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AGDL Statutes

Association Pour la Garantie des Dépôts Luxembourg (AGDL)

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**ASSOCIATION POUR LA GARANTIE DES DÉPÔTS,
LUXEMBOURG
(DEPOSIT GUARANTEE ASSOCIATION, LUXEMBOURG)**

STATUTES

as adopted by the Extraordinary General Meeting on 18 February 2009

*This text is a translation of the French version.
In case of any divergence between the French and the English text,
the French text shall prevail.*

Title I. - Name, registered office, duration, purpose

Article 1 - Name

- (1) Under the name of "Association pour la Garantie des Dépôts, Luxembourg" (Deposit Guarantee Association, Luxembourg), abbreviated to "AGDL", a non-profit association with registered office in Luxembourg is hereby established for an unlimited duration.
- (2) The Association may, at its own discretion, use either its full name or its abbreviated name.

Article 2 - Purpose

- (1) Pursuant to the amended law of 5 April 1993 on the financial sector (referred to below as the "law"), the sole purpose of the Association shall be to set up a mutual guarantee system (the "Guarantee")
 - for cash deposits as defined by the law and by these statutes for the benefit of customers of the member credit institutions of the Association;
 - for claims arising out of investment transactions as defined by the law and by these statutes in favour of investors with credit institutions and investment firms which are members of the Association.
 - cash deposits and claims resulting from investment transactions as defined in the two previous subparagraphs in favor of customers of any other member of the Association and of investors with that member.

- (2) The Guarantee shall take effect within the limits, subject to the conditions and in accordance with the procedures, laid down in the statutes and in such internal rules of procedure as may be adopted on the basis of the statutes. The internal rules of procedure in question may also determine the utilisation to be made of funds recovered by the Association pursuant to the exercise of its rights. The internal rules of procedure shall be drawn up by the Board of Directors and made available to any interested party at the Association's registered office.
- (3) The Association may take all actions, which are, either directly or indirectly, conducive to the attainment of its purpose.

Title II. - Members, admission, termination of membership

Article 3 - Members

- (1) The number of members shall be unlimited, but may not be less than three.
- (2) Only corporate bodies shall be eligible to become members.
- (3) The rights and obligations of members shall be equal for all without prejudice to the differences arising from the nature and scope of the Guarantee provided by the Association, depending on whether the Guarantee relates to deposits or to claims resulting from investment transactions.

Article 3-1 – Admission of members – Credit institutions

- (1) At their written request, all the credit institutions listed in the table of credit institutions kept by the Commission for the Supervision of the Financial Sector ("CSSF") shall automatically become members, with the exception of branches, save where the latter are covered by the provisions of numbered paragraphs (2) to (5) below.

The term "branch", within the meaning of the statutes, designates an operating office which constitutes a section, with no legal personality of its own, of a credit institution and which directly performs, in whole or in part, the transactions inherent in the activity of a credit institution; where more than one operating office is created in the same State, they shall be regarded as a single branch.

- (2) The depositors of the branches created in other Member States of the European Community by credit institutions approved in Luxembourg shall be covered by the Guarantee.
- (3) When the level or scope, including the percentage, of the Guarantee exceeds the level or scope of cover provided in the Member State of the European Community in which the credit institution is approved, the Luxembourg branch of that institution shall be entitled, at its written request, to become a member in order to supplement the guarantee already available to its depositors by reason of its membership of the guarantee system of the Member State of origin. In that case, the contribution as defined in Article 9, which the branch is to pay, shall be determined by the supplementary guarantee.

For the purpose of application of the provisions of this paragraph, the Association shall define at bilateral level with the appropriate deposit guarantee system of the Member

State of origin, suitable rules and procedures for calculation of the share of the contribution to which the Guarantee gives rise to and which is incumbent upon the Luxembourg branch referred to in the present paragraph and also for payment thereof. For the definition of these procedures, and for the determination of the conditions of membership of the Association applicable to this branch, the guiding principles set out in the law shall apply.

- (4) The depositors of the Luxembourg branches created by credit institutions having their registered office outside the European Community, shall be covered by the Guarantee. With that end in view, these branches shall automatically become members at their written request.
- (5) The rights and obligations of the members shall be equal for all without any need to distinguish between credit institutions and branches within the meaning of paragraphs (1), (3) and (4).
- (6) In the case of the agricultural credit co-operatives ("caisses rurales") affiliated to the central credit institution of these credit co-operatives, only the central institution shall be a member, but the deposits set up with each credit co-operative shall be taken into consideration for the application of the statutes and, in particular, for that of Articles 6, 9 and 10.

