

Annexes

1. The main characteristics of Luxembourg's investment fund regimes (EY, 2020)

The marketing of AIFs may be summarized as follows:

- ▶ Full AIFM regime AIFs can be marketed to:
 - ▶ Professional investors in the EU/EEA⁷: authorized AIFM, and authorized internally managed AIFs benefit from a passport permitting them to market the shares or units of the AIFs they manage to professional investors throughout the EU/EEA
 - ▶ Retail investors in the EU/EEA under stricter national rules: each EU/EEA Member State may permit authorized AIFM, and authorized internally managed AIFs to market the shares or units of the AIFs they manage to retail investors in the Member State. The Member State may also apply stricter requirements than those applicable to marketing to professional investors
- ▶ Simplified AIFM registration regime AIFs can be marketed to professional investors in the EU/EEA under national private placement regimes (i.e., subject to national requirements), where such regimes exist. The passport is not applicable. However, a specific regime exists for the managers of qualifying European Venture Capital Funds (EuVECA) and of qualifying European Social Entrepreneurship Funds (EuSEF) which meet the requirements of the simplified EU/EEA regulatory regimes. Such managers can benefit from a “passport” permitting them to market the shares or units of the qualifying European funds they manage to suitably qualified investors throughout the EU/EEA (see Section 2.4.4.3.)
- ▶ EU/EEA professional investors may, on their own initiative, purchase the shares or units of any AIFs, irrespective of the domicile of the AIFs or AIFM, provided that there is no marketing (also referred to as “reverse solicitation”)
- ▶ In addition to the rules applicable to AIFs, SIFs and RAIFs can only be distributed to “well-informed investors” (see Section 2.4.3.2.)

Summary of marketing of Luxembourg UCIs in the EU/EEA

Products	Regulatory framework	Marketing regime	Investors
UCITS	UCITS	EU/EEA “passport”	Retail and professional
AIF	Full AIFM regime AIF	EU/EEA “passport”	Professional
	EuVECA and EuSEF	EU/EEA “passport”	Qualified
	Simplified AIFM registration regime AIF	National private placement regimes (NPPRs)	Professional
	Full AIFM regime AIF and, if relevant, simplified AIFM registration regime AIF	National retail distribution regimes, where applicable	Retail
	Any AIF (Full AIFM regime or simplified AIFM registration regime)	Reverse solicitation	Professional

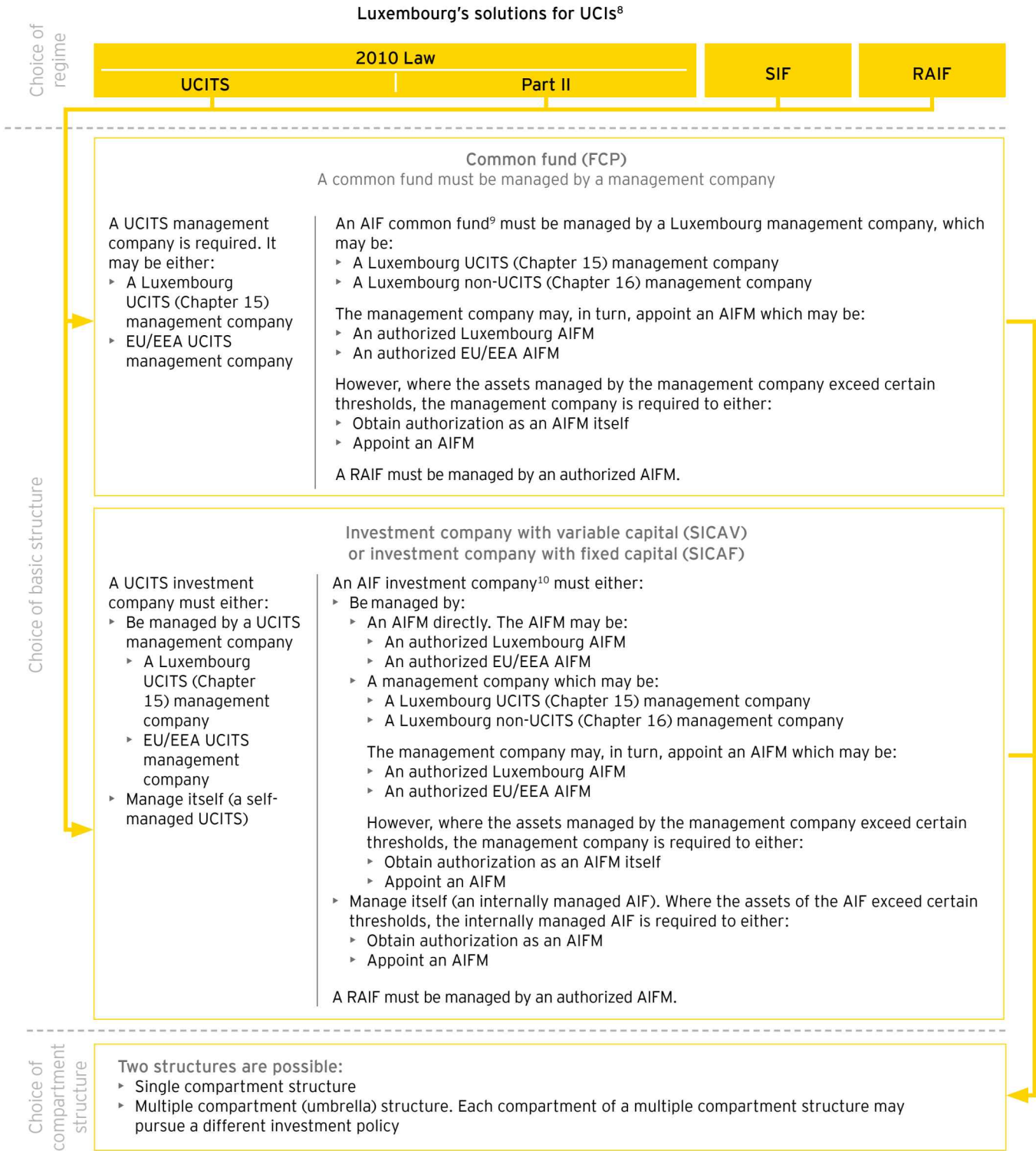
Marketing outside the EEA is subject to each country’s national requirements.

Chapter 12 covers the marketing of UCIs.

⁷ The EEA Agreement did not list the AIFM Directive in Annex at the time of writing, but the AIFM Directive is identified as a “text with EEA relevance”.

C. Overview of fund regimes and basic structures

The choice of regime and basic structure is presented in schematic form below:



⁸ Section 2.3.1. covers basic structures, Section 2.4.4. covers the requirements applicable to AIF, and Section 6.1. introduces management companies and AIFM.
⁹ This general outline does not cover the specific cases of certain partnerships; for further information, see Section 2.3.1.
¹⁰ Idem.

The following table outlines the main characteristics of Luxembourg's investment fund regimes:

	Regimes			
	UCITS	2010 Law Part II	SIF	RAIF
Regulation	Regulated	Regulated	Regulated	Under the AIFMD - however see footnote below ¹¹
Regulator	CSSF	CSSF	CSSF	Under the AIFMD - however see footnote below ¹²
Authorization procedure (see Chapter 3)	Prior to set-up	Prior to set-up	Prior to set-up	Not required
Structures available (see Chapter 2)	Common fund: FCP	Common fund: FCP	Common fund: FCP	Common fund: FCP
	Investment company: SICAV or SICAF	Investment company: SICAV or SICAF	Investment company: SICAV or SICAF	Investment company: SICAV or SICAF
Eligible investors ¹³ (see Section 1.3.1.B. and Chapter 2)	All	All	Well-informed investors ¹⁴	Well-informed investors ¹⁵
Distribution in European Union (EU)/European Economic Area (EEA) ¹⁶ (see Section 1.3.1.B. and Chapter 12) to:				
▶ Retail investors	EU/EEA passport	National retail distribution requirements	National retail distribution requirements	National retail distribution requirements
▶ Professional investors	EU/EEA passport	EU/EEA passport if managed by an authorized AIFM ¹⁷ , otherwise national private placement regimes (NPPRs)	EU/EEA passport if managed by an authorized AIFM ¹⁸ , otherwise national private placement regimes (NPPRs)	EU/EEA passport of the authorized AIFM ¹⁹
Maximum number of shareholders or unitholders (see Section 2.3.)	No limit	No limit	No limit ²⁰	No limit ²¹
Minimum number of shareholders or unitholders (see Section 2.3.)	No minimum	No minimum	No minimum	No minimum
Minimum investment by a shareholder or unitholder (see Chapter 2)	None	None	EUR 125,000; less if certification	EUR 125,000; less if certification
Use of compartments (sub-funds) (see Section 2.3.2.)	Yes	Yes	Yes	Yes
Cross-investment between compartments (see Section 2.3.5.)	Yes, subject to conditions	Yes, subject to conditions	Yes, subject to conditions	Yes, subject to conditions

¹¹ The RAIF must be managed by an authorized AIFM which is supervised by the competent authority of its country of domicile. A RAIF is not however directly supervised by the CSSF.

¹² Idem.

¹³ Additional restrictions may be included in the constitutional document or prospectus.

¹⁴ See Section 2.4.2.1.B.

¹⁵ See Section 2.4.3.2.

¹⁶ European Union (EU) Member States plus Iceland, Liechtenstein and Norway.

¹⁷ See Chapter 6.

¹⁸ Idem.

¹⁹ Idem.

²⁰ Except in the case of a SIF or RAIF set up as a private limited liability company (S.à r.l.), in which case the maximum number of investors is 100.

²¹ Idem.

	Regimes			
	UCITS	2010 Law Part II	SIF	RAIF
Multiple share or unit classes (see Section 2.3.3.)	Yes	Yes	Yes	Yes
Eligible investments/strategy (see Chapter 4)	Transferable securities such as equities, bonds, money market instruments (MMI), investment funds and certain derivatives Techniques and instruments related to transferable securities Detailed restrictions apply	Some restrictions	No restrictions	No restrictions
Diversification (see Chapter 4)	Detailed requirements	General requirements	General requirements	General requirements
Risk management (see Chapter 7)	Detailed requirements	General requirements, and AIFM requirements (where applicable)	General requirements on risk management system, and AIFM requirements (where applicable)	AIFM requirements
Fees/expenses including performance and advisory fees	No detailed restrictions Must be disclosed	No detailed restrictions Must be disclosed	No detailed restrictions Must be disclosed	No detailed restrictions Must be disclosed
Transferability of shares or units (see Chapter 2)	Generally freely transferable	Generally freely transferable	May or may not be freely transferable Subject to informed investor qualification	May or may not be freely transferable Subject to informed investor qualification
Information for investors (see Chapter 10)	Prospectus Key Investor Information (KII) Financial statements ²² Periodic disclosures ²³	Prospectus ²⁴ Financial statements ²⁵ Periodic disclosures ²⁶	Prospectus or offering document ²⁷ Financial statements ²⁸ Periodic disclosures ²⁹	Offering document ³⁰ Financial statements ³¹ Periodic disclosures ³²
Required service providers (see Chapter 6) ³³ (see Chapter 9) (see Chapter 8) (see Section 10.5.10.)	UCITS management company (common fund) Luxembourg depositary Administration, registrar and transfer agent which must be in Luxembourg if the management company is in Luxembourg Luxembourg auditor	Luxembourg management company (common fund) Luxembourg depositary Luxembourg administration, registrar and transfer agent Luxembourg auditor	Luxembourg management company (common fund) Luxembourg depositary Luxembourg administration, registrar and transfer agent Luxembourg auditor	Luxembourg management company (common fund) Luxembourg depositary Luxembourg administration, registrar and transfer agent Luxembourg auditor

²² At least audited annual and unaudited semi-annual financial statements.

²³ See Section 10.4.1.

²⁴ For full AIFM regime AIF, information to be disclosed in the prospectus or separately (see Section 10.3.3.).

²⁵ At least audited annual and unaudited semi-annual financial statements.

²⁶ For full AIFM regime AIF (see Section 10.4.2.).

²⁷ For full AIFM regime AIF, information to be disclosed in the prospectus or separately (see Section 10.3.3.).

²⁸ At least audited annual financial statements.

²⁹ For full AIFM regime AIF (see Section 10.4.2.).

³⁰ Information to be disclosed in the prospectus or separately (see Section 10.3.3.).

³¹ At least audited annual financial statements.

³² For full AIFM regime AIF (see Section 10.4.2.).

³³ Main service providers only listed here; see Section 1.4.

	Regimes			
	UCITS	2010 Law Part II	SIF	RAIF
Regulator reputational checks		Promoter ³⁴		Please see footnote below ³⁵
(see Chapter 5)	Portfolio manager and/or adviser	Portfolio manager and/or adviser		
(see Chapter 9)	Directors of UCI, or of management company ³⁶	Directors of UCI, or of management company ³⁷	Directors of SIF, or of management company ^{38, 39}	
Listing possible (see Chapter 13)	Yes	Yes	Yes	Yes
Net asset value (NAV) calculation and redemption frequency (see Section 8.6.)	Minimum twice a month	Minimum monthly and, if managed by an authorized AIFM, the NAV must be calculated on the occasion of each issue	If managed by an authorized AIFM, on the occasion of each issue or subscription or redemption or cancellation of shares or units, and at least once a year. In any case, NAV required for reporting purposes	On the occasion of each issue or subscription or redemption or cancellation of shares or units, and at least once a year. In any case, NAV required for reporting purposes
Subscription and redemption price (see Section 8.6.2.)	NAV ⁴⁰	NAV ⁴¹	Subscription and redemption conditions laid down in the constitutional document	Subscription and redemption conditions laid down in the constitutional document
Tax treatment in Luxembourg (see Section 11.3.)	No tax, except for annual subscription tax of 0.05% on the NAV unless a reduced rate of 0.01% or exemption applies No withholding tax (WHT) on dividends paid	No tax, except for annual subscription tax of 0.05% on the NAV unless a reduced rate of 0.01% or exemption applies No withholding tax (WHT) on dividends paid	No tax, except for annual subscription tax of 0.01% on the NAV unless an exemption applies No withholding tax (WHT) on dividends paid	No tax, except for annual subscription tax of 0.01% on the NAV unless an exemption applies RAIFs investing entirely in risk capital are subject to the tax regime applicable to SICARs No withholding tax (WHT) on dividends paid

³⁴ Where the 2010 Law Part II UCI is not managed by a UCITS (Chapter 15) management company.

³⁵ RAIFs are not supervised by the CSSF. The AIFM is responsible for ensuring that the AIFs it manages comply with the AIFMD product rules.

³⁶ For self-managed UCITS, see Section 2.4.1.5.

³⁷ For internally managed AIF, see Section 2.4.4.

³⁸ "Directors" means, in the case of public limited companies and in the case of cooperatives in the form of a public limited company, the members of the Board of Directors, in the case of partnerships, the managers or general partner, in the case of private limited liability companies, the manager(s) and in the case of common funds, the members of the Board of Directors or the managers of the management company.

³⁹ For internally managed AIF, see Section 2.4.4.

⁴⁰ The net asset value per share or unit may be adjusted to incorporate a "swing factor" if swing pricing procedures are in place (see Section 8.6.3.).

⁴¹ Idem.

1.3.2. Basic structures

The decision to create a UCI in contractual form (common fund – FCP) or in corporate form (an investment company, generally with variable capital – SICAV)⁴² is primarily driven by tax, operational and marketing considerations. The following table details the main differences between common funds and investment companies:

	Basic structures	
	Common fund (FCP)	Investment company (SICAV or SICAF)
Management entity	Luxembourg management company which, in the case of an AIF, may appoint an AIFM	Self-managed investment company: Board of Directors, general partner or manager(s) ⁴³ . Managed investment company: <ul style="list-style-type: none"> ▸ UCITS: a management company ▸ AIF: a management company and/or an AIFM
Control	Board of Directors of management company in conjunction with depositary	Board of Directors, general partner or manager(s) ⁴⁴ and ultimately by investors ⁴⁵
Shareholders' or unitholders' meetings	Unitholders' meetings are not mandatory for a common fund	At least one meeting of shareholders must be held annually
Taxable status	Tax transparent (with limited exceptions)	Not tax transparent (with limited exceptions)
Tax implications	Individual underlying investors may benefit from certain double taxation treaties (DