed the thresholds under article 3(2) of the Law of 2013
AIF(s):	Alternative Investment Fund(s)
AIFM(s):	Alternative Investment Fund Manager(s)
- **External AIFM** - **Internal AIFM**	- External AIFM refers to the legal person appointed by the AIF or on behalf of the AIF and which through this appointment is responsible for managing the AIF - Internal AIFM refers to a structure where the legal form of the AIF permits an internal management and where the AIF's governing body has chosen not to appoint an external AIFM
AIFMD:	Directive 2011/61/EU of the European Parliament and of Council of 8 June 2011 on Alternative Investment Fund Managers
AIFMD-CDR:	Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision
AIFMD Depositary Agreement:	Agreement covering the appointment of the depositary of a given AIF as required by article 19(2) of the Law of 2013 and complying with the requirements of article 83 of AIFMD-CDR
Authorised AIFM:	(i) AIFM that manages portfolios of AIFs whose assets under management in total exceed the thresholds under article 3(2) of the Law of 2013 or (ii) AIFM that manages portfolios of AIFs whose assets under management in total do not exceed the thresholds under article 3(2) of the Law of 2013, but has chosen to opt in under the Law of 2013 on the basis of article 3(4) of that law, and that are in both cases authorised under the Law of 2013
Below-threshold AIFM:	AIFM that manages portfolios of AIFs whose assets under management in total do not exceed the thresholds under article 3(2) of the Law of 2013
Chapter 15 ManCo(s):	Management companies authorised under Chapter 15 of the Law of 2010
Chapter 16 ManCo(s):	Management companies authorised under Chapter 16 of the Law of 2010
ESMA:	European Securities and Markets Authority
ESMA Opinion on	ESMA *Opinion on the Collection of information for the effective monitoring of*

Reporting under Article 24(5):	*systemic risk under Article 24(5), first sub-paragraph, of the AIFMD* (ESMA/2013/1340)
ESMA Reporting Guidelines	The ESMA *Guidelines on reporting obligations under Articles 3(3)(d) and 24(1), (2) and (4) of the AIFMD* (ESMA/2013/1339)
Investment Firm(s):	Entity(ies) having been authorised under Part I, Chapter 2, Section 2, Subsection I of the Law of 1993
Law of 1915	Law of 10 August 1915 on commercial companies
Law of 1993:	Law of 5 April 1993 on the financial sector
Law of 2004:	Law of 15 June 2004 relating to the investment company in risk capital (« SICARs »)
Law of 2007:	Law of 13 February 2007 relating to specialised investment funds (« SIFs »)
Law of 2010:	Law of 17 December 2010 relating to undertakings for collective investment (« UCIs »)
Law of 2013:	Law of 12 July 2013 regarding alternative investment fund managers, transposing Directive 2011/61/EU of the European Parliament and of Council of 8 June 2011 on Alternative Investment Fund Managers
Marketing:	A direct or indirect offering or placement at the initiative of the AIFM or on behalf of the AIFM of units or shares of an AIF it manages to or with investors domiciled or with a registered office in the EU
Other Assets:	Other assets as per article 19(8)(b) of the Law of 2013
Product Law(s):	The Luxembourg investment fund laws under which regulated AIFs can be established in Luxembourg, i.e. part II of the Law of 2010, the Law of 2004 and the Law of 2007
Professional investor:	An investor which is considered to be a professional client or may, on request, be treated as a professional client within the meaning of Annex II to Directive 2004/39/EC
Registered AIFM:	AIFM that manages portfolios of AIFs whose assets under management in total do not exceed the thresholds under article 3(2) of the Law of 2013 and who has not chosen to opt in as Authorised AIFM under the Law of 2013 on the basis of article 3(4) of that law
Retail investor:	An investor who is not a professional investor
UCITS Directive:	Directive 2009/65/EU of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)

II. Questions and answers:

(10 January 2014)

1. Scope: To whom does the regime resulting from the Law of 2013 apply?

The main objective of the Law of 2013 is to regulate AIFMs and not directly AIFs. However, it is first necessary to identify the entities that should be qualified as AIFs before identifying AIFMs.

1.a) What is the definition of an AIF?

An AIF is any collective investment vehicle, including investment compartments thereof, which in accordance with the definition under article 1(39) of the Law of 2013 in case of Luxembourg AIFs respectively under article 4 (1)a) of the AIFMD in case of AIFs established in another EU Member State or in a third country (i) raises capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and (ii) does not require authorisation pursuant to article 2(1) of the Law of 2010, respectively article 5 of the UCITS Directive).

It is recommended that each collective investment vehicle performs a self-assessment to determine whether or not it falls within the definition of an AIF within the meaning of the Law of 2013.

It is the responsibility of the management body of any collective investment vehicle to self-assess if it has to be considered as an AIFM under the Law of 2013 or not.

1.b) Does the concept of AIF cover only regulated entities?

No.
The concept of AIF covers AIFs established in Luxembourg, in another EU Member State or in a third country irrespective of whether such AIF is a regulated or a non-regulated entity.

As far as Luxembourg entities are concerned, the following entities do qualify as AIF:

- all undertakings for collective investment established under part II of the Law of 2010;
- specialised investment funds established under the Law of 2007 if they fulfil the criteria under article 1(39) of the Law of 2013;
- SICARs established under the law of 2004 if they fulfil the criteria under article 1(39) of the Law of 2013;
- any entity not regulated under the Law of 2010, the Law of 2007 or the Law of 2004 that also meets the criteria of article 1(39) of the Law of 2013.

1.c) What is the definition of an AIFM?

An AIFM means any legal person whose regular business is managing one or more AIF(s) in accordance with the definition under article 1(46) of the Law of 2013. It should be noted that it is the responsibility of any legal person whose regular business is the management of one or more AIFs to self-assess if it is to be considered as an AIFM under the Law of 2013.
The Law of 2013 applies to both External AIFMs and Internal AIFMs.

1.d) Which entities <u>established in Luxembourg may potentially</u> be considered as <u>AIFMs</u>?

The following entities may potentially be considered as AIFMs:
(a) Chapter 15 ManCos under the Law of 2010;
(b) Chapter 16 ManCos (article 125-1and article 125-2) under the Law of 2010;
(c) internally managed UCIs under part II of the Law of 2010;
(d) internally managed SIFs under the Law of 2007;
(e) internally managed SICARs under the Law of 2004;
(f) any Luxembourg entity going to adopt the status of a « *gestionnaire de fonds d'investissement alternatifs* » regulated under the Law of 2013. This status has to be adopted by
1° any Luxembourg entity providing management services to AIFs which are not regulated under any of the Product Laws and
2° any internally managed Luxembourg entity qualifying as AIF which is not regulated under any of the Product Laws.

1.e) Internal versus External AIFM: how to determine the AIFM with respect to AIFs structured as FCP or as limited partnership?

AIFMs may either be an External AIFM or, where the legal form of the AIF permits an internal management, an Internal AIFM.

I. With respect to AIFs structured as a FCP, the legal form of the AIF-FCP does not permit an internal management. AIFs structured as a FCP therefore in all instances have to appoint an External AIFM.

(A) FCP with a Chapter 16 Manco:

- A Chapter 16 Manco falling under the provisions of article 125-1 of the Law of 2010 can act as External AIFM of an AIF structured as an FCP provided that the assets of the AIFs under management of the management company in total do not exceed the thresholds under article 3(2) of the Law of 2013. The Chapter 16 Manco is in this event required to register as a Registered AIFM. The Chapter 16 Manco can also appoint an External AIFM (authorised or registered as the case may be) for the AIFs structured as FCP for which it is the management company.

- A Chapter 16 Manco subject to article 125-2 of the Law of 2010 is required to obtain an authorisation as Authorised AIFM. Such Chapter 16 Manco can, individually for each AIF structured as an FCP for which it is the designated management company, decide to act as the External AIFM or decide to designate another External AIFM (authorised or registered as the case may be). It is understood that such Chapter 16 Manco has to act as Authorised AIFM for at least one AIF.

(B) FCP with a Chapter 15 Manco:

A Chapter 15 ManCo can, in addition to the services it provides in such capacity, also act as AIF management company for AIFs structured as FCP. Such Chapter 15 Manco can in this event, individually for each AIF structured as an FCP for which it is the management company, decide to act as the External AIFM or decide to designate another External AIFM (authorised or registered as the case may be).
In the event the Chapter 15 ManCo decides to act as External AIFM for an FCP it manages and depending on the thresholds provided for under the Law of 2013, such Chapter 15 ManCo:
- can apply for a registration under the provisions of article 3(3) of the Law of 2013, provided that the assets of the AIFs it manages in its capacity of External AIFM do not exceed one of the thresholds

provided for under article 3(2) of the Law of 2013; or
- must apply for authorisation as Authorised AIFM under the provisions of chapter II of the Law of 2013 when the assets of the AIFs it manages in its capacity as External AIFM do exceed one of the thresholds provided for under article 3(2) of the Law of 2013 or when it decides to opt for the status as Authorised AIFM in accordance with article 3(4) of the Law of 2013. IF the Chapter 15 Manco has received the authorisation referred to in this paragraph, it has to act as Authorised AIFM for at least one AIF.

A Chapter 15 ManCo appointing an External AIFM for all the AIFs it manages is not subject to the provisions of the Law of 2013.

II. With respect to AIFs structured as a limited partnership, a distinction has to be operated with respect to the different types of limited partnership under the provisions of the Law of 1915.

(A) With respect to AIFs structured as limited partnership established as either a *société en commandite par action* or as a *société en commandite simple*.

The AIFM of such AIF is in principle an External AIFM, who can be the managing general partner or the *gérant* or any other External AIFM designated by the *gérant* of the limited partnership. A limited partnership can also opt to qualify as an Internal AIFM in case the purpose of the *gérant* is limited to the *gérance* of the given limited partnership.

(B) With respect to AIFs structured as limited partnership established as a *société en commandité spéciale*

Such AIF cannot qualify as Internal AIFM but necessarily has to appoint an External AIFM. The External AIFM can be the general partner or the *gérant* or an external AIFM appointed by the *gérant*.

1.f) In whose name will the registration as Registered AIFM or the authorisation as Authorised AIFM be done with respect to AIFs structured as FCP or as limited partnership?

With respect to a *fonds commun de placement* and a *société en commandite spéciale*, registration as Registered AIFM or the authorisation as Authorised AIFM will be done in the name of the legal entity appointed as the External AIFM.

Regarding a *société en commandite par action* or a *société en commandite simple*, the registration as Registered AIFM or the authorisation as Authorised AIFM will be done in the name of the *société en commandite par action* or in the name of the *société en commandite simple*, when it qualifies as Internal AIFM, or in the name of the legal entity appointed as the External AIFM, when such External AIFM has been appointed.

1.g) Which <u>steps</u> Luxembourg entities qualifying as <u>AIFM</u> have to undertake to be <u>compliant</u> with the Law of 2013?

Luxembourg entities qualifying as AIFMs are subject to either an authorisation or a registration regime. Please refer to 2. and 3. below for further clarification.

(18 June 2013)

2. Authorisation regime applicable to AIFMs

2.a) Which entities fall under the AIFM authorisation regime?	Any Luxembourg entities qualifying as AIFM fall under the authorisation regime and have to be authorised under Chapter 2 of the Law of 2013, unless they can benefit from the registration regime referred to under point 3 below. With respect to Chapter 16 ManCos, only Chapter 16 ManCos subject to article 125-2 of the Law of 2010 are eligible to be authorised under Chapter 2 of the Law of 2013.
2.b) Where do Luxembourg AIFMs introduce their authorisation application?	The authorisation application as AIFM has to be filed with the CSSF, the CSSF being the competent authority for the authorisation and for the supervision of Luxembourg AIFMs.
2.c) Which documents and information need to be included in the authorisation file to be submitted to the CSSF?	Details regarding the application file for authorisation as AIFM are available for download on the website of the CSSF.

(18 June 2013)

3. Registration regime applicable to AIFMs

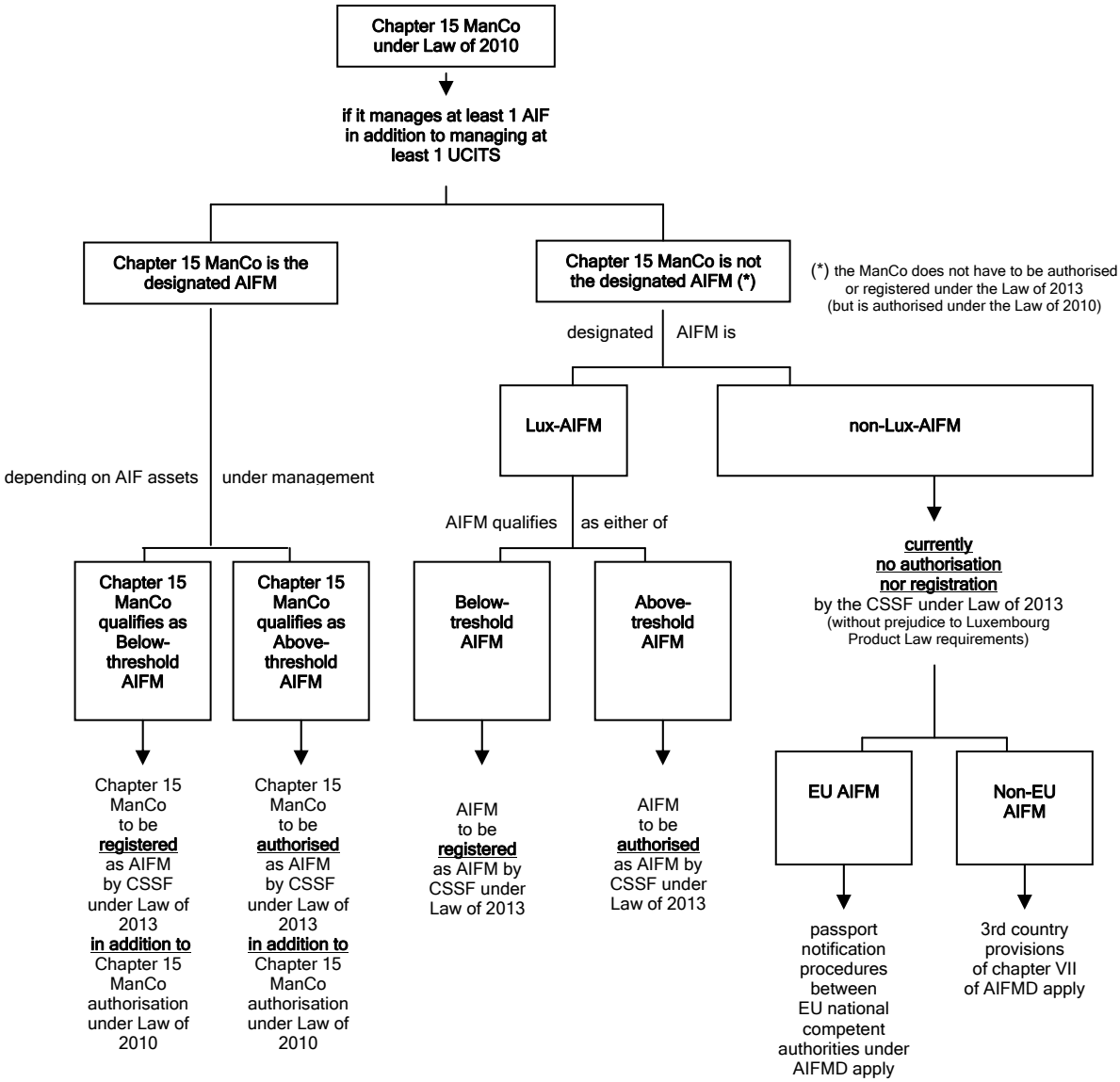
3.a) Which entities fall under the registration regime?	As a derogation from the authorisation regime, Luxembourg entities qualifying as Below-threshold AIFMs are subject to the registration regime under article 3(3) of the Law of 2013, i.e. AIFMs whose AIFs' assets under management do not in total exceed the following thresholds: (i) EUR 100 million, including assets acquired through use of leverage; (ii) EUR 500 million, when the portfolio of assets managed consists of AIFs that are not leveraged and have no redemption rights exercisable during a period of 5 years following the date of the initial investment in each AIF.
3.b) Where do Luxembourg AIFMs introduce their registration application?	The registration application has to be filed with the CSSF.
3.c) Which documents and information need to be included in the registration file to be submitted to the CSSF?	Details regarding the application file for registration as AIFM will be available soon for download on the website of the CSSF.

(18 June 2013)

4. <u>Which steps have to be considered by a Luxembourg entity in order to determine its status under the Law of 2013?</u>

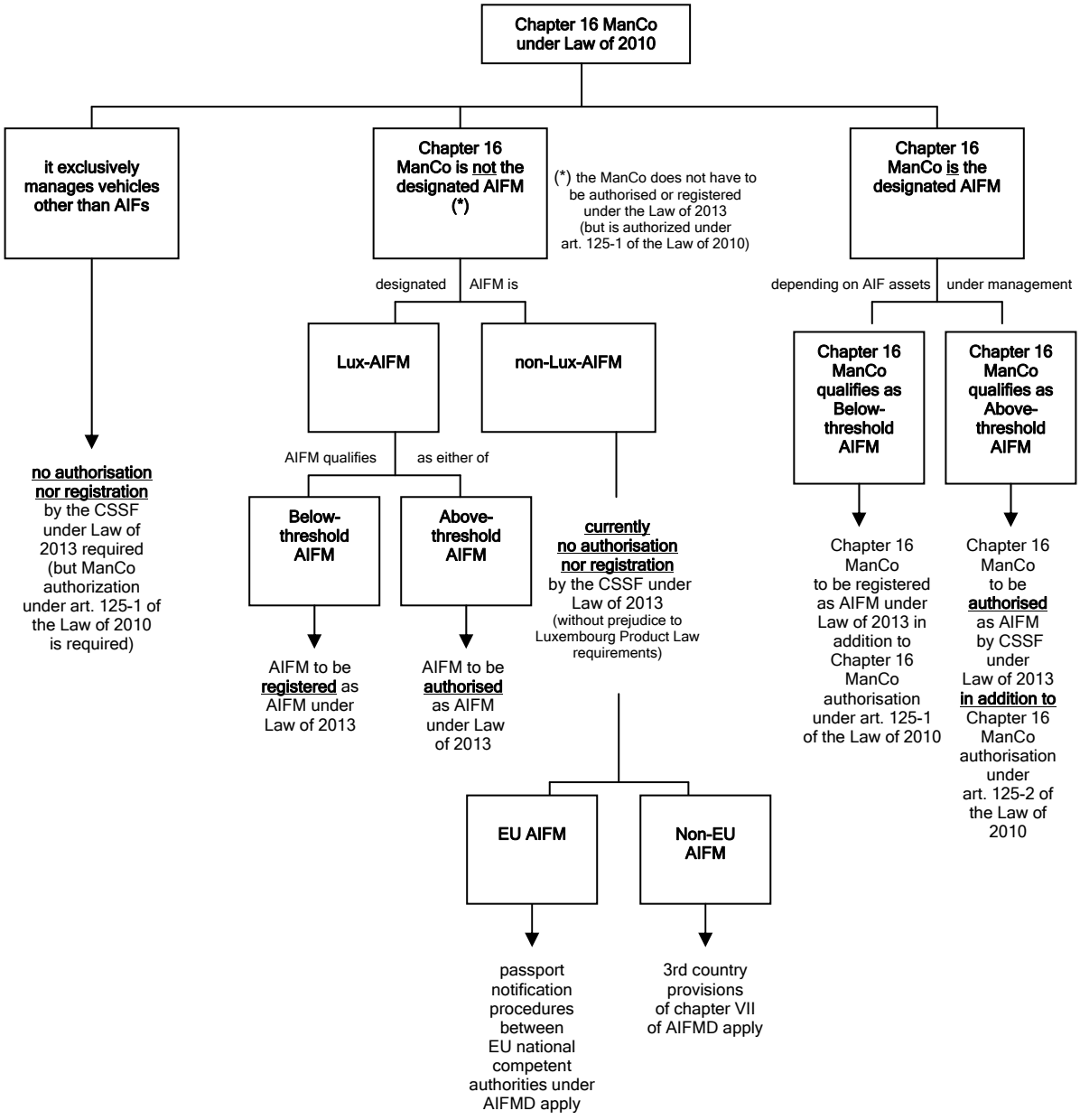
<u>Remark:</u> The charts under sections 4.a to 4f. below reflect the steps Luxembourg entities have to undertake from a Luxembourg perspective with respect to AIFMD related authorisations or registrations, i.e. those to be undertaken under the Law of 2013 with respect to the CSSF. They consequently disregard requirements that can potentially apply under the national laws, transposing the AIFMD, of other EU Member States or of any third-countries.

4.a) <u>Chapter 15 ManCo</u>



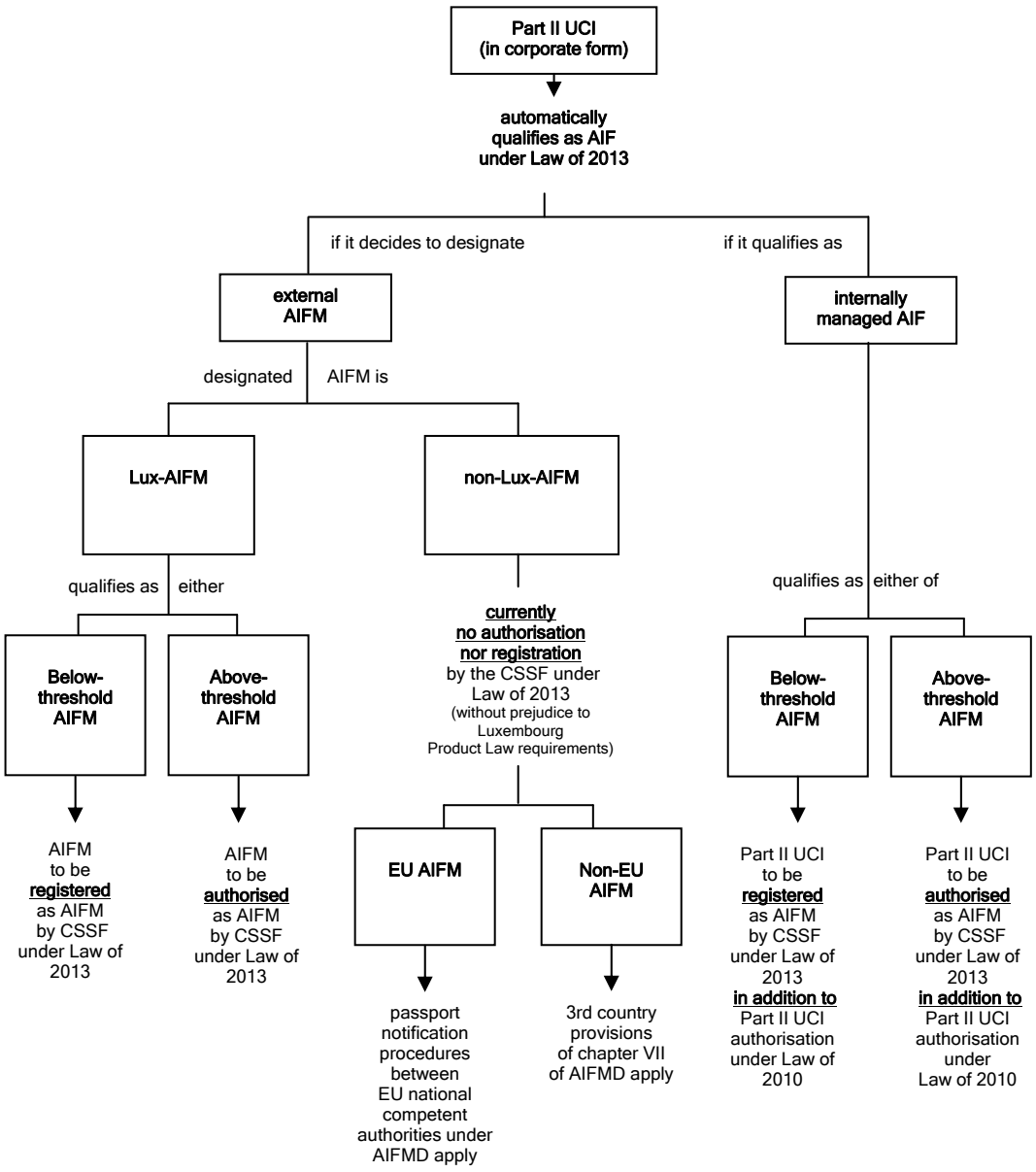
(18 June 2013)

4.b) Chapter 16 ManCo



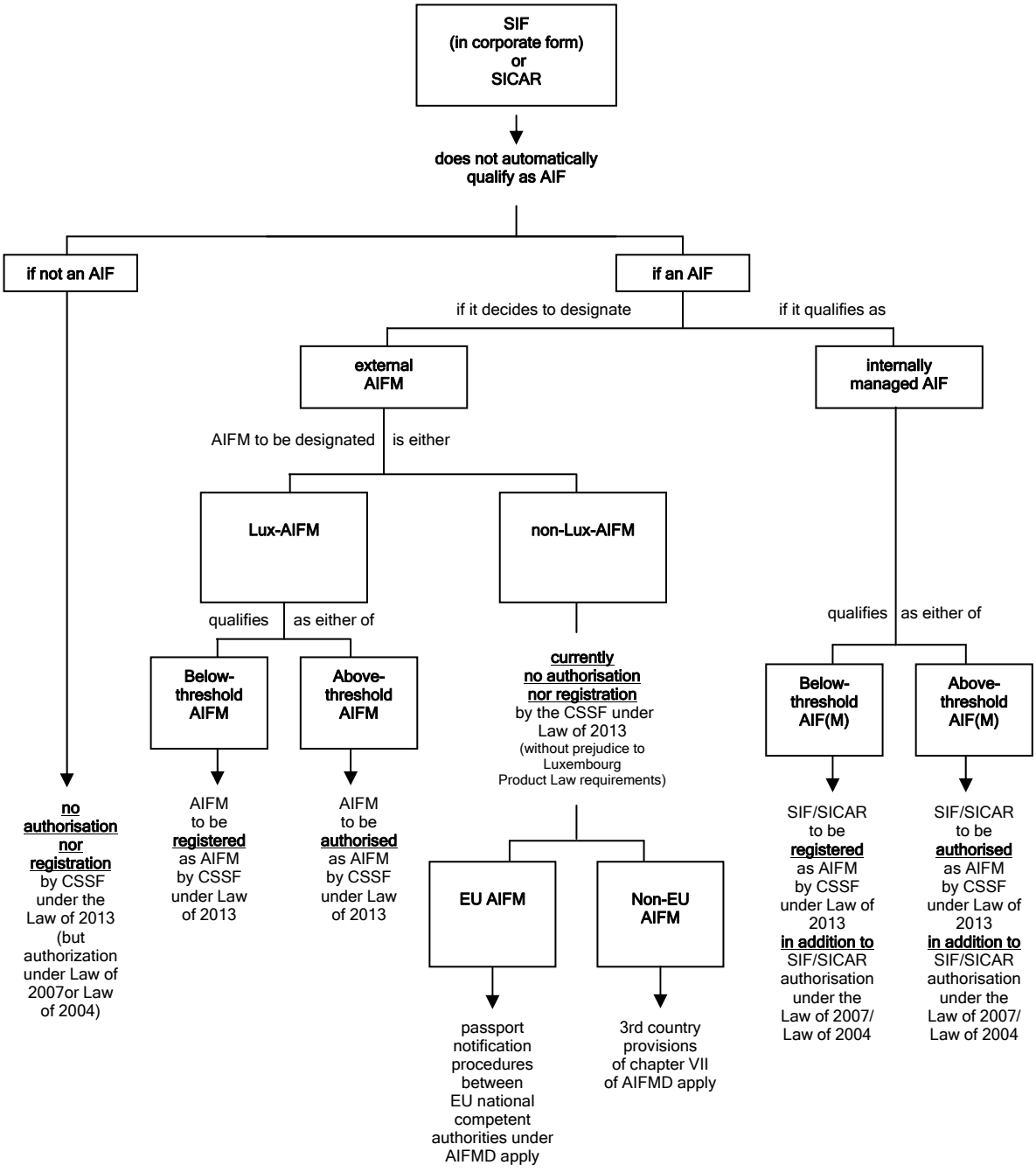
(18 June 2013)

4.c) <u>UCIs established in corporate form under part II of Law of 2010 (Part II UCI)</u>



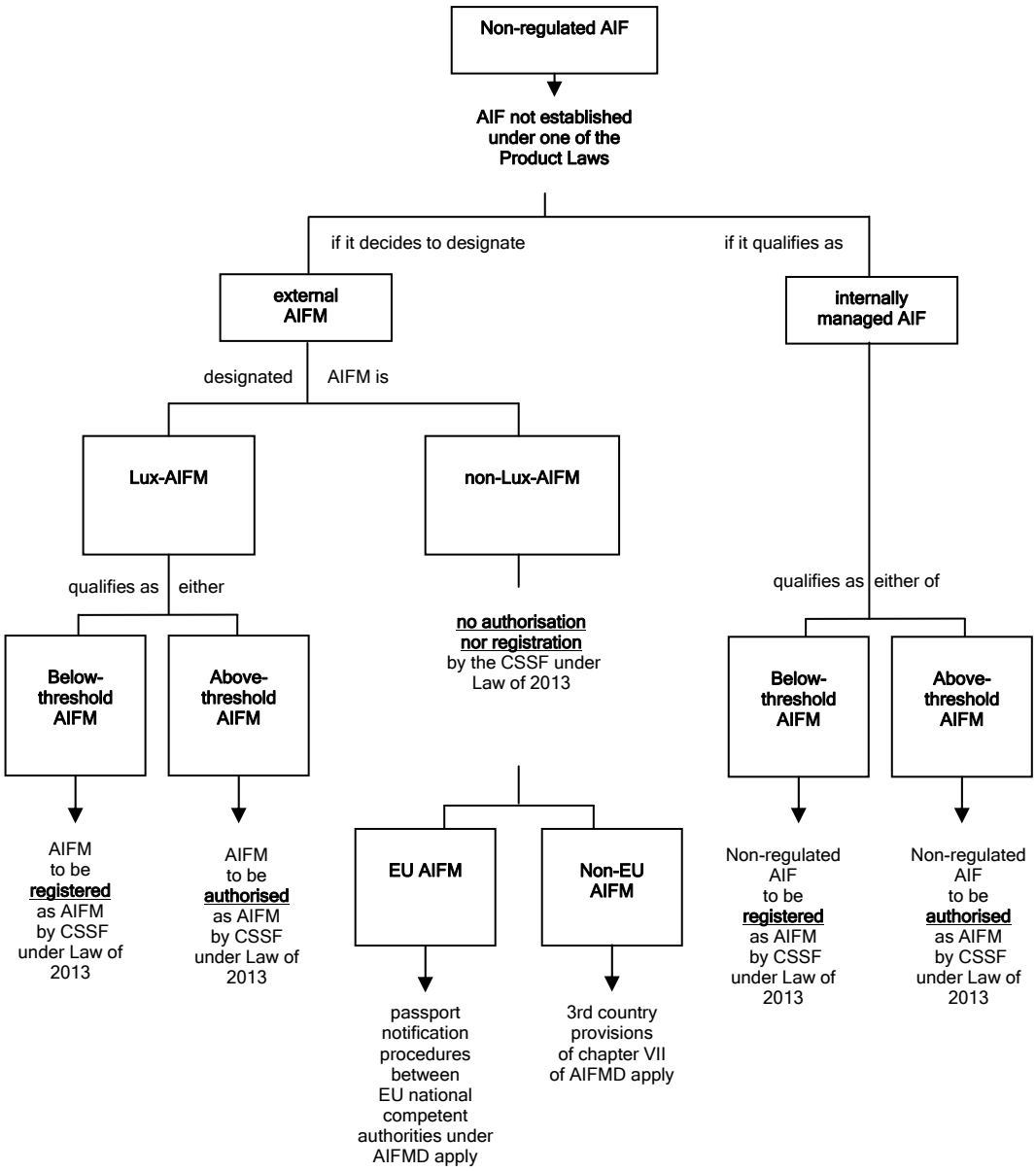
(18 June 2013)

4.d) <u>Specialised Investment Funds (SIF) established in corporate form under the Law of 2007 or investment companies in risk capital (SICAR) under the Law of 2004</u>



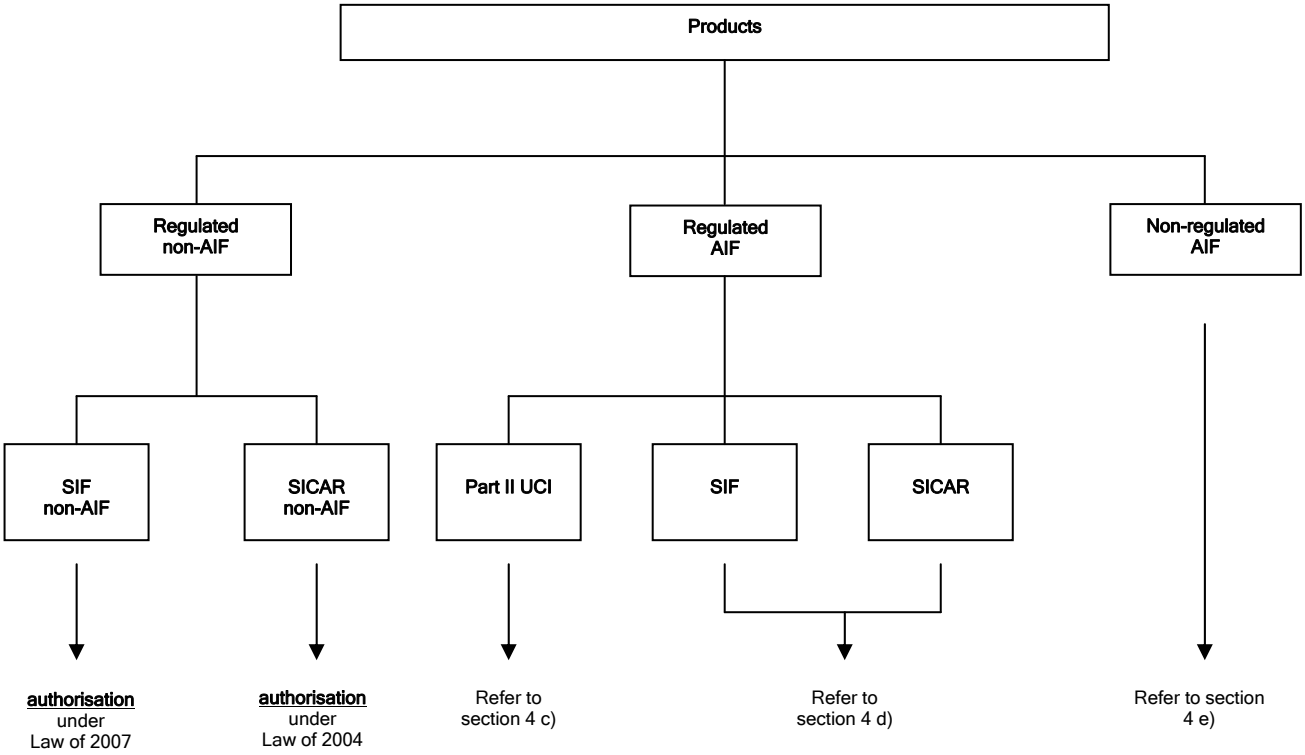
(11 July 2013)

4.e) Law of 2013 impact on non-regulated AIF



(11 July 2013)

4.f) Product overview



(18 June 2013)

5. Can entities established under the Law of 1993 obtain an AIFM authorisation under Chapter II of the Law of 2013?

Entities established under the Law of 1993:

No. Entities currently authorised under the Law of 1993, i.e. credit institutions and professionals of the financial sector (investment firms, specialised PSF and support PSF) cannot benefit from additional AIFM authorisation under Chapter II of the Law of 2013 and as such cannot manage AIFs in an AIFM capacity.

Credit institutions:

No. Credit institutions can not combine the status of credit institution under the Law of 1993 and the one of AIFM under the Law of 2013.

However, credit institutions may manage AIF assets on the basis of a delegation arrangement between the AIFM of such AIF and the credit institution in accordance with the provisions of article 5(8) of the Law of 2013.

Investment firms:

No. Investment firm can not combine the status of Investment Firm under the Law of 1993 and the one of AIFM under the Law of 2013.

However, Investment Firms may manage AIF assets on the basis of a delegation arrangement between the AIFM of such AIF and the Investment Firm in accordance with the provisions of article 5(8) of the Law of 2013.

(18 June 2013)

6. Must AIFs adopt a specific legal form?

The Law of 2013 does not provide for any specific mandatory legal forms that an AIF to be established needs to adopt. AIFs can be regulated products, under which scenario such AIFs have to be established under, and in accordance with, the provisions of one of the Luxembourg Product Laws, or can take the form of unregulated AIFs.

Regulated AIFs must hence adopt one of the legal forms prescribed by the relevant Product Law, i.e. the Law of 2010 for part II funds, the Law of 2007 for SIFs and the Law of 2004 for SICARs.

(18 June 2013)

7. Delegation requirements

7.a) Which regulatory texts are to be taken into consideration for the purpose of ensuring that an AIFM is not to be considered as a letter-box entity under the Law of 2013?

The following regulatory texts shall be used by Luxembourg authorised AIFMs for the purpose of ensuring that they are not considered as a letter-box entity under the Law of 2013:

- the provisions of article 82 of the AIFMD-CDR which specify the conditions under which an AIFM shall be deemed to have delegated its functions to the extent that it becomes a letter-box entity, with the consequence that it can no longer be considered to be the manager of the AIF;

- the principles laid down in section 7 of CSSF Circular 12/546 which specify the delegation rules with respect to Chapter 15

ManCos and self-managed UCITS under the Law of 2010; these principles apply by analogy to Luxembourg AIFMs delegating investment management functions.

7.b) Can the two functions <u>portfolio management and/or risk management</u> be delegated?

An AIFM may delegate the two functions (i.e. portfolio management and/or risk management), in the understanding that an AIFM may not delegate both functions in whole at the same time, subject, however, always to complying with the requirements of article 82 of the AIFMD-CDR. Portfolio management and risk management are multi-faceted functions consisting of various core activities and may in that respect be partially delegated.

(10 January 2014)

8. <u>Entry into force of the provisions of the Law of 2013 and transitional provisions applicable to Luxembourg AIFMs and Luxembourg AIFs</u>

8.a) Can <u>applications</u> for the authorisation or registration as AIFM be submitted to the CSSF <u>before</u> the <u>entry into force</u> of the Law of 2013?

Yes.

AIFM applications can be submitted to the CSSF since 1 March 2013 (See question 2c).

8.b) What <u>transitional provisions</u> are applicable to <u>AIFMs created on or after 22 July 2013?</u>

There are no transitional provisions applicable to entities which intend to perform activities of managing AIFs and which did not exist and performed such activities prior to 22 July 2013. These entities have to apply for authorisation or registration as AIFM and have to obtain such authorisation or registration prior to starting their activities. An AIFM application template is available on the website of the CSSF.

8.c) What <u>transitional provisions</u> are applicable to <u>existing AIFMs and AIFs</u>?

Article 58(1) of the Law of 2013 provides that any person performing activities under this Law before 22 July 2013 shall take all necessary measures to comply with the provisions of this Law and shall have until 22 July 2014 to submit an application for authorisation with the CSSF.

It is considered that in relation to this transitional provision, a distinction is to be operated between the regime applicable to the AIFMs and the impact of this provision on AIFs established under one of the Luxembourg Product Laws.

<u>(i) Transitional provisions for AIFMs</u>:

Article 58 of the Law of 2013 introduces different transitional provisions which apply to entities that existed prior to 22 July 2013 and which perform activities captured by the Law of 2013 prior to that date (i.e. entities that in principle qualify as AIFMs under the Law of 2013 but which existed and performed AIFM activities prior to 22 July 2013).

According to those transitional provisions all entities, which technically qualify as AIFMs as of the date the Law of 2013 enters into force but which existed and exercised management activities within the meaning of the Law of 2013 prior to 22 July 2013 and which exceed the thresholds of article 3 (2) of the Law of 2013, are

required to submit a duly completed application for authorisation as AIFM by 22 July 2014 at the latest. Such entities shall during that transitional period take all necessary measures (i.e. expend their best efforts) to comply (as from the earlier of (i) the moment of their authorisation as AIFM by the CSSF or (ii) 22 July 2014) with the obligations under the Law of 2013 regarding general principles, operating conditions, organizational requirements, conflicts of interest, remuneration, risk management, liquidity management rules, securitization rules, valuation and delegation rules). From the moment an AIFM is authorised by the CSSF under the Law of 2013, it has to ensure, in accordance with article 4 of the Law of 2013, that the AIFs it manages take all necessary measures to comply with the product aspects introduced by the relevant Product Law (i.e. annual report, valuation rules, disclosure to investors, depositary rules).
Notwithstanding the provisions of the preceding paragraph, entities which need an authorisation as AIFM under the Law of 2013 are invited to submit to the CSSF, as soon as possible and by 1st April 2014 at the latest, an application file.

(ii) Transitional provisions for AIFs:

The Law of 2013 also introduces modifications to the different Product Laws which reflect the product aspects of the AIFMD at the level of the different Luxembourg Product Laws. In this context the Law of 2004, the Law of 2007 and the Law of 2010 include specific transitional provisions for collective investment undertakings/ investment vehicles established under those laws prior to 22 July 2013. On the basis of those transitional provisions all collective investment undertakings / investment vehicles established under one of the Product Laws prior to 22 July 2013 and which qualify as AIF under the Law of 2013, as well as any collective investment undertaking / investment vehicles established under one of those Product Laws between 22 July 2013 and 22 July 2014 that qualifies as AIF, can appoint an AIFM which benefits from the transitional provisions applicable to AIFMs under article 58(1) of the Law of 2013 (article 61(1) of the AIFMD) explained above when they qualify as externally managed AIF. Once an AIF has appointed an AIFM auhorized by the CSSF, that AIF has to take all necessary measures to comply with the product aspects introduced by the relevant Product Law (i.e. annual report, valuation rules, disclosure to investors, depositary rules).

Notwithstanding the provisions of the preceding paragraph, any collective investment undertaking/investment vehicle qualifying as AIF established under one of the Product Laws, which benefits from the transitional provisions, are invited to submit to the CSSF, as soon as possible and by 1st April 2014 at the latest, a file containing information as regards its compliance with the AIFMD product rules (i.e. annual report, valuation rules, disclosure to investors, depositary rules) by 22 July 2014.

8.d) Do the transitional provisions apply to multiple compartments AIFs?

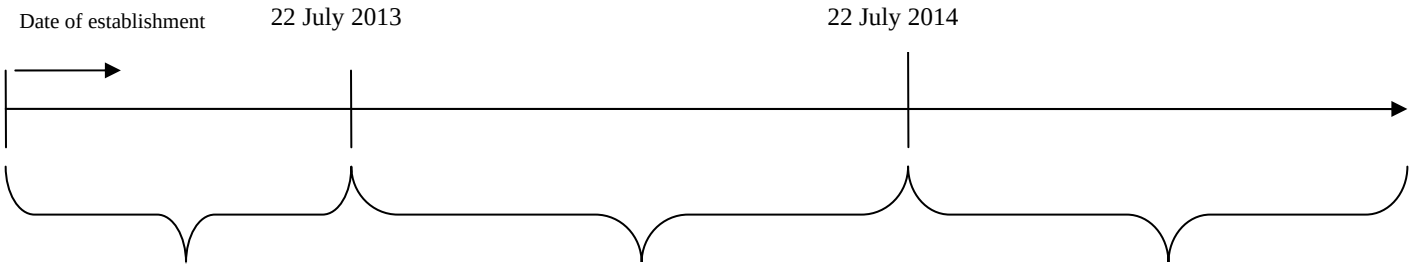
Yes.

The availability of the transitional provisions under the Law of 2013 also applies to any new sub-fund created under a multiple compartment AIF that was established under one of the Product Laws prior to 22 July 2013.

8.e) Can EU AIFMs and non-EU AIFMs continue to market non-Luxembourg AIFs under the existing Luxembourg placement rules until 22 July 2014	Yes, marketing under the existing Luxembourg placement rules will continue to be permitted until 22 July 2014 and will not be affected by the Law of 2013.

(18 June 2013)

Time-line concerning transitional provisions



1. AIFMs (including internally managed regulated AIFs) : have until 22 July 2014 to submit an application for authorisation. This means they should be AIFMD compliant as from the moment of their authorisation as AIFM by the CSSF or by 22 July 2014 at the latest.

2. Externally managed regulated AIFs (SIFs, SICARs + Part II UCIs) : have until the moment their external manager obtains its authorisation as AIFM, or until 22 July 2014 at the latest, to take all necessary measures to comply with the AIFMD product rules.

1. AIFMs (including internally managed regulated AIFs) :
have to be AIFMD compliant as from the moment of their establishment

2. Externally managed regulated AIFs (SIFs, SICARs + Part II UCIs) :
have to comply with the AIFMD product rules as from the moment of their establishment.
However, if their external manager existed before 22 July 2013 and performed activities captured by the Law of 2013, these AIFs have until the moment their external manager obtains its authorisation as AIFM, or until 22 July 2014 at the latest, to take all necessary measures to comply with the AIFMD product rules.

1. AIFMs (including internally managed regulated AIFs) :
have to be AIFMD compliant from the moment of their establishment.

2. Externally managed regulated AIFs (SIFs, SICARs + Part II UCIs) :
have to comply with the AIFMD product rules from the moment of their establishment.

(18 June 2013)

9. Scope of authorised activities of AIFMs – what functions AIFMs are allowed to perform?

9.a) Does an AIFM necessarily have to perform all functions listed under Annex I of the Law of 2013 and the non-core services listed under article 5(4)(a) and (b) of the Law of 2013?

Mandatory functions:

An AIFM must be capable of providing, and take responsibility for, the investment management functions under section (1) of Annex I (i.e. portfolio management and risk management) in order to obtain AIFM authorisation under the Law of 2013, with the possibility to delegate to third parties the task of carrying out certain functions on its behalf in accordance with article 18 of the Law of 2013.

An AIFM has the option to perform part or all of the functions listed under section (2) of Annex I of the Law of 2013. Each fund structure is to be assessed on a case-by-case basis when considering which functions have been attributed to the AIFM and therefore can also be subject to delegation by the AIFM.

Furthermore, in accordance with the provisions under article 5(5)(a) of the Law of 2013, an AIFM may not exclusively provide the ancillary services under article 5(4), including the function of management of portfolios in accordance with mandates given by investors on a discretionary basis, of the same law.

With respect to the performance of non-core service in accordance with article 5(4)(a) and (b) of the Law of 2013 (e.g. provision of investment advice, safe-keeping and administration in relation to shares or units of collective investment schemes and/or reception and transmission of orders in relation to financial instruments), an AIFM may perform part or all of those services provided it is authorised to do so on the basis of the AIFMD authorisation granted to that AIFM by the CSSF in accordance with Chapter II of the Law of 2013.

Ancillary services:

AIFMs can provide ancillary services listed under article 5(4)(b) of the Law of 2013 to the extent that it has been specifically authorised to provide such services under the AIFM authorisation obtained in accordance with the procedure under Chapter II of the Law of 2013.

9.b) Can AIFMs provide domiciliary services to SOPARFIs on an ancillary basis?

AIFMs are permitted to provide SOPARFI domiciliary services to the extent that such SOPARFI either (i) qualifies as an AIF and that the AIFM is the designed manager of that SOPARFI/AIF or (ii) such SOPARFI is a subsidiary controlled by an AIF.

9.c) Can AIFMs perform investment management functions for non-AIFs?

AIFMs can provide ancillary services listed under article 5(4)(b) of the Law of 2013 to the extent that it has been specifically authorised to provide such services under the AIFM authorisation obtained in accordance with the procedure under Chapter II of the Law of 2013.

(19 June 2013)

10. Depositary aspects

10.a) As of when does a depositary of an AIF has to comply with the depositary requirements as per the Law of 2013?

1) In relation to AIFs with an External AIFM:

A depositary must, in relation to a given AIF managed by an External AIFM, comply with the depositary requirements provided for under the Law of 2013 and AIFMD-CDR at the latest as of the following date:
- in relation to an AIF established after 22 July 2013 the External AIFM of which does not provide services covered by the Law of 2013 on 22 July 2013 (e.g. an AIFM established after the 22 July 2013) as of the date of inception of the AIF;
- in relation to an AIF established before 22 July 2013 the External AIFM of which does provide services covered by the Law of 2013 on 22 July 2013 (i.e. an AIFM benefiting from the transitional provisions under article 58(1) of the Law of 2013 and/or the relevant transitional provisions under the Product Law under which the AIF has been established), by 22 July 2014 at the latest;
- in relation to an AIF established after 22 July 2013 the External AIFM of which does provide services covered by the Law of 2013 on 22 July 2013 (i.e. an AIFM benefiting from the transitional provisions under article 58(1) of the Law of 2013 and/or the relevant transitional provisions under the Product Law under which the AIF has been established), by 22 July 2014 at the latest.

2) In relation to AIFs with an Internal AIFM:

In relation to any internally managed AIF, a depositary must comply with the depositary requirements provided for under the Law of 2013 and AIFMD-CDR as from the date the AIF obtains the required authorization as AIFM.

3) Requirement to have an AIFMD Depositary Agreement in place:

At the date as of which a depositary must, in relation to a given AIF, comply with the depositary requirements provided for under the Law of 2013 and AIFMD-CDR as per points 1) and 2) above, an AIFMD Depositary Agreement must be in place between the AIF or the management company of the AIF (i.e. in relation to any AIF established under one of the Product Laws and constituted in accordance with contract law, i.e. a common fund managed by a management company) and the depositary.
This will require the AIFM/AIF to replace the depositary agreement not compliant with the requirements of article 83 of AIFMD-CDR by an AIFMD Depositary Agreement as per the deadlines outlined under point 1) and 2) above.

10.b) What are 'objective reasons' and conditions for a depositary to be in a position to discharge itself of liability towards a third-party holding in custody a financial instrument, in relation to a loss of a financial instrument held in custody by such third party within

Article 19 of the Law of 2013 distinguishes between objective reasons for the delegation of safekeeping functions (article 19(11)) and objective reasons to contract a discharge of liability (article 19(13)).

With respect to the discharge of liability under article 19(13) of the Law of 2013, which permits a depositary to discharge itself of the liability for the loss of a financial instrument held in custody by a third party, a written contract between the AIF (or the AIFM acting on behalf of the AIF) and the depositary must provide for the discharge of liability and establish the objective reason(s) for the

the meaning of article 19(13) of the Law of 2013?	contracting of such discharge. The definition of objective reason for discharge of liability is a matter of professional judgment, based on the criteria set forth in article 102(1) AIFMD-CDR. It will depend on the facts of the case in question by taking into account particular aspects able to constitute an objective reason, and which can e.g. be related to: - the investment policy and strategy of the AIF; - the types of counterparties used by the AIFM on behalf of the AIF; - the sub-custody network used for safekeeping of the financial instruments as per article 88 of AIFMD-CDR. In the particular circumstances, defined in article 102(3) AIFMD-CDR, the depositary shall be deemed to have objective reasons for the contracting of discharge of its liability.
10.c) Monitoring of the AIFs cash flows – Is a look-through approach to be applied to cash accounts which are not opened in the name of the AIF/M but in the name of companies (e.g. real estate holding companies) in which the AIF/M holds investments?	Article 89(3) and article 90(5) of the AIFMD-CDR explicitly state that safe-keeping duties related to financial instruments and other assets are subject to a look-through obligation with regard to ownership verification and other duties for assets held by underlying legal structures which are directly or indirectly controlled by the AIFM/AIF. With respect to the monitoring of the AIFs cash flow, article 86 of the AIFMD-CDR solely requires effective and proper monitoring of cash accounts opened in the name of the AIF.
10.d) Cash flow reconciliation - article 86 (b), (c) and (f) AIFMD-CDR – In case an authorised third party (administrator, transfer agent or other third party) performs cash flow reconciliations, can the depositary leverage this reconciliation for monitoring purposes under article 86 AIFMD-CDR?	Pursuant to article 19(11) of the Law of 2013, only safe-keeping functions of article 19(8) of the Law of 2013 can be delegated: cash flow monitoring, however, can thus not be delegated. The depositary therefore has to implement a procedure for reconciliation of cash flows. In this context, the depositary may rely on material tasks executed by a third party with respect to cash flow monitoring for the execution of its own obligations or may use information received with respect to cash flow reconciliations performed by a third party, provided that the depositary obtains all information it needs to comply with its own cash monitoring obligation and has performed an adequate due diligence of the reconciliation processes performed by the third party. The concept of third party in this context also includes other divisions or services of the entity appointed as depositary of an AIF in the sense of article 19(1) of the Law of 2013, provided that a functional and hierarchical separation of the performance of the depositary functions is ensured.
10.e) How should the depositary maintain records and segregated accounts of financial instruments that can be held in custody for AIFs managed by an AIFMD having appointed a third party (e.g. prime broker, collateral safekeeping agent)?	In accordance with the provisions of article 89(1) AIFMD-CDR, the depositary has to maintain records and segregated accounts in relation to the safekeeping of financial instruments that can be held in custody (as defined under article 19(8) of the Law of 2013 and article 88 AIFMD-CDR). With respect to those of the financial instruments sub-custodied by the depositary with a third-party (e.g. prime broker or collateral safekeeping agent), the depositary can rely on the books of the third-party so to meet its obligations in terms of records and segregated accounts, provided that the depositary has a daily access to the records and segregated accounts maintained by the third-party and

that the depositary has performed a due diligence on the third-party ensuring that the records and segregated accounts of the third-party are maintained in accordance with the provisions of the Law of 2013 and the AIFMD-CDR.

10.f) How should the depositary perform record keeping of "other assets"?

