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THE ALTERNATIVE INVESTMENT FUND MANAGERS LAW OF 2013

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THE ALTERNATIVE INVESTMENT FUND MANAGERS AND RELATED
MATTERS LAW OF 2013

OJ No. L174
1.7.2011,
p. 1.

For the purpose of harmonisation with the act of the European Union titled ‘Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010’ excluding Articles 62 and 63 of this Directive,

OJ No. L 83,
22.3.2013,
p. 1.

AND for the purpose of application of the act of the European Union titled ‘Commission Delegated Regulation (EU) No 231/2012 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’,

AND for the purpose of regulating the tax regime of the alternative investment fund managers,

The House of Representatives has adopted this Law:

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PART I – INTRODUCTORY PROVISIONS

Summary title. 1. This Law will shall be referred as the Alternative Investment Fund Managers Law of 2013.

Interpretation. 2.-(1) In the present Law, except where it follows otherwise from the context-

«competent authority of the home Member State», in relation to AIFMS of the Republic, means the Cyprus Securities and Exchange Commission ·

«competent authorities» means the national authorities of Member States which are empowered by law or regulation to supervise AIFMs ·

«competent authorities», in relation to a depositary means:

- (a) if the depositary is a credit institution authorised under the Banking Law or under the legislation of another Member State which harmonises the Directive 2006/48/EC, the competent authorities as defined in paragraph (4) of Article 4 of this Directive,
- 66(I) of 1997
74(I) of 1999
94(I) of 2000
119(I) of 2003
4(I) of 2004
151(I) of 2004
231(I) of 2004
235(I) of 2004
20(I) of 2005
80(I) of 2005
100(I) of 2009
123(I) of 2009
27(I) of 2011
104(I) of 2011
107(I) of 2012
14(I) of 2013.
- (b) if the depositary is an investment firm authorised under the
- 144(I) of 2007

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106(I) of 2009
 141(I) of 2012
 154(I) of 2012.
 Official Gazette,
 Annex I:
 16.11.2012
 30.11.2012.

Investment Services and Activities and Regulated Markets Law of 2007, as amended or under the legislation of another Member State which harmonises the Directive 2004/39/EC, the competent authorities as defined in point (22) of paragraph (1) of Article 4 of this Directive,

- (c) if the depositary falls within a category of institution referred to in section 23(3)(c) of this Law, the national authorities of its home Member State which are empowered by law or regulation to supervise such categories of institution,
- (d) if the depositary is an entity referred to in article 23(5) of this Law, the national authorities of the Member State in which that entity has its registered office and which are empowered by law or regulation to supervise such entity or the official body competent to register or supervise such entity pursuant to the rules of professional conduct applicable thereto,
- (e) if the custodian is appointed as depositary for a non-EU AIF in accordance with section 23(7)(b) of this Law and does not fall within the scope of the previous paragraphs of this definition, the relevant national authorities of the third country where the depositary has its registered office ·

«initial capital» means funds as referred to in points (a) and (b) of the first paragraph of article 57 of Directive 2006/48/EC;

«prime broker» means a credit institution, a regulated investment firm or another entity -

- (a) subject to prudential regulation and on-going supervision, and

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- (b) offering services to professional investors primarily to finance or execute transactions in financial instruments as counterparty, and
- (c) which may also provide other services such as clearing and settlement of trades, custodial services, securities lending, customised technology and operational support facilities;

«Republic» means the Republic of Cyprus;

‘marketing’ means a direct or indirect offering or placement at the initiative of the AIFM or on behalf of the AIFM of units of an AIF it manages to or with investors who -

- (a) domicile in EU, if these are natural persons or,
- (β) have their registered office in EU, if these are legal persons;

the term ‘marketing of units’ is interpreted accordingly;

‘managing AIFs’ means performing at least investment management functions referred to in section 6(5)(a) for one or more AIFs;

‘AIFM’ or ‘Alternative Investment Fund Manager’ means any legal person whose regular business is managing one or more AIFs;

‘non-EU AIFM’ means an AIFM which is not an EU AIFM;

‘AIFM of the Republic’ means an AIFM whose home Member State is the Republic;

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‘EU AIFM’ means an AIFM which has its registered office in a Member State;

‘ESMA’ or ‘European Securities Markets Authority’ means the European Securities and Markets Authority established under the Regulation (EU) No 1095/2010;

‘established’ means -

- (a) for AIFMs, ‘having its registered office in’
- (b) for AIFs ‘being authorised or registered in’ or if the AIF is not authorised or registered, ‘having its registered office in’;
- (c) for depositaries, ‘having its registered office or branch in’;
- (d) for legal representatives that are legal persons, ‘having its registered office or branch in’;
- (e) for legal representatives that are natural persons, ‘domiciled in’;

‘EU’ means -

- (a) the European Union, and
- (b) the European Economic Area, in case of application of the Directive 2011/61/EU to the latter;

‘qualifying holding’ means a direct or indirect holding in an AIFM, which -

- (a) represents, at least, 10% of the capital or of the voting rights in accordance with section 28, section 29(1)(a), (b), (c), (d) and

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190(I) of 2007
72(I) of 2009
143(I) of 2012.

section 30(1) of the Transparency Requirements (Securities Admitted to Trading on a Regulated Market) Law, taking into account the conditions regarding the aggregation thereof laid down in section 34(1) and (2) and section 35(1) and (2) of the said Law, or

- (b) which makes it possible to exercise a significant influence over the management of the AIFM in which that holding subsists;

‘issuer’ means an issuer within the meaning of section 2 of the Transparency Requirements (Securities Admitted to Trading on a Regulated Market) Law, where that issuer has its registered office in the EU, and where its shares are admitted to trading on a regulated market within the meaning of section 2(1) of the Investment Services and Activities and Regulated Markets Law of 2007, as amended;

78(I) of 2005.

‘employees’ representatives’ means employees’ representatives as defined in section 2 of the Law Establishing a General Framework for Informing and Consulting Employees;

Cap 113.
9 of 1968
76 of 1977
17 of 1979
105 of 1985
198 of 1986
19 of 1990
41(1) of 1994
15(I) of 1995
21(I) of 1997
82(I) of 1999
149(I) of 1999
2(I) of 2000

‘auditor’ means a person qualified under the Company Law to be appointed as an auditor of a company;

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135(I) of 2000
151(I) of 2000
76(I) of 2001
70(I) of 2003
167(I) of 2003
92(I) of 2004
24(I) of 2005
129(I) of 2005
130(I) of 2005
98(I) of 2006
124(I) of 2006
70(I) of 2007
71(I) of 2007
131(I) of 2007
186(I) of 2007
87(I) of 2008
49(I) of 2009
99(I) of 2009
42(I) of 2010
60(I) of 2010
88(I) of 2010
53(I) of 2011
117(I) of 2011
145(I) of 2011
157(I) of 2011
198(I) of 2011
64(I) of 2012
98(I) of 2012.
190(I) of 2012
203(I) of 2012
6(I) of 2013.

‘control’ means control as defined in Article 1 of Directive 83/349/EEC;

‘FATF’ means the Financial Action Task Force for the Combat against Money Laundering and Terrorist Financing, which was established by the

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15th G-7 Summit that was held in Paris on the 14th to 16th of July 1989;

‘professional investor’ means 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 the Investment Services and Activities and Regulated Markets Law of 2007 as amended;

73(l) of 2009
5(l) of 2012.

‘Securities and Exchange Commission’ or ‘Commission’ means the legal entity of public law established and operating pursuant to the Cyprus Securities and Commission Law of 2009 as amended;

Official Gazette
Annex (I):
31.7.2009.

‘investment firm’ has the meaning attributed to the term in section 2(1) of the Investment Services and Activities and Regulated Markets Law of 2009 as amended;

‘competent authorities’, in relation to non-EU AIFM, means the national authorities of the third country which are empowered by law or regulation to supervise the AIFM;

‘competent authorities’, in relation to non-EU AIF, means the national authorities of the third country, which are empowered by law or regulation to supervise the AIF;

OJ of EU: L 331,
15.12.2010,
p. 1.

‘ESRB’ or ‘European Systemic Risk Board’ means the European Authority established by the act of European Union titled ‘Regulation (EU) No 1092/2010 of the European Parliament and the Council of the 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board’;

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‘holding company’ means a company with shareholdings in one or more other companies –

- (a) the commercial purpose of which is to carry out a business strategy or strategies through its subsidiaries, associated companies or participations in order to contribute to their long-term value and which is either a company; and
- (b) which is either a company which:
 - (i) operates on its own account and whose shares are admitted to trading on a regulated market in the Union, or
 - (ii) is not established for the main purpose of generating returns for its investors by means of divestment of its subsidiaries or associated companies, as evidenced in its annual report or other official documents;

‘retail investors’ means investors who are not professional investors;

‘subsidiary’ means a subsidiary undertaking as defined in section 148 of the Company Law;

‘own funds’ means own funds as referred to in Articles 56 to 67 of Directive 2006/48/EC;

‘Regulation (EU) No 1095/2010’ means the act of the European Union titled ‘Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending decision No 716/2009/EC and repealing Commission Decision 2009/77/EC, as recently amended by the Directive 2011/61/EU;

OJ No. L 331,
15.12.2010,
p. 84.

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‘Regulation (EU) No 231/2013’ means the act of the European Union titled ‘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, operating conditions, depositaries, leverage, transparency and supervision’;

‘relevant legislation’ has the meaning attributed to this term by article 2 of the Cyprus Securities and Exchange Commission Law of 2009;

‘Member State’ means:

- (a) Member State of the European Union, or
- (b) in case of application of Directive 2011/61/EU in the European Economic Area, another state that is a contracting party to the European Economic Area Agreement, signed in Oporto on May 2nd, 1992, and adapted by the Protocol signed in Brussels on May 17th 1993, as this Agreement shall be further amended;

‘Member State of reference’ means the Republic determined in accordance with article 50 of this Law or another Member State determined in accordance with article 37(4) of the Directive 2011/61/EU;

‘home Member State’ of an AIFM, means -

- (a) the Member State in which the AIFM has its registered office, or
- (b) for non-EU AIFMs, the Member State of reference;

‘home Member State’ of an AIF, means -

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- (a) if the AIF is neither authorised nor registered in a Member State, the Member State in which the AIF has its registered office and/or head office;
- (b) the Member State in which the AIF is authorised or registered under applicable national law, or in case of multiple authorisations or registrations, the Member State in which the AIF has been authorised or registered for the first time;

‘host Member State’ of an AIFM means any of the following:

- (a) a Member State, other than the home Member State, in which an EU AIFM manages EU AIFs, or
- (b) a Member State, other than the home Member State, in which an EU AIFM markets units or shares of an EU AIF, or
- (c) a Member State, other than the home Member State, in which an EU AIFM markets units or shares of a non-EU AIF, or
- (d) a Member State, other than the Member State of reference, in which a non-EU AIFM manages EU AIFs, or
- (e) a Member State, other than the Member State of reference, in which a non-EU AIFM markets units or shares of an EU AIF,
- (f) a Member State, other than the Member State of reference, in which a non-EU AIFM markets units or shares of a non-EU AIF;

‘master AIF’ means an AIF in which another AIF invests or has an exposure in accordance of the term ‘feeder AIF’ as determined in this section .

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‘units of an AIF’ or ‘units’ regarding an AIF means -

- (a) units of an AIF of contractual form or of a trust form, or
- (b) shares of an AIF of a corporate form;

‘non-listed company’ means a company which has its registered office in the Union and the shares of which are not admitted to trading on a regulated market within the meaning of section 2(1) of the Investment Services and Activities and Regulated Markets Law of 2007, as amended;

‘parent undertaking’ means a parent undertaking within the meaning of section 148 of the Company Law;

‘leverage’ means any method by which the AIFM increases the exposure of an AIF it manages, whether through borrowing of cash or securities, or leverage embedded in derivative positions or by any other means;

‘legal representative’ means a natural or legal person which -

- (a) in case of a natural person, is domiciled in the EU, or
- (b) in case of a legal person, has its registered office in the Union, and which, expressly designated by a non-EU AIFM, acts on behalf of such non-EU AIFM vis-à-vis the authorities, clients, bodies and counterparties to the non-EU AIFM in the EU with regard to the non-EU AIFM’s obligations under this Law;

‘directive’ means the directive of regulatory content of the Cyprus Securities and Exchange Commission that is published in the Official Gazette of the Republic;

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OJ: No L 193,
18.7.1983,
p. 1·
No L 164,
26.6.2009,
p. 42.

‘Directive 83/349/EEC’ means the act of the European Community titled ‘Seventh Council Directive of 13 June 1983 based on the Article 54(3)(g) of the Treaty on consolidated accounts’, as it has been recently amended by Directive 2009/49/EC of the European Parliament and the Council of 18 June 2009;

OJ: No L 335,
17.12.2009,
p. 1·
No L 174,
1.7.2011,
p. 1.

‘Directive 2003/41/EC’ means the act of the European Community titled ‘Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision’, as it has been recently amended by Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011;

OJ: No L 345,
31.12.2003,
p. 64·
No L 331,
15.12.2010,
p. 120.

‘Directive 2003/71/EC’ means the act of the European Community titled ‘Directive 2003/71/EC of the European Parliament and of the Council of 4 June 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC’, as it has been recently amended by Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010;

OJ: No L 145,
30.4.2004,
p. 1·
No L 331,
15.12.2010,
p. 120.

‘Directive 2004/39/EC’ means the act of the European Community titled ‘ Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on the markets in financial instruments, amending Council Directives 85/611/EEC and 93/6/EEC of the Council and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC’, as it was recently amended by Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010;

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OJ: No L 177,
30.6.2006,
p. 1·
No L 326,
8.12.2011,
p. 113.

‘Directive 2006/48/EU’ means the act of the European Community titled ‘Directive 2006/48/EU of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuing activities of credit institutions’ as it was recently amended by Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011;

OJ: No L 177,
30.6.2006,
p. 201·
No L 331,
15.12.2010,
p. 120.

‘Directive 2006/49/EC’ means the act of the European Community titled ‘Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions’, as it was recently amended by Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010;

OJ: No L 302,
17.11.2009,
p. 32·
No L 174,
1.7.2011,
p. 1.

‘Directive 2009/65/EC’ means the act of the European Community titled ‘Directive 2009/65/EC’ of the European Parliament and of the Council on the coordination of laws, regulations and administrative provisions, relating to undertakings for collective investment in transferable securities (UCITS)’, as it was recently amended by Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011;

‘Directive 2011/61/EU’ means the act of the European Union titled ‘Directive 2011/61/EU of the European Parliament and of the Council on Alternative Investment Fund Managers and amending Directives 2003/41/EC και 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010’;

‘AIF’ or ‘Alternative Investment Fund’ means any collective investment undertaking, including investment compartments thereof, which:

- (a) raise capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit

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of those investors; and

- 78(l) of 2012.
- (b) do not require authorisation pursuant to section 9 of the Open-ended Undertakings for Collective Investment Law of 2012 or pursuant to the legislation of another Member State which harmonises the article 5 of Directive 2009/65/EC;

'non-EU AIF' means an AIF which is not an EU AIF;

'EU AIF' means -

- (a) an AIF which is authorised or registered in a Member State under the applicable national law; or
- (b) an AIF which is not authorised or registered in a Member State, but has its registered office and/or head office in a Member State;

OJ: No L 15,
20.1.2009,
p. 1.

'securitisation special purpose entity' means entity whose sole purpose is to carry on a securitisation or securitisations within the meaning of Article 1(2) of Regulation (EC) No 24/2009 of the European Central Bank of 19 December 2008 concerning statistics on the assets and liabilities of financial vehicle corporations engaged in securitisation transactions (ECB/2008/30) and other activities which are appropriate to accomplish that purpose;

'OECD' means the Organisation for Economic Co-operation and Development established in 1960, by the Convention for the Organisation for Economic Co-operation and Development;

78(l) of 2012.

'UCITS' means an undertaking for collective investment in transferable securities authorised in accordance with section 9 of the Undertakings on Collective Investments Law of 2012 or in accordance with the national

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legislation of another Member State which harmonises Article 5 of the Directive 2009/65/EC;

‘credit institution’ means bank or a cooperative society;

‘close links’, means a situation in which two or more natural or legal persons are linked by -

- (a) participation, namely ownership, directly or by way of control, of at least 20% of the voting rights or capital of an undertaking; or
- (b) control, namely the relationship between a parent undertaking and a subsidiary, as referred to in section 148 of the Company Law or a similar relationship between a natural or legal person and an undertaking; for the purposes of this point, a subsidiary undertaking of a subsidiary undertaking shall also be considered to be a subsidiary of the parent undertaking of those subsidiaries; or
- (c) control relationship permanently to the same person;

‘third country’ means a country that is a non an EU Member State;

‘feeder AIF’ means an AIF which -

- (a) invests, at least 85% of its assets in units of another AIF (the ‘master AIF’); or
- (b) invests at least 85% of its assets in more than one master AIFs where those AIFs have identical investment strategies; or
- (c) has otherwise an exposure of at least 85% of its assets to such a

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master AIF;

‘branch’ means a place of business which is a part of an AIFM, which has no legal personality and which provides the services for which the AIFM has been authorised; all the places of business established in the same Member State by an AIFM with its registered office in another Member State or in a third country shall be regarded as a single branch;

‘financial instrument’ means an instrument as specified in Part III of the Third Annex of the Investment Services and Activities and Regulated Markets Law of 2007, as amended.

(2) For the purposes of definition ‘own funds’ in section (1), Articles 13 to 16 of Directive 2006/49/EC on the capital adequacy of investment firms and credit institutions shall apply mutatis mutandis.

OJ: No L 177,
30.6.2006,
p. 201.

(3) In this Law and in the directives issued pursuant to this Law, any references to legislative acts of the European Union, such as Directive, Regulation or Decision means the relevant act as adjusted, amended or replaced, unless a different meaning is attributed by the text.

In this Law and in the regulatory or individual administrative acts issued pursuant to this Law, any reference to legislative act of the European Union, such as Directive, Regulation or Decision, means the relevant act as adjusted, amended or replaced, unless a different meaning is attributed to it by the text.

(4) The Commission may, by directive, adopt regulatory technical standards to determine types of AIFMs in order to ensure uniform conditions of application of the rules established under this Law.

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General Scope
of application of
the Law.

3.-(1) Subject to paragraph (3) of this section and section (4), this Law shall apply to:

- (a) AIFMs of the Republic which manage one or more AIFs, irrespective of whether such AIFs are EU AIFs or non-EU AIFs;
- (b) EU AIFMs, which manage one or more AIFs, irrespective of whether such AIFs are EU AIFs or non-EU AIFs;
- (c) non-EU AIFMs, which manage one or more EU AIFs;
- (d) non-EU AIFMs, which market one or more AIFs in a Member State, irrespective of whether such AIFs are EU AIFs or non-EU AIFs;

(2) For the purposes of paragraph (1), the following shall be of no significance:

- (a) whether the AIF is of open-ended or closed-ended type; and
- (b) whether the AIF is constituted under the law of contract, under statute, under trust law, or has any other legal form; and
- (c) the legal structure of the AIFM.

(3) This Law shall not apply to the following entities or arrangements:

- (a) holding companies;
- (b) institutions for occupational retirement provision which are

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208(I) of 2012.

covered by the Law on Establishment, Activities and Supervision of Institutions for Occupational Retirement Provision or the law of another Member State which harmonises the Directive 2003/41/EC, which includes:

- (i) authorised entities responsible for managing such institutions and acting on their behalf, referred to in paragraph (1) of Article 2 of this Directive; and
- (ii) the investment managers appointed pursuant to paragraph (1) of Article 19 of this Directive,

In so far as they do not manage AIFs;

- (c) supranational institutions, such as the European Central Bank, the European Investment Bank, the European Investment Fund, the European Development Finance Institutions and bilateral development banks, the World Bank, the International Monetary Fund and other supranational institutions and similar international organisations, in the event that such institutions or organisations manage AIFs and in so far as those AIFs act in the public interest;
- (d) national central banks;
- (e) national, regional and local authorities and organisations and other institutions which manage funds supporting social security and pension systems;
- (f) employee participation schemes or employee savings schemes;
- (g) securitisation special purpose entities;
- (h) insurance contracts;

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- (i) joint ventures.

(4) The Commission shall take all necessary steps to ensure that AIFMs referred to in section (1) comply with Law at all times.

Specific scope
of application of
this Law.

4.-(1) This Law shall not apply to AIFMs, in so far as they manage or none more AIFs, whose only investors are the AIFM or the parent undertakings, or the subsidiaries of the AIFM or other subsidiaries of those parent undertakings, provided that none of those investors is itself an AIF.

(2) Without prejudice to the application of section 71, only paragraphs (3), (4), (5) and (6) of this section apply to the following AIFMs:

- (a) AIFMs which, either directly or indirectly, through a company with which the AIFM is linked by common management or control, or by a substantive direct or indirect holding, manage portfolios of AIFs whose assets under management, including any assets acquired through use of leverage, in total do not exceed a threshold of EUR 100million; or
- (b) AIFMs which, either directly or indirectly, through a company with which the AIFM is linked by common management or control, or by a substantive direct or indirect holding, manage portfolios of AIFs whose assets under management in total do not exceed a threshold of EUR 500 million when the portfolios of AIFs that are unleveraged and have no redemption rights exercisable during a period of 5 years following the date of initial investment in each AIF.

(3) AIFMs referred to in paragraph (2) -

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- (a) are subject to registration with the competent authorities of their home Member State; and
- (b) at the time of registration, identify themselves and the AIFs that they manage to the competent authorities of their home Member State; and
- (c) at the time of registration, provide information on the investment strategies of the AIFs that they manage to the competent authorities of their home Member State; and
- (d) regularly provide the competent authorities of their home Member State with information on the main instruments in which they are trading and on the principal exposures and most important concentrations of the AIFs that they manage in order to enable the competent authorities to monitor systemic risk effectively; and
- (f) notify the competent authorities of their home Member State in the event that they do no longer meet the conditions referred to in paragraph (2).

(4) Paragraphs (2) and (3) shall apply without prejudice to any stricter rules adopted with respect to AIFMs referred to in paragraph (2).

(5) In case an AIFM no longer meets the conditions set out in paragraph (2), the AIFM shall apply for authorisation within 30 calendar days in accordance with the relevant procedures laid down in this Law.

(6) AIFMs referred to in paragraph (2) shall not benefit from any of the rights granted under this Law, unless they choose to opt in under this Law. Where AIFMs opt in, this Law shall become applicable in its entirety.

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(7) The Commission may issue a Directive specifying the procedures for AIFMs which choose to opt in under this Law in accordance with paragraph (6).

Determination of the AIFM.

5.-(1) Each AIF managed within the scope of this Law, shall have a single AIFM, which shall be responsible for ensuring compliance with the provisions of this Law. The AIFM shall be either -

- (a) an external manager, which is the legal person appointed by the AIF or on behalf of the AIF and which through this appointment is responsible for managing the AIF εξωτερικός διαχειριστής (external AIFM), or
- (b) where the legal form of the AIF permits an internal management and where the AIF's governing body chooses not to appoint an external AIFM, the AIF itself, which shall then be authorised as AIFM.

(2) In cases where an external AIFM is unable to ensure compliance with the requirements of this Law, for which an AIF or another entity on its behalf is responsible, it shall immediately inform the competent authority of its home Member State and, if applicable, the competent authority of the EU AIF concerned. In case the Commission, as the competent authority of the AIFM, is informed, the Commission shall require the AIFM to take the necessary steps to remedy the situation.

(3) If, notwithstanding the steps referred to in paragraph (2) being taken, the non-compliance persists, and in so far as it concerns an AIFM of the Republic or an EU AIF, the Commission shall require the AIFM to resign as AIFM of that AIF. In that case, the AIF shall no longer be marketed in the Union. If it concerns a non-EU AIFM managing a non-EU AIF, the AIF shall

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no longer be marketed in the Union. The Commission, as the competent authority of the home Member State of the AIFM shall immediately inform the competent authorities of the host Member States of the AIFM.

PART II – AUTHORISATION OF AIFMs

Conditions for taking up activities as AIFM of the Republic.

6.-(1) An AIFM of the Republic must be a limited liability company with shares, which is covered by the provisions of this Law and by the provisions of Company Law with a registered office and central management in the Republic.

(2)(a) An AIFM of the Republic may manage AIFs only if it is authorised by the Commission in accordance with section 8 and only if it meets the conditions for authorisation established in this Law at all times.

(b) It is prohibited to an AIFM, other than an AIFM of the Republic to manage AIFs, unless the AIFM -

- (i) is duly authorised according to national law or regulation, which harmonises the Directive 2011/61/EU, and
- (ii) meets the conditions for authorisation established in Directive 2011/61/EU at all times.

(3) External AIFMs may -

- (a) only engage in the activities referred to in paragraph (5), and/or
- (b) manage UCITS,

as long as they have been duly authorised in accordance with Undertakings for Collective Investments Law of 2012 or in accordance with the national law of another Member State which harmonises the Directive 2009/65/EC.

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(4) An Internally managed AIF may only engage in the activity of the internal management of the AIF in accordance with section 5.

(5) Every AIFM and every AIF, mentioned in other paragraphs of this section which refer to this paragraph -

(a) shall engage, at least in the following investment management functions when managing an AIF:

- (i) portfolio management, and
- (ii) risk management;

(b) may additionally perform any of the following functions in the course of the collective management of an AIF:

(i) administration:

- (A) legal and fund management accounting services;
- (B) customer inquiries;
- (C) valuation and pricing, including tax returns;
- (D) regulatory compliance monitoring;
- (E) maintenance of unit/shareholder register;
- (F) distribution of income;
- (G) unit/shares issues and redemptions;

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- (H) contract settlements, including certificate dispatch;
- (I) record keeping;
- (ii) marketing;
- (iii) activities related to the assets of the AIFs, namely services necessary to meet the fiduciary duties of the AIFM, facilities management, real estate administration activities, advice to undertakings on capital structure, industrial strategy and related matters advice and services relating to mergers and the purchase of undertakings and other services connected to the management of the AIF and the companies and other assets in which it has invested.

(6) By way of derogation from paragraph (3), an external AIFM may be authorised to provide any of the following services:

- (a) management of portfolios of investments, including those owned by pension funds and institutions for occupational retirement provision in accordance with paragraph 1 of Article 19 of Directive 2003/41/EC, in accordance with mandates given by investors on a discretionary, client-by-client basis;
- (b) non-core services comprising:
 - (i) investment advice;
 - (ii) safe-keeping and administration in relation to shares or units of collective investment undertakings;

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- (iii) reception and transmission of orders in relation to financial instruments.

(7) AIFMs are not authorised to provide -

- (a) only the services referred to in paragraph (6); and/or
- (b) non-core services referred to in paragraph (6)(b), without also being authorised to provide the services referred to in paragraph (6)(a); and/or
- (c) only the activities referred to in paragraph (5)(b); and/or
- (d) the services referred to in paragraph (5)(a)(i), without also providing the services referred to in paragraph (5)(a)(ii); and/or
- (e) the services referred to in paragraph (5) (a) (ii), without providing the services referred to in paragraph (5) (a) (i).

144(I) of 2007.
106(I) of 2009.

(8) Articles 3(3), 10, 18, 36 and 77(6) of the Investment Services and Activities and Regulated Markets Law shall apply to the provision of the services referred to in paragraph (6) of this section by AIFMS.

(9) AIFMs of the Republic shall provide the Commission with the information the Commission requires to monitor compliance with the conditions referred to in this Law at all times.

(10) Investment firms authorised in accordance with the Investment Services and Activities and Regulated Markets Law and credit institutions authorised in accordance with Banking Law, shall not be required to obtain an authorisation under this Law in order to provide investment services such as individual portfolio management in respect of AIFs. However, investment

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firms shall, directly or indirectly, offer units or shares of AIFs to, or place such units or shares with, investors in the Union, only to the extent the units or shares can be marketed in accordance with this Law.

Application for
authorisation.

7.-(1) In order to be duly authorised, an AIFM of the Republic, shall submit an application for authorisation to the Commission accompanied by the following:

- (a) information on the persons effectively conducting the business of the AIFM;
- (b) information on the identities of the AIFM's shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings and on the amounts of those holdings;
- (c) a programme of activity setting out the organisational structure of the AIFM, including information on how the AIFM intends to comply with its obligations under Parts II, III and IV and, where applicable, Parts V, VI, VII and VIII;
- (d) information on the remuneration policies and practises pursuant to section 14;
- (e) information on arrangements made for the delegation and sub-delegation of functions, as referred to in sections 20 to 22, to third parties.

(2) Further to the information referred to in paragraph (1), an AIFM of the Republic, applying for authorisation, shall provide to the Commission the following information on the AIFs it intends to manage:

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- (a) information about the investment strategies including the types of underlying funds if the AIF is a fund of funds, and the AIFM's policy as regards the use of leverage, and the risk profiles and other characteristics of the AIFs it manages or intends to manage, including information about the Member States or third countries in which such AIFs are established or are expected to be established;
- (b) information on where the master AIF is established if the AIF is a feeder AIF;
- (c) the rules or instruments of incorporation of each AIF the AIFM intends to manage;
- (d) information on the arrangements made for the appointment of the depositary in accordance with sections 23 to 28, for each AIF the AIFM intends to manage;
- (e) any additional information referred to in section 30(1) for each AIF the AIFM intends to manage.

(3) Where a UCITS management company, authorised pursuant to the 78(l) of 2012. Undertakings on Collective Investments Law of 2012, applies for authorisation as an AIFM under this Law, the Commission shall not require the UCITS management company to provide information or documents which the UCITS management company has already provided when applying for authorisation for the first licence, provided that such information or documents remain up-to-date.

(4) The Commission shall inform ESMA of authorisations granted or withdrawn in accordance with this Part, on a quarterly basis.

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(5) The Commission may, by virtue of Directives, specify the information to be provided according to paragraphs (1) and (2) and determine standard forms, templates and procedures for the provision of this information.

Conditions for granting authorisation.

8.-(1) The Commission grants authorisation to AIFMs of the Republic in accordance with this section.

(2) The Commission shall not grant authorisation to an AIFM of the Republic, unless:

- (a) it is satisfied that the AIFM will be able to meet the conditions of this Law; and
- (b) the AIFM has sufficient initial capital and own funds in accordance with section 9; and
- (c) the persons who effectively conduct the business of the AIFM are of sufficiently good repute and are sufficiently experienced also in relation to the investment strategies pursued by the AIFs managed by the AIFM, the names of those persons and of every person succeeding them in office being communicated forthwith to the Commission and the conduct of the business of the AIFM being decided by at least two persons meeting such conditions; and
- (d) the shareholders or members of the AIFM that have qualifying holdings are suitable taking into account the need to ensure the sound and prudent management of the AIFM; and
- (e) the head office and re registered office of the AIFM are located in the Republic.

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(3) The Commission shall consult with the relevant competent authorities of the Member States involved before granting authorisation, in case the AIFM of the Republic is -

- (a) a subsidiary of another AIFM, of a UCITS management company, of an investment firm, of a credit institution or of an insurance undertaking authorised in another Member State; or
- (b) a subsidiary of the parent undertaking of another AIFM, of a UCITS management company, of an investment firm, of a credit institution or of an insurance undertaking authorised in another Member State; or
- (c) a company controlled by the same natural or legal persons as those that control another AIFM, a UCITS management company, an investment firm, a credit institution or an insurance undertaking authorised in another Member State.

(4) The Commission shall refuse authorisation to AIFMs of the Republic, where the effective exercise of its supervisory functions is prevented by any of the following:

- (a) close links between the AIFM and other natural or legal persons; or
- (b) the laws, regulations or administrative provisions of a third country governing natural or legal persons with which the AIFM has close links; or
- (c) difficulties involved in the enforcement of those laws, regulations and administrative provisions referred to in sub-paragraph (b).

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(5) The Commission may restrict the scope of the authorisation granted, in accordance with this section, to an AIFM of the Republic, in particular as regards the investment strategies of the AIFs the AIFM of the Republic is allowed to manage.

(6)(a) The Commission shall inform the applicant AIFM of the Republic, in writing, within three months of the submission of a complete application, whether or not authorisation has been granted. The Commission may prolong this period for up to three additional months, where it considers it necessary due to the specific circumstances of the case and after having notified the AIFM accordingly.

(b) For the purpose of sub-paragraph (a), an application is deemed complete, if the AIFM of the Republic has, at least, submitted the information referred to in section 7(1)(a) to (d) and (2)(a) and (b).

(7) AIFMs of the Republic may start managing AIFs with investment strategies described in the application in accordance with section 7(2)(a), in the Republic, as soon as the authorisation is granted, but not earlier than one month after having submitted any mission information referred to in section 7(1)(e) and (2)(c), (d) and (e).

(8) The Commission may, by virtue of Directive, specify any of the following:

- (a) the requirements applicable to the AIFMs under paragraph (3);
- (b) the requirements applicable to shareholders and members with qualifying holdings referred to in sub-paragraph (d) of paragraph (1);

Initial capital 9.-(1) An AIFM which is an internally managed AIF shall have an initial

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and own funds. capital of at least EUR 300,000.

(2) Where an AIFM is appointed as external manager of AIFs the AIFM shall have an initial capital of at least EUR 125,000.

(3) Where the value of the portfolios of AIFs managed by the AIFM exceeds EUR 250 million, the AIFM shall provide an additional amount of own funds. That additional amount of own funds shall be equal to 0.02% of the amount by which the value of the portfolios of the AIFM exceeds EUR 250 million but the required total of the initial capital and the additional amount shall not, however, exceed EUR 10 million.

(4) For the purpose of paragraph (3) of this section, AIFs managed by the AIFM, including AIFs for which the AIFM has delegated functions in accordance with sections 20 to 21, but excluding AIF portfolios that the AIFM is managing under delegation, shall be deemed to be the portfolios of the AIFM.

(5) Irrespective of paragraph (2) of this section, the own funds of the AIFM shall never be less than the amount required under Article 21 of Directive 2006/49/EC.

(6) An AIFM may not to provide up to 50% of the additional amount of own funds referred to in paragraph (3), if it benefits from a guarantee of the same amount given by a credit institution or an insurance undertaking which has its registered office -

- (a) in a Member State; or
- (b) in a third country where it is subject to prudential rules considered by the Commission as equivalent to those laid down in Union law.

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(7) To cover potential professional liability risks resulting from activities AIFMs may carry out pursuant to this Law, both internally managed AIFs and external AIFMs shall either -

- (a) have additional own funds which are appropriate to cover potential liability risks arising from professional negligence; or
- (b) hold a professional indemnity insurance against civil liability arising from professional negligence which is appropriate to the risks covered.

(8) Own funds, including any additional own funds as referred to in subparagraph (a) of paragraph (7), shall be invested in liquid assets or assets readily convertible to cash in the short term and shall not include speculative positions.

(9) With the exemption of paragraphs (7) and (8) of this section and of the Regulation (EU) No 231/2013 and of the other delegated acts adopted by the European Commission pursuant to paragraph 9 of Article 8 of the Directive 2011/61/EU, this section shall not apply to AIFMs which are also UCITS management companies.

Changes in the scope of authorisation.

10.-(1) An AIFM of the Republic, before implementation, shall notify the Commission, of any material changes to the conditions for initial authorisation, in particular material changes to the information provided in accordance with section 7.

(2) In case the Commission decides to reject, or to impose restrictions to the application of the changes referred to in paragraph (1), shall, within one month of receipt of that notification, inform the AIFM. The Commission may prolong that period for up to one month where it considers this to be

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necessary because of the specific circumstances of the case and after having notified the AIFM accordingly. The changes shall be implemented if the Commission does not oppose the changes within the relevant assessment period.

Suspension of the authorisation.

11.-(1) The Commission may suspend the authorisation of an AIFM of the Republic, if it assesses, at its full discretion, that by continuing its activities may jeopardise the interests of the AIFs it manages, its clients or the investors, or in general the smooth operation or the integrity of the market -

- (a) in connection with the procedure of withdrawal of authorisation of the AIFM, for the time period until a decision regarding the withdrawal is taken; or
- (b) upon decision of the Chairman or the Vice-Chairman of the Commission, who notify the Board of the Securities and Exchange Commission during its upcoming session, when there are suspicions of possible infringement of this Law or of another legal provision that regulates the provision of services by the AIFM or of a provision of the relevant legislation, for the time period during which it is assessed that the above interests are jeopardised.

(2) The Commission may suspend the authorisation in accordance with paragraph (1) of this section, partly or completely. In case of partial suspension, according to which the authorisation is suspended in accordance with the activities of paragraph (a) of subsection (6) of section 6, the Commission shall also suspend the activities mentioned in paragraph (b) of subsection (6) of section 6.

(3) In case of suspension of authorisation in accordance with subparagraph (b) of paragraph (1), the Commission, with its decision for

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suspension, may set to the AIFM a reasonable deadline to remedy the situation. This deadline may not be longer than one month, starting from the date of communication of the decision for the suspension to the AIFM.

(4) The AIFM shall inform the Commission about the remedy of the situation, within the deadline of paragraph (3), where -

- (a) if the Commission judges that the reasons for the suspension of authorisation no longer exist, revokes the suspension and communicates the fact to the AIFM; or
- (b) if the AIFM omits to notify the Commission, or if the Commission judges that there was no remedy of the situation or that the interests mentioned in paragraph (1) are still jeopardised, it extends the suspension of authorisation and initiates the procedure for withdrawal of the authorisation, where the suspension applies until the decision for withdrawal of authorisation is taken.

(5) In case of suspension according to paragraph (1), the AIFM does not provide those services or perform those activities for which the authorisation is suspended.

(6) The Commission may specify, by Directive, the procedure to be followed for the implementation of this section.

(7) In the event of infringement of the provisions of paragraph (5) by an AIFM, the Commission may impose to the AIFM an administrative fine of up to EUR 350,000.

Withdrawal of
authorisation

12.-(1) The Commission shall withdraw the authorisation of an AIFM of the Republic in any of the following cases:

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- (a) if the AIFM does not make use of the authorisation within 12 months, expressly renounces the authorisation or has ceased the activity covered by this Law for the preceding 6 months;
- (b) if the AIFM obtained the authorisation by making false statements or by any irregular means;

(2) The Commission may withdraw the authorisation issued to an AIFM of the Republic in any of the following cases:

- (a) if the AIFM no longer meets the conditions under which the authorisation was granted;
- (b) if the AIFM no longer complies with the Directive DI144-2007-05 of the Commission on the capital adequacy of Investment Firms, if its authorisation also covers the discretionary portfolio management service referred to in paragraph (a) of subsection (6) of section 6 of this Law;
- (c) if the AIFM has seriously or systematically infringed the provisions of this Law;
- (d) if this AIFM falls within any of the cases where national law, in respect of matters outside the scope of this Law, provides for withdrawal of authorisation.

(3)(a) The Commission may set a deadline to the AIFM of the Republic, according to the circumstances, to remedy the situation -

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477/2012).

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- (i) in case the own funds of the AIFM are reduced below the minimum limits of section 9; or
- (ii) if the AIFM no longer complies with the capital adequacy requirements of the Investment Services and Activities and Regulated Markets Law, in case it is authorised to provide the service of management of portfolios of investments of paragraph (a) of subsection (6) of section 6.

(b) In case the AIFM does not proceed to any remedial action within the deadline of paragraph (a), the Commission shall withdraw the authorisation of the AIFM.

PART III – OPERATING CONDITIONS FOR AIFMs

CHAPTER 1

General requirements

General
principles.

13.-(1) AIFMs shall, at all times -

- (a) act honestly, with due skill, care and diligence and fairly in conducting their activities; and
- (b) act in the best interests of the AIFs or the investors of the AIFs they manage and the integrity of the market; and
- (c) have and employ effectively the resources and procedures that are necessary for the proper performance of their business activities; and
- (d) take all reasonable steps to avoid conflicts of interest and, when they cannot be avoided, to identify, manage and monitor and,

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where applicable, disclose, those conflicts of interest in order to prevent them from adversely affecting the interests of the AIFs and their investors and to ensure that the AIFs they manage are fairly treated; and

- (e) comply with all regulatory requirements applicable to the conduct of their business activities so as to promote the best interests of the AIFs or the investors of the AIFs they manage and the integrity of the market; and
- (f) treat all AIF investors fairly.

(2) No investor in an AIF shall obtain preferential treatment, unless such preferential treatment is disclosed in the relevant AIF's rules or instruments of incorporation.

(3) Each AIFM, the authorisation of which also covers the discretionary portfolio management service referred to in paragraph (a) of subsection (6) of section 6 of this Law shall-

- (a) not invest all or part of the client's portfolio in units or shares of the AIFs it manages, unless it receives prior general approval from the client; and
- (b) with regard to the services referred to in subsection (6) of section 6 of this Law, be subject to the provisions of section 17 and Part VII of the Investment Services and Activities and Regulated Markets Law and to the provisions of the Regulations on the Establishment and Operation of an Investors Compensation Fund of clients of CIFs of 2004.

(Κ.Δ.Π.
531/2004)
4.6.2004
(Κ.Δ.Π.
594/2004)
29.7.2005
(Κ.Δ.Π.
359/2005).

Remuneration. 14.-(1) AIFMs establish and apply remuneration policies and practices which-

- (a) are consistent with and promote sound and effective risk management; and
- (b) do not encourage risk-taking which is inconsistent with the risk profiles, rules or instruments of incorporation of the AIFs they manage; and
- (c) comply with the provisions of paragraph (2); and
- (d) apply to those categories of staff, including senior management, risk takers, control functions and any employees receiving total remuneration that takes them into the same remuneration bracket as senior management and risk takers, whose professional activities have a material impact on the risk profiles of the AIFMs or of the AIFs they manage.

(2) When establishing and applying the total remuneration policies, inclusive of salaries and discretionary pension benefits, AIFMs shall comply with the following principles in a way and to the extent that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities:

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- (a) the remuneration policy is consistent with and promotes sound and effective risk management and does not encourage risk-taking which is inconsistent with the risk profiles, rules or instruments of incorporation of the AIFs they manage;
- (b) the remuneration policy is in line with the business strategy, objectives, values and interests of the AIFM and the AIFs it manages or the investors of such AIFs, and includes measures to avoid conflicts of interest;
- (c) the management body of the AIFM, in its supervisory function, adopts and periodically reviews the general principles of the remuneration policy and is responsible for its implementation;
- (d) the implementation of the remuneration policy is, at least annually, subject to central and independent internal review for compliance with policies and procedures for remuneration adopted by the management body in its supervisory function;
- (e) staff engaged in control functions are compensated in accordance with the achievement of the objectives linked to their functions, independent of the performance of the business areas they control;
- (f) the remuneration of the senior officers in the risk management and compliance functions is directly overseen by the remuneration committee;
- (g) where remuneration is performance related, the total amount of remuneration is based on a combination of the assessment of the performance of the individual and of the business unit or AIF

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concerned and of the overall results of the AIFM, and when assessing individual performance, financial as well as non-financial criteria are taken into account;

- (h) the assessment of performance is set in a multi-year framework appropriate to the life-cycle of the AIFs managed by the AFM in order to ensure that the assessment process is based on longer term performance and that the actual payment of performance-based components of remuneration is spread over a period which takes account of the redemption policy of the AIFs it manages and their investment risks;
- (i) guaranteed variable remuneration is exceptional, occurs only in the context of hiring new staff and is limited to the first year;
- (j) fixed and variable components of total remuneration are appropriately balanced and the fixed component represents a sufficiently high proportion of the total remuneration to allow the operation of a fully flexible policy, on variable remuneration components, including the possibility to pay no variable remuneration component;
- (k) payments related to the early termination of a contract reflect performance achieved over time and are designed in a way that does not reward failure;
- (l) the measurement of performance used to calculate variable remuneration components or pools of variable remuneration components includes a comprehensive adjustment mechanism to integrate all relevant types of current and future risks;
- (m) subject to the legal structure of the AIF and its rules or

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instruments of incorporation, a substantial portion, and in any event at least 50% of any variable remuneration consist of units or shares of the AIF concerned, or equivalent ownership interests, or share-linked instruments or equivalent non-cash instruments unless the management of AIFs accounts for less than 50% of the total portfolio managed by the AIFM, in which case the minimum of 50% does not apply; the instruments referred to in this sub-paragraph shall be subject to an appropriate retention policy designed to align incentives with the interests of the AIFM and the AIFs it manages and the investors of such AIFs; the Commission may, by Directive, place restrictions on the types and designs of those instruments or ban certain instruments as appropriate. This sub-paragraph (m) applies to both the portion of the variable remuneration component deferred in line with sub-paragraph (n) and the portion of the variable remuneration component not deferred;

- (n) a substantial portion, and in any event at least 40% of the variable remuneration component, is deferred over a period which is appropriate in view of the life cycle and redemption policy of the AIF concerned and is correctly aligned with the nature of the risks of the AIF in question; the period referred to in this sub-paragraph shall be at least three to five years unless the life cycle of the AIF concerned is shorter; remuneration payable under deferral arrangements vests no faster than on a pro-rata basis; in the case of a variable remuneration component of a particularly high amount, at least 60% of the amount is deferred;

- (o) the variable remuneration, including the deferred portion, is paid or vests only if it is sustainable according to the financial situation

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of the AIFM as a whole, and justified according to the performance of the business unit, the AIF and the individual concerned; the total variable remuneration shall generally be considerably contracted where subdued or negative financial performance of the AIFM or of the AIF concerned occurs, taking into account both current compensation and reductions in payouts of amounts previously earned, including through malus or clawback arrangements;

- (p) the pension policy is in line with the business strategy, objectives, values and long-term interests of the AIFM and the AIFs it manages; if the employee leaves the AIFM before retirement, discretionary pension benefits shall be held by the AIFM for a period of 5 years in the form of instruments defined in paragraph (m); in the case of an employee reaching retirement, discretionary pension benefits shall be paid to the employee in the form of instruments defined in paragraph (m) subject to a 5 year retention period;
- (q) staff are required to undertake not to use personal hedging strategies or remuneration and liability-related insurance to undermine the risk alignment effects embedded in their remuneration arrangements;
- (r) variable remuneration is not paid through vehicles or methods that facilitate the avoidance of the requirements of this Law.

(3) The principles set out in subsection (2) shall apply to remuneration of any type paid by the AIFM, to any amount paid directly by the AIF itself,

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including carried interest, and to any transfer of units or shares of the AIF, made to the benefits of those categories of staff, including senior management, risk takers, control functions and any employee receiving total remuneration that takes them into the same remuneration bracket as senior management and risk takers, whose professional activities have a material impact on their risk profile or the risk profiles of the AIF that they manage.

(4) AIFMS that are significant in terms of their size or the size of the AIFs they manage, their internal organisation and the nature, the scope and the complexity of their activities shall establish a remuneration committee. The remuneration committee shall be constituted in a way that enable it to exercise competent and independent judgment on remuneration policies and practices and the incentives created for managing risk. The remuneration committee shall be responsible for the preparation of decisions regarding remuneration, including those which have implications for the risk and risk management of the AIFM or the AIF concerned and which are to be taken by the management body in its supervisory function. The remuneration committee shall be chaired by a member of the management body who does not perform any executive functions in the AIFM concerned. The members of the remuneration committee shall be members of the management body who do not perform any executive functions in the AIFM concerned.

(5) The Commission may, by directive, specify -

- (a) the persons referred to in subsection (1); and
- (b) the principles and rules of subsection (2), taking into account, the size of the AIFMs and the size of the AIFs they manage, their internal organisation and the nature, the scope and the complexity of their activities.

Conflicts of 15.-(1) AIFMs shall take all reasonable steps to identify conflicts of interest

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interest.

that arise in the course of managing AIFs -

- (a) between the AIFM, including its managers, employees or any person directly or indirectly linked to the AIFM by control, and the AIF managed by the AIFM or the investors in that AIF; or
- (b) between the AIF or the investors in that AIF, and another AIF or the investors in that AIF; or
- (c) between the AIF or the investors in that AIF, and another client of the AIFM; or
- (d) between the AIF or the investors in that AIF, and a UCITS managed by the AIFM or the investors in that UCITS; or
- (e) between two clients of the AIFM.

(2) AIFMs shall -

- (a) establish, maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to identify, prevent, manage and monitor conflicts of interest in order to prevent them from adversely affecting the interests of the AIFs and their investors; and
- (b) segregate, within their own operating environment, tasks and responsibilities which may be regarded as incompatible with each other or which may potentially generate systematic conflicts of interest. AIFMs shall assess whether their operating conditions may involve any other material conflicts of interest and disclose them to the investors of the AIFs; and

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- (c) assess whether their operating conditions may involve any other material conflicts of interest and disclose them to the investors of the AIFs.

(3) Where organisational and internal administrative arrangements of paragraph (a) of subsection (2) are not sufficient to ensure, with reasonable confidence, that risks of damage to investors interests will be prevented, the AIFM shall clearly disclose the general nature or sources of conflicts of interest to the investors before undertaking business on their behalf, and develop appropriate policies and procedures to overcome those conflicts of interests.

(4)(a) Where the AIFM on behalf of an AIF uses the services of a prime broker, the terms shall be set out in a written contract, which -

- (i) defines the terms of their cooperation; and
- (ii) provides for any possible transfer and reuse of AIF's assets and that any such transfer or reuse shall comply with the AIF rules or instruments of incorporation; and
- (iii) provides that the depositary shall be informed of the contract.

(b) AIFMs shall exercise due skill, care and diligence in the selection and appointment of prime brokers with whom a contract referred to in paragraph (a) is to be concluded.

Risk
management.

16.-(1) AIFMs shall functionally and hierarchically separate the functions of risk management from the operating units, including from the functions of portfolio management. The Commission shall review the functional and hierarchical separation of the functions of risk management, in accordance

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with the principle of proportionality and understanding that the AIFM shall, in any event, be able to demonstrate that specific safeguards against conflicts of interest allow for the independent performance of risk management activities and that the risk management process satisfies the requirements of this section and is consistently effective.

(2) AIFMs shall establish and implement adequate risk management systems in order to identify, measure, manage and monitor appropriately all risks relevant to each AIF investment strategy and to which each AIF is or may be exposed. AIFMs shall review the risk management systems with appropriate frequency at least once a year and adapt them whenever necessary.

(3) AIFMs shall -

- (a) establish and implement appropriate, documented and regularly updated due diligence process when investing on behalf of the AIF, according to the investment strategy, the objectives and risk profile of the AIF;
- (b) ensure that the risks associated with each investment position of the AIF and their overall effect on the AIF's portfolio can be properly identified, measured, managed and monitored on an ongoing basis, including through the use of appropriate stress testing procedures; and
- (c) ensure that the risk profile of the AIF shall correspond to the size, portfolio structure and investment strategies and objectives of the AIF as laid down in the AIF rules or instruments of incorporation, prospectus and offering documents.

(4) AIFMs shall set a maximum level of leverage which they may employ

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on behalf of each AIF they manage as well as the extent of the right to reuse collateral or guarantee that could be granted under the leveraging arrangement, taking into account, inter alia -

- (a) the type of the AIF; and
- (b) the investment strategy of the AIF; and
- (c) the sources of leverage of the AIF; and
- (d) any other connection or relevant relationship with other financial services institutions, which could pose systemic risk; and
- (e) the need to limit the exposure to any single counterparty; and
- (f) the extent to which the leverage is collateralised; and
- (g) the asset-liability ratio; and
- (h) the scale, nature and extent of the activity of the AIFM on the markets concerned.

Liquidity
management.

17.-(1) AIFMs shall, for each AIF that they manage which is not an unleveraged closed-ended AIF, employ an appropriate liquidity management system and adopt procedures which enable them to monitor the liquidity risk of the AIF and to ensure that the liquidity profile of the investments of the AIF complies with its underlying obligations. AIFMs shall regularly conduct stress tests, under normal and exceptional liquidity conditions, which enable them to assess and monitor the liquidity risk of the AIFs accordingly.

(2) AIFMs shall ensure that, for each AIF that they manage, the investment strategy, the liquidity profile and the redemption policy are

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consistent.

CHAPTER 2

Organisational requirements

Procedures
arrangements
and
mechanisms
applied by
AIFMs

18. AIFMs shall use, at all times, adequate and appropriate human and technical resources that are necessary for the proper management of AIFs. Without prejudice to the general obligation, AIFMs of the Republic shall have, according to the nature of the AIFs it manages, -

- (a) sound administrative and accounting procedures, control and safeguard arrangements for electronic data processing; and
- (b) adequate internal control mechanisms including, in particular, rules for personal transactions by its employees or for the holding or management of investments in order to invest on its own account and ensuring, at least -
 - (i) that each transaction involving the AIFs may be reconstructed according to its origin, the parties to it, its nature and the time and place which it was effected; and
 - (ii) that the assets of the AIFs managed by the AIFM are invested in accordance with the AIF rules or instruments of incorporation and the legal provisions in force.

Valuation.

19.-(1) AIFMs shall ensure that, for each AIF that they manage, appropriate and consistent procedures are established so that a proper and independent valuation of the assets of the AIF can be performed in accordance with this section, the applicable law and the AIF rules or instruments of incorporation.

(2) The rules applicable to the valuation of assets and the calculation of

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the net asset value per unit of the AIF are determined by the law of the country where the AIF is established and/or in the AIF rules or instruments of incorporation.

(3) AIFMs shall ensure that the net asset value per unit of AIFs is calculated and disclosed to the investors in accordance with this section, the applicable national law and the AIF rules or instruments of incorporation. The valuation procedures used shall ensure that the assets are valued and the net asset value per unit is calculated at least once a year, the investors shall be informed of the valuations and calculations as set out in the relevant AIF rules or instruments of incorporation. The valuations and calculations -

- (a) if the AIF is of the open-ended type, shall also be carried out at a frequency which is both appropriate to the assets held by the AIF and its issuance and redemption frequency; and
 - (b) if the AIF is of the closed-ended type, shall also be carried out in case of an increase or decrease of the capital by the relevant AIF.
- (4) AIFMs shall ensure that the valuation function is either performed by-
- (a) an external valuer, being a legal or natural person independent from the AIF, the AIFM and any other persons with close links to the AIF or the AIFM; or
 - (b) the AIFM itself, provided that the valuation task is functionally independent from the portfolio management and the remuneration policy and other measures established by the AIFM ensure that conflicts of interest are mitigated and that undue influence upon employees is prevented.

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(5) The depositary appointed for an AIF shall not be appointed as external valuer of the AIF, unless -

- (a) it has functionally and hierarchically separated the performance of its depositary functions from its tasks as external valuer; and
- (b) the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the AIF.

(6) Where an external valuer performs the valuation function, the AIFM shall demonstrate that -

- (a) the external valuer is subject to mandatory professional registration recognised by law or to legal or regulatory provisions or rules of professional conduct; and
- (b) the external valuer can provide sufficient professional guarantees to be able to perform effectively the relevant valuation function in accordance with subsections (1) to (3); and
- (c) the appointment of the external valuer complies with the requirements of paragraphs (a) to (f) of subsection (1) and subsection (2) of section 20 of this Law and with the delegated acts adopted pursuant to paragraph 7 of Article 20 of Directive 2011/61/EU.

(7) The appointed external valuer shall not delegate the valuation function to a third party.

(8) AIFMs of the Republic shall notify the appointment of the external valuer to the Commission, which may require that another external valuer be appointed instead, where the conditions laid down in subsection (6) are not

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met.

(9) The valuation shall be performed impartially and with all due skill, care and diligence.

(10) Where the valuation function is not performed by an independent external valuer, the Commission may require the AIFM of the Republic to have its valuation procedures and/or valuations verified by an external valuer or, where appropriate, by an auditor.

(11)(a) AIFMs are responsible towards the AIF and its investors, for the proper valuation of AIF assets, the calculation of the net asset value and the publication of that asset value. The AIFMs liability towards the AIF and its investors shall, therefore not be affected by the fact that the AIFM has appointed an external valuer.

(b) Notwithstanding paragraph (a) and irrespective of any contractual arrangements providing otherwise, the external valuer shall be liable to the AIFM for any losses suffered by the AFIM as a result of the external valuer's negligence or intentional failure to perform its tasks.

CHAPTER 3

Delegation of AIFM functions

Delegation of an AIFM functions. 20.-(1) AIFMs may delegate to third parties the task of carrying out functions on their behalf, only if the following conditions are met:

- (a) the AIFM shall notify the competent authority of its home Member State before the delegation arrangements become effective;
- (b) the AIFM must be able to justify its entire delegation structure on

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objective reasons;

- (c) the delegate must dispose of sufficient resources to perform the respective tasks and the persons who effectively conduct the business of the delegate must be of sufficiently good repute and sufficiently experienced;
- (d) the delegation must not prevent the effectiveness of supervision of the AIFM, and, in particular, must not prevent the AIFM from acting, or the AIF from being managed, in the best interests of its investors;
- (e) the AIFM must be able to demonstrate that the delegate is qualified and capable of undertaking the functions in question, that it was selected with all due care and that the AIFM is in a position to monitor effectively at any time the delegated activity, to give at any time further instructions to the delegate and to withdraw the delegation with immediate effect when this is in the interest of investors;
- (f) the AIFM shall review the services provided by each delegate on an ongoing basis;
- (g) the AIFM shall not delegate its functions to the extent that, in essence, it can no longer be considered to be the manager of the AIF and to the extent that it becomes a letter-box entity.

(2) Where the delegation concerns part or the whole functions of portfolio management or risk management, the AIFM may delegate to third party the task of carrying functions on its behalf, only if the provisions of subsection (1) and the following provisions are satisfied:

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- (a) the delegation must be conferred only on undertakings which are authorised or registered for the purpose of asset management and subject to supervision or, only subject to prior approval by the competent authorities of the home Member State of the AIFM;
- (b) where the delegation is conferred on a third-country undertaking, cooperation between the competent authorities of the home Member State of the AIFM and the supervisory authority of the undertaking must be ensured;
- (c) no delegation shall be conferred on -
 - (i) the depositary or a delegate of the depositary; or
 - (ii) any other entity whose interests may conflict with those of the AIFM or the investors of the AIF, unless such entity has functionally and hierarchically separated the performance of its portfolio management or risk management tasks from its other potentially conflicting tasks, and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the AIF.

Sub delegation
of AIFM
functions.

21.-(1) The third party to whom functions have been delegated in accordance with section 20, may sub-delegate any of the functions delegated to it provided that the following conditions are met:

- (a) the AIFM consented prior to the sub-delegation;
- (b) the AIFM notified the competent authorities of its home Member State before the sub-delegation arrangements become effective;

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- (c) the conditions set out in subsection (1) and paragraph (c) of subsection (2) of section 20, on the understanding that all references to the 'delegate' are read as references to the 'sub-delegate'.

(2) The person to whom the delegate has sub-delegated functions in accordance to subsection (1) may delegate functions further, only if the provisions of subsection (1) are satisfied *mutatis mutandis*.

Liability of the AIFM in case of delegation or sub-delegation.

22. The AIFM's liability towards the AIF and its investors shall not be affected by the fact that the AIFM has delegated functions to a third party, or by any further sub-delegation.

CHAPTER 4

AIF Depositary

Appointment of AIF depositary.

23.-(1) For each AIF it manages, the AIFM shall ensure that a single depositary is appointed in accordance with this section.

(2) The appointment of a depositary shall be evidenced by written contract between the depositary and the AIFM. The contract shall, inter alia, regulate the flow of information deemed necessary to allow the depositary to perform its functions for the AIF for which it has been appointed as depositary, as set out in this Law and in other relevant laws, regulations or administrative provisions.

(3) The depositary shall be -

- (a) a credit institution having its registered office in the Union and is authorised in accordance with the Banking Law or in accordance with the legislation of another member state which harmonises

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the Directive 2006/48/EC; or

- (b) an investment firm -
 - (i) having its registered office in the Union; and
 - (ii) which, in any case shall have own funds not less than the amount of initial capital referred to in Article 9 of the Directive 2006/49/EC; and
 - (iii) is subject to capital adequacy requirements in accordance with paragraph 1 of Article 20 of the Directive 2006/49/EC, including capital requirements for operational risks; and
 - (iv) authorised in accordance with the Investment Services and Activities and Regulated Markets Law, as amended or according to the national legislation of another Member State which harmonises the Directive 2004/39/EC; and
 - (v) which also provides the ancillary service of safe-keeping and administration of financial instruments for the account of clients in accordance with paragraph 1 of Part II of the Third Annex of the Investment Services and Activities and Regulated Markets Law as amended;

- (c) another category of institution that is subject to prudential regulation and on-going supervision and which, of 21 July 2011, falls within the categories of institution determined by Members States to be eligible to be a depositary under subsection (2) of section 10 of the Undertakings on Collective Investments Law.

(4) Notwithstanding subsection (3), but subject to paragraph (b) of subsection (7), for non-EU AIFs only, the depositary may also be a credit institution or any other entity of the same nature as the entities referred to in paragraphs (a) and (b) of subsection (3) provided that the conditions of paragraph (a) of subsection (8) are met.

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(5) Notwithstanding subsection (3) of this section, an AIF which has no redemption rights exercisable during the period of five years from the date of the initial investments and which, in accordance with their core investment policy -

- (a) generally does not invest in assets that must be held in custody in accordance with paragraph (a) of subsection (3) of section 24, or
- (b) generally invests in issuers or non-listed companies, in order to potentially acquire control of such companies in accordance with section 33,

may appoint as depositary an entity which carries out depositary functions as part of its professional or business activities in respect of which such entity is subject to mandatory professional registration recognised by law or to legal or regulatory provisions or rules of professional conduct and which can provide sufficient financial and professional guarantees to enable it to perform effectively the relevant depositary functions and meet the commitments inherent in those functions.

(6) In order to avoid conflicts of interest between the depositary, the AIFM, the AIF and/or its investors -

- (a) an AIFM shall not act as depositary ; and
- (b) a prime broker acting as a counterparty to an AIF, shall not act as depositary for that AIF, unless it has functionally and hierarchically separated the performance of its depositary functions from its tasks as prime broker and the potential conflicts of interest are properly identified, manage, monitored

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and disclosed to the investors of the AIF. Delegation by the depositary to such prime broker of its custody tasks in accordance with section 25 is allowed if the relevant conditions are met.

(7) The depositary shall be established in one of the following locations:

- (a) for EU AIFs, in the home Member State of the AIF;
- (b) for non-EU AIFs -
 - (i) in the third country where the AIF is established; or
 - (ii) in the home Member State of the AIFM managing the AIF;
or
 - (iii) in the Member State of reference of the AIFM managing the AIF.

(8) Without prejudice to the requirements set out in subsections (3) to (5), of this section, the appointment of a depositary established in a third country is subject to the following conditions:

- (a) in the third country where the depositary is established, the depositaries are subject to prudential regulation and supervision, including minimum capital requirements, which have the same effect as Union law and are effectively enforced;
- (b) the third country where the depositary is established is not listed as a Non-Cooperative by the FATF;
- (c) the depositary shall, by contract be liable to the AIF or to the investors of the AIF in accordance with subsections (1) to (4) of

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section 27 and shall expressly agree to comply with section 26;

- (d)(i) the competent authorities of the Member States in which the units or shares of the non-EU AIF are intended to be marketed, and, in so far as different, the Commission, as the competent authority of the Republic, as the home Member State of the AIFM, have signed cooperation and exchange of information arrangements with the competent authorities of the depositary;
or
 - (ii) the Commission, as the competent authority of the Republic, where units of the non-EU AIF are intended to be marketed and the competent authorities of the home Member State of the AIFM, in so far as different, have signed cooperation and exchange of information arrangements with the competent authorities of the depositary;
-
- (e)(i) the Member States in which the units of the non-EU AIF are intended to be marketed, and, in so far as different, the Commission, as the competent authority of the Republic, which is the home Member State of the AIFM, have signed an agreement with the third country where the depositary is established which fully complies with the standards laid down in Article 26 of the OECD Model Tax convention on Income and on Capital and ensures an effective exchange of information in tax matters including any multilateral tax agreements; or
 - (ii) the Commission, as the competent authority of the Republic where units of the non-EU AIF are intended to be marketed, and the competent authorities of the home Member State of the AIFM, in so far as different, have signed an agreement with the third country where the depositary is established which fully complies with the standards laid down in Article 26 of the OECD

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Model Tax convention on Income and on Capital and ensures an effective exchange of information in tax matters including any multilateral tax agreements.

(9) The Commission, being the competent authority of the Republic, may act in accordance with the second paragraph of paragraph 6 of Article 21 of the Directive 2011/61/EU.

(10) Notwithstanding the provisions of subsection (8), the Commission may, by directive, determine that the prudential regulation and supervision of a third country have the same effect as Union Law and are effectively enforced.

Duties of AIF
depository

24.-(1) The AIF depository shall in general ensure that the AIF's cash flows are properly monitored and shall, in particular ensure that -

- (a) all payments made by or on behalf of investors upon the subscription of units of an AIF have been received; and
- (b) all cash of the AIF has been booked in cash accounts opened in the name of the AIF or on the name of the AIFM acting on behalf of the AIF or in the name of the depository acting on behalf of the AIF at an entity referred to in sub-paragraphs (a), (b), (c) or (d) of paragraph 20 of the Directive for the Authorisation and Operating Conditions of CIFs, DI144-2007-01 of 2012, or another entity of the same nature, in the relevant market where cash accounts are required, provided that such entity is subject to effective prudential regulation and supervision which have the same effect as Union law and are effectively enforced and in accordance with the principles set out in paragraph 18 of the Directive for the Authorisation and Operating Conditions of CIFs, DI144-2007-01, of 2012.

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(2) Where the cash accounts are opened in the name of the depositary acting on behalf of the AIF, no cash of the entity referred to in paragraph (b) of subsection (1) and none of the depositary's own cash shall be booked on such accounts.

(3) The asset of the AIF or the AIFM acting on behalf of the AIF shall be entrusted to the depositary for safe-keeping, as follows:

- (a) for financial instruments that can be held in custody -
 - (i) the depositary shall hold in custody all financial instruments that can be registered in a financial instruments account opened in the depositary's books and all financial instruments that can be physically delivered to the depositary;
 - (ii) for that purpose, the depositary shall ensure that all those financial instruments that can be registered in a financial instruments account opened in the depositary's books are registered in the depositary's books within segregated accounts in accordance with the principles set out in paragraph 18 of the Directive for the Authorisation and Operating Conditions of CIFs, DI144-2007-01, of 2012, opened in the name of the AIF or the AIFM acting on behalf of the AIF, so that they can be clearly identified as belonging to the AIF in accordance with the applicable law at all times;
- (b) for other assets -
 - (i) the depositary shall verify the ownership of the AIF or the AIFM acting on behalf of the AIF of such assets and shall

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maintain a record of those assets for which it is satisfied that the AIF or the AIFM acting on behalf of the AIF holds the ownership of such assets;

- (ii) the assessment whether the AIF or the AIFM acting on behalf of the AIF holds the ownership shall be based on information or documents provided by the AIF or the AIFM and, where available, on external evidence;
- (iii) the depositary shall keep the record referred to in point (i) up-to-date.

(4) In addition to the tasks referred to in subsections (1) to (3) of this section, the depositary shall:

- (a) ensure that the sale, issue, re-purchase, redemption and cancellation of units of the AIF are carried out in accordance with the applicable national law and the AIF rules or instruments of incorporation; and
- (b) ensure that the value of the units or shares of the AIF is calculated in accordance with the applicable national law, the AIF rules or instruments of incorporation and the procedures laid down in section 19; and
- (c) carry out the instructions of the AIFM, unless they conflict with the applicable national law or the AIF rules or instruments of incorporation; and
- (d) ensure that in transactions involving the AIF's assets any consideration is remitted to the AIF within the usual time limits; and

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- (e) ensure that the AIF's income is applied in accordance with the applicable national law and the AIF rules or instruments of incorporation.

Obligations of the AIFM and the depositary when performing their duties.

25.-(1) In the context of their respective roles, the AIFM and the depositary shall act honestly, fairly, professionally, independently and in the interest of the AIF and the investors of the AIF.

(2) A depositary shall not carry out activities with regard to the AIF or the AIFM on behalf of the AIF that may create conflicts of interest between the AIF, the investors in the AIF, the AIFM and itself, unless the depositary has functionally and hierarchically separated the performance of its depositary tasks from its other potentially conflicting tasks, and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the AIF.

(3) The assets referred to in subsection (3) of section 24, shall not be reused by the depositary without the prior consent of the AIF or the AIFM acting on behalf of the AIF.

Delegation of duties by the AIF depositary to third party.

26.-(1) The depositary may delegate to third parties only the functions referred to in subsection (3) of section 24, subject to the following conditions:

- (a) the functions are not delegated with the intention of avoiding the requirements of this Law;
- (b) the depositary can demonstrate that there is an objective reason for the delegation;

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- (c) the depositary has exercised all due skill, care and diligence in the selection and the appointment of any third party to whom it wants to delegate parts of its tasks, and keeps exercising all due skill, care and diligence in the periodic review and ongoing monitoring of any third party to whom it has delegated parts of its tasks and of the arrangements of the third party in respect of the matters delegated to it; and
- (d) the depositary ensures that the third party meets the following conditions at all times during the performance of the tasks delegated to it:
 - (i) the third party has the structures and the expertise that are adequate and proportionate to the nature and complexity of the assets of the AIF or the AIFM acting on behalf of the AIF which have been entrusted to it;
 - (ii) for custody tasks referred to in paragraph (a) of subsection (3) of section 24, the third party is subject to effective prudential regulation, including minimum capital requirements, and supervision in the jurisdiction concerned and third party is subject to an external periodic audit to ensure that the financial instruments are in its possession;
 - (iii) the third party segregates the assets of the depositary's clients from its own assets and from the assets of the depositary in such a way that they can at any time be clearly identified as belonging to clients of a particular depositary;
 - (iv) the third party does not make use of the assets without the prior consent of the AIF or the AIFM acting on behalf of the AIF and prior notification to the depositary; and
 - (v) the third party complies with the general obligations and

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prohibitions set out in subsection (3) of section 24 and section 25.