Article 3-2 - Admission of Members – Investment firms

- (1) At their written request, all the investment firms listed in the table of investment firms kept by the Commission for the Supervision of the Financial Sector ("CSSF") shall automatically become members, with the exception of branches, save where the latter are covered by the provisions of numbered paragraphs (2) to (5) below.

The term "branch", within the meaning of the statutes, designates an operating office which constitutes a section, with no legal personality of its own, of an investment firm and which provides investment services for which the investment firm has secured authorisation; where more than one operating office is created in the same Member State by an investment firm which has its registered office in another Member State, they shall be regarded as a single branch.

- (2) Investors with a branch set up in another Member State of the European Community by investment firms which have been authorised in Luxembourg shall be covered by the Guarantee.
- (3) When the level or scope, including the percentage, of the Guarantee exceeds the level or scope of cover provided in the Member State of the European Community in which the credit institution or the investment firm is approved, the Luxembourg branch of that institution or firm shall be entitled, at its written request, to become a member in order to supplement the guarantee already available to its investors by reason of its membership of the guarantee system of the Member State of origin. In that case, the contribution as defined in Article 9, which the branch is to pay, shall be determined by the supplementary guarantee.

For the purpose of application of the provisions of this paragraph, the Association shall define at bilateral level with the investor-compensation scheme in the Member State of origin, suitable rules and procedures for calculation of the share of the contribution to which the Guarantee gives rise to and which is incumbent upon the Luxembourg branch referred to in the present paragraph and also for payment thereof. For the

definition of these procedures, and for the determination of the conditions of membership of the Association applicable to this branch, the guiding principles set out in the law shall apply.

- (4) Investors with a Luxembourg branch created by credit institutions or investment firms having their registered office outside the European Community, shall be covered by the Guarantee. With that end in view, these branches shall automatically become members at their written request.
- (5) The rights and obligations of the members shall be equal for all without any need to distinguish between investment firms and branches within the meaning of paragraphs (1), (3) and (4).
- (6) In the case of the agricultural credit co-operatives ("caisses rurales") affiliated to the central credit institution of these credit co-operatives, only the central institution shall be a member, but the Guarantee provided by the Association covers not only investors who are customers of the central institution but also investors with the affiliated credit co-operatives for the purpose of application of the statutes and, in particular, for that of Articles 7, 9 and 10.

Article 3-3 - Post Office and Telecommunications Corporation

- (1) At its written request, the Post Office and Telecommunications Corporation, public establishment, shall automatically become an associate member, but only in respect of the provision by it of postal financial services as defined by law.
- (2) For the purposes of the Statutes, the Post Office and Telecommunications Corporation shall be treated in every respect in the same way as an associated credit institution.

Article 4 – Cessation of membership

- (1) The capacity of associate member automatically lapses if said associate member no longer has the authorization required by law.
- (2) However, if a member is in liquidation, he shall remain a member of the Association until the date on which that liquidation is completed.
- (3) The capacity of member shall likewise cease under the following circumstances:
 - a) each member shall be free to withdraw from the Association by notifying the Board of Directors in writing of his resignation;

- b) the general meeting, acting by a majority of two-thirds of the votes, may stipulate the exclusion of a member in the event of infringement of his statutory or legal obligations. Exclusion shall be possible only in compliance with the formal and substantive conditions stipulated by law.
- (4) In the instances referred to in paragraphs (1) and (3), the outgoing member shall still be required to participate in the Guarantee if, within twelve months of the date of its leaving, another member finds himself in one of the situations referred to in Article 11.

Should this member not have had any more deposits, funds or instruments entrusted to him, as defined by the statutes and by law on 31 December of the year preceding the year in which the circumstances referred to in Article 11 occur, the deposits, funds or instruments to be taken into consideration for the calculation of his share of the contribution to the Guarantee shall be those which existed on 31 December of the immediately previous year.
- (5) Deposits, funds and instruments entrusted before the date of cessation of membership shall remain fully covered by the Guarantee until such time as they are covered by an equivalent guarantee system.

Article 5 – Consequences of the cessation of membership

A member who has resigned, or has been excluded, and his entitled beneficiaries, shall have no rights in the corporate funds and they shall not be authorised to ask for any accounts, cause seals to be affixed or seek an inventory.

Title III. - Nature and scope of the Guarantee

Article 6 - Guarantee on cash deposits

- (1) The customers benefiting from a Guarantee provided by the Association on their deposits are all natural persons who are customers of the members as defined in Articles 3-1 and 3-3 without any distinction on grounds of the nationality or residence of such persons.
- (2) The Guarantee in virtue of their deposits with members referred to in paragraph (1) is likewise extended to companies governed by Luxembourg law or the law of another Member State of the European Community if their size is such that they are authorised to establish an abridged balance sheet pursuant to law and those of comparable size governed by the law of another Member State of the European Community.
- (3) Natural persons and corporate bodies within the meaning of paragraphs (1) and (2) are referred to below collectively as "depositors".
- (4) The Guarantee covers all cash deposits made by depositors.

- (5) Subject to the conditions and limits of the statutes, in particular Articles 6-1 and 8 thereof and the internal rules of procedure, depositors shall benefit from the Guarantee on deposits with members within the meaning of paragraph (1) in respect of the following deposits stated, in the case of credit institutions, in "Finrep Tables B 1.1: Balance Sheet", as follows:

<u>Nature of the deposits</u>	<u>Numbers in the Table</u>
- Deposits of credit institutions	2.4.1 / 2.2.3 / 2.3.1
- Deposits other than those of credit institutions	2.2.4 / 2.3.2 / 2.4.2
- Subordinated liabilities	2.3.4 / 2.4.4

However, credit balances on exchange transactions are excluded.

- (6) The deposits in question are those made with any member in any form, in any currency and for any duration, including all accrued interest, even where it has not yet fallen due, on such deposits. They likewise comprise cash deposits managed by investment companies for the account of their customers.

Article 6-1 - Non-guaranteed cash deposits

- (1) Guaranteed cash deposits shall not include:
- a) subject to the provisions of Article 8 (9), deposits made by other credit institutions in their own name and for their own account;
 - b) deposits of financial credit institutions as defined by the law;
 - c) deposits of insurance companies;
 - d) deposits of States and their central administrations;
 - e) deposits of provincial, regional, local or municipal, Luxembourg or foreign authorities and those of all Luxembourg or foreign public interest bodies governed by said authorities, Associations constituted between them as well as international and supranational organisations;
 - f) the deposits of investment funds;
 - g) the deposits of pension or retirement funds, regardless of their nature, the form of deposit and the nationality of the depositor.
- (2) Guaranteed cash deposits shall not include:
- a) the deposits of members of the Boards of Directors and management of the credit institution, the deposits of personally liable partners, the deposits of natural and legal persons who hold at least 5% of the capital of the credit institution and the deposits of natural and legal persons having the same capacity in other companies belonging to the group which owns the credit institution.

For the purpose of this provision, the term "group" means all the companies which, either directly or indirectly, control the credit institution and the subsidiaries of these companies and of the credit institution within the meaning of the regulations on the annual accounts of banks;

- b) the deposits of the spouse and those of relatives, up to and including relatives three times removed, of the depositors referred to in (2) a) and of third parties acting on their behalf;
 - c) the deposits of other companies belonging to the same group within the above meaning;
 - d) the items constituting shareholders' equity as defined by the CSSF pursuant to the law;
 - e) credit notes issued by the credit institution and commitments resulting from own acceptances and promissory notes.
- (3) For the calculation of the credit balance in the depositor's favour, the rules relating to netting and to claims to be netted in conformity with the statutory and contractual conditions applicable to the deposit shall be followed.
- (4) Guaranteed cash deposits shall not include:
- a) deposits for which the depositor has obtained from the credit institution, in an individual capacity, rates and financial advantages which contributed to the deterioration of the financial situation of the credit institution concerned;
 - b) deposits which may be eligible for reimbursement by a foreign protection scheme or, where appropriate, in the amount of such reimbursement if the latter is below the maximum Guarantee as stipulated in Article 8;
 - c) deposits resulting from transactions in respect of which a criminal sentence has been handed down for a money laundering offence as defined by the law.

Article 7 – Guarantee on claims arising out of investment transactions

- (1) Customers guaranteed by the Association in virtue of their investment transactions include all natural persons who are customers of the members as designated in Articles 3-1, 3-2 and 3-3 without distinction on grounds of nationality or residence of such persons.

- (2) The Guarantee in virtue of their investment transactions with the members referred to in paragraph (1) is likewise extended to companies governed by Luxembourg law or by the law of another Member State of the European Community whose size is such that they are authorised to establish an abridged balance sheet pursuant to the law and those of comparable size governed by the law of another Member State of the European Community.
- (3) Natural persons and corporate bodies within the meaning of paragraphs (1) and (2) above are referred to below collectively as "investors".
- (4) The Guarantee covers all claims of investors against the members in virtue of investment transactions, i.e. the instruments belonging to the investors and held, administered or managed on their behalf in connection with investment business as well as the money owed to or belonging to investors and held on their behalf in connection with investment business.
- (5) Subject to the conditions and within the limits of the statutes, in particular Articles 6-1, 7-1 and 8, and of the internal rules of procedure, investors shall benefit from a Guarantee on their claims against members within the meaning of paragraph (1), such claims being liable to figure, in the case of credit institutions, in "Finrep Tables B 1.1: Balance sheet and B1.6: Additional Information in relation with Balance sheet", as follows:

Instruments

<u>Nature of instruments</u>	<u>Numbers in the Table</u>
- Third party assets held by the credit institution: Instruments listed in Annexe II Section B, points 1 and 3 of the law of 5.04.1993	B 1.6I 4.1.99
- Derivatives: Instruments listed in Annexe II, Section B, point 2, and point 4 to 10 of the law of 5.04.1993	B 1.1: 2.2.1 / 2.6
- -Firm take-up of issues	B 1.6I: 4.99

However, precious metals deposits and cheques presented for cashing are excluded.

- (6) The claims in question are those existing against each member in any form whatsoever, in any currency and for any duration including all accrued interest, even if it is not yet due, on such claims. They likewise comprise instruments, which investment firms manage for the account of their customers.

Article 7-1 – Non-guaranteed Claims arising out of investment transactions

- (1) Claims arising from guaranteed investment transactions do not include:
- a) claims of investment companies;
 - b) subject to Article 8 (9), claims of credit institutions in their own name and for their own account;
 - c) claims of credit institutions within the meaning of the law;
 - d) claims of insurance companies;
 - e) claims of investment funds;
 - f) claims of pension or retirement funds, regardless of their nature, form or the nationality of the creditor;
 - g) claims of other professional and institutional investors;
 - h) claims of supranational institutions, States and central administrations;
 - i) claims of provincial, regional, local or municipal, Luxembourg or foreign authorities and those of all Luxembourg or foreign public interest bodies governed by said authorities and Associations set up between them.
- (2) Claims resulting from guaranteed investment transactions do not comprise:
- a) claims of members of the boards and management bodies of the credit institution or investment company, claims of personally liable partners, claims of natural and legal persons which hold at least 5% of the capital of the bank or investment company and claims of natural and legal persons having the same capacities in other companies forming part of the group to which the credit institution or investment company belongs.

For the purpose of this provision, the term group means all the companies, which either directly or indirectly control the credit institution or investment firm together with the subsidiaries of these companies and of the credit institution or investment firm within the meaning of the regulations on their annual statements of account;
 - b) claims of the spouse and those of parents and relatives, up to and including relatives three times removed, of the creditors referred to in (2) a) and those of third parties acting for the account of the latter;
 - c) claims of other companies belonging to the same group within the above meaning;
 - d) items constituting shareholders' equity as defined by the CSSF pursuant to the law.

- (3) The amount of the claim of an investor is calculated in compliance with the statutory and contractual conditions, in particular those concerning netting and claims to be netted applicable for assessment on the date of the finding or ruling referred to in Article 11 of the amount of the funds or the value – defined if possible on the basis of the sales value – of the instruments which belong to the investor and which the credit institution or investment firm is unable either to refund or return.
- (4) Claims resulting from guaranteed investment transactions do not include:
 - a) claims of investors who are responsible for, or have derived advantage from, certain facts concerning the credit institution or investment firm and who are at the origin of its financial difficulties or have contributed to the worsening of its financial situation;
 - b) claims which may be eligible for reimbursement by a foreign investor protection scheme and, where appropriate, in the amount of such reimbursement if it falls short of the maximum Guarantee as stipulated in Article 8;
 - c) claims arising out of transactions in respect of which a criminal sentence has been handed down for a money laundering offence as defined by the law.

Article 8 – Scope and limits of the Guarantee

- (1)
 - a) Pursuant to Article 6 the Association shall reimburse to the depositor the amount of his guaranteed cash deposits up to a maximum value equivalent in all currencies to 100.000 euros.
 - b) Pursuant to Article 7 the Association shall reimburse to the investor the amount of his guaranteed claim up to a maximum value equivalent in all currencies to 20.000 euros.
- (2) The guaranteed amount in euros or in a foreign currency shall be determined at the market rate on the date on which unavailability of the funds is established pursuant to the provisions of Article 11.
- (3) The amount of the Guarantee shall constitute an absolute ceiling and cannot be augmented by the addition of interest, costs or any other sums.
- (4) The entitlements to reimbursement of the deposit and of the claim shall be exercised separately. This rule applies to all the cases covered by paragraphs (5) to (10) below.

No claim shall be eligible for double compensation in virtue of the Guarantee.

Any claim arising out of a cash deposit within the meaning of the statutes and of the law must be imputed against the cash deposit-guarantee scheme alone.

- (5)
 - a) No depositor shall collect a sum in excess of that specified in (1), regardless of the number of accounts or deposits of which he is the holder or joint holder at the same credit institution and regardless of the place at which they are situated within the European Community.
 - b) No investor shall collect a sum in excess of that specified in (1), regardless of the number of claims of which he is the holder or joint holder at the same credit institution

or investment firm and regardless of the place at which they are situated within the European Community.

- (6)a) When two persons at least are the holders of a single account or have rights over a single account which can be exercised under the signature of at least one such person acting in a capacity other than that of mandatory, the share reverting to each such depositor shall be taken into consideration for the purpose of calculation of the amount payable by way of the Guarantee.

Where a single account has been opened in the names of several joint holders, the right of each joint holder shall be equal to his respective share of this account. In principle, the shares of all the joint holders shall be identical, save where proof to the contrary is supplied to the Association.

- b) In the case of joint investment transactions, the share accruing to each investor shall be taken into account for calculation of the cover referred to in this article.

In the absence of special provisions, the claims shall be distributed equally between the investors.

A joint investment transaction is an investment transaction made for the account of at least two persons or in which at least two persons have rights, which may be exercised under the signature of at least one such person.

- (7)a) When two persons at least have rights in an account by reason of their capacity of partner in a company, member of an Association or any similar grouping which does not have legal personality, the deposit shall be treated, for the purpose of calculation of the sum payable by way of the Guarantee, as though it were effected by a single depositor and only one single Guarantee payment shall be due.
- b) Claims relating to a joint investment transaction in which at least two persons have rights by reason of their capacity of partner in a company, member of an Association or any similar grouping which does not have legal personality shall be grouped together for the calculation of the limit fixed in this article and treated for the purpose of calculation of the limit stipulated in this article as though they were the result of an investment made by a single investor, and only one single indemnity shall be payable under the Guarantee.
- (8)a) Each depositor who is the holder of an account is deemed to have made the deposit exclusively for his own account. If the holder is able to prove that his deposit is jointly owned, the other persons concerned shall be regarded as joint holders of the account, the right of each joint holder being equal to his share of the total asset, of which proof shall be given to the Association. This rule shall apply subject to other principles and rules set out in the statutes and in the internal rules of procedure in respect of the total or partial exclusion or limitation of the Guarantee.
- b) Each investor who holds a claim is deemed to be the creditor exclusively for his own account. If the creditor can prove that his claim is jointly owned, the other persons concerned shall be regarded as joint holders of the claim, the right of each joint holder being equal to his share of the total asset, of which proof shall be given to the Association. This rule shall apply subject to other principles and rules set out in the statutes and in the internal rules of procedure in respect of the total or partial exclusion or limitation of the Guarantee.
- (9)a) When the depositor is not the entitled beneficiary of the funds deposited on the account, said beneficiary shall receive the compensation on condition that he has been identified, or is identifiable before the date on which the CSSF has made the

finding referred to in the law or on which the district court, sitting in commercial division, handed down its ruling on suspension of payment and controlled management or liquidation of the credit institution, or of the investment firm, depending on whether the finding or the ruling is handed down first.

The entitled beneficiaries shall be deemed to be identifiable only if the depositor has informed the credit institution that he is acting for the account of third parties and has notified it of the number of beneficiaries of an entitlement to the claim and the share accruing to each such beneficiary. The payment of an indemnity by way of the Guarantee shall be subject to communication of the identity of the entitled beneficiaries.

Where there are several beneficiaries of the sums deposited on a single account, the share accruing to each such beneficiary shall be taken into consideration in calculating the amount payable by way of the Guarantee.

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

- b) When the investor is not the entitled beneficiary of the instruments, said beneficiary shall receive the compensation provided that he has been identified or is identifiable before the date on which the CSSF has made the finding stipulated by law or on which the district court, sitting in commercial division, has handed down its ruling on suspension of payment and controlled management or liquidation of the credit institution or investment firm, depending on whether the finding or the ruling is handed down first.

The entitled beneficiaries shall be deemed to be identifiable only if the investor has informed the credit institution or investment firm that he is acting for the account of third parties and has notified it of the number of beneficiaries of an entitlement to the claim and the share accruing to each such beneficiary. The payment of an indemnity by way of the Guarantee shall be subject to communication of the identity of the entitled beneficiaries.

Where there are several beneficiaries, the share accruing to each such beneficiary shall be taken into consideration in calculating the amount payable by way of the Guarantee.

In the absence of special provisions, the investment transaction shall be deemed to be effected in equal shares by the beneficiaries.

- c) This paragraph shall not apply to investment funds.
- (10) An annex to the statutes, which forms an integral part thereof, lists the rules applicable if there are one or more collective accounts of two or more depositors, or joint holders or investors, or, in the event that a depositor or an investor is the holder of one or more collective accounts with one or more other joint holders.