The depositary can maintain a record in systems operated by the depositary or use records of third parties provided that the depositary performs an ongoing due diligence on the third party and has access to all information satisfactory to the depositary in order to comply with its obligations.

The concept of third party in this context also includes other divisions or services of the entity appointed as depositary of an AIF in the sense of article 19(1) of the Law of 2013, provided that a functional and hierarchical separation of the performance of the depositary functions is ensured.

10.g) How should the look-through be performed?

According to article 89(3) and article 90(5) of AIFMD-CDR, a look-through shall apply to underlying assets held by the AIF or the AIFM on behalf of the AIF, which are controlled directly or indirectly by the AIF or the AIFM acting on behalf of the AIF.
The definition of a controlled entity is a matter of professional judgment and will depend on the specific structure in question. The AIF or the AIFM should provide the depositary with all the required information to confirm whether the underlying entity is directly or indirectly controlled or not.

10.h) Article 88 (2) AIFMD-CDR provides that financial instruments which, in accordance with applicable law, are only directly registered in the name of the AIF with the issuer itself or its agent, such as a registrar or a transfer agent, shall not be held in custody. Under what circumstances can financial instruments be directly registered in the name of the AIF, or the AIFM on behalf of the AIF, with the issuer or an agent of the issuer and therefore qualify as other assets in the sense of article 19(8)(b) of the Law of 2013?

Financial instruments can be directly registered in the name of the AIF, or the AIFM on behalf of the AIF, with the issuer or an agent of the issuer in the following circumstances:
- when the law applicable to the issuer explicitly requires those financial instruments to be registered directly in the name of the AIF, or the AIFM on behalf of the AIF, with the issuer or an agent of the issuer; or
- when the law applicable to the issuer does not prohibit an AIF to register its investment directly in the name of the AIF, or the AIFM on behalf of the AIF, with the issuer or an agent of the issuer, provided that the AIF or the AIFM and the depositary agree to register the financial instruments in the name of the AIF or the AIFM on behalf of the AIF.

As for any other assets in the sense of article 19(8)(b) of the Law of 2013, article 90(2)(c) AIFMD-CDR requires that the depositary ensures that there are procedures in place so that the assets directly registered in the name of the AIF, or the AIFM on behalf of the AIF, with the issuer or an agent of the issuer, cannot be assigned, transferred, exchanged or delivered without the depositary having been informed of such transaction and that the depositary has access without undue delay to documentary evidence of each transaction and position with the issuer or the agent of the issuer.

(10 January 2014)

11. AIFMD marketing passport: Marketing in the EU of EU AIFs (included AIFs set up in Luxembourg) by AIFMs established in Luxembourg

11.a) Which are the regulatory provisions applicable to Luxembourg Authorised AIFMs which intend to market EU AIFs in the EU to professional investors?

The following regulatory provisions are applicable to Luxembourg Authorised AIFMs which intend to market EU AIFs in the EU to professional investors:

- the provisions of article 29 of the Law of 2013 which specify the conditions applicable to Luxembourg Authorised AIFMs marketing in Luxembourg units or shares of EU AIFs they manage to professional investors. It is to be noted that in relation to the marketing in Luxembourg of Luxembourg AIFs managed by the Luxembourg Authorised AIFM, the provisions of article 29 only apply to non-regulated AIFs (i.e. not established under one of the Product Law(s));

- the provisions of article 30 of the Law of 2013 which specify the conditions applicable to Luxembourg Authorised AIFMs marketing to professional investors in another EU Member State units or shares of EU AIFs they manage.

11.b) Are Luxembourg Authorised AIFMs allowed to market non-regulated EU AIFs in the EU?

Yes.
Luxembourg Authorised AIFMs are allowed to market in the EU (including in Luxembourg) units or shares of EU AIFs, irrespective of whether such AIFs are regulated or non-regulated entities. It should nevertheless be noted that the marketing in other EU Member States might in some cases be subject to specific restrictions applicable in that EU Member State.

11.c) To what type of investors is the marketing of EU AIFs by a Luxembourg Authorised AIFM permitted?

Luxembourg Authorised AIFMs are permitted to market units or shares of EU AIFs only to professional investors, except where an EU Member State allows the marketing of EU AIFs to retail investors in its territory.

11.d) Does the Luxembourg legislation allow Luxembourg Authorised AIFMs to market EU AIFs to retail investors in its territory?

With respect to the marketing of Luxembourg regulated AIFs, only AIFs established under part II of the Law of 2010 can be marketed to any type of retail investors in the territory of Luxembourg, while the scope of eligible investors of AIFs established under the Law of 2004 (SICAR-AIFs) and the Law of 2007 (SIF-AIFs) only covers well-informed investors as defined in these laws. With respect to non-regulated Luxembourg AIFs the marketing is limited to professional investors.

With respect to the marketing of non-Luxembourg EU AIFs pursuant to article 46 of the Law of 2013, Luxembourg Authorised AIFMs are allowed to market to retail investors in the territory of Luxembourg units or shares of EU AIFs they manage, when the following conditions are fulfilled:

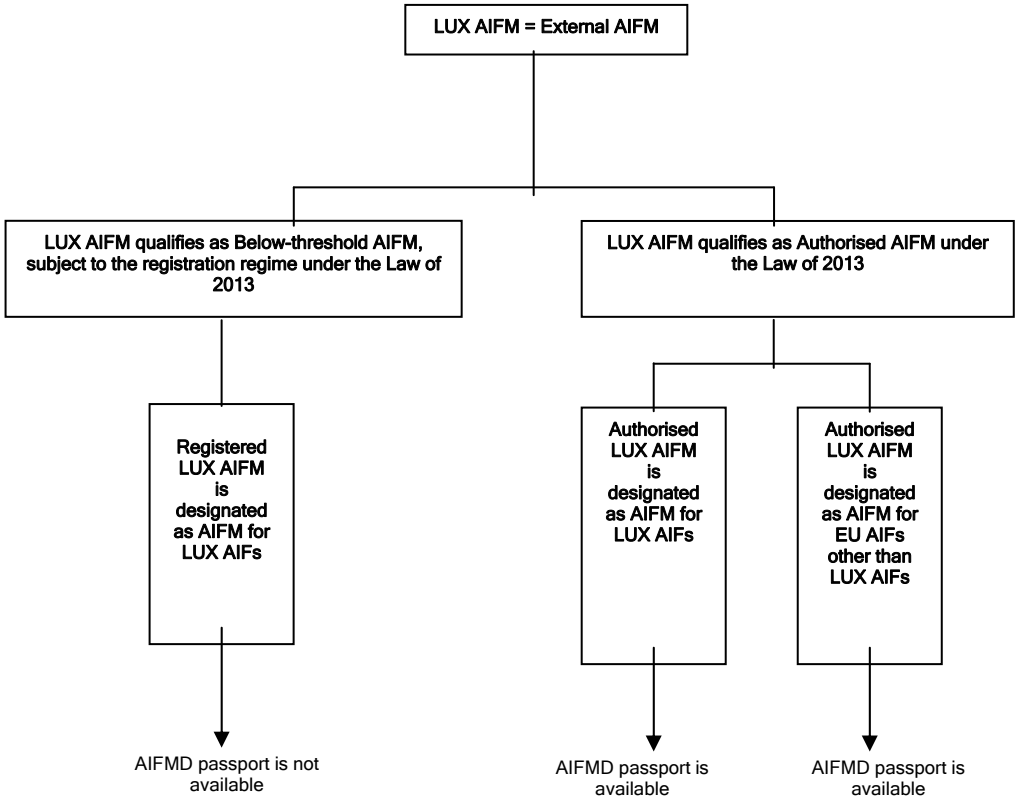
- the concerned EU AIFs must be subject in their home Member State to a permanent supervision performed by a supervisory authority set up by law in order to ensure the protection of investors;

- EU AIFs established in a Member State other than Luxembourg must furthermore be subject in their home Member State to regulations offering a level of protection for investors as well as to a prudential supervision considered by the CSSF as equivalent to that provided for in Luxembourg legislation.

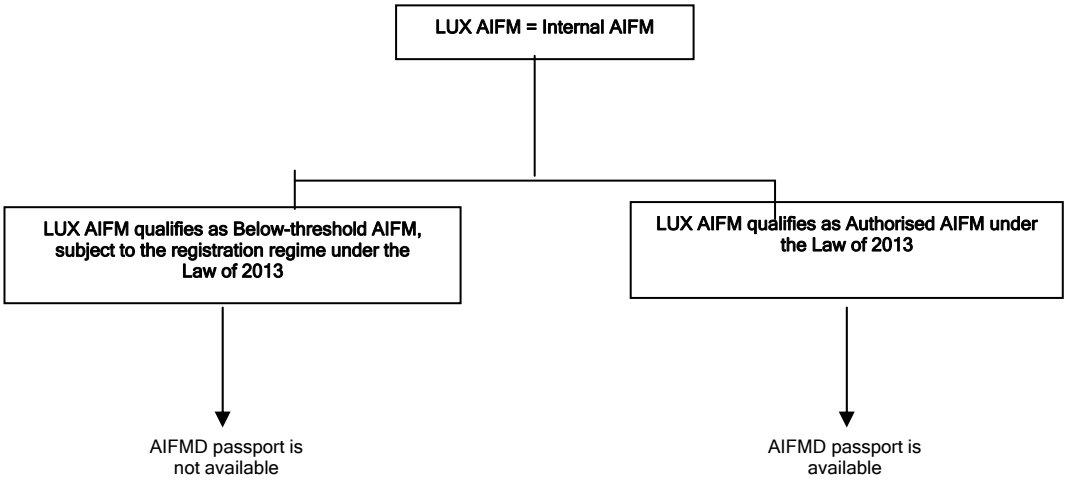
Please note that article 100 (concerning foreign UCIs) in conjunction with article 59 (appointment of a Luxembourg paying agent) and article 129 (prior authorisation by the CSSF) of the Law of 2010 also apply to such non-Luxembourg EU AIFs.

11.e) What are the different scenarios available for AIFMs established in Luxembourg with respect to the marketing of EU AIFs in the EU under the AIFMD marketing passport?

1° Luxembourg AIFM is an External AIFM



2° Luxembourg AIFM is an Internal AIFM



(10 January 2014)

12. <u>AIFMD marketing passport: Marketing in Luxembourg of EU AIFs (including Luxembourg AIFs) by AIFMs established in another EU Member State</u>

<u>Preliminary remarks</u>:

Luxembourg AIFs which are regulated AIFs established under one of the Product Laws are automatically authorised for marketing in the territory of Luxembourg. With respect to Luxembourg non-regulated AIFs the marketing is limited to professional investors.

In order to market EU AIFs in Luxembourg the AIFMs established in another EU Member State have to be authorized AIFMs.

As pointed out in point 8.e), the marketing of EU AIFs in Luxembourg by EU AIFMs under the existing Luxembourg placement rules will continue to be permitted until 22 July 2014 and will not be affected by the Law of 2013.