(2) Notwithstanding point (ii) of paragraph (d) of section (1), where the law of a third country requires that certain financial instruments be held in custody by a local entity and no local entities satisfy the delegation requirements laid down in that point, the depositary may delegate its functions to such a local entity only to the extent required by the law of the third country and only for as long as there are no local entities that satisfy the delegation requirements, subject to the following requirements;

- (a) the investors of the relevant AIF must be duly informed that such delegation is required due to legal constraints in the law of the third country and of the circumstances justifying the delegation, prior to their investment; and
- (b) the AIF, or the AIFM on behalf of the AIF, must instruct the depositary to delegate the custody of such financial instruments to such local entity.

(3) The third party may, in turn, sub-delegate some or all of those functions to another party, provided that the sub-delegation is subject to the same requirements as the initial delegation. In such a case, subsection (4) of section 27 shall apply mutatis mutandis to the relevant parties.

(4) For the purposes of subsections (1) to (3) of this section, the provision of services as specified by the Settlement Finality in Payment Systems and Securities Settlement Systems Laws of 2003 to 2011, as designated for the purposes of that Law or the provision of similar services by third-country securities settlement systems shall not be considered a delegation of its custody functions.

8(I) of 2003
118(I) of 2006
99(I) of 2011
145(I) of 2012.

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Depository
liability.

27.-(1) The depository shall be liable to the AIF or to the investors of the AIF, for the loss by the depository or a third party to whom the custody of financial instruments held in custody in accordance with paragraph (a) of subsection (3) of section 24 has been delegated.

(2) In the case of such a loss of a financial instrument held in custody, the depository shall return a financial instrument of identical type or the corresponding amount to the AIF or the AIFM acting on behalf of the AIF without undue delay. The depository shall not be liable if it can prove that the loss has arisen as a result of an external event beyond its reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary.

(3) The depository shall also be liable to the AIF, or to the investors of the AIF, for all other losses suffered by them as a result of the depository's negligent or intentional failure to properly fulfil its obligations pursuant to this Law.

(4) The depository's liability shall not be affected by any delegation referred to in section 26. In case of a loss of financial instruments held in custody by a third party pursuant to section 26, the depository may discharge itself of liability if it can prove that -

- (a) all requirements for the delegation of its custody tasks set out in section subsection (1) of section 26 are met; and
- (b) a written contract between the depository and the third party expressly transfers the liability of the depository to that third party and makes it possible for the AIF or the AIFM acting on behalf of the AIF to make a claim against the third party in respect of the loss of financial instruments or for the depository to make such a claim on their behalf; and

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- (c) a written contract between the depositary and the AIF or the AIFM acting on behalf of the AIF, expressly allows a discharge of the depositary's liability and establishes the objective reason to contract such a discharge.

(5) Where the law of a third country requires that certain financial instruments are held in custody by a local entity and there are no local entities that satisfy the delegation requirements laid down in point (ii) of paragraph (d) of subsection (1) of section 26, the depositary can discharge itself of liability provided that the following conditions are met:

- (a) the rules or instruments of incorporation of the AIF concerned expressly allow for such a discharge under the conditions set out in this subsection;
- (b) the investors of the relevant AIF have been duly informed of that discharge and of the circumstances justifying the discharge prior to their investment;
- (c) the AIF, or the AIFM on behalf of the AIF instructed the depositary to delegate the custody of such financial instruments to a local entity;
- (d) there is a written contract between the depositary and the AIF or the AIFM acting on behalf of the AIF, which expressly allows such a discharge;
- (e) there is a written contract between the depositary and the third party that expressly transfers the liability of the depositary to that local entity and makes it possible for the AIF or the AIFM acting on behalf of the AIF to make a claim against that local entity in

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respect of the loss of financial instruments or for the depositary to make such a claim on their behalf.

(6) Liability to the investors of the AIF may be invoked directly or indirectly through the AIFM, depending on the legal nature of the relationship between the depositary, the AIFM and the investors.

Information
obtained by the
depositary.

28. The depositary shall make available to its competent authorities, on request, all information which it has obtained while performing its duties and that may be necessary for the competent authorities of the AIF or the AIFM. If the Commission is the competent authority of the depositary, but not the competent authority of the AIF or the AIFM, the Commission shall share the information received without delay with the competent authorities of the AIF and the AIFM.

PART IV

TRANSPARENCY REQUIREMENTS

Annual Report.

29.-(1) An AIFM shall, for each of the EU AIFs it manages and for each of the AIFs it markets in the Union, make available an annual report for each financial year no later than six months following the end of the financial year. The annual report shall be provided to investors on request. An AIFM of the Republic shall make available the annual report to the Commission, and where applicable to the competent authorities of the home Member State of the AIF.

(2) Where the AIF is required to make public an annual financial report in accordance with the Transparency Requirements (Securities admitted to Trading on a Regulated Market) Law or in accordance with the national legislation of another Member State which harmonises the Directive 2004/109/EC, only such additional information referred to in subsection (3) of this section needs to be provided to investors on request, either

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separately, or as an additional part of the annual financial report. In the latter case the annual financial report shall be made public no later than four months following the end of the financial year.

(3) The annual report shall, at least, contain the following:

- (a) a balance sheet or a statement of assets and liabilities of the AIF;
- (b) and income and expenditure account of the AIF for the financial year;
- (c) a report on the activities of the AIF of the financial year;
- (d) any material changes in the information listed in section 30 during the financial year covered by the report;
- (e) the total amount of remuneration for the financial year, split into fixed and variable remuneration, paid by the AIFM to its staff, and number of beneficiaries, and where relevant, carried interest paid by the AIF;
- (f) the aggregate amount of remuneration broken down by senior management and members of staff of the AIFM whose actions have a material impact on the risk profile of the AIF.

(4) The accounting information given in the annual report -

- (a) shall be prepared in accordance with the accounting standards of the home Member State of the AIF, or in accordance with the accounting standards of the third country where the AIF is established and with the accounting rules laid down in the AIF

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rules or instruments of incorporation; and

- (b) shall be audited by an auditor and the auditor's report, shall be reproduced in full in the annual report.

(5) By way of derogation of paragraph (b) of subsection (4), the AIFM marketing non-EU AIFs to subject the annual reports of those AIFs to an audit meeting international auditing standards in force in the country where the AIF has its registered office.

Disclosure to investors.

30.-(1) AIFMs shall, for each of the EU AIFs that they manage and for each of the AIFs that they market in the Union make available to AIF investors, in accordance with the AIF rules or instruments of incorporation, the following information before they invest in the AIF, as well as any material changes thereof :

- (a) a description of the investment strategy and objectives of the AIF, information on where any master AIF is established and where the underlying funds are established if the AIF is a fund of funds, a description of the types of assets in which the AIF may invest, the techniques it may employ and all associated risks, any applicable investment restrictions, the circumstances in which the AIF may use leverage, the types and sources of leverage permitted and the associated risks, any restrictions on the use of leverage and any collateral and asset reuse arrangements, and the maximum level of leverage which the AIFM is entitled to employ on behalf of the AIF;
- (b) a description of the procedures by which the AIF may change its investment strategy or investment policy or both;
- (c) a description of the main legal implications of the contractual

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relationship entered into for the purpose of investment, including information on jurisdiction, on the applicable law and on the existence or not of any legal instruments providing for the recognition and enforcement of judgments in the territory where the AIF is established;

- (d) the identity of the AIFM, the AIF's depositary, auditor and any other service providers and a description of their duties and the investors' rights;
- (e) a description of how the AIFM is complying with the requirements of subsection (7) of section 9;
- (f) a description of any delegated management function as referred to in subsection (5) of section 6 by the AIFM and any safekeeping function delegated by the depositary, the identification of the delegate and any conflicts of interest that may arise from such delegations;
- (g) a description of the AIF's valuation procedure and of the pricing methodology for valuing assets, including the methods used in valuing hard-to-value assets in accordance with section 19;
- (h) a description of the AIF's liquidity risk management, including the redemption rights both in normal and in exceptional circumstances, and the existing redemption arrangements with investors;
- (i) a description of all fees, charges and expenses and of the maximum amounts thereof which are directly or indirectly borne by investors;

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- (j) a description of how the AIFM ensures a fair treatment of investors and, whenever an investor obtains preferential treatment or the right to obtain preferential treatment, a description of that preferential treatment, the type of investors who obtain such preferential treatment and, where relevant, their legal or economic links with the AIF or AIFM;
- (k) the latest annual report referred to in section 29;
- (l) the procedure and conditions for the issue and sale of units;
- (m) the latest net asset value of the AIF or the latest market price of the unit of the AIF, in accordance with section 19;
- (n) where applicable, the historical performance of the AIF;
- (o) the identity of the prime broker and a description of any material arrangements of the AIF with its prime brokers and the way the conflicts of interest in relation thereto are managed and the provision in the contract with the depositary on the possibility of transfer and reuse of AIF assets, and information about any transfer of liability to the prime broker that may exist;
- (p) a description of how and when the information required under subsections for (4) and (5) of this section will be disclosed.

(2) The AIFM shall inform the investors before they invest in the AIF of any arrangement made by the depositary to contractually discharge itself of liability in accordance with subsection (4) of section 27. The AIFM shall also inform investors of any changes with respect to depositary liability without delay.

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114(I) of 2005
144(I) of 2012.

(3) Where the AIF is required to publish a prospectus in accordance with the Public Offer and Prospectus Law of 2005 or in accordance with the national legislation of another Member State which harmonises the Directive 2003/71/EC, only such information referred to in subsections (1) and (2) of this section, which is in addition to that contained in the prospectus needs to be disclosed separately or as additional information in the prospectus.

(4) AIFMs shall, for each of the EU AIFs that they manage and for each of the AIFs that they market in the Union, periodically disclose to investors:

- (a) the percentage of the AIF's assets which are subject to special arrangements arising from their illiquid nature;
- (b) any new arrangements for managing the liquidity of the AIF;
- (c) the current risk profile of the AIF and the risk management systems employed by the AIFM to manage those risks.

(5) AIFMs managing EU AIFs employing leverage or marketing in the Union AIFs employing leverage shall, for each such AIF disclose, on a regular basis -

- (a) any changes to the maximum level of leverage which the AIFM may employ on behalf of the AIF as well as any right of the reuse of collateral or any guarantee granted under the leveraging arrangement; and
- (b) the total amount of leverage employed by that AIF.

Reporting
obligations to
the
Commission.

31.-(1) AIFMs of the Republic shall regularly report to the Commission on the principal markets and instruments in which it trades on behalf of the AIFs they manage. AIFMs of the Republic shall include in these reports

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information on -

- (a) the main instruments in which it is trading on behalf of the AIF;
and
- (b) the markets of which it is a member or where it actively trades;
and
- (c) on the principal exposures and most important concentrations of
each of the AIFs it manages.

(2) AIFMs of the Republic shall, for each of the EU AIFs it manages and for each of the AIFs it markets in the Union, provide the following information to the Commission:

- (a) the percentage of the AIF's assets which are subject to special arrangements arising from their illiquid nature;
- (b) any new arrangements for managing the liquidity of the AIF;
- (c) the current risk profile of the AIF and the risk management systems employed by the AIFM to manage the market risk, liquidity risk, counterparty risk and other risks including operational risk;
- (d) information on the main categories of assets in which the AIF invested;
- (e) the results of the stress tests performed in accordance with paragraph (b) of subsection (3) of section 16 and subsection (1) of section 17.

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(3) The AIFM shall, on request, provide the following documents to the Commission:

- (a) an annual report for each EU AIF managed by the AIFM and of each AIF marketed by it in the Union, for each financial year in accordance with subsections (1) and (2) of section 29;
- (b) at the end of each quarter a detailed list of all AIFs which the AIFM manages.

(4) An AIFM of the Republic, managing AIFs employing leverage on a substantial basis, shall make available to the Commission -

- (a) information about the overall level of leverage employed by each AIF it manages; and
- (b) a break-down between leverage arising from borrowing of cash or securities and leverage embedded in financial derivatives; and
- (c) information regarding the extent to which the AIF's assets have been reused under leveraging arrangements; and
- (d) the identity of the five largest sources of borrowed cash or securities for each of the AIFs managed by the AIFM, and the amounts of leverage received from each of those sources for each of those AIFs.

(5) Non-EU AIFM, for which the Republic is the member state of reference, shall make available to the Commission the information referred to in subsection (4), only for the EU AIFs it manages and for the non-EU AIFs it markets in the Union.

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(6) Where the Commission considers it is necessary for the effective monitoring of systemic risk, it may require the AIFM of the Republic to disclose additional information to that described in this section, on a periodic as well as on an ad-hoc basis. The Commission shall inform ESMA about the additional information requirements.

(7) The Commission may, by directive, impose to the AIFMs of the Republic additional reporting requirements, after ESMA's request in accordance with the provisions of the second sub-paragraph of paragraph 5 of Article 24 of the Directive 2011/61/EU.

PART V – AIFMs MANAGING SPECIFIC TYPES OF AIF

CHAPTER 1

AIFMs managing leveraged AIFs

Use of information by the Commission, supervisory cooperation and limits to leverage.

32.-(1) The Commission uses the information collected under section 31 for the purposes of identifying the extent to which the use of leverage contributes to the built-up of systemic risk in the financial system, risks of disorderly markets or risks to the long-term growth of the economy.

(2) The Commission, as the competent supervisory authority of every AIFM established in the Republic shall ensure that -

- (α) all information gathered under section 31 in respect of all AIFMs under its supervision and the information gathered under section 7, is made available to the competent authorities of other relevant Member States, ESMA and the ESRB by means of the procedures set out in section 77; and

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(b) any information regarding an AIFM under its responsibility or an AIF managed by that AIFM that this AIFM or AIF could potentially constitute an important source of counterparty risk to a credit institution or other systemically relevant institutions in other Member States, shall be provided, without delay, to the competent authorities of other Member States directly concerned, by means of the procedures set out in section 77 and bilaterally, through cooperation agreements.

(3) The AIFM shall demonstrate that the leverage limits set by it for each AIF it manages are reasonable and that the AIF complies with those limits at all times. The Commission shall assess the risks that the use of leverage by an AIFM of the Republic with respect to the AIFs it manages could entail, and, where deemed necessary, in order to ensure the stability and integrity of the financial system, after having notified ESMA, the ESRB and the competent authorities of the relevant AIF, shall impose limits to the level of leverage that the AIFM is entitled to employ or other restrictions on the management of the AIF to limit the extent to which the use of leverages contributes to the build-up of systemic risk in the financial system or risks of disorderly markets. The Commission shall duly inform ESMA, the ESRB and the competent authorities of the Member State of the AIF, of actions taken in this respect through the procedures set out in section 77.

(4) The Commission shall make the notification referred to in subsection (3) not less than ten working days before the proposed measure is intended to take effect or to be renewed. The notification shall include details of the proposed measure, the reasons for the measure and when the measure is intended to take effect. In exceptional circumstances, the Commission may decide that the proposed measure takes effect within the period referred to in the first sentence.

(5) The Commission, before taking action to apply the measures referred

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to in subsection (3) of this section, shall take into account any relevant advice issued by ESMA in accordance with paragraph 6 and/or paragraph 7 of Article 25 of Directive 2011/65/EU. The Commission, may, however, take action, in spite of the fact that ESMA advises the contrary. In such a case, it shall inform ESMA, stating the reasons for its decision.

CHAPTER 2

Obligations for AIFMs managing AIFs which acquire control of non-listed companies and issuers

Scope of application of this Chapter.

33.-(1) Subject to subsection (2), this Chapter shall apply to the following:

- (a) AIFMs managing one or more AIFs which either individually or jointly on the basis of an agreement aimed at acquiring control, acquire control of a non-listed company in accordance with subsection (5);
- (b) AIFMs cooperating with one or more AIFMs on the basis of an agreement pursuant to which the AIFs managed by those AIFMs jointly, acquire control of a non-listed company in accordance with subsection (5).

(2) This Chapter shall not apply where the non-listed companies concerned are -

- (a) small and medium-sized enterprises within the meaning of Article 2(1) of the Annex to Commission's Recommendation 2003/61/EC concerning the definition of micro, small and medium sized enterprises; or
- (b) special purpose vehicles with the purpose of purchasing, holding

OJ No: L 124,
20.5.2003,
p. 36.

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or administering real estate.

(3) Without prejudice to subsections (1) and (2) of this section, section 34(1) shall also apply to AIFMs managing AIFs that acquire a non-controlling participation in non-listed companies.

(4) Subsections (1) and (2) of section 35 and section 37 shall apply also to AIFMs managing AIFs that acquire control over issuers. For the purposes of those Sections, subsections (1) and (2) of this section shall apply mutatis mutandis.

(5) For the purposes of this Chapter, for non-listed companies, control shall mean more than 50% of the voting rights of the companies, even if the exercise of this right is suspended. When calculating the percentage of voting rights held by the relevant AIF, in addition to the voting rights held directly by the relevant AIF, the voting rights of the following shall be taken into account, subject to control as referred to in the previous sentence being established:

- (a) an undertaking controlled by the AIF;
- (b) the natural or legal persons acting on their own name but on behalf of the AIF or on behalf of an undertaking controlled by the AIF.

(6) Notwithstanding the definition of 'control' of section 2(1) of this Law, for the purpose of section 35(1), (2) and (3) and of section 37 of this Law, in regard to issuers, control shall be determined in accordance with section 13 of the Public Offer and Prospectus Law.

41(I) of 2007.

47(I) of 2009.

(7) This Chapter shall apply subject to the conditions and restrictions set

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out in section 67 of the Establishing a General Framework for Informing and Consulting Employees Law and without prejudice to any stricter rules adopted in the legal framework of Cyprus, with respect to the acquisition of holdings in issuers and non-listed companies in the Republic.

Notification of the acquisition of major holdings and control on non-listed companies.

34.-(1) An AIFM of the Republic, that manage an AIF that acquires, disposes of or holds shares of a non-listed company, shall notify the Commission of the proportion of voting rights of the non-listed company held by the AIFs any time when that reaches, exceeds or falls below the thresholds of 10%, 20%, 30%, 50% and 75%.

(2) An AIFM, that manages an AIF, that acquires individually or jointly, control over a non-listed company pursuant to section 33(1) in conjunction with subsections (5) and (6) of that section, the AIFM managing such AIF shall notify the following of the acquisition of control by the AIF:

- (a) the non-listed company;
- (b) the shareholders of this company, of which the identities and addresses are available to the AIFM or can be made available by the non-listed company or through a register to which the AIFM has or can obtain access;
- (γ) the competent authority of the home Member State of the AIFM.

(3) The notification required under subsection (2) shall contain the following additional information:

- (a) the resulting situation in terms of voting rights;
- (b) the conditions subject to which control was acquired, including information about the identity of the different shareholders

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involved, any natural person or legal entity entitled to exercise voting rights on their behalf and, if applicable, the chain of undertakings through which voting rights are effectively held;

(c) the date on which control was acquired.

(4) In its notification to the non-listed company, in accordance with paragraph (a) of subsection (2), the AIFM shall request the board of directors of the company to inform the employees' representatives or, where there are none, the employees themselves, without undue delay of the acquisition of control by the AIF managed by the AIFM and of the information referred to in subsection (3). The AIFM shall use its best efforts to ensure that the employees' representatives or, where there are none, the employees themselves, are duly informed by the board of directors in accordance with this section.

(5) The notifications referred to in subsections (1), (2) and (3) shall be made as soon as possible, but no later than ten working days after the date on which the AIF has reached, exceeded, or fallen below the relevant threshold or has acquired control over the non-listed company.

Disclosure in
case of
acquisition of
control

35.-(1) When an AIF acquires, individually or jointly, control of a non-listed company or an issuer pursuant to section 33(1), in conjunction with subsections (5) and (6) of this section, the AIFM managing such AIF shall make the information referred to in subsection (2) of this section available to:

- (a) the company concerned;
- (b) the shareholders of the company of which the identities and addresses are available to the AIFM or can be made available by the company or through a register to which the AIFM has or can obtain access;

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- (c) the competent authority of the home Member State of the AIFM;
- (d) the competent authority of the home Member State of the non-listed company, which the Commission may designate for this purpose, by a directive.

(2) The AIFM shall make available in accordance with subsection (1) -

- (a) the identity of the AIFMs which either individually or in agreement with other AIFMs manage the AIFs that have acquired control; and
- (b) the policy for preventing and managing conflicts of interest, in particular between the AIFM, the AIF and the company, including information about the specific safeguards established to ensure that any agreement between the AIFM and/or the AIF and the company is concluded at arm's length; and
- (c) the policy for external and internal communication relating to the company in particular as regards employees.

(3) In its notification to the company in accordance with paragraph (a) of subsection (1), the AIFM shall request the board of directors of the company to inform the employees' representatives, or where there are none, the employees themselves, without undue delay of the information referred to in subsection (2). The AIFM shall use its best efforts to ensure that the employees' representatives or, where there are none, the employees themselves, are duly informed by the board of directors in accordance with this section.

(4) When an AIF acquires, individually or jointly, control of a non-listed

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company pursuant to subsection (1) of section 33, in conjunction with subsections (5) and (6) of that section, the AIFM managing such AIF shall ensure that the AIF, or the AIFM, acting on behalf of the AIF, disclose its intentions with regard to the future business of the non-listed company and the likely repercussions on employment, including any material change in the conditions of employment, to -

- (a) the non-listed company; and
- (b) the shareholders of the non-listed company of which the identities and addresses are available to the AIFM or can be made available by the non-listed company or through a register to which the AIFM has or can obtain access.

(5) In the case described in subsection (4), the AIFM managing the relevant AIF shall use its best efforts to ensure that the board of directors of the non-listed company makes available the information set out in subsection (4) to the employees' representatives or, there are none, the employees themselves, of the non-listed company.

(6) An AIFM, managing an AIF that acquires control in a non-listed company in accordance with subsection (1) of section 33, in conjunction with subsections (5) and (6) of that article, shall provide the Commission and the AIF's investors information on the financing of the acquisition.

Specific provisions regarding the annual report of AIFs exercising control of non-listed companies

36.-(1) When an AIF acquires, individually or jointly, control of a non-listed company pursuant to subsection (1) of section 33, in conjunction with subsections (5) and (6) of that section, the AIFM managing such AIF shall -

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- (a) request and use its best efforts to ensure that the annual report, drawn up in accordance with subsection (2) of this section, is made available by the board of directors or any other management body of the non-listed company to the employees' representatives or, where there are none, to the employees themselves within the period such annual report has to be drawn up in accordance with the Company Law; or
- (b) for each such AIF, include in the annual report provided for in section 29 the information referred to in subsection (2) of this section relating to the relevant non-listed company.

(2) The additional information to be included in the annual report of the company or the AIF, in accordance with subsection (1) of this section, shall include at least a fair review of the development of the company's business representing the situation at the end of the period covered by the annual report. The report shall also give indication of -

- (a) any important events that have occurred since the end of the financial year; and
- (b) the company's likely future development; And
- (c) the information concerning acquisitions of own shares prescribed by section 57D (2) of the Company Law.

(3) The AIFM managing the relevant AIF shall either -

- (a) request and use its best efforts to ensure that the board of directors or any other management body of the non-listed company makes available the information referred to in paragraph (b) of subsection (1) of this section relating to the

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company concerned, to the employees' representatives or, if there are none, to the employees themselves within the period referred to in subsections (1) or (2) accordingly of section 29; or

- (b) make available the information referred to in paragraph (a) of subsection (1) of this section, to the investors of the AIF, in so far as already available, within the period referred to in subsection (1) or (2) of section 29 and, in any event, no later than the date on which the annual report of the non-listed company is drawn up in accordance with the national applicable law.

Asset stripping. 37.-(1) When an AIF, individually or jointly, acquires control of a non-listed company or an issuer pursuant to subsection (1) of section 33, in conjunction with subsections (5) and (6) of that section, the AIFM managing such an AIF shall for a period of twenty four months following the acquisition of control of the company by the AIF -

- (a) not be allowed to facilitate, support or instruct any distribution, capital reduction, share redemption and/or acquisition of own shares by the company as described in subsection (2) of this section; and
- (b) in so far as the AIFM is authorised to vote on behalf of the AIF at the meetings of the governing bodies of the company, not vote in favour of a distribution, capital reduction, share redemption and/or acquisition of own shares by the company as described in subsection (2) of this section; and
- (c) in any event use its best efforts to prevent distributions, capital reductions, share redemptions and/or the acquisition of own shares by the company as described in subsection (2) of this section.

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(2) The obligations imposed on AIFMs pursuant to subsection (1), shall relate to the following:

- (a) any distribution to shareholders made when on the closing date of the last financial year the net assets as set out in the company's annual accounts are, or following such a distribution would become, lower than the amount of the subscribed capital plus those reserves which may be not distributed under the law or the statutes, on the understanding that where the uncalled part of the subscribed capital is not included in the assets shown in the balance sheet, this amount shall be deducted from the amount of subscribed capital;
- (b) any distribution to shareholders the amount of which would exceed the amount of the profits at the end of the last financial year plus any profits brought forward and sums drawn from reserves available for this purpose, less any losses brought forward and sums placed to reserve in accordance with the law or the statutes;
- (c) to the extent that acquisitions of own shares are permitted, the acquisitions by the company, including shares previously acquired by the company and held by it, and shares acquired by a person acting in his own name but on the company's behalf, that would have the effect of reducing the net assets below the amount mentioned in paragraph (a).

(3) For the purposes of subsection (2) of this section -

- (a) the term 'distribution' referred to in paragraphs (a) and (b) of subsection (2), shall include, in particular, the payment of

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dividends and of interest relating to shares; and

- (b) the provisions of capital reductions shall not apply on a reduction in the subscribed capital, the purpose of which is to offset losses incurred or to include sums of money in a non-distributable reserve provided that, following that operation, the amount of such reserve is not more than 10% of the reduced subscribed capital; and
- (c) the restriction set out in paragraph (c) of subsection (2) shall be subject to section 57B (1) (b) to (z) of the Company Law.

PART VI – RIGHTS OF AIFMs TO MANAGE AND MARKET EU AIFs IN THE UNION

Marketing of units of EU AIFs in the Republic by AIFMs of the Republic.

38.-(1) An AIFM of the Republic, authorised by the Commission in accordance with the provisions of this Law, may market units of any EU AIF that it manages in the Republic, as soon as the conditions laid down in this section are met. Where the EU AIF is a feeder AIF, the right to market in the Republic is subject to the condition that the master AIF is also an EU AIF which is managed by an EU AIFM which is authorised in accordance with the Directive 2011/61/EU.

(2) The AIFM of the Republic, which intends to market units of an EU AIF in accordance with subsection (1) of this section, shall submit a notification to the Commission in respect of the relevant AIF and the following documents or information:

- (a) a notification letter, including a programme of operations identifying the AIF the AIFM intends to market and information on where the AIF is established;

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- (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 section 30(1) 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 the case where the AIFM relies on activities of independent entities to provide investment services in respect of the AIF.

(3) Subject to subsections (1) and (2) of section 67, an AIFM of the Republic may market the units of the AIFs that it manages only to professional investors.

(4) Within twenty days following receipt of a complete notification file pursuant to subsection (2), the Commission shall inform the AIFM of the Republic whether it may start marketing the AIF identified in the notification of subsection (2) in the Republic. The Commission shall prevent the marketing of the AIF only if the AIFM's management of the AIF does not or will not comply with this Law or the AIFM otherwise does not or will not comply with this Law. In case of a positive decision, the AIFM may start marketing the AIF in the Republic from the date of the notification of the

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Commission to that effect. In so far as, the AIF is established in a Member State other than the Republic, the Commission shall also inform the competent authorities of the AIF that the AIFM may start marketing units of the AIF in the Republic.

(5) In the event of a material change to any of the particulars communicated in accordance with subsection (2), the AIFM shall give written notice of that change to the Commission, at least one month before implementing the change as regards any changes planned by the AIFM or immediate after the unplanned change has occurred.

(6) If, pursuant to a planned change, the AIFM's management of the AIF would no longer comply with this Law, or, the AIFM would otherwise no longer comply with this Law, the Commission shall inform the AIFM without undue delay that it is not to implement the change.

(7) If a planned change is implemented notwithstanding the provisions of subsections (5) and/or (6) of this section, or if an unplanned change has taken place pursuant to which the AIFM's management of the AIF no longer complies with this Law, or the AIFM otherwise no longer complies with this Law, the Commission shall take all due measures in accordance with section 71, including, if necessary, the express prohibition of marketing of the AIF.

(8) The Commission, may, by Directive, to determine any of the following:

- (a) the form and content of a model for the notification letter referred to in subsection (2);
- (b) the form of the written notice referred to in subsections (5) and (6) and of the notification of the measures taken in accordance with subsection (7).

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Marketing of units of EU AIFs in a Member State other than the Republic by an AIFM of the Republic

39.-(1) An AIFM of the Republic, authorised by the Commission in accordance with this Law, may market units of an EU AIF that it manages in a Member State other than the Republic as soon as the conditions laid down in this section are met. Where an EU AIF is a feeder AIF the right to market referred to in the previous sentence, is subject to the condition that the master AIF is also an EU AIF and is managed by an authorised EU AIFM authorised in accordance with Directive 2011/61/EU.

(2) An AIFM of the Republic, that intends to market units of an EU AIF in accordance with subsection (1) of this section, shall submit to the Commission, a notification in respect of the particular EU AIF, along with the following documents or information:

- (a) a notification letter, including a programme of operations identifying the AIF the AIFM intends to market and information on where the AIF is 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 section 30(1) for each AIF the AIFM intends to market;
- (g) the Member State in which the AIFM of the Republic intends to

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market the units of the AIF to professional investors;

- (h) information about arrangements made for the marketing of the AIF and, where relevant, information on the arrangements established to prevent units 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.

(3) Subject to subsections (1) and (2) of section 67, an AIFM of the Republic may market the units of the AIF it manages only to professional investors.

(4) Within twenty days from the date of receipt of the complete notification file referred to in subsection (2), the Commission shall transmit the complete notification file to the competent authorities of the Member State where it is intended that the AIF be marketed, including a statement from the Commission to the effect that the AIFM concerned is authorised to manage AIFs with the particular investment strategy. Such transmission shall occur only if the AIFM's management of the AIF complies with and will continue to comply with this Law and if the AIFM otherwise complies with this Law.

(5) Upon transmission of the notification file in accordance with subsection (4), the Commission shall, without delay, notify the AIFM of the Republic about the transmission. The AIFM of the Republic may start marketing the AIF in the host Member State as of the date of that notification. Where the AIF is established in a Member State other than the Republic, the Commission shall also notify the competent authorities of that Member State that the AIFM may start marketing the units of the AIF in the host Member State of the AIFM.

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(6) The arrangements referred to in paragraph (h) of subsection (2), shall be subject to the law and supervision of the host Member State of the AIFM.

(7) The notification letter referred to in subsection (2) and the statement referred to in subsection (4) are provided in a language customary in the sphere of international finance. Furthermore, electronic transmission and filing of the documents referred to in subsection (2) and the statement referred to in subsection (4) are accepted.

(8) In the event of a material change to any of the particulars communicated in accordance with subsection (2), the AIFM of the Republic shall give written notice of that change to the Commission at least one month before implementing a planned change, or immediately after an unplanned change has occurred. If the change is acceptable because it does not affect the compliance of the AIFM's management of the AIF with the provisions of this Law, or the AIFM's compliance with the provisions of this Law otherwise, the Commission shall allow the change and, shall, without delay, notify the competent authorities of the AIFM's host Member State of that change.

(9) If, pursuant to a planned change, the AIFM's management of the AIF would no longer comply with this Law, or the AIFM would otherwise no longer comply with this Law, the Commissions shall inform the AIFM without undue delay that it is not to implement the change.

(10) If a planned change is implemented notwithstanding subsections (8) and/or (9) of this section, or if an unplanned change has taken place pursuant to which the AIFM's management of the AIF would no longer comply with this Law or the AIFM otherwise would no longer comply with this Law, the Commission shall take all due measures in accordance with section 71, including, if necessary, the express prohibition of marketing of the AIF.

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- (11) The Commission may, by directive, determine any of the following:
- (a) the form and content of a model for the notification letter referred to in subsection (2);
 - (b) the form and content of a model for the statement referred to in subsection (4);
 - (c) the form of the transmission referred to in subsection (4);
 - (d) the form of the written notice referred to in subsections (8) and (9).

Marketing of units of EU AIFs in the Republic managed by an AIFM of another Member State.

40.-(1) An EU AIFM authorised by the competent authorities of a Member State other than the Republic, in accordance with Directive 2011/61/EU and for which the Republic is the host Member State, may market the units of any EU AIF that it manages, as soon as the conditions laid down in this article are met. Where the EU AIF is a feeder AIF the right to market in the Republic is subject to the condition that the master AIF is also an EU AF which is authorised by an EU AIFM in accordance with Directive 2011/61/EU.

(2) An EU AIFM, referred to in subsection (1) of this section, may start marketing the units of the AIF in the Republic, from the date of the notification of the AIFM by the competent authorities of its home member state, in accordance with paragraph 4 of Article 32 of Directive 2011/61/EU. The Commission shall accept electronic transmission and/or filing of the documents referred to in paragraph 3 of Article 32 of Directive 2011/61/EU.

(3) Arrangements referred to in point h) of Annex IV of Directive 2011/61/EU, which the AIFM, referred to in subsection (1) of this section,

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shall notify to the competent authorities of its home Member State in accordance with paragraph 2 of Article 2 of Directive 2011/61/EU, are subject to the law of the Republic and to the supervision of the Commission.

(4) Subject to section 67(1) and (2), an EU AIFM referred to in subsection (1) of this section, may market the units of the AIF it manages, only to professional investors.

Conditions for managing EU AIFs established in a Member State other than the Republic by an AIFM of the Republic.

41.-(1) An AIFM of the Republic may manage EU AIFs established in a Member State other than the Republic, directly or by establishing a branch, provided that the AIFM is authorised to manage that type of AIF.

(2) An AIFM intending to manage EU AIFs established in another Member State for the first time shall communicate the following information to the Commission:

- (a) the Member State in which it intends to manage AIFs directly or establish a branch;
- (b) a programme of operations stating in particular the services which it intends to perform and identifying the AIFs it intends to manage.

(3) If the AIFM of the Republic intends to establish a branch, it shall provide the following information in addition to that referred to in subsection (2):

- (a) the organisational structure of the branch;

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- (b) the address in the home Member State of the AIF from which documents may be obtained;
- (c) the names and contact details of the persons responsible for the management of the branch;

(4) The Commission, so long as the AIFM's management of the AIF complies, and will continue to comply with this Law and the AIFM otherwise complies with this Law -

- (a) shall, within one month of receiving the complete documentation in accordance with subsection (2) or within two months of receiving the complete documentation in accordance with subsection (3), transmit the complete documentation, including a statement to the effect that the AIFM concerned is authorised by the Commission, to the competent authorities of the host Member State of the AIFM; and
- (b) shall immediately notify the AIFM about the transmission in accordance with paragraph (a).

(5) In the event of a change to any of the information communicated to the Commission in accordance with subsections (2) and/or (3), the AIFM of the Republic shall give written notice of that change to the Commission at least one month before implementing planned changes, or immediately after an unplanned change has occurred. If the changes are acceptable because they do not affect the compliance of the AIFM's management of the AIF with this Law, or the compliance by the AIFM with this Law otherwise, the Commission shall allow the change and, without undue delay, shall inform the competent authorities of the host Member State of the AIFM of those changes.

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(6) If, pursuant to a planned change, the AIFM's management of the AIF would no longer comply with this Law or the AIFM would otherwise no longer comply with this Law, the Commission shall inform the AIFM without undue delay that it is not to implement the change.

(7) If a planned change is implemented notwithstanding the provisions of subsections (5) or (6) of this section, or if an unplanned change has taken place pursuant to which the AIFM's management of the AIF would no longer comply with this Law or the AIFM otherwise would no longer comply with this Law, the Commission shall take all due measures in accordance with section 71.

(8) The Commission may, by directive, specify any of the following:

- (a) the information to be notified in accordance with subsections (2) and (3);
- (b) to establish standard forms, templates and procedures for the transmission of information in accordance with subsections (2) and (3).

Conditions for managing AIFs established in the Republic by an AIFM of another Member State.

42.-(1) An AIFM established in a Member State other than the Republic, which is authorised in accordance with Directive 2011/61/EU, may manage AIFs established in the Republic either directly, or by establishing a branch, provided that the AIFM is authorised to manage that type of AIF.

(2) The AIFM referred to in subsection (1) of this section, which intends to manage AIFs established in the Republic for the first time, may start to provide its services in the Republic upon receipt of the transmission notification from the competent authorities of its home Member State in

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accordance with the third subparagraph of paragraph 4 of Article 33 of Directive 2011/61/EU.

(3) The Commission shall not impose any additional requirements to the AIFM referred to in subsection (1) for any matters that fall under the provisions of this Law.

PART VII – SPECIFIC RULES IN RELATION TO THIRD COUNTRIES

Conditions for AIFMs of the Republic which manage non-EU AIFs, which are not marketed in Member States.

43.-(1) An AIFM of the Republic may manage non-EU AIFs which are not marketed in the Union provided that -

- (a) the AIFM of the Republic complies with all the requirements established in this Law, except for sections 23 to 29 in respect of those AIFs; and
- (b) appropriate cooperation arrangements are in place between the Commission and the supervisory authorities of the third country where the non-EU AIF is established in order to ensure, at least, an efficient exchange of information that allows the Commission to carry out its duties in accordance with this Law.

(2) The Commission may, by Directive, specify the measures regarding the cooperation arrangements referred to in subsection (1), and determine the conditions of application of those measures.

Conditions for the marketing in the Republic, with a passport, of non-EU AIFs managed by an

44.-(1) An AIFM of the Republic, authorised in accordance with this Law, may market to professional investors in the Republic, units of non-EU AIFs it manages and of EU feeder AIFs that do not fulfil the requirements referred to in the second sentence of subsection (1) of section 38, as soon as the conditions laid down in this section are met.

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AIFM of the
Republic.

(2) An AIFM of the Republic shall comply with all the requirements established in this law, with the exception of Part VI. In addition the following conditions shall be met:

- (a) appropriate cooperation arrangements must be in place between the Commission and the supervisory authorities of the third country where the non-EU AIF is established in order to ensure at least an efficient exchange of information, taking into account subsections (2) to (4) of section 77 of this Law, that allows the Commission to carry out its duties in accordance with this Law;
- (b) the third country where the non-EU AIF is established is not listed as a Non- Cooperative Country and Territory by FATF;
- (c) the third country where the non-EU AIF is established has signed an agreement with the Republic and with each other Member State in which the units of the non-EU AIF are intended to be marketed, which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures that an effective exchange of information in tax matters, including any multilateral tax agreements.

(3) For the purposes of this section and of section 45 of this Law, the Commission, being the competent authority of the Republic, may act in accordance with second subparagraph of paragraph 2 of Article 35 of Directive 2011/61/EU.

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(4) If the AIFM of the Republic, referred to in subsection (1) of this section, intends to market units of the non-EU AIFs it manages to professional investors in the Republic, the AIFM shall submit a notification to the Commission in respect of each non-EU AIF that it intends to market, which shall comprise the documentation and information set out in subsection (2) of section 38.

(5) No later than 20 working days after receipt of a complete notification pursuant to subsection (4), the Commission shall inform the AIFM of the Republic whether it may start marketing the AIF identified in the notification in its territory. The AIFM of the Republic may start marketing the AIF as of the date of this notification. The Commission shall prevent the marketing of the AIF only if the AIFM's management of the AIF does not or will not comply with this Law or the AIFM otherwise does not comply with this Law. In case of a positive decision, the Commission shall also inform ESMA that the AIFM of the Republic may start marketing the units of the AIF in the Republic.

(6) If the AIFM of the Republic, referred to in subsection (1), intends to market units of the non-EU AIFs it manages, to professional investors in a Member State other than the Republic, the AIFM of the Republic shall submit a notification, which shall comprise the documentation and information referred to in subsection (2) of section 39, to the Commission in respect of each non-EU AIF that it intends to market.

(7) The Commission shall, no later than twenty working days after the date of receipt of the complete notification file referred to in subsection (6), transmit that complete notification file, including a statement to the effect that the AIFM concerned is authorised to manage AIFs with a particular investment strategy, to the competent authorities of the Member State where the AIF is intended to be marketed. Such transmission will occur only if the AIFM's management of the AIF complies and will continue to comply with

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this Law and that the AIFM otherwise complies with this Law.

(8) Upon transmission of the notification file in accordance with subsection (7), the Commission shall without delay, notify the AIFM about the transmission. The Commission shall also notify ESMA that the AIFM may start marketing the units of the AIF in the host Member State of the AIFM.

(9) Arrangements regarding the marketing of non-EU AIFs managed by an AIFM of the Republic in another Member State and, where relevant, information on the arrangements established to prevent units 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 to the AIF information about arrangements made for the marketing of AIFs, shall be subject to the law and supervision of the host Member States of the AIFM.

(10) The notification letter of the AIFM referred to in subsection (6) and the statement referred to in subsection (7) are provided in a language customary in the sphere of international finance and the electronic transmission of documents referred to in subsection (7) is also accepted by the Commission.

(11) In the event of a material change to any of the particulars communicated to the Commission in accordance with subsection (4) and/or (6) of this section, the AIFM of the Republic shall give written notice of that change to the Commission, at least one month before implementing a planned change or, immediately after an unplanned change has occurred. If pursuant to a planned change, the AIFM's management of the AIF would no longer comply with this Law, or the AIFM would no longer comply with this Law, the Commission shall inform the AIFM, without undue delay, that it is not to implement the change. If a planned change is implemented

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notwithstanding the provisions of this section referred to above, or if an unplanned change has taken place pursuant to which the AIFM's management of the AIF would no longer comply with this Law, or, the AIFM otherwise would no longer comply with this Law, the Commission shall take all due measures in accordance with section 71, including, if necessary the express prohibition of marketing of the AIF. If the changes do not affect the compliance of the AIFM's management of the AIF with this Law, or the compliance by the AIFM with this Law otherwise, the Commission shall accept the changes and shall, without delay, inform the competent authorities of the host Member State of the AIFM and, in so far as the changes concern the termination of the marketing of certain AIFs, ESMA.

(12) Subject to the provisions of subsections (1) and (2) of section 67, the AIFM referred to in subsection (1) of this section may market the units of the AIFs it manages only to professional investors.

Conditions for the marketing in the Republic, with a passport, of non-EU AIFs managed by an AIFM of a Member State other than the Republic.

45.-(1) An AIFM authorised in accordance with Directive 2011/61/EU in a Member State other than the Republic, may market to professional investors in the Republic, units of non-EU AIFs it manages and of EU feeder AIFs that do not fulfil the requirements referred to in the second sentence of subsection (1) of section 38 of this Law, as soon as the conditions laid down in the first subparagraph of paragraph 2 of Article 35 of Directive 2011/61/EU are met.

(2) Subject to the provisions of subsections (1) and (2) of section 67, the AIFM referred to in subsection (1) of this section may market the units of the AIFs it manages only to professional investors.

(3) The AIFM referred to in subsection (1) of this section, may start marketing the units of the AIF in the Republic as of the date of the transmission of the complete notification to the Commission by the

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competent authorities of its home Member State in accordance with paragraph 6 of Article 35 of Directive 2011/65/EU.

(4) Arrangements regarding the marketing of non-EU AIFs in the Republic managed by an AIFM of a Member State other than the Republic and, where relevant, information on the arrangements established to prevent units 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 to the AIF, information about arrangements made for the marketing of AIFs, shall be subject to the law of the Republic and to the supervision of the Commission.

(5) The Commission shall accept the notification letter referred to in paragraph 5 of Article 35 of Directive 2011/61/EU and the statement referred to in that paragraph, if this is provided in a language customary in the sphere of international finance. The electronic submission of documentation and information referred to in paragraph 6 of Article 35 of Directive 2011/61/EU is also acceptable.

Complementary provisions to sections 44 and 45.

46.-(1) The Commission may, by Directive, develop guidelines to determine the conditions of application of the measures adopted by the European Commission in accordance with paragraph 11 of Article 35 of Directive 2011/61/EU regarding the cooperation arrangements referred to point (a) of paragraph 2 of this Article.

(2) The Commission may, by directive, develop regulatory technical standards to determine any of the following:

- (a) the minimum content of the cooperation arrangements referred to in subsection (2) of section 44 so as to ensure that the exchange of information between the Commission and the

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competent authorities of the host or home Member State of the AIFM, respectively, so that the Commission will be able to exercise its supervisory and investigatory powers under this Law;

- (b) the procedures for coordination and exchange of information between the Commission, as the competent authority of the home Member State of the AIFM and the competent authorities of the host Member State of the AIFM and, respectively, between the competent authorities of the home Member State of the AIFM and the Commission, as the competent authority of the host Member State of the AIFM.

(3) The Commission may, by directive, develop draft implementing technical standards to determine:

- (a) the form and content of a model for the notification letter referred to in subsections (4) and (6) of section 44;
- (b) the form and content of a model for the statement referred to in subsection (7) of section 44;
- (c) the form of the transmission referred to in subsection (7) of section 44;
- (d) the form of the written notice referred to in subsection (11) of section 44.

(4) The Commission, as the competent authority of the Republic, may act in accordance with paragraph 15 of Article 35 of Directive 2011/61/EU.

Conditions for 47.-(1) Without prejudice to the provisions of section 44, an AIFM of the

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the marketing in the Republic, without a passport, of non-EU AIFs managed by an AIFM of the Republic.

Republic may market to professional investors in the Republic, units of non-EU AIFs it manages and EU feeder AIFs that do not fulfil the requirements of the second sentence of subsection (1) of section 38, provided that:

- (a) the AIFM of the Republic complies with all the requirements established in this Law with the exemption of sections 23 to 28, and ensures that one or more entities are appointed to carry out the duties referred to in section 24, which the AIFM shall not perform. The AIFM shall provide the Commission with information about the identity of those entities responsible for carrying out the duties referred to in section 24;
- (b) appropriate cooperation arrangements for the purpose of systemic risk oversight and in line with international standards are in place between the Commission and the supervisory authorities of the third country where the non-EU AIF is established in order to ensure an efficient exchange of information that allows the Commission to carry out its duties in accordance with this Law;
- (c) the third country where the non-EU AIF is established is not listed as a Non-Cooperative Country and Territory by FATF.