Article 9 – Financing of intervention by the Association

- (1) If the Guarantee is invoked following the failure of a member, the intervention of the Association in the payment to which the Guarantee gives rise to shall be effected by means of a contribution made by each member to the Association, to the exclusion of all systems of capitalisation or prior constitution of funds or reserves for said Association.
- (2)
 - a) In respect of guaranteed cash deposits, each member shall, in the sense of Articles 3-1 and 3-3, contribute to these payments in proportion to the amount of the Guarantee accruing to his own guaranteed cash deposits in relation to the total amount of the Guarantee pertaining to all the guaranteed cash deposits set up with all the members who contribute to the payment, as these deposits stood on 31 December of the year prior to the date of the ruling stipulated in Article 11 (1) of the statutes.
 - b) In respect of guaranteed claims in relation with investment business, each member shall contribute to these payments in proportion to the amount of the Guarantee accruing in virtue of the guaranteed claims for which he is the debtor in relation to the total amount of the Guarantee pertaining to all the guaranteed claims in relation with investment business for which all the members contributing to the compensation are liable, as these liabilities stood on 31 December of the year prior to the date of the ruling stipulated in Article 11 of the statutes.
- (3) The rules by which the guaranteed cash deposits, funds and investment instruments are determined shall likewise apply to the calculation of each member's proportionate contribution to the payment of the Guarantee.

However, by derogation from the provisions of the foregoing paragraph:

- a) the provisions of Articles 6-1 (3) and (4) and 7-1 (3) and (4) shall not apply to the calculation of each member's proportionate contributory share to the payment of the Guarantee;
 - b) a member may notify sums greater than those which he is required to declare in virtue of the statutes. In that case, he shall be required to contribute to the payment of the Guarantee as a function of the amounts, which he has declared and his proportionate contributory share shall be calculated accordingly;
 - c) should a member who is required to participate in the Guarantee be late in paying his contribution, interest on the arrears may be charged by the Association.
- (4) The amount of the contribution of each member shall in no case exceed five per cent (5%) per calendar year of his shareholder's equity as defined by the CSSF, pursuant to the law.
- (5) When an event, giving rise to the Guarantee occurs, the Association may ask each member to pay an advance. Said advance shall be taken into account for possible subsequent payments, which the members are required to make.

The decision to request an advance shall be taken by the Board of Directors.

- (6) If the Association obtains total or partial reimbursement of the sums paid out, it shall give its members the benefits of this payment, after deduction of the relevant costs, on a prorata basis to their effective contribution to the claim concerned. Any payment of interest on arrears due in virtue of Article 9 (3) c) shall not be regarded as an effective contribution. In principle, the Association shall repay its members in the currency or currencies, which it has itself obtained. However, it may always choose to effect redistribution in the form, which appears most appropriate to it and, in particular, reimbursement in a single currency.

Article 10 – Communications to be made by the Members

- (1) Each year, each member shall notify to the Association its figures for 31 December of the previous year, so enabling the Association to calculate the total amount of the guaranteed cash deposits and the total amount of the guaranteed instruments and the respective percentages accruing to each member, all this in compliance with the statutes.
- (2) This notification shall be made by 31 March at the latest.
- (3) The Association may entrust a third party with the task of collecting and processing the information referred to in paragraph (1).

Article 11 – Intervention by the Association

- (1)a) Pursuant to the law, the Association shall pay the duly verified claims of the depositors in respect of unavailable cash deposits within a period of three months from the date on which that unavailability is established.

The term "unavailable deposit" within the meaning of this provision denotes a cash deposit which has fallen due for payment but has not been paid by a member under the legal and contractual conditions applicable to him and when:

- aa) the CSSF has established that, from its point of view, for the time being and for reasons bound up directly with his financial situation, this member does not appear able to repay the cash deposits and has no prospect of doing so in the immediate future;

or if

- bb) a Luxembourg court has, for reasons directly relating to the financial situation of the member, handed down a decision which has the effect of suspending the exercise of the rights of depositors to enforce claims against this member, where such a decision is made before the fact referred to above has been established.

- b) Pursuant to the law, the Association shall pay claims in respect of investment instruments as soon as possible and no later than three months after the eligibility and the amount of the claim have been established.