12.a) Which are the regulatory provisions applicable to AIFMs authorised in another EU Member State which intend to market EU AIFs to professional investors in Luxembourg?

The provisions of article 31 of the Law of 2013 specify the conditions applicable to AIFMs authorised in another EU Member State which intend to market in Luxembourg to professional investors units or shares of EU AIFs they manage.

12.b) Are AIFMs authorised in another EU Member State allowed to market non-regulated EU AIFs to professional investors in Luxembourg?

Yes.
AIFMs authorised in another EU Member State are allowed to market in Luxembourg units or shares of EU AIFs, irrespective of whether such AIFs are regulated or non-regulated entities.

12.c) To what type of investors is the marketing in Luxembourg of EU AIFs by an AIFM authorised in another EU Member State permitted?

AIFMs authorised in another EU Member State are permitted to market units or shares of EU AIFs only to professional investors in Luxembourg. Moreover,it is also possible to market to retail investors as mentioned under point 12.d) hereafter.

12.d) Does the Luxembourg legislation allow authorised EU AIFMs to market EU AIFs to retail investors in its territory?

With respect to the marketing of Luxembourg regulated AIFs, only AIFs established under part II of the Law of 2010 can be marketed to any type of retail investors in the territory of Luxembourg, while the scope of eligible investors of AIFs established under the Law of 2004 (SICAR-AIFs) and the Law of 2007 (SIF-AIFs) only covers well-informed investors as defined in these laws. With respect to non-regulated EU AIFs the marketing is limited to professional investors.

Pursuant to article 46 of the Law of 2013, EU AIFMs authorised in another EU Member State are allowed to market to retail investors in the territory of Luxembourg units or shares of EU AIFs they manage, when the following conditions are fulfilled:

- the concerned EU AIFs must be subject in their home Member State to a permanent supervision performed by a supervisory authority set up by law in order to ensure the protection of investors;

- EU AIFs established in a Member State other than Luxembourg, must furthermore be subject in their home Member State to regulations offering a level of protection for investors as well as to a prudential supervision considered by the CSSF as equivalent to that provided for in Luxembourg legislation.

Please note that article 100 (concerning foreign UCIs) in conjunction with article 59 (appointment of a Luxembourg paying agent) and article 129 (prior authorisation by the CSSF) of the Law of 2010 also apply to such non-Luxembourg EU AIFs.

(10 January 2014)

13. <u>AIFMD marketing passport: General conditions applicable to Luxembourg Authorised AIFMs marketing EU AIFs in the EU</u>

<u>Preliminary remark</u>: Only Authorised AIFMs can benefit from the marketing passport under the Law of 2013 and/or the AIFMD.

13.a) Where do Luxembourg Authorised AIFMs have to introduce the notification file in relation to the marketing of EU AIFs (including Luxembourg AIFs) to professional investors in another EU Member State ?

The CSSF is the competent authority for the notification process. Luxembourg Authorised AIFMs which intend to market to professional investors in another EU Member State Luxembourg and/or non-Luxembourg EU AIFs they manage have to introduce a notification file with the CSSF.

13.b) Where do Luxembourg Authorised AIFMs have to introduce the notification file in relation to the marketing of non-Luxembourg EU AIFs to professional investors in Luxembourg?

The CSSF is the competent authority for the notification process. Luxembourg Authorised AIFMs which intend to market in Luxembourg to professional investors non-Luxembourg EU AIFs they manage have to introduce the notification file with the CSSF.

13.c) Which documents and information need to be included in the notification file to be submitted to the CSSF?

1) <u>In relation to marketing of non-Luxembourg EU AIFs to professional investors in Luxembourg</u>:

The notification file shall include the following documents and information as set out in Annex III of the Law of 2013:

(a) A notification letter, including a programme of operations identifying the AIFs the AIFM intends to market and information on where the AIFs are established;
(b) the AIF rules or instruments of incorporation;
(c) identification of the depositary of the AIF;
(d) a description of, or any information on, the AIF available to investors;
(e) information on where the master AIF is established if the AIF is a feeder AIF;
(f) any additional information referred to in article 21(1) of the Law of 2013 for each AIF the AIFM intends to market;
(g) where relevant, information on the arrangements established to prevent units or shares of the AIF from being marketed to retail investors, including in the case where the AIFM relies on activities of independent entities to provide

investment services in respect of the AIF.

2) In relation to marketing of EU AIFs (including Luxembourg AIFs) to professional investors in another EU Member State:

In addition to the documents and information referred to under 1), the notification file, as set out in Annex IV of the Law of 2013, must also include the indication of the EU Member State in which the AIFM intends to market the units or shares of the AIF to professional investors.

13.d) Marketing approval process: When may a Luxembourg Authorised AIFM start marketing the AIFs identified in the notification file?

1) In relation to marketing in Luxembourg:

Within 20 working days following receipt of a complete notification file, the CSSF shall inform the Luxembourg Authorised AIFM whether it may start marketing the AIFs identified in the notification file. The CSSF shall prevent the marketing of the AIFs only if the AIFMs management of the AIFs does not or will not comply with the Law of 2013 or the AIFM otherwise does not or will not comply with the Law 2013. In the case of a positive decision, the Luxembourg Authorised AIFM may start marketing the AIFs in Luxembourg from the date of the CSSF's notification to that effect.

Where the concerned AIF is an AIF established in an EU Member State other than Luxembourg, the CSSF shall also inform the competent authorities of the AIF, that the Luxembourg Authorised AIFM may start marketing units or shares of the AIF in Luxembourg.

2) In relation to marketing in another EU Member State:

The CSSF shall, no later than 20 working days after the date of receipt of the complete notification file, transmit the complete notification file to the competent authorities of the EU Member State where it is intended that the AIFs be marketed. Such transmission shall occur only if the AIFMs management of the AIFs complies with and will continue to comply with the Law of 2013 and if the AIFM otherwise complies with the Law of 2013. The CSSF shall enclose a statement to the effect that the AIFM concerned is authorised to manage AIFs with a particular investment strategy. Upon transmission of the notification file, the CSSF shall directly notify the Luxembourg Authorised AIFM about the transmission. The Luxembourg Authorised AIFM may start marketing the AIFs in the host EU Member State as of the date of that notification.

Where the concerned AIF is an AIF established in an EU Member State other than Luxembourg, the CSSF shall also inform the competent authorities of the AIF about the Member State(s) in which the Luxembourg Authorised AIFM may start marketing the units or shares of the AIF.

13.e) Must a Luxembourg Authorised AIFM inform the CSSF about changes in the information included in the initial notification file?

Yes.
All material changes to the information included in the initial notification file must be notified to the CSSF at least 1 month before implementing the change as regards any changes planned by the Luxembourg Authorised AIFM, or immediately after an unplanned change has occurred.

Where the Luxembourg Authorised AIFM has been authorised to market AIFs in an EU Member State other than Luxembourg, the CSSF shall, without delay, inform the competent authorities of the host Member State of the AIFM about any changes to the initial notification file.

13.f) Under what conditions does the notification procedure also cover the marketing in the EU of feeder AIFs?

Luxembourg Authorised AIFMs may market in the EU units or shares of EU AIFs qualifying as feeder AIFs, subject to the condition that the master AIF is also an EU AIF which is managed by an authorised EU AIFM.

13.g) When does the EU marketing passport under the AIFMD become available for Luxembourg Authorised AIFMs?

The EU marketing passport under the AIFMD is available from the 22 July 2013 on. From this date Luxembourg Authorised AIFMs may benefit from the possibility to market EU AIFs to professional investors in the EU upon the fulfilment of the notification procedure.

(10 January 2014)

14. Reporting aspects

Preliminary remark: The reporting aspects covered by the FAQs on reporting aspects hereafter are to be read in conjunction with the ESMA Reporting Guidelines and the ESMA Opinion on Reporting under Article 24(5).

14.a) Reporting periods – general requirements

The ESMA Reporting Guidelines recommend that reporting periods of AIFMs be aligned with calendar years. Depending on the frequency of the reporting as prescribed by article 110(3) of the AIFMD-CDR AIFMs shall transmit their reporting in accordance with the following table (yyyy stands for the respective year).

Frequency	Reporting period start date(s)	Reporting period end date(s)	Deadline for transmission for AIF that are not fund of funds	Deadline for transmission for AIF that are fund of funds
quarterly	01/01/yyyy 01/04/yyyy 01/07/ yyyy 01/10/ yyyy	31/03/ yyyy 30/06/ yyyy 30/09/ yyyy 31/12/ yyyy	30/04/ yyyy 31/07/ yyyy 31/10/ yyyy 31/01/(yyyy +1)	15/05/ yyyy 15/08/ yyyy 15/11/ yyyy 15/02/(yyyy +1)
half-yearly	01/01/ yyyy 01/07/ yyyy	30/06/ yyyy 31/12/ yyyy	31/07/ yyyy 31/01/(yyyy +1)	15/08/ yyyy 15/02/(yyyy +1)
annually	01/01/ yyyy	31/12/ yyyy	31/01/(yyyy +1)	15/02/(yyyy +1)

14.b) Reporting periods – first reporting

As per paragraph 12 of chapter VII. of the ESMA Reporting Guidelines "*AIFMs should start reporting as from the first day of the following quarter after they have information to report until the end of the first reporting period. For example, an AIFM subject to half-yearly reporting obligations that has information to report as from 15 February would start reporting information as from 1 April to 30 June.*"

Depending on the frequency of the reporting as prescribed by article 110(3) of the AIFMD-CDR, AIFMs shall transmit their first reporting in accordance with the following table (yyyy stands for the respective year). The information in the table hereafter illustrates the timing for a first reporting for an AIFM

authorised on 15 February of a given year and is applicable as long as there is no shift in the obligation for the frequency of the reporting of that AIFMD[1].

Authorisation date	#	Quarterly reporting	Half-yearly reporting	Annual reporting
15/02/yyyy	1	01/04/yyyy - 30/06/yyyy	01/04/yyyy - 30/06/yyyy	01/04/yyyy-31/12/yyyy
	2	01/07/yyyy - 30/09/yyyy	01/07/yyyy - 31/12/yyyy	01/01/(yyyy+1) – 31/12/(yyyy+1)
	3	01/10/yyyy - 31/12/yyyy	01/01/(yyyy+1) – 30/06/(yyyy+1)	01/01/(yyyy+2) – 31/12/(yyyy+2)
	4	01/01/(yyyy+1) – 31/03/(yyyy+1)	01/07/(yyyy+1) – 31/12/(yyyy+1)	01/01/(yyyy+3) – 31/12/(yyyy+3)

On the basis of the above table, an Authorised AIFMs subject to half-yearly reporting obligations and having received its authorisation on 15 February of a given year has to submit its first reporting covering the period of 1st April to 30 June on 31 July of the same year at latest (15 August of the same year at latest where the AIF is a fund of funds). The next reporting following the initial one then has to be done on 31 January of the following year at latest (15 February of the following year at latest where the AIF is a fund of funds) for the period of the 1 July to 31 December of the current year.

Registered AIFMs have to report according to the last column since they are subject to annual reporting obligations.

As per paragraph 11 of the ESMA Reporting Guidelines, any AIFM that has been authorised or registered and has received confirmation from the CSSF concerning their autorisation or registration, but has no information to report for the respective reporting period has to submit a reporting file using a special field.. If an AIFM has not yet any AIF to report, an AIFM file has to be sent to the CSSF, indicating that the AIFM has not information to report yet. If a specific AIF has not yet been launched although the AIF has been authorised or registered by the CSSF, the AIFM has to send an AIF file for this specific AIF indicating that the AIF has not information to report yet.

14.c) As of which date is an AIFM considered to be an Authorised AIFM or a Registered AIFM?

AIFMs are informed of the effective date of their status as Authorised AIFM or as Registered AIFM by the CSSF. This date is to be taken into consideration for the determination of applicable reporting obligations.

14.d) Reporting requirements applicable to AIFMs benefiting from the transitional provisions under article 58(1) of the Law of 2013?

AIFMs that benefit from the transitional provisions under article 58(1) of the Law of 2013 have the option to submit or not to submit the reporting requested under Article 22(1), (2) and (4) of the Law of 2013 in advance of their authorisation. If the AIFM opts to report, it has to submit its reporting with the frequency and for the reporting periods described under the answer to question 15.a) above.

AIFMs that have submitted a request for registration and that have received confirmation from the CSSF that they have to be considered as Registered AIFMs before 1st October 2013 also have the option to submit or not to submit the reporting requested under article 3(3) d) of the Law of 2013 for 31 January 2014 at latest (15 February 2014 at latest where the AIF is a fund of funds) covering the period of 1st October 2013 up to 31 December 2013.

[1] In the case of changes in the frequency of the reporting obligations AIFMs are invited to consult paragraph IX ("Procedures when AIFMs are subject to new reporting obligations") of the ESMA Reporting Guidelines.

	Any of the above mentioned AIFMs has to contact the CSSF in order to get identifiers for reporting purposes.
14.e) Does the CSSF require reporting on more frequent basis than foreseen in the AIFMD-CDR?	No. For the time being the CSSF does not request information to be reported on a more frequent basis than foreseen in the AIFMD-CDR.
14.f) In both AIFM and AIF reports, some fields are formatted to be filled-in with free text elements. In which language(s) these free text fields may be provided to CSSF?	The only acceptable language for the entire AIFMD reporting is English.
14.g) Acceptable means of communication regarding the reporting required under the Law of 2013?	AIFMD reporting is possible only by using the channels that have been accepted by the CSSF, i.e. for the moment "*e-file*" and "*SOFIE*".
14.h) Do the obligations under article 20(2) of the Law of 2013 apply to Registered AIFMs and Authorised AIFMs?	Article 20 (2) only applies to Authorised AIFMs, not-withstanding any specific rules under a Product Law applicable to a given AIF.
14.i) Do annual reports as required under article 20(1) of the Law of 2013 have to be made available for all AIFs by authorised AIFMs when their authorisation date is prior to the end of their fiscal year?	Yes. Authorised AIFMs have to ensure that an annual report based on the elements described in article 20(2) of the Law of 2013 is made available in respect of all those AIFs where the AIFMs' authorisation date is prior to the end of the relevant AIFs fiscal year. This also applies to Authorised AIFMs having been authorised during 2013 for the fiscal year ending in 2013.
14.j) Do annual reports covered under article 20(2) of the Law of 2013 have to be submitted to the CSSF in conformity with the naming conventions as laid down in CSSF circular 11/509 and the procedure as described in CSSF circular 08/371?	Yes. Only annual reports respecting the naming conventions and the format as set out in CSSF circular 11/509 and the CSSF circular 08/371 are accepted.
14.k) What provisions does an annual report to be provided by an AIFM under 20 of the Law of 2013 have to comply with?	For the presentation of the annual report and especially for the article 20 (1) (a) a balance-sheet or a statement of assets and liabilities; and (b) an income and expenditure account for the financial year, AIFMs have to comply with the requirements under scheme B of the Law of 2010 (for part II funds) and on the annex of the Law of 2007 (for SIFs, where applicable) and on article 104 of the AIFMD Level II Regulation.

14.l) Does the CSSF require the AIFMs to provide the additional information set out in ESMA's Opinion on Reporting under Article 24(5)?

Yes.
The CSSF will require from AIFMs all information indicated in the ESMA Opinion on Reporting under Article 24(5).

14.m) Do the reporting obligations under article 24(1), (2) & (4) of the AIFMD also apply to non-EU AIFMs?

Yes.
The reporting obligations do also apply to non-EU AIFMs during the period before introduction of the passport for non-EU AIFMs expected to be available for 2015 (hereafter referred to as the transitional period). The reporting obligations by non-EU AIFMs during the transitional period are adressed in points 14.n) to 14.q) hereafter.

14.n) When does a non-EU AIFM have to report to the CSSF under the obligations of article 24(1), (2) & (4) of the AIFMD?

Based on the provisions of article 45 of the Law of 2013, a non-EU AIFM will have to report to the CSSF under the obligations of article 24(1), (2) & (4) of the AIFMD in the following cases:
1° A non-EU AIFM is managing a Luxembourg AIF during the transitional period.
2° A non-EU AIFM is marketing in Luxembourg EU AIFs and/or non-EU AIFs during the transitional period.

It has to be noted that from a Luxembourg legal perspective, article 45 of the Law of 2013 shall apply in the context of the marketing in Luxembourg of EU and/or non-EU AIFs by a non-EU AIFM as well as in the context of the managing of a Luxembourg AIF by a non-EU AIFM during the transitional period.

14.o) Non-EU AIFM managing a Luxembourg AIF:
Has the non-EU AIFM to report to the CSSF under the obligations of article 24(1), (2) & (4) of the AIFMD, if the Luxembourg AIF it manages is exclusively marketed outside of the EU?

Yes.

The reporting obligations under article 24(1), (2) & (4) of the AIFMD apply to a non-EU AIFM that manages a Luxembourg AIF independently of where the Luxembourg AIF is marketed, and thus also when the Luxembourg AIF is exclusively marketed outside of the EU.

14.p) Non-EU AIFM marketing in Luxembourg EU AIFs and/or non-EU AIFs :
In a configuration where a non-EU AIFM is marketing EU AIFs and/or non-EU AIFs in Luxembourg and in other Member States of the EU, should the reporting to the CSSF under the obligations of article 24(1), (2) & (4) of the AIFMD contain data for all AIFs marketed by the non-EU AIFM in the different EU Member States or only the

When a non-EU AIFM is marketing EU AIFs and/or non-EU AIFs in Luxembourg and in other Member States of the EU, the reporting to the CSSF under the obligations of article 24(1), (2) & (4) of the AIFMD, should only cover the data for those AIFs that are marketed in Luxembourg.

data for those AIFs that are marketed in Luxembourg?	
14.q) Non-EU AIFM marketing in Luxembourg EU AIFs and/or non-EU AIFs : **From what date on does a non-EU AIFM that markets EU AIFs and/or non-EU AIFs in Luxembourg have to report to the CSSF under the obligations of article 24(1), (2) & (4) of the AIFMD?**	The CSSF has to approve the marketing in Luxembourg of EU AIFs and/or non-EU AIFs by a non-EU AIFM, in accordance with the provisions of article 45 of the Law of 2013. Non-EU AIFMs shall in principle take the date of the CSSFs approval for the marketing in Luxembourg as the start date for their reporting obligations under article 24(1), (2) & (4) of the AIFMD. The reporting frequency and the reporting periods for non-EU AIFMs are the same as those applicable to Luxembourg AIFMs (see ESMA Reporting Guidelines).
14.r) Do the reporting obligations under article 24(1), (2) & (4) of the AIFMD also apply to non-EU AIFMs which existed and marketed non-Luxembourg AIFs under the Luxembourg private placement regime rules before 22 July 2013?	No. As pointed out in point 8.e), the marketing of non-Luxembourg AIFs in Luxembourg by non-EU AIFMs under the existing Luxembourg placement rules will continue to be permitted until 22 July 2014 and will not be affected by the Law of 2013. Non-EU AIFMs which existed and marketed non-Luxembourg AIFs under the Luxembourg private placement regime rules before 22 July 2013 are therefore not concerned by the points 14.m) to 14.q) mentioned before.

(10 January 2014)

15. List of the cooperation arrangements required under the AIFMD signed by the CSSF

Further to ESMA's approval of co-operation arrangements between EU securities regulators and their global counterparts, the CSSF has signed an MoU with each of the following non-EU authorities:

Albania:

- Financial Supervisory Authority of Albania

Australia:

- Australian Securities and Investments Commission

Bahamas:

- Securities Commission of the Bahamas

Bermuda:

- Bermuda Monetary Authority

Bosnia Herzegovina:

- Republic of Srpska Securities Commission

Brazil:

- Comissão de Valores Mobiliários do Brasil

British Virgin Islands:

- British Virgin Islands Financial Services Commission

Canada:

- Alberta Securities Commission
- Autorité des Marchés Financiers du Quebec
- British Columbia Securities Commission
- Office of the Superintendent of Financial Institutions
- Ontario Securities Commission

Cayman Islands:

- Cayman Islands Monetary Authority

Guernsey:

- Guernsey Financial Services Commission

Hong Kong:

- Hong Kong Monetary Authority
- Hong Kong Securities and Futures Commission

India:

- Securities and Exchange Board of India

Isle of Man:

- Financial Supervision Commission of the Isle of Man

Israel:

- Israel Securities Authority

Japan:

- Financial Services Agency of Japan
- Ministry of Agriculture, Forestry and Fisheries of Japan
- Ministry of Economy, Trade and Industry of Japan

Jersey:

- Jersey Financial Services Commission

Kenya:

- Capital Markets Authority of Kenya

Macedonia (FYROM):

- Securities and Exchange Commission of the Republic of Macedonia (FYROM)

Malaysia:

- Labuan Financial Services Authority
- Securities Commission of Malaysia

Maldives:

- Capital Market Development Authority of Maldives

Mauritius:

- Financial Services Commission of Mauritius

Mexico:

- National Banking and Securities Commission

Montenegro:

- Securities and Exchange Commission of Montenegro

New Zealand:

- Financial Markets Authority

Morocco:

- Conseil Déontologique des Valeurs Mobilières of Morocco

Pakistan:

- Securities and Exchange Commission of Pakistan,

Singapore:

- Monetary Authority of Singapore

South Africa:

- Financial Services Board

Switzerland:

- Swiss Financial Market Supervisory Authority (FINMA)

Tanzania:

- Capital Markets and Securities Authority of Tanzania

Thailand:

- Securities and Exchange Commission Thailand

Turkey:

- Capital Markets Board of Turkey

United Arab Emirates:

- Dubai International Financial Centre Authority
- Emirates Securities and Commodities Authority

United States of America:

- Commodity Futures Trading Commission
- Federal Reserve Board
- Office of the Comptroller of the Currency
- Securities and Exchange Commission

* *
*