(2) The Commission may, by Directive, impose additional obligations on the AIFMs in respect of the marketing of units of non-EU AIFs to investors in the Republic for the purpose of this section.

(3) The Commission may, by Directive to transpose the act referred to in paragraph 4 of Article 36 of Directive 2011/61/EU.

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Conditions for the marketing in the Republic, without a passport, of non-EU AIFs managed by an AIFM of a Member State other than the Republic.

48.-(1) Without prejudice to the provisions of section 45 of this Law, an AIFM of a Member State other than the Republic, which is authorised in accordance with Directive 2011/61/EU, may market to professional investors in the Republic, units of non-EU AIFs it manages and EU feeder AIFs that do not fulfil the requirements of the second sentence of subsection (1) of section 38, provided that:

- (a) that AIFM complies with all the requirements established in this Law with the exemption of sections 23 to 28, and ensures that one or more entities are appointed to carry out the duties referred to in section 24, which the AIFM shall not perform. The AIFM shall provide its supervisory authorities with information about the identity of those entities responsible for carrying out the duties referred to in section 24;
- (b) appropriate cooperation arrangements, for the purpose of systemic risk oversight and in line with international standards, are in place between the competent authorities of the home Member State of the AIFM and the supervisory authorities of the third country where the non-EU AIF is established in order to ensure an efficient exchange of information that allows the competent authorities of the home Member State of the AIFM to carry out their duties in accordance with Directive 2011/61/EU;
- (c) the third country where the non-EU AIF is established is not listed as a Non-Cooperative Country and Territory by FATF.

(2) The Commission may, by Directive, impose additional obligations on

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the AIFMs referred to in subsection (1), in respect of the marketing of units of non-EU AIFs to investors in the Republic for the purpose of this section.

Authorisation and specific obligations for non-EU AIFMs intending to manage AIFs of the Republic or of another Member State and/or market their units in the Republic or in another Member State.

49.-(1) (a) Where the Republic is the Member State of reference of a non-EU AIFM in accordance to section 50, the non-EU AIFM may manage EU AIFs established in the Republic or in another Member State and/or market in the Republic units of the AIFs it manages either in accordance with sections 59 to 61 or in accordance with sections 62 and 63, only if it acquires prior authorisation by the Commission.

(b) The Commission grants authorisation to a non-EU AIFM referred to in paragraph (a), in accordance with the relevant provisions of this Law.

(2) A non-EU AIFM intending to obtain prior authorisation by the Commission in accordance with subsection (1), shall comply with this Law, with the exemption of Part VI. If and to the extent that compliance with a provision of this Law is incompatible with compliance with the law to which the non-EU AIFM and/or the non-EU AIF marketed in the Union is subject there shall be no obligation on the AIFM to comply with that provision of this Law if it can demonstrate that:

- (a) it is impossible to combine such compliance with compliance with a mandatory provision in the law to which the non-EU AIFM and/or the non-EU AIF marketed in the Republic is subject; and
- (b) the law to which the non-EU AIFM and/or the non-EU AIF is subject provides for an equivalent rule having the same

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regulatory purpose and offering the same level of protection to the investors of the relevant AIF; and

- (c) the non-EU AIFM and/or the non-EU AIF complies with the equivalent rule referred to in paragraph (b).

(3) A non-EU AIFM intending to obtain prior authorisation by the Commission in accordance with subsection (1), shall have a legal representative established in the Republic. The legal representative shall -

- (a) be the contact point of the AIFM in the Union and any official correspondence between the competent authorities and the AIFM and between the EU investors of the relevant AIF and the AIFM shall take place through that legal representative; and
- (b) perform the compliance function relating to the management and marketing activities performed by the AIFM under this Law together with the AIFM.

Determining the Republic as Member State of reference of a non-EU AIFM.

50.-(1) The Republic, as Member State of reference of a non-EU AIFM shall be determined as follows:

- (a) if the non-EU AIFM intends to manage only one EU AIF, or several EU AIFs established in the Republic and does not intend to market any AIF in accordance with sections 59 to 61 or sections 62 and 63, the Republic, as the home Member State of that or those AIFs, is deemed to be the Member State of reference and the Commission will be competent for the authorisation procedure and for the supervision of the AIFM;

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- (b) if the non-EU AIFM intends to manage several EU AIFs established in different Member States and does not intend to market any AIF in the Union, in accordance with sections 59 to 61 or with sections 62 and 63, the Member State of reference may be the Republic-
 - (i) if most of the AIFs are established in the Republic, or
 - (ii) if the largest amount of assets is being managed in the Republic;
- (c) if the non-EU AIFM intends to market only one EU AIF in only one Member State, the Member State of reference of the AIFM may be the Republic -
 - (i) either as the home Member State of the AIF, so long as the AIF is authorised or registered in the Republic, or as the Member State in which the AIFM intends to market the units of the AIF, or
 - (ii) as the Member State in which the AIFM intends to market the units of the AIF, if the AIF is not authorised or registered in the Republic;
- (d) if the non-EU AIFM intends to market only one non-EU AIF in the Republic only, the Member State of reference is the Republic;
- (e) if the non-EU AIFM intends to market only one EU AIF, but in different Member States, the Republic may be determined as Member State of reference -
 - (i) either as the home Member State of the AIF, so long as the

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- AIF is authorised or registered in the Republic, or as one of the Member States where the AIFM intends to develop effective marketing; or
- (ii) as one of the Member States where the AIFM intends to develop effective marketing, if the AIF is not authorised in the Republic;
- (f) if the non-EU AIFM intends to market only one non-EU AIF, but in different Member States, including the Republic, the Member State of reference of the AIFM shall be either the Republic or one of the other Member States;
- (g) if the non-EU AIFM intends to market several EU AIFs in the Union, the Member State of reference shall be the Republic -
- (i) in so far as those AIFs are all registered or authorised in the Republic or as the Member State where the AIFM intends to develop effective marketing for most of those AIFs; or
 - (ii) as the Member State where the AIFM intends to develop effective marketing for most of those AIFs, in so far as those AIFs are not all authorised or registered in the Republic;
- (h) if the non-EU AIFM intends to market several EU and non-EU AIFs, or several non-EU AIFs in the Union, and the AIFM intends to develop effective marketing for most of those AIFs in the Republic, then the Member State of reference of the AIFM shall be the Republic.

(2) In accordance with the criteria set out in paragraph (b), in point (i) of paragraph (c), in paragraph (e), in paragraph (f) and in point (i) of paragraph

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(g) of subsection (1) of this section, the Republic shall be one of the possible Member States of reference of a non-EU AIFM. In such a case, the non-EU AIFM which intends to manage EU AIFs without marketing them and/or market AIFs managed by it, in accordance, either, with sections 59 to 61, or in accordance with sections 62 and 63, shall submit a request to the Commission and to the competent authorities of all of the Member States that are possible Member States of reference in accordance with the applicable criteria of subsection (1) of this section, to determine its Member State of reference from among them. The Commission shall jointly decide with the other competent authorities the Member State of reference for the non-EU AIFM, within one month of receipt of such request. In case the Republic will be the Member State of reference, the Commission shall, without undue delay, inform the non-EU AIFM of that appointment. If the Commission fails to inform the non-EU AIFM of the decision made by the relevant competent authorities within seven days of the decision, or if the relevant competent authorities have not made a decision within the one month period, the non-EU AIFM may itself choose its Member State of reference based on the criteria set out in this subsection.

(3) The non-EU AIFM, for which the Republic is the Member State of reference, shall be able to prove its intention to develop effective marketing in the Republic or in another Member State, by disclosure of its marketing strategy to the Commission.

(4) The Commission, being the competent authority of the Republic, shall comply with paragraphs 5 and 6 of Article 38 of Directive 2011/61/EU.

Authorisation of
a non-EU AIFM
from the
Commission
when the
Republic has

51.-(1) After receiving an application for authorisation from a non-EU AIFM referred to in subsection (1) of section 49, the Commission shall assess whether the determination of the Republic as Member State of reference by the AIFM complies with the criteria laid down in section 50. If the Commission considers that this is not the case, it shall refuse the

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been
determined as
the Member
State of
reference.

authorisation request of the non-EU AIFM explaining the reasons for its refusal. If the Commission considers that the criteria of section 50 have been complied with, it shall notify ESMA, without undue delay, requesting advice on its assessment. In its notification to ESMA, the Commission shall provide ESMA with the justification by the non-EU AIFM of its assessment that the Republic is its Member State of reference and with information on the marketing strategy of the AIFM.

(2) The terms referred to in subsection (6) or (7) of section 8 of this Law shall be suspended, in accordance with the third subparagraph of paragraph 5 of Article 37 of Directive 2011/61/EU, during ESMA's examination of the Commission's assessment which has been notified to ESMA in accordance with subsection (1) of this section.

(3) If the Commission proposes to grant the authorisation referred to in subsection (1) of section 49, contrary to ESMA's advice, it shall inform ESMA, stating the reasons for insisting on its decision. In such a case and so long as the non-EU AIFM intends to market units of AIFs managed by it in Member States other than the Republic, which is its Member State of reference, the Commission shall also inform the competent authorities of those Member States thereof, stating its reasons for granting the authorisation. In so far as applicable, the Commission shall also inform the competent authorities of the home Member States of the AIFs managed by the AIFM thereof, about the authorisation granted to the non-EU AIFM and about the reasons for granting the authorisation.

(4) The Commission, as the competent authority of the Republic, may act in accordance with paragraph 6 of Article 37 of Directive 2011/61/EU.

Additional
conditions for

52.-(1) Without prejudice to subsection (4) of this section, the Commission shall grant authorisation to a non-EU AIFM referred to in subsection (1) of

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authorisation of a non-EU AIFM by the Commission. section 49 of this Law, only if the following additional conditions are met:

- (a) the non-EU AIFM indicates the Republic as Member State of reference in accordance with the criteria set out in section 50 of this Law, this proposal is supported by the disclosure of the marketing strategy and the procedure set out in subsection (1) of section 49 and subsections (1) to (3) of section 51 of this Law has been followed by the relevant competent authorities;
- (b) the AIFM has appointed a legal representative established in the Republic;
- (c) the legal representative shall, together with the non-EU AIFM, be the contact person of the non-EU AIFM for the investors of the relevant AIFs, for ESMA and for the competent authorities as regards the activities for which the AIFM is authorised in the Union and shall at least be sufficiently equipped to perform the compliance function pursuant to this Law;
- (d) appropriate cooperation arrangements are in place between the Commission, the competent authorities of the home Member State of the EU AIFs concerned and the supervisory authorities of the third country where the non-EU AIFM is established in order to ensure, at least, an efficient exchange of information that allows the competent authorities to carry out their duties in accordance with this Law;
- (e) the third country where the non-EU AIFM is established is not listed as a Non-Cooperative Country and Territory by FATF;

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- (f) the third country, where the non-EU AIFM is established has signed an agreement with the Republic, which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including any multilateral tax agreements;
- (g) the effective exercise by the competent authorities of their supervisory functions under this Law or the Directive 2011/61/EU, is neither prevented by the laws, regulations or administrative provisions of a third country governing the non-EU AIFM, nor by limitations in the supervisory and investigatory powers of that third country's supervisory authorities.

(2) For the authorisation referred to in subsection (1) of this section from the Commission, the provisions of Part II shall apply *mutatis mutandis* subject to the following criteria:

- (a) the information referred to in subsection (1) of section 7 shall be supplemented by -
 - (i) a justification by the non-EU AIFM of its assessment regarding the Member State of reference in accordance with the criteria set out in section 50 with information on the marketing strategy; and
 - (ii) a list of the provisions of this Law for which compliance by the non-EU AIFM is impossible as compliance by the AIFM with those provisions is, in accordance with subsection (2) of section 49, incompatible with compliance with a mandatory provision in the law to which the non-EU AIFM and/or the non-EU AIF marketed in the Union is subject;
 - (iii) written evidence based on the regulatory technical

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standards developed by ESMA that the relevant third country law provides for a rule equivalent to the provisions for which compliance is impossible, which has the same regulatory purpose and offers the same level of protection to the investors of the relevant AIFs and that the non-EU AIFM complies with that equivalent rule; such written evidence being supported by a legal opinion on the existence of the relevant incompatible mandatory provision in the law of the third country and including a description of the regulatory purpose and the nature of the investor protection pursued by it; and

- (iv) the name of the legal representative of the non-EU AIFM and the place where it is established;
- (b) the information referred to in subsection (2) of section 7 may be limited to the EU AIFs the non-EU AIFM intends to manage and to those AIFs managed by the AIFM that it intends to market in the Union with a passport;
- (c) paragraph (a) of subsection (2) of section 8 shall be without prejudice to subsection (2) of section 49;
- (d) paragraph (e) of subsection (2) of section 8 shall not apply;
- (e) paragraph (b) of subsection (6) of section 8 shall be read as including a reference to the information referred in paragraph (a) of this subsection.

(3) The Commission, being the competent authority of the Republic, may act in accordance with the second and/or third subparagraph of paragraph 7 and/or the second subparagraph of paragraph 8 of Article 37 of Directive

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2011/61/EU.

Notification to ESMA for any exemptions granted from compliance with certain provisions of this Law.

53.-(1)(a) In case the Commission, as the competent authority of the Member State of reference of the non-EU AIF, considers that the AIFM may rely on subsection (2) of section 49 to be exempted from compliance with certain provisions of this Law, shall, without undue delay, notify ESMA thereof. It shall support this assessment by the information provided by the AIFM in accordance with points (ii) and (iii) of paragraph (a) of subsection 2 of section 52.

(b) The term referred to in subsections (6) or (7) of section 8 of this Law shall be suspended during the ESMA review in accordance with the third subparagraph of paragraph 9 of Article 37 of Directive 2011/61/EU.

(2) If the Commission proposes to grant authorisation contrary to ESMA's advice referred to in subsection (1) of section 49, it shall inform ESMA stating its reasons. In such a case, if the non-EU AIFM intends to market the units of AIFs managed by it in Member States other than the Republic which is the Member State of reference, the Commission shall also inform the competent authorities of those Member States thereof, stating its reasons for granting the authorisation.

(3) The Commission, being the competent authority of the Republic, may act in accordance with the sixth subparagraph of paragraph 9 of Article 37 of the Directive 2011/61/EU.

Notification to ESMA for the authorisations granted and for the applications for authorisation that have been

54.-(1) The Commission shall, without undue delay, inform ESMA of the outcome of the initial authorisation process in accordance with subsection (2) of section 49, about any changes in the authorisation of the AIFM and any withdrawal of authorisation.

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rejected
regarding non-
EU AIFMs.

(2) The Commission shall inform ESMA about the applications for authorisation in accordance with subsection (1) of section 49 that it has rejected, providing data about the non-EU AIFM having asked for authorisation and the reasons for the rejection. The Commission shall treat as confidential the information of the central register kept by ESMA in accordance with the second subparagraph of paragraph 10 of Article 37 of Directive 2011/61/EU to which the Commission shall have access in accordance with the relevant provision of Directive 2011/61/EU.

Change in the
business
strategy of a
non-EU AIFM
which affects
the
determination of
the Member
State of
reference.

55.-(1) The authorisation granted by the Commission in accordance with subsection (1) of section 49 shall not be affected by the further business development of the non-EU AIFM in the Union. However, where the AIFM changes its marketing strategy within two years of its initial authorisation, and that change would have affected the determination of the Republic as Member State of reference, if the modified strategy had been the initial marketing strategy, the AIFM shall notify the Commission of the change, before implementing it and indicate its Member State of reference in accordance with the criteria set out in paragraph 4 of Article 37 of Directive 2011/61/EU and based on the new strategy. The non-EU AIFM, at the same time, shall provide information on its legal representative, including its name and the place where it is established. The legal representative shall be established in the new Member State of reference.

(2) The Commission shall assess whether the determination of the non-EU AIFM in accordance with subsection (1) is correct and shall notify ESMA thereof. In its notification to ESMA the Commission shall include the non-EU AIFM's justification of its assessment regarding the Member State of reference and information on the AIFM's new marketing strategy. ESMA

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shall issue advice on the assessment made by the Commission.

(3) After receipt of ESMA's advice in accordance with the third subparagraph of paragraph 11 of Article 37 of Directive 2011/61/EU, the Commission shall inform the non-EU AIFM, its original legal representative and ESMA of its decision.

(4)(a) Where the Commission agrees with the assessment made by the non-EU AIFM, it shall also inform the competent authorities of the new Member State of reference of the change and without undue delay, shall transfer a copy of the authorisation and the supervision file relating to the AIFM to the competent authorities of the new Member State of reference. From the date of transmission of the authorisation and supervision file, the Commission shall cease to be the competent authority for the supervision of the AIFM.

(b) The Commission shall be the competent authority for the supervision of a non-EU AIFM for which the Republic is the new Member State of reference from the date of the transmission of the authorisation and supervision file by the competent authority of its original Member State of reference in accordance with the fifth subparagraph of paragraph 11 of Article 37 of Directive 2011/61/EU.

(5) Where the Commission's final assessment is contrary to ESMA's advice referred to in subsection (3) -

- (a) the Commission shall inform ESMA thereof, stating the reasons for insisting to its assessment;
- (b) where the non-EU AIFM markets units of AIFs managed by it in Member States other than the Republic, which was its original Member State of reference, the Commission shall inform the competent authorities of those other Member States and the

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competent authorities of the home Member State of the AIF thereof, stating the reasons for insisting to its assessment.

(6) Where it appears from the actual course of the business development of the non-EU AIFM in the Union within two years after its authorisation from the Commission in accordance with subsection (1) of section 49, that the marketing strategy as presented by the AIFM at the time of its authorisation was not followed, that the AIFM made false statements in relation thereto, or the AIFM has failed to comply with the provisions of subsections (1) to (5) of this section when changing its marketing strategy, the Commission shall request the AIFM to indicate the Member State of reference based on its actual marketing strategy. In such a case the provisions of subsections (1) to (5) shall apply *mutatis mutandis*. If the AIFM does not comply with the Commission's request, the Commission shall withdraw its authorisation.

(7) Where the non-EU AIFM changes its marketing strategy after the period referred to in the second sentence of subsection (1) and intends to change its Member State of reference on the basis of its new marketing strategy, it shall submit a request to change its Member State of reference to the Commission. In such a case the procedure referred to in subsections (1) to (5) shall apply *mutatis mutandis*.

(8) The Commission, being the competent authority of the Republic, may act in accordance with the third subparagraph of paragraph 12 of Article 37 of Directive 2011/61/EU.

Applicable Law
in case of
disputes arising
regarding the
application of
sections 49 to
55.

56.-(1) Any dispute arising between the Commission, as the competent authority of the Republic, which is the Member State of reference of the non-EU AIFM and the AIFM shall be settled in accordance with the applicable law of and subject to the jurisdiction of the Republic.

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(2) Any disputes between the non-EU AIFM or the AIF and EU investors of the relevant AIF shall be settled in accordance with the applicable law of and subject to the jurisdiction of the Republic, so long as the Republic has been indicated as the Member State of reference of the AIFM.

Issue of
directives.

57.-(1) The Commission may, by directive, specify the procedure to be followed for the determination of the Republic as Member State of Reference.

(2) The Commission may, by directive:

- (a) develop guidelines to determine the conditions of application of the measures adopted by the European Commission in accordance with paragraph 15 of Article 37 of Directive 2011/61/EU;
- (b) develop regulatory technical standards to determine the minimum content of the cooperation arrangements referred to in paragraph (d) of subsection (1) of section 52 of this Law, so as to ensure that the Commission, as the competent authority of the Republic, which is the Member State of reference of the AIFM and the competent authorities of the host Member States of the AIFM receive sufficient information in order to be able to exercise their supervisory and investigatory powers under the Directive 2011/61/EU;
- (c) develop draft regulatory technical standards to specify the procedures for coordination and exchange of information between the Commission, as the competent authority of the Republic, which is the Member State of reference of the AIFM and the competent authorities of the host Member States of the

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AIFM;

- (d) develop draft regulatory technical standards for the determination of the form and content of the request referred to in subsection (7) of section 55 of this Law;
- (e) develop draft regulatory technical standards on the following:
 - (i) the manner in which an AIFM must comply with the requirements laid down in this Law, taking into account that the AIFM is established in a third country and, in particular the presentation of the information required in sections 29 to 31 of this Law;
 - (ii) the conditions under which the law to which a non-EU AIFM or a non-EU AIF is subject is considered to provide for an equivalent rule having the same regulatory purpose and offering the same level of protection to the relevant investors.

Rejection of request to exchange of information.

58. The Commission being the competent authority of the Republic may act in accordance with paragraph 19 of Article 37 of Directive 2011/61/EU.

Conditions for the marketing in the Republic, with a passport, of EU AIFs managed by non-EU AIFM, when the Member State of reference of the

59.-(1) A non-EU AIFM, duly authorised by the Commission in accordance with subsection (1) of section 49, may market the units of an EU AIF it manages to professional investors in the Republic, which is its Member State of reference, with a passport, as soon as the conditions laid down in this section are met.

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AIFM is the
Republic.

(2) In case the AIFM, referred to in subsection (1), intends to market units or shares of an EU AIF in the Republic, shall submit a notification to the Commission in respect of that AIF. The notification shall comprise the documentation and information referred to in subsection (2) of section 38.

(3) No later than twenty working days after the receipt of a complete notification pursuant to subsection (2), the Commission shall inform the AIFM referred to in subsection (1) whether it may start marketing the AIF identified in the relevant notification. The Commission may prevent the marketing of the AIF only if the AIFM's management of the AIF does not or will not comply with this Law or if the AIFM otherwise does not or will not comply with this Law. In the case of a positive decision by the Commission, the AIFM may start marketing the AIF in the Republic as of the date of the notification by the Commission to that effect. The Commission shall also inform ESMA and the competent authorities of the AIF that the AIFM may start marketing units or shares of the AIF in the Republic.

(4) The arrangements referred to in paragraph (h) of subsection (2) of section (39) shall be subject to the laws of the Republic and to the supervision of the Commission.

(5) In the event of a material change to any of the particulars communicated in accordance with subsection (2) of this section, accordingly, the AIFM referred to in subsection (1) shall give written notice of that change to the Commission at least one month before implementing a planned change, or immediately after an unplanned change has occurred. If, pursuant to a planned change, the AIFM's management of the AIF would no longer comply with this Law, or the AIFM would otherwise no longer comply with this Law, the Commission shall inform the AIFM, without undue delay,

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that it is not to implement the change. If a planned change is implemented notwithstanding the provisions of this section mentioned above, or if an unplanned change has taken place pursuant to which the AIFM's management of the AIF no longer complies with this Law or the AIFM otherwise no longer complies with this law, the Commission shall take all due measures in accordance with section 71, including, if necessary the express prohibition of marketing of the AIF. If the changes are acceptable because they do not affect compliance of the AIFM's management of the AIF with this Law, or compliance by the AIFM with this Law otherwise, the Commission shall, without delay, inform ESMA in so far as the changes concern the termination of the marketing of the relevant AIF or any additional AIFs being marketed.

(6) Subject to the provisions of subsections (1) and (2) of section 67, the AIFM referred to in subsection (1) of this section may market units of AIFs it manages only to professional investors.

(7) The Commission may, by directive, develop draft regulatory technical standards to determine the form and content of the notification letter referred to in subsection (2).

Conditions for the marketing in a Member State other than the Republic, with a passport, of EU AIFs managed by a non-EU AIFM, when the Member State of reference of the AIFM is the Republic.

60.-(1) A non-EU AIFM, duly authorised by the Commission in accordance with subsection (1) of section 49, may market the units of an EU AIF it manages to professional investors in a Member State other than the Republic, with a passport, as soon as the conditions laid down in this section are met.

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(2) In case the AIFM, referred to in subsection (1), intends to market units or shares of an EU AIF in a Member State other than the Republic, shall submit a notification to the Commission in respect of that AIF. The notification shall comprise the documentation and information referred to in subsection (2) of section 39.

(3) No later than twenty working days after the receipt of a complete notification pursuant to subsection (2), the Commission, as the competent authority of the Republic, which is the Member State of reference of the AIFM referred to in subsection (1), shall transmit the notification file to the competent authorities of the of the Member State where the units of the AIF are intended to be marketed. Such transmission shall occur only if the AIFM's management of the AIF complies and will continue to comply with this Law and that in general the AIFM complies with this Law. The Commission shall enclose a statement to the effect that the AIFM concerned is authorised to manage AIFs with a particular investment strategy.

(4) The notification letter referred to in subsection (2) and the statement referred to in subsection (3) are provided in a language customary in the sphere of international finance. The Commission may file or transmit electronically the documents referred to in subsection (5).

(5) Upon transmission of the notification file in accordance with subsection (3), the Commission shall, without undue delay, notify the AIFM of the transmission. The Commission shall also inform ESMA and the competent authorities of the relevant AIF that the AIFM may start marketing the units of the AIF in the relevant host Member State of the AIFM.

(6) Arrangements referred to in paragraph (h) of subsection (2) of section 39 are subject to the law and supervision of the host Member State of the AIFM referred to in subsection (1) of this section.

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(7) In the event of a material change to any of the particulars communicated in accordance with subsection (2) of this section, the AIFM referred to in subsection (1) shall give written notice of that change to the Commission, as the competent authority of the Republic, which is its Member State of reference, at least one month before implementing a planned change, or immediately after an unplanned change has occurred. If, pursuant to a planned change, the AIFM's management of the AIF would no longer comply with this Law, or the AIFM would otherwise no longer comply with this Law, the Commission shall inform the AIFM, without undue delay, that it is not to implement the change. If a planned change is implemented notwithstanding the provisions of this section mentioned above, or if an unplanned change has taken place pursuant to which the AIFM's management of the AIF no longer complies with this Law or the AIFM otherwise no longer complies with this law, the Commission shall take all due measures in accordance with section 71, including, if necessary the express prohibition of marketing of the AIF to the other Member States. If the changes are acceptable because they do not affect the compliance of the AIFM's management of the AIF with this Law, or the compliance by the AIFM with this Law otherwise, the Commission shall, without delay, inform ESMA in so far as the changes concern the termination of the marketing of the relevant AIF or any additional AIFs being marketed and the competent authorities of the host Member States of the AIFM of those changes.

(8) Subject to paragraph 1 of Article 43 of Directive 2011/61/EU, the AIFM referred to in subsection (1) of this section, may market units of the AIFs it manages only to professional investors.

(9) The Commission may, by directive, develop draft implementing technical standards to determine:

(a) the form and content of a model for the notification letter referred

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to in subsection (2);

- (b) the form and content of a model for the transmission and the statement referred to in subsection (3);
- (c) the form of the written notice referred to in subsection (7).

Conditions for the marketing in the Republic, with a passport, of EU AIFs managed by a non-EU AIFM, when the member state of reference of the AIFM is other than the Republic.

61.-(1) A non-EU AIFM, duly authorised by the competent authorities of its Member State of reference in accordance with paragraph 1 of Article 37 of Directive 2011/61/EU, may market the units of an EU AIF it manages to professional investors in the Republic, with a passport, as soon as the conditions laid down in this section are met.

(2) The Commission shall receive the notification file in accordance with paragraph 4 of Article 39 of Directive 2011/61/EU and the statement in accordance with the second subparagraph of paragraph 5 of Article 30 of Directive 2011/61/EU from the competent authorities of the Member State of reference of the AIFM.

(3) The Commission shall accept the electronic transmission and filing of the documents referred to in subsection (2) from the competent authorities of the Member State of reference of the AIFM referred to in subsection (1).

(4) The AIFM referred to in section (1) may start marketing the units of the AIFs in the Republic, as of the date it is notified by the competent

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authority of its Member State of reference of the transmission of the notification file to the Commission in accordance with subsection (2).

(5) Arrangements referred to in point (h) of Annex IV of Directive 2011/61/EU are subject to the laws of the Republic, as the host Member State of the AIFM referred to in subsection (1) and to the supervision of the Commission.

(6) The Commission shall be informed about a material change to any of the particulars communicated in accordance with paragraph 9 of Article 39 of Directive 2011/61/EU, by the competent authorities of the Member State of reference of the AIFM.

(7) Subject to subsections (1) and (2) of section 67, the AIFM referred to in subsection (1) of this section, may market units of the AIFs it manages only to professional investors.

(8) Any official correspondence between the Commission and the AIFM referred to in subsection (1), and between the investors in the Republic and the relevant AIF and the AIFM, shall take place through the legal representative of that AIFM, which is established in its Member state of reference.

Conditions for
the marketing in
the Republic or
in another
Member State,
with a passport,
of non-EU AIFs
managed by a
non-EU AIFM,
when the
Member State of

62.-(1) A non-EU AIFM, duly authorised by the Commission in accordance with subsection (1) of section 49, may market the units of a non-EU AIF it manages to professional investors in the Republic, with a passport, as soon as the conditions laid down in this section are met.

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reference of the
AIFM is the
Republic.

(2) In addition to the conditions of this Law that apply to EU AIFMs, a non-EU AIFM referred to in subsection (1) shall also meet the following conditions:

- (a) appropriate cooperation arrangements are in place between the Commission, as the competent authority of the Member State of reference of the AIFM and the competent authority of the third country where the non-EU AIFM is established, in order to ensure at least an efficient exchange of information that allows the Commission to carry out its duties in accordance with this Law;
- (b) the third country where the non-EU AIF is established, is not listed as a Non-Cooperative Country and Territory by FATF;
- (c) the third country where the non-EU AIF is established has signed an agreement with the Republic, as Member State of reference of that AIFM, and with each other Member State in which the units of the non-EU AIF are intended to be marketed which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters including any multilateral tax agreements.

(3) The AIFM referred to in subsection (1) of this section shall submit to the Commission, as the competent authority of its Member State of reference, a notification regarding the non-EU AIF, the units of which intends to market in the Republic. The notification shall include the documents and information referred to in subsection (2) of section 38.

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(4) No later than twenty working days after the receipt of a complete notification pursuant to subsection (3), the Commission, as the competent authority of the Republic, which is the Member State of reference of the AIFM referred to in subsection (1), shall inform the AIFM whether it may start marketing the AIF in the Republic. The Commission may prevent the marketing of the AIF only if the AIFM's management of the AIF does not or will not comply with this Law or the AIFM otherwise does not or will not comply with this Law. In the case of a positive decision, the AIFM may start marketing the AIF in the Republic, from the date of the notification by the Commission to that effect. The Commission shall also inform ESMA that the AIFM may start marketing the units of the AIF in the Republic.

(5) If the AIFM, referred to in subsection (1), intends to market the units of a non-EU AIF also in a Member State other than the Republic, which is its Member State of reference, the AIFM shall submit a notification to the Commission in respect of that AIF. The notification shall include the documents and information referred to in subsection (2) of section 39.

(6) No later than twenty working days after the receipt of a complete notification pursuant to subsection (6), the Commission, as the competent authority of the Republic, which is the Member State of reference of the AIFM referred to in subsection (1), shall transmit the notification file to the competent authorities of the of the Member State where the units of the AIF are intended to be marketed. Such transmission shall occur only if the AIFM's management of the AIF complies and will continue to comply with this Law and that in general the AIFM complies with this Law. The Commission shall enclose a statement to the effect that the AIFM concerned is authorised to manage AIFs with a particular investment strategy.

(7) The notification letter referred to in subsection (5) and the statement referred to in subsection (6) are provided in a language customary in the sphere of international finance. The Commission may file or transmit

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electronically the documents referred to in subsection (6).

(8) Upon transmission of the notification file in accordance with subsection (7), the Commission shall, without undue delay, notify the AIFM referred to in subsection (1) of the transmission. The Commission shall also inform ESMA and the competent authorities of the relevant AIF that the AIFM may start marketing the units of the AIF in the relevant host Member State of the AIFM.

(9) Arrangements referred to in paragraph (h) of subsection (2) of section 39 are subject to the law of the Republic and to the supervision of the Commission.

(10) In the event of a material change to any of the particulars communicated in accordance with subsections (3) or (5) of this section, the AIFM referred to in subsection (1) of this section shall give written notice of that change to the Commission, as the competent authority of the Republic, which is its Member State of reference, at least one month before implementing a planned change, or immediately after an unplanned change has occurred. If, pursuant to a planned change, the AIFM's management of the AIF would no longer comply with this Law, or the AIFM would otherwise no longer comply with this Law, the Commission shall inform the AIFM, without undue delay, that it is not to implement the change. If a planned change is implemented notwithstanding the provisions of this section mentioned above, or if an unplanned change has taken place pursuant to which the AIFM's management of the AIF no longer complies with this Law or the AIFM otherwise no longer complies with this law, the Commission shall take all due measures in accordance with section 71, including, if necessary the express prohibition of marketing of the AIF in the Republic or in the other Member States. If the changes are acceptable because they do not affect the compliance of the AIFM's management of the AIF with this Law, or the compliance by the AIFM with this Law otherwise, the

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Commission shall, without delay, inform ESMA in so far as the changes concern the termination of the marketing of the relevant AIF or any additional AIFs being marketed and the competent authorities of the host Member States of the AIFM of those changes.

(11) Subject to the provisions of subsections (1) and (2) of section 67, the AIFM referred to in subsection (1) of this section, may market the units of AIFs it manages only to professional investors.

(12) The Commission may, by directive, develop any of the following:

- (a) guidelines to determine the conditions of application of the measures adopted by the European Commission in accordance with paragraph 11 of Article 40 of Directive 2011/61/EU;
- (b) draft regulatory technical standards to determine the minimum content of the cooperation arrangements referred to in paragraph (a) of subsection (2) of this section, in order to be able to exercise its supervisory and investigatory powers under this Law;
- (c) draft regulatory technical standards to specify the procedures for coordination and exchange of information between the Commission, as the competent authority of the Republic, which is the Member State of reference of the AIFM and the competent authorities of the host Member State of the AIFM;
- (d) draft regularly technical standards to determine -

- (i) the form and content of a model for the notification letter referred to in subsections (3) and (5) of this section;
- (ii) the form and content of a model for the transmission and the statement referred to in subsection (6) of this section;
- (iii) the form of the written notice referred to in subsection (10) of this section.

(13) The Commission, being the competent authority of the Republic, may act in accordance with the second subparagraph of paragraph 2 and/or in accordance with paragraph 15 of Article 40 of Directive 2011/61/EU.

Conditions for the marketing in the Republic, with a passport, of non-EU AIFs managed by non-EU AIFM, when the Member State of reference of the AIFM is a Member State other than the Republic.

63.-(1) A non-EU AIFM, duly authorised by the competent authorities of its Member State of reference in accordance with paragraph 1 of section 37 of Directive 2011/61/EU, may market the units of a non-EU AIF it manages to professional investors in the Republic, with a passport, as soon as the conditions laid down in this section are met.

(2) In addition to the conditions of this Law that apply to EU AIFMs, a non-EU AIFM referred to in subsection (1) shall also meet the following conditions:

- (a) appropriate cooperation arrangements are in place between the competent authorities of the Member State of reference of the AIFM and the competent authority of the third country where the non-EU AIFM is established, in order to ensure at least an

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efficient exchange of information that allows the competent authorities of its Member State of reference to carry out their duties in accordance with this Directive 2011/61/EU;

- (b) the third country where the non-EU AIF is established, is not listed as a Non-Cooperative Country and Territory by FATF;
- (c) the third country where the non-EU AIF is established has signed an agreement with the Member State of reference of that AIFM, with the Republic and with each other Member State in which the units of the non-EU AIF are intended to be marketed which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters including any multilateral tax agreements.

(3) The Commission shall receive the notification file from the competent authorities of the Member State of reference of the AIFM referred to in subsection 1 of this section, including a statement to the effect that the AIFM concerned is authorised to manage AIFs with a particular investment strategy in accordance with paragraph 6 of Article 40 of Directive 2011/61/EU.

(4) The Commission shall accept the electronic transmission and filing of the documents referred to in subsection (3) from the competent authorities of the Member State of reference of the AIFM referred to in subsection (1).

(5) The AIFM referred to in section (1) may start marketing the units of the AIFs in the Republic, as of the date it is notified by the competent authority of its Member State of reference of the transmission of the notification file to the Commission in accordance with paragraph 6 of Article 40 of Directive 2011/61/EU.

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(6) Arrangements referred to in point (h) of Annex IV of Directive 2011/61/EU are subject to the laws of the Republic, as the host Member State of the AIFM referred to in subsection (1) and to the supervision of the Commission.

(7) Subject to subsections (1) and (2) of section 67, the AIFM referred to in subsection (1) of this section, may market units of the AIFs it manages only to professional investors.

(8) The Commission, being the competent authority of the Republic, may act in accordance with the second subparagraph of paragraph 2 and/or in accordance with paragraph 15 of Article 40 of Directive 2011/61/EU.

Conditions for managing AIFs established in a Member State other than the Republic, when the Republic is the member state of reference, by non-EU AIFMs.

64.-(1) A non-EU AIFM, duly authorised by the Commission in accordance with subsection (1) of section 49, may manage EU AIFs established in a Member State, other than the Republic, either directly or via the establishment of a branch, provided that the AIFM is authorised by the Commission to manage that type of AIF.

(2) The AIFM referred to in subsection (1), intending to manage EU AIFs established in a Member State other than the Republic, which is its Member State of reference, for the first time, shall communicate the following information to the Commission:

- (a) the Member State in which it intends to manage the AIF directly or establish a branch;

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- (b) a programme of operations stating in particular the services which it intends to perform and identifying the AIF it intends to manage.

(3) If the AIFM referred to in subsection (1), intends to establish a branch, it shall provide, in addition to the information requested in subsection (2), the following information;

- (a) the organisational structure of the branch;
- (b) the address in the home Member State of the AIFM from which documents may be obtained;
- (c) the names and the contact details of persons responsible for the management of the branch.

(4) The Commission shall, within one month of receiving the complete documentation in accordance with subsection (2) or within two months of receiving the complete documentation in accordance with subsection (3), transmit that documentation, including a statement to the effect that the AIFM concerned is authorised by the Commission, to the competent authorities of the host Member State of the AIFM referred to in subsection (1). Such transmission shall occur only if the AIFM's management of the AIF complies and will continue to comply with this Law and the AIFM otherwise complies with this Law. The Commission shall immediately notify the AIFM about the transmission. The Commission shall also inform ESMA that the AIFM may start managing the AIF in the host Member State of the AIFM.

(5) In the event of a change to any of the information communicated in accordance with subsection (2) or, if relevant with subsection (3) of this section, the AIFM referred to in subsection (1) shall give written notice to the Commission, as the competent authority of its Member State of reference,

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at least one month before implementing a planned change, or immediately after an unplanned change has occurred. If, pursuant to a planned change, the AIFM's management of the AIF would no longer comply with this Law, or the AIFM would otherwise no longer comply with this Law, the Commission shall inform the AIFM without undue delay that it is not to implement the change. If a planned change is implemented, notwithstanding the provisions of this subsection referred to above, or if an unplanned change has taken place pursuant to which the AIFM's management of the AIF no longer complies with this Law or the AIFM otherwise no longer complies with this Law, the Commission shall take all due measures in accordance with section 71, including, if necessary, the express prohibition of marketing of the AIF. If the changes are acceptable because they do not affect the compliance of the AIFM's management of the AIF with this Law or the compliance by the AIFM with this Law, the Commission shall, without undue delay, inform the competent authorities of the host Member State of the AIFM of those changes.

(6) The Commission may, by directive, develop any of the following:

- (a) draft regulatory technical standards to specify the information to be notified in accordance with subsections (2) and (3);
- (b) draft regulatory technical standards, to establish standard forms, templates and procedures for the transmission of information in accordance with subsections (2) and (3).

Conditions for managing AIFs established in the Republic by non-EU AIFMs,

65.-(1) A non-EU AIFM, duly authorised by the competent authorities of its Member State of reference, may manage EU AIFs established in the Republic, either directly or via the establishment of a branch, provided that the AIFM is authorised by the relevant competent authority to manage that

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when the type of AIF.
Member State of
reference of the
AIFM is other
than the
Republic.

(2) The Commission, as the competent authority of the host Member State of the AIFM referred to in subsection (1) of this section, shall receive from the competent authority of the Member State of reference of the AIFM, the notification file referred to in paragraph (2), or, if relevant, paragraph (3) of Article 41 of Directive 2011/61/EU, which shall also include the statement referred to in subparagraph 2 of paragraph 4 of Article 41 of Directive 2011/61/EU.

(3) The AIFM referred to in subsection (1), may start to provide its services in the Republic, upon receipt of the transmission notification by the competent authorities of its Member State of reference about the transmission of the notification file to the Commission.

(4) The Commission shall not impose any additional requirements on the AIFM referred to in subsection (1) in respect of the matters covered by this Law.

Conditions for
the marketing in
the Republic of
AIFs managed
by non-EU
AIFMs, without
a passport.

66.-(1) Without prejudice to sections 49 to 63, a non-EU AIFM may market to professional investors in the Republic units of AIFs it manages only if the following conditions are met:

- (a) the AIFM complies with sections 29 to 31 in respect of each AIF marketed by it pursuant to this section and with sections 33 to 37 where the AIFM falls within the scope of section 33(1). The

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competent authority shall be deemed to be the Commission and the investors shall be deemed to be the investors of the Republic;

- (b) appropriate cooperation arrangements for the purpose of systemic risk oversight and in line with international standards are in place between the Commission, the competent authorities of the EU AIFs concerned and the supervisory authorities of the third country where the non-EU AIFM is established and the supervisory authorities of the third country where the non-EU AIF is established in order to ensure an efficient exchange of information that allows the Commission to carry out its duties in accordance with this Law;
- (c) the third country where the non-EU AIFM or the non-EU AIF is established is not listed as a Non-Cooperative Country and Territory by FATF.

(2) The Commission, being the competent authority of the Republic, may act in accordance with the second subparagraph of paragraph 1 of Article 42 of Directive 2011/61/EU.

(3) The Commission may, by directive, impose additional obligations on the non-EU AIFMS in relation to the marketing of units of AIFs to professional investors in the Republic for the purposes of this section.

(4) The Commission may, by directive, develop guidelines to determine the conditions of application of the measures adopted in accordance with paragraph 3 of Article 42 of Directive 2011/61/EU.

PART VIII - MARKETING OF UNITS OF AIFs TO RETAIL INVESTORS IN THE REPUBLIC

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Marketing of units of AIFs by AIFMs to retail investors in the Republic.

67.-(1) Without prejudice to other instruments of Union law and/or the law of the Republic, the Commission may allow AIFMs to market to retail investors in the Republic, units of AIFs they manage in accordance with this Law, irrespective of whether such AIFs are marketed on a domestic or cross-border basis or whether they are EU or non-EU AIFs upon authorisation by the Commission.

(2)(a) The Commission may, by directive, determine the terms, the procedure and the conditions for the authorisation referred to in subsection (1) and the procedure for the marketing of the units of the AIFs in the Republic.

(β) For such authorisation, the Commission -

- (i) may impose additional obligations on the AIFM or the AIF than the requirements applicable to the AIFs marketed to professional investors in the Republic in accordance with this Law;
- (ii) may not impose stricter or additional requirements on EU AIFs established in a Member State other than the Republic and marketed in the Republic, than the requirements imposed on the AIFs of the Republic marketed domestically.

Disclosures to European Commission and ESMA regarding the marketing of AIFs to retail investors in the Republic.

68.-(1) So long as the Commission exercises the discretion of subsection (1) of section 67, shall, by 22 July 2014, inform the European Commission and ESMA of -

- (a) the types of AIF which AIFMs may market to retail investors in

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the Republic; and

- (b) any additional requirements imposed, for the marketing of AIFs to retail investors in the Republic.

(2) The Commission shall also inform the European Commission and ESMA of any subsequent changes to the information referred to in subparagraphs (a) and (b) of subsection (1).

PART IX – SUPERVISION RULES

CHAPTER 1

Designation, powers and redress procedures

Designation of the Commission as the competent authority.

69. The Commission shall be the designated competent authority for the supervision of the application of the provisions of the Law. The Commission shall adopt and apply appropriate procedures in order to supervise the compliance of the AIFMs, at all times, and with their obligations derived from this Law. The Commission shall inform ESMA and the European Commission that it has been designated as the competent authority of the Republic for the purposes of this Law and of Directive 2011/61/EU.

Responsibilities of the Commission and the competent authorities of the home and host Member State of

70.-(1) The Commission shall be responsible for the prudential supervision of an AIFM of the Republic, whether the AIFM manages and/or markets AIFs in another Member State or not, without prejudice to those provisions of Directive 2011/61/EU which confer the responsibility for supervision on the competent authorities of the host Member State of the AIFM.

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the AIFM.

(2) Where the Republic is the host Member State of an AIFM, the Commission shall supervise the compliance of the AIFM with sections 13 and 15, so long as it manages and/or markets units of AIFs, through a branch, in the Republic.

(3) Where an AIFM of the Republic manages and/or markets AIFs through a branch in the territory of another Member State, the supervision of the AIFM's compliance with Articles 12 and 14 of Directive 2011/61/EU shall be responsibility of the competent authorities of the host Member State of the AIFM.

(4) Where the Republic is the host Member State of an AIFM, the Commission may require an AIFM managing or marketing AIFs in its territory, whether or not through a branch, to provide the information necessary for the supervision of the AIFM's compliance with the applicable rules for which the Commission is responsible. Those requirements shall not be more stringent than those which the applicable law of the Republic imposes on AIFMs of the Republic for monitoring of their compliance with the same rules.

(5) Where the Republic is the host Member State of an AIFM and the Commission ascertains that the AIFM managing and/or marketing AIFs in the Republic, whether or not through a branch, is in breach of one of the rules in relation to which it has responsibility for supervising compliance, the Commission shall require the AIFM concerned to put an end to that breach and inform the competent authorities of the home Member State thereof.

(6) If the AIFM referred to in subsection (5) refuses to provide the Commission with information falling under its responsibility, or fails to take the necessary steps to put an end to the breach referred to in subsection (5),

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the Commission shall inform the competent authorities of its home Member State thereof.

(7) Where the Commission, as the competent authority responsible for the supervision of an AIFM of the Republic, is informed by the competent authorities of the host Member State of the AIFM, that it refuses to provide them with information falling under their responsibility or fails to take the necessary steps to put an end to the breach of one of the rules of the host Member State, it shall, at the earliest opportunity -

- (a) take all appropriate measures to ensure that the AIFM concerned provides the information requested by the competent authorities of its host Member State, or puts an end to the breach and shall communicate those measures to the competent authorities of the host Member State of the AIFM; and
- (b) request the necessary information from the relevant supervisory authorities in the third country.

The Commission shall communicate the nature of the measures referred to in paragraph (a), to the relevant competent authorities of the host Member State of the AIFM

(8) If, despite the measures taken by the competent authorities of the home Member State of the AIFM pursuant to paragraph 5 of Article 45 of the Directive 2011/61/EU, or because such measures prove to be inadequate or are not available in the Member State in question, the AIFM continues to refuse to provide the information requested by the Commission pursuant to subsection (4) of this section, or persists in breaching the applicable legal or regulatory provisions in force and in relation to which the Commission has

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the responsibility of supervising compliance in accordance with this Law, the Commission may, after informing the competent authorities of the home Member State of the AIFM, take appropriate measures, including those laid down in sections 71 and 74 of this Law, to prevent or penalise further irregularities, and in so far as necessary, to prevent that AIFM from imitating any further transactions in the Republic. Where the function carried out in the Republic is the management of AIFs, the Commission may require the AIFM to cease managing those AIFs.

(9) Where the Republic is the host Member State of an AIFM, if the Commission has clear and demonstrable grounds for believing that the AIFM is in breach of the obligations arising from rules in relation to which it has no responsibility for supervising compliance, it shall refer those findings to the competent authorities of the home Member State of the AIFM, which shall take appropriate measures in accordance with paragraph 7 of Article 45 of Directive 2011/61/EU.

(10) Where the Commission, as the competent authority responsible for the supervision of an AIFM of the Republic, is informed by the competent authorities of the host Member State of the AIFM, that they have clear and demonstrable grounds for believing that the AIFM is in breach of the obligations arising from rules in relation to which they have no responsibility for supervising compliance, it shall take appropriate measures, including, if necessary request additional information from the relevant supervisory authorities in third countries.

(11) If, despite the measures taken by the competent authorities of the home Member State of the AIFM referred to in subsection (9), or because such measures prove to be inadequate or because the competent authorities of the home Member State of the AIFM fail to act within reasonable time, the AIFM persists in acting in a manner that is clearly

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prejudicial to the interests of the investors of the relevant AIF in the Republic, the financial stability or the integrity of the market in the Republic, as the host Member State of the AIFM, the Commission, may, after informing the competent authorities of the home Member State of the AIFM, take all appropriate measures needed in order to protect the investors of the relevant AIF in the Republic, the financial stability or the integrity of the market in the Republic, including the possibility of preventing the AIFM concerned to further market the units of the relevant AIF in the Republic.

(12) The procedure laid down in subsections (9), (10) and (11) shall also apply in the event that the Commission, as the competent authority of the Republic, which is the host Member State of the AIFM, has clear and demonstrable grounds for disagreement with the authorisation of a non-EU AIFM by the Member State of reference.

(13) The Commission, being the competent authority of the Republic, may act in accordance with paragraph 10 of Article 45 of Directive 2011/61/EU.

Powers of the
Commission.

71.-(1) The Commission has all supervisory and investigatory powers that are necessary for the exercise of its functions. Such powers shall be exercised in any of the following ways:

- (a) directly;
- (b) in collaboration with other authorities;
- (c) under its responsibility by delegation to entities to which tasks have been delegated;
- (d) by application to the competent judicial authorities.

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- (2) The Commission has the power to:
- (a) have access to any document in any form and to receive a copy of it;
 - (b) require information from any person related to the activities of the AIFM or the AIF and if necessary to summon and question a person with a view to obtaining information;
 - (c) carry-out on site inspections with or without prior announcements;
 - (d) request existing telephone and existing data traffic records;
 - (e) require the cessation of any practice that is contrary to the provisions adopted in the implementation of this Law or any regulatory act developed pursuant to the Law;
 - (f) request the freezing or the sequestration of assets;
 - (g) request the temporary prohibition of professional activity in accordance with the following procedure:
 - (i) where the Commission determines that a person violates the provisions of this Law or Regulation issued pursuant to this Law, may impose to this person a temporary prohibition of professional activity for a period that does not exceed five days, with the possibility of extension for one or more times for a period of less than five days, for the termination of violation; and
 - (ii) the person subject to the prohibition, during the prohibition period, shall make all reasonable actions to

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- revoke the reasons for which the prohibition of professional activity has been imposed; and
- (iii) if the Commission is satisfied that the reasons for which the prohibition has been imposed, are revoked before the end of the first or any five day period, may allow the exercise of professional activity before the expiry of the prohibition period;
- (h) require authorised AIFM, depositaries or auditors to provide information;
 - (i) adopt any type of measure to ensure that AIFMs or depositaries continue to comply with the requirements of this Law applicable to them;
 - (j) by directive, determine the procedure with which the Commission may require the suspension of the issue, repurchase or redemption of units in the interest of the unit-holders and/or the public;
 - (k) withdraw the authorisation granted to an AIFM and/or AIF depositary;
 - (l) refer matters to the General Attorney of the Republic for criminal prosecution of persons violated a rule of criminal nature, in relation to matters concerning the application of this Law;
 - (m) request that auditors or experts carry out verifications and/or investigations.

(3) The provisions of the Cyprus Securities and Exchange Commission

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(Constitution and Terms of Reference) Law, as subsequently amended, governing the supervisory function of the Commission, its power to collect information, to carry out inspections, to impose sanctions, to cooperate with other competent authorities and bodies of other states and, in general, all its powers, responsibilities and duties pursuant to the said Law, apply supplementary to the supervision that the Commission exercises in accordance with the provisions of this Law.

(4) Where the Commission, as the competent authority of the Republic which is the Member State of reference of a non-EU AIFM, considers that an authorised non-EU AIFM is in breach of its obligations under this Law, it shall notify ESMA, the soonest possible, setting out full reasons as soon as possible.

(5) The Commission may take all measures required in order to ensure the orderly functioning of markets in those cases where the activity of one or more AIFs in the market for a financial instrument could jeopardise the orderly functioning of the market.

Obligations of the Commission to ESMA and to other authorities.

72.-(1) All the information exchanged under this Law, between the Commission, ESMA, ESRB or other competent authorities shall be considered confidential, except where ESMA or the competent authority states at the time of communication that such information may be disclosed or where such disclosure is necessary for legal proceedings.

(2) In accordance with paragraph (4) of Article 47 of Directive 2011/61/EU, the Commission, after ESMA's request shall take or renew any of the following measures, as appropriate:

- (a) prohibit the marketing of units of AIFs managed by non-EU AIFMs or units of non-EU AIFs managed by EU AIFMs, without the authorisation required in section 49 of this Law, or without

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the notification required in sections 44, 45 and 59 to 63 of this Law, or without being allowed to do so by the competent authorities of relevant Member States in accordance with section 66 of this Law.

- (b) impose restrictions on non-EU AIFMs relating to the management of an AIF in case of excessive concentration of risk in a specific market on a cross-border basis;
- (c) impose restrictions on non-EU AIFMs relating to the management of an AIF where its activities potentially constitute an important source of counterparty risk to a credit institution or other systemically relevant institutions;

(3) The measures taken by the Commission pursuant to subsection (2) shall -

- (a) effectively address the threat to the orderly functioning and integrity of the financial market or to the stability of the whole or a part of the financial system in the Union or significantly improve the ability of the Commission to monitor the threat; and
- (b) not create a risk of regulatory arbitrage; and
- (c) not have a detrimental effect on the efficiency of the financial markets, including reducing liquidity in those markets or creating uncertainty for market participants, in a way that is disproportionate to the benefits of the measures;

(4) The Commission being the Competent authority of the Republic may act in accordance with paragraph 10 of Article 47 of Directive 2011/61/EU.

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Fees and
annual
contributions

73.-(1) The Commission may, by directive, determine-

- (a) the AIFMs regulated by the Commission which shall submit fees for the purposes of application of this Law and the amount of those fees; and
- (b) the AIFMs which shall submit annual contributions at the end of each calendar year for the purposes of application of this Law and the amount of those annual contributions.

(2) The Commission may, by directive, determine the applications and/or notifications for which fees are due for the application of any provision of this Law and, in general, determine every relevant issue regarding fees and annual contributions referred to in this section.

(3) The fees and annual contributions defined in this section shall be calculated as revenue of the Commission, and, in case of non-payment, further to the measures taken in accordance with the provisions of this Law, additional measures shall be taken for their receipt in accordance with the provisions of Cyprus Securities and Exchange Commission Law, as amended.

Administrative
Penalties

74.-(1) In case of infringements of this Law and/or the directives issued pursuant to this Law and/or Regulation (EU) No 231/2013, the Commission may impose to the person responsible for the infringement an administrative fine, not exceeding three hundred and fifty thousand euro (€350.000) and, in case of repetition of the infringement, an administrative fine not exceeding seven hundred thousand euro (€700.000) according to the gravity of the infringement.

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(2) Where it is established that the person responsible for the infringement has obtained a gain as a result of the infringement, or has allowed to another person to obtain a gain as a result of the infringement, the Commission may impose an administrative fine of up to double the amount the said person gained by the infringement.

(3) The administrative fines levied by the Commission pursuant to the provisions of this Law, shall be calculated as revenue of the Treasury of the Republic.

(4) In the event of an omission to pay administrative fine, legal measures shall be taken for the collection of the amounts due pursuant to the Cyprus Securities and Exchange Commission Law, as amended.

(5) Without prejudice to subsection (1), the Commission may impose an administrative fine to -

- (a) legal persons, and/or
- (b) a member of the board of directors, an executive or official or any other person in case that it is established that the infringement is due to its own fault, wilful omission or negligence.

(6) Before imposing an administrative fine in accordance with this section, the Commission shall notify the person affected about its intention to impose the administrative fine, informing the person about the reasons it intends to act in that way and giving that person the right to submit its comments within fifteen days from the date of the notification.

(7) The Commission may disclose to the public any measures or penalties imposed for infringement of the provisions of this Law, or directive

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issued pursuant to it, unless such disclosure would seriously jeopardise the financial markets, be detrimental to the interests of investors, or cause disproportionate damage to the parties involved.

(8) The Commission, being the competent authority of the Republic shall comply with paragraph 3 of Article 48 of Directive 2011/61/EU.

False
statements and
withholding of
information,
criminal
penalties and
civil liability.

75.-(1) A person who -

- (a) in the course of providing information for any of the purposes of this Law, makes a false or misleading or deceitful statement or announcement or submits false misleading or deceitful information as to any fact thereof or withholds information or omits the submission of information or in any way impedes the immediate collection of information or the immediate conduct of inspection or entry or investigation of the Commission, and/or
- (b) violates Regulation (EU) No 231/2013,

shall commit a criminal offence and shall be subject to a penalty of imprisonment not exceeding five years or to a fine up to seven hundred thousand euro (€700.000) or to both penalties.

Without prejudice to the provisions of this section, a person acting in violation of this section, shall be subject to an administrative penalty in accordance to the provisions of section 74.

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(2) A person that provides the services of section 6, without prior authorisation by the Commission, shall commit a criminal offence and shall be subject to imprisonment not exceeding five years, or to a fine up to seven hundred thousand euro (€700.000) or to both penalties.

(3) A person, which knowingly publishes, makes available or distributes advertising material or application documents or statements for participation to an AIF, that may not distribute its units in the Republic in accordance with this Law, shall commit a criminal offence and shall be subject to imprisonment not exceeding three years or to an administrative fine not exceeding two hundred thousand euro (€200.000) or to both penalties.

(4) Where the criminal offence in accordance with this section, is committed by a legal person, criminally liable shall also be held, in addition to the legal person, any of the members of the board of directors, the general manager or any other official or employee or associate of the legal person, which is proven to consent or acted jointly in the commitment of the criminal offence.

(5) A person, who in accordance with the provisions of subsection (4), is criminally liable for the offences committed by the legal person, shall be jointly and wholly liable with the legal person for every damage caused to a third party as a result of the act or the omission lying behind the offence.

Justification of the Commission's decisions.

76. The Commission shall justify in writing any decision to reject an application for authorisation of an AIFM, for the management and/or the distribution of units of AIFs, or with which recalls such authorisation and any negative decision taken in accordance with this Law. Such decision shall be notified to the applicant or to the interested AIFM.

CHAPTER 2

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Cooperation of the Commission with the competent authorities of other Member States

Obligation of the Commission to cooperate with the competent authorities of the other Member States, with ESMA and the ESRB.

77.-(1) The Commission shall cooperate with the competent authorities of other Member States, with ESMA and the ESRB, whenever necessary for the purpose of carrying out their duties under this Law or the Directive 2011/61/EU accordingly. The Commission shall use its powers for the purpose of cooperation, even in cases where the conduct under investigation does not constitute an infringement of any regulation in force in the Republic.

(2) The Commission shall immediately supply the competent authorities of the other Member States and ESMA with the information required for the purposes of carrying out their duties under Directive 2011/61/EU.

(3) The Commission, as the competent authority for the supervision of the AIFMs of the Republic -

- (a) shall forward a copy of the relevant cooperation arrangements entered into in accordance with sections 44, 45, 52, 62 and/or 63 of this Law, to the host Member States of the AIFMs; and
- (b) shall forward the information received from third-country supervisory authorities in respect to the AIFM in accordance with procedures relating to the applicable regulatory technical standards referred to in paragraph 14 of Article 35, paragraph 17 of Article 37 or paragraph 14 of Article 40 of Directive 2011/61/EU, or where relevant, pursuant to subsection (8) to (10) of section 70 of this Law, to the competent authorities of the host Member States of the AIFMs concerned.

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(4) The Commission, being the competent authority of the Republic, may act in accordance with the third point of paragraph 4 of Article 5 of Directive 2011/61/EU.

(5) Where the Commission has clear and demonstrable grounds to suspect that acts contrary to Directive 2011/61/EU are being or have been carried out by an AIFM not subject to its supervision, shall notify ESMA and the competent authorities of the home and host Member State of the AIFM concerned thereof in as specific a manner as possible.

(6) Where the Commission receives, as the competent authority of the Republic, which is either the host or the home Member State of the AIFM, a notification in accordance with paragraph 5 of Article 50 of Directive 2011/61/EU, shall take appropriate action thereof and notify ESMA and the competent authority that made the notification of the outcome of that action and, to the extent possible, of significant interim developments.

(7) Subsections (5) and (6) shall apply without prejudice to the competences of the Commission or the notifying competent authority.

(8) The Commission may, by Directive, develop draft implementing technical standards to determine the conditions of application with regard to the procedures for exchange of information between the Commission and the competent authorities of other Member States or ESMA.

Transfer and
retention of
personal data.

78.-(1) The Commission, on the exchange of personal data with other competent authorities, shall apply the Processing of Personal Data (Protection of Individuals) Law.

138(I) of 2001
37(I) of 2003
105(I) of 2012.

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(2) The data referred to in subsection (1) shall be retained for a maximum period of five years.

Disclosure of information to third countries.

79.-(1) The Commission may communicate information and information analysis, accordingly, to the competent authorities of a third country so long as the provisions of section 9 of the Processing of Personal Data (Protection of Individuals) Law are complied with, and the Commission believes that this communication is necessary for the purposes of the Law and Directive 2011/61/EU. The Commission shall forbid to the competent authority of the third country to transmit the relevant information communicated to it by the Commission without its written consent.

(2) The Commission shall communicate to a third-country competent authority information received from the competent authority of another Member State, only if the Commission has received the explicit consent of the competent authority of the other Member State which has communicated the information to the Commission to do so, and accordingly, whether the information is communicated exclusively and only for the purposes for which that authority has given its consent.

Exchange of information relating to the potential systemic consequences of AIFM activity.

80.-(1) The Commission, as the competent authority for the authorisation and/or supervision of AIFMs under this Law, shall communicate information to the competent authorities of other Member States where this is relevant for monitoring and responding to the potential implications of the activities of individual AIFMs or AIFMs collectively for the stability of systemically relevant financial institutions and the orderly functioning of markets on which AIFMs are active. The Commission shall also inform ESMA and the ESRB.

(2) Subject to the provisions of Article 35 of Regulation (EU) No 1095/2010, the Commission shall communicate aggregated information relating to the activities of AIFMs under its supervision to ESMA and the ESRB.

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(3) The Commission may, by Directive, specify the way and frequency of the information to be exchanged pursuant to subsection (1).

Cooperation in
supervisory
activities.

81.-(1) The Commission may request the cooperation of the competent authorities of another Member State in a supervisory activity or for an on-the-spot verification or in an investigation in the territory of the latter within the framework of its powers pursuant to this Law..

(2) Where the Commission receives a request from the competent authority of another Member State, with respect to an on-the-spot verification or an investigation in the Republic, it shall perform any of the following:

- (a) carry out the verification or investigation itself;
- (b) allow the requesting authority to carry out the verification or investigation;
- (c) allow auditors or experts to carry out the verification or investigation.

(3) In the case referred to in paragraph (a) of subsection (2), the Commission shall accept a probable request of the competent authority of the other Member State, that members of its own personnel assist the persons acting on behalf of the Commission carrying out the verification or investigation. The verification or investigation shall, however, be the subject of the overall control of the Commission. In the case referred to in paragraph (b) of subsection (1), the Commission may request that members of its own personnel assist the personnel carrying out the verification or investigation of behalf of the competent authority of the other Member State.

(4) The Commission may refuse to exchange information and/or to act on

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a request for cooperation in carrying out an investigation or on-the-spot verification only in the following cases:

- (a) the investigation, on-the-spot verification or exchange of information might adversely affect the sovereignty, security or public order in the Republic; and/or
- (b) judicial proceedings have already been initiated in respect of the same actions and the same persons before the authorities of the Republic; and/or
- (c) final judgement has already been delivered in the Republic, in respect of the same persons and the same actions.

(5) The Commission shall inform the requesting competent authority of the other Member State of any decision taken under subsection (4), stating the reasons thereof.

(6) The Commission may, by Directive, develop implementing technical standards to establish common procedures for cooperation between the Commission and other competent authorities in on-the-spot verifications and investigations.

Dispute
settlement.

82. The Commission being the competent authority of the Republic may act in accordance with Article 55 of Directive 2011/61/EU.

PART X - TRANSFER OF REGISTERED OFFICE OF AN AIFM FROM AND TO THE REPUBLIC

Transfer of
registered office
of an AIFM from
and to the

83.-(1) The provisions of sections 354A to 354IH of Part VIII of the Company Law, regarding the transfer of the registered office of a company established in another Member State or third country to the Republic and of a company

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Republic established in the Republic to another Member State or to a third country, through the continuance of the operations of the company as a legal entity under the legal framework or the jurisdiction of the state where the registered office is transferred, shall apply to the AIFM *mutatis mutandis*.

(2) The Commission may, by directive, define the conditions for authorisation for the transfer of registered office from and to the Republic, in accordance with subsection (1) and specify the procedure to be followed in each case.

PART XI – TAXATION AND CONTRIBUTIONS PROVISIONS

Taxes and contributions. 84.-(1) Internally managed AIFs, in accordance with paragraph (b) of subsection (1) of section 5, authorised in accordance with section 8 of this Law and natural and legal persons that acquire units of those AIFs, are subject to the taxation provisions of the Income Tax Law and the Special Contribution for the Defence of the Republic Law.

118(I) of 2002

230(I) of 2002

162(I) of 2003

195(I) of 2004

92(I) of 2005

113(I) of 2006

80(I) of 2007

138(I) of 2007

32(I) of 2009

45(I) of 2009

74(I) of 2009

110(I) of 2009

41(I) of 2010

133(I) of 2010

116(I) of 2011

197(I) of 2011

102(I) of 2012

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188(I) of 2012
19(I) of 2013
26(I) of 2013
27(I) of 2013.

117(I) of 2002
223(I) of 2002
188(I) of 2003
178(I) of 2007
23(I) of 2009
44(I) of 2009
75(I) of 2009
111(I) of 2009
40(I) of 2010
132(I) of 2010
114(I) of 2011
190(I) of 2011
72(I) of 2013
29(I) of 2013.

(2) The establishment of the AIFs referred to in subsection (1), the subscription, redemption, repurchase and the transfer of their units are exempted from the Stamp Duty Law.

19 of 1963
21 of 1967
36 of 1968
17 of 1969
26 of 1971
38 of 1972
79 of 1977
29 of 1980
8 of 1984
160 of 1991
60(I) of 1992
68(I) of 1994
1(I) of 1995
9(I) of 1998
121(I) of 2002
222(I) of 2002
179(I) of 2004

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209(I) of 2004
 130(I) of 2007
 152(I) of 2007
 173(I) of 2012.

PART XII – FINAL AND TRANSITIONAL PROVISIONS

Disclosure of derogations from the provisions of the Directive 2011/61/EU. 85. The Commission, being the competent authority of the Republic, shall comply with Article 60 of Directive 2011/61/EU.

Disclosure of information to ESMA and the European Commission. 86. The Commission, being the competent authority of the Republic, shall comply with paragraph 3 of Article 67, paragraph 3 of Article 68 and the first and third subparagraphs of paragraph 2 of Article 69 of Directive 2011/61/EU.

Derogations and transitional provisions. 87.-(1) AIFMs of the Republic performing activities under this Law, before 22 July 2013, shall take all necessary measures to comply with this Law and shall submit an application to the Commission for authorisation in accordance with section 7, within one year of that date.

(2) Sections 38 to 42 of this Law, shall not apply to the marketing of units of AIFs that are subject to a current offer to the public under a prospectus that has been drawn up and published in accordance with Directive 2003/71/EC before 22 July 2013, for the duration of validity of that prospectus.

(3) AIFMs in so far as they manage AIFs of the closed-ended type before 22 July 2013 which do not make any additional investments after 22 July 2013 may however continue to manage such AIFs without authorisation

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under this Law.

(3) AIFMs, in so far as they manage AIFs of the closed-ended type, whose subscription period for investors has closed prior to 21st of July 2013, and are constituted for a period of time which expires at the latest 3 years after 22 July 2013, may, however, continue to manage such AIFs without needing to comply with this Law, except for section 29 and, where relevant, sections 33 to 37 or to submit an application for authorisation under this Law.

(5) The Commission, as the competent authority of the home Member State of an AIF or, in case where the AIF is not regulated, the competent authority of the home Member State of an AIFM, may allow institutions referred to in paragraph (a) of subsection (3) of section 23 and established in another Member State to be appointed as a depositary until 22 July 2017. This section shall apply without prejudice to the full application of sections 23 to 28, with the exception of subparagraph (a) of subsection (7) of section 23 on the place where the depositary is to be established.

Entry into force. 88.-(1) This Law shall enter into force on the date of its publication in the Official Gazette of the Republic.

(2) Notwithstanding subsection (1), the sections 44, 45, 46, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64 and 65 of this Law shall enter into force on the latest of:

- (a) the date of publication of this Law;
- (b) the date specified by the delegated act adopted by the European Commission pursuant to paragraph 6 of Article 67 of Directive 2011/61/EU, regarding the entry into force of Articles 35 and 37 to 41 of Directive 2011/61/EU.

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(3) The sections 59, 60, 61 and 66 of this Law shall cease to apply on the date specified by the delegated act adopted by the European Commission pursuant to paragraph 6 of Article 68 of Directive 2011/61/EU, regarding Articles 36 and 42 of Directive 2011/61/EU.

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