The Association must pay if

- aa) the CSSF has established that, from its point of view, for the time being and for reasons directly bound up with its financial situation, a credit institution or an

investment firm does not appear able to meet its liabilities arising out of investors claims and has no prospect of doing so in the immediate future;

or if

- bb) a Luxembourg court, sitting in commercial division, has ruled on a suspension of payment and controlled management or liquidation of the credit institution or investment firm, depending on whether the ruling or the judgement is handed down first.
- (2)a) Under altogether exceptional circumstances and for specific cases, the Association may ask the CSSF to extend the deadline stipulated in paragraph (1) a). This extension shall not exceed three months. At the request of the Association, the CSSF may grant a maximum of two further extensions, neither of which shall exceed three months.
 - b) In highly exceptional circumstances for specific cases, the Association may ask the CSSF to extend the deadline stipulated in paragraph (1) b). This extension shall not exceed three months.
- (3) The periods referred to in paragraphs (1) and (2) cannot be invoked by the Association as a reason to refuse benefit of the Guarantee for a depositor or an investor who has been unable to enforce his right to a Guarantee payment.
 - (4) For verification purposes, the claims shall be declared to the Association either by the liquidators or legal representatives of the member concerned or by the depositor or investor himself.

Detailed documents setting out the conditions and formalities to be complied with in order to benefit from a guarantee payment shall be drawn up in one of the official languages of Luxembourg or, should the need arise, in the official language or languages of the Member States of the European Community in which the branch is situated. In the latter case, the Association may require a translation to be produced in one of the official languages of Luxembourg.

The Association may stipulate that the declarations of claims, which are to be presented to it, shall be established on a form or according to a layout prescribed by it and also that these declarations shall be accompanied by such attestations or certifications relating, in particular, to the identity of the depositor or investor and the signature of the person making the declaration as it may prescribe.

- (5) Notwithstanding the deadlines set out in paragraphs (1) and (2), where a depositor, an investor or any other person who has rights or interests in the sums held on account or associated with an investment transaction, has been found guilty or is the subject of proceedings relating to an offence of money laundering as defined by law, the Association may suspend all payment pending a ruling by the court.

Article 12 – Payments - Subrogation

- (1) All payments to be made in virtue of the Guarantee shall be effected either to the liquidators or legal representatives of the member, or to each depositor or investor in the currency of the cash deposit, the funds and instruments.
- (2) Pursuant to the law, the Association, which makes payments under the Guarantee, shall be subrogated up to an amount equivalent to its payment for the guaranteed rights of clients and entitled beneficiaries who have obtained the payment.

The Association takes priority for reimbursement over these clients and entitled beneficiaries.

- (3) The Association may, if it deems this appropriate, require the customer who has been reimbursed either in whole or in part to submit any document, declaration or waiver, such as an assignment of claim, which in its sole discretion places it in a situation at least as advantageous as that resulting for it from the subrogation with the priority referred to above.

Article 13 - Confidentiality

The Association, its members and managers and the persons for whom they are answerable shall preserve total secrecy in respect of all information which has come to their knowledge by reason of their membership of the present Association, save to the extent that the use or disclosure of information are stipulated by law or made necessary for the implementation of the Guarantee.

Article 14 – Information to be secured by the Association

The Association may obtain from each member all information necessary for application of the Guarantee.

Article 15 – Information for depositors and investors

Pursuant to the law, the members shall be required to furnish effective and potential depositors and investors with all relevant information relating to the Guarantee in one of the official languages of Luxembourg or, if appropriate, in the official language or languages of the Member State of the European Community in which the branch is situated.

Title IV. - Board of Directors

Article 16 - Membership

- (1) The Association shall be administered by a Board of Directors consisting of not less than eleven and not more than fifteen members elected by the general meeting for a term of office, which shall not exceed two years.
- (2) Outgoing directors shall be eligible for re-election.

- (3) If one or more seats of directors fall vacant, the remaining directors shall retain the same powers until the next general meeting is held.
- (4) The duties of director shall give no entitlement to remuneration, but the expenses incurred for their performance shall be refunded by the Association.

Article 17 – Chairman – Vice-Chairmen

The Board of Directors shall select among its members a Chairman and, if it deems this appropriate, one or more Vice-Chairmen, the eldest of whom shall replace the Chairman in his absence.

Article 18 - Powers

- (1) The Board of Directors shall manage the Association, convene and organise general meetings and implement their decisions.
- (2) It shall have the most extensive possible powers to accomplish all administrative and executive actions relating to the Association.
- (3) It shall appoint and dismiss personnel of the Association and decide their terms of reference and salaries.
- (4) It may, on its own responsibility, delegate special powers of a stipulated nature to one or more of its members or to third parties.
- (5) It may establish, from among its members or outside its own ranks, all committees whose membership and terms of reference it shall define.
- (6) The foregoing list is explanatory and non-limitative.

Article 19 – Procedure

- (1) Written notice of all meetings of the Board of Directors shall be given to all the directors at least eight days prior the date scheduled for the meeting, save in urgent cases when the nature and reasons for the urgency shall be stipulated in the notice convening the meeting. The notice shall indicate the agenda.
- (2) This notice may be dispensed with, if assent is given in writing by telegram or fax by each director.
- (3) A special notice shall not be required for meetings held on a date and at a place stipulated in a resolution adopted beforehand by the Board of Directors.
- (4) Any director may arrange to be represented at the meetings of the Board of Directors by naming in writing, by telegram or fax, another director as his mandated representative. However, no director may represent more than one of his colleagues.
- (5) The Board of Directors shall only be able to deliberate and act validly if at least a majority of the directors are present or represented.

- (6) Decisions shall be taken by a majority of the votes cast by the directors who are present or represented and take part in the vote. In the event of a tie, the Chairman shall have the casting vote.
- (7) In urgent cases, a written decision signed by all the directors shall be regular and valid as though it had been adopted at a meeting of the Board of Directors, which was duly convened and held. Such a decision can be documented by several separate written texts, each having the same content and each signed by one or more directors.

Article 20 – Commitment to third parties

- (1) The Association shall be validly bound in relation to all third parties by the joint signature of two directors who shall not have to justify any deliberation or prior authorisation, without prejudice to all special powers conferred by the Board of Directors.
- (2) Judicial actions, as plaintiff or defendant, shall be conducted or defended in the name of the Association by the Board of Directors on the initiative of its Chairman.

Title V. - General meeting

Article 21 – Membership - Powers

- (1) The general meeting shall consist of all the members.
- (2) It shall be the sovereign authority of the Association and shall have the powers, which are expressly vested in it by the law or by its statutes.

Article 22 - Meetings

- (1) The general meeting shall be convened in ordinary session at least once each year, during the first half of the calendar year. It shall also be convened extraordinarily by the Board of Directors whenever the latter deems this necessary or when 20% of the members so request.
- (2) The invitations to attend shall contain the agenda. They shall be addressed in writing to each member at least fifteen days prior to the date of the meeting.

Article 23 – Procedure - Votes

- (1) Any member may grant authority to another member to represent him at the general meeting.
- (2) The general meeting convened in ordinary session by the procedure set out in Article 22 shall be regularly constituted, regardless of the number of members present.
- (3) It may only act on the items figuring on its agenda.
- (4) Each member shall have one vote.

- (5) Decisions shall be validly taken by a majority of the members who are present or represented.

Article 24 – Extraordinary meetings

The general meeting, which is convened extraordinarily to amend the statutes, shall deliberate under the conditions of presence and majority stipulated by the law.

Article 25 – Corporate accounts

The accounts of the Association shall be verified by a statutory auditor who shall present a written report to the general meeting.

Article 26 - Minutes

- (1) The decisions of the general meeting shall be set down in a register of minutes signed by the Chairman and a member of the Board of Directors. This register shall be kept at the registered office, where all the members may be apprised thereof without displacement.
- (2) All members and all third parties justifying a legitimate interest may request extracts signed by the same persons.

Title VI. - Subscription

Article 27 – Amount of the subscription

The ordinary general meeting shall fix the amount of the annual subscription of the members. This shall not be more than one thousand two hundred and fifty euros.

Title VII. - Winding up

Article 28 – Distribution of assets

If the Association is wound up voluntarily or by judicial process, the general meeting shall decide on the utilisation of the assets of the dissolved Association.

Title VIII. - Arbitration

Article 29 - Procedure

- (1) All disputes and controversies which may arise in connection with the interpretation and application of the statutes or the application of the Guarantee established by them, either between the Association and one or more of its members or between members themselves, shall be settled by arbitration to the exclusion of ordinary judicial channels.
 - (2) For this purpose, each party concerned shall designate an arbitrator and the two arbitrators shall jointly designate the third.
 - (3) If more than two parties are concerned, those whose interests coincide shall agree on the appointment of a joint arbitrator.
 - (4) Should the other party fail to appoint his arbitrator within a period of one month, or should the two arbitrators fail to reach agreement on the choice of a third within the same period, the appointment shall be made by the President of the district court of Luxembourg at the request of the party who acts soonest, the other party or parties having been duly convened.
 - (5) The third arbitrator shall act as chairman of the arbitration court.
 - (6) Arbitration shall take place in Luxembourg and the language of arbitration shall be French.
 - (7) Subject to the binding provisions of the law, the arbitration tribunal shall itself determine its own procedure which shall take due account of the rights of the parties in the arbitration to a proper defence.
 - (8) The arbitrators shall decide not only on the basis of law, but also with a view to amicable settlement.
 - (9) The arbitration ruling shall be final and not open to appeal.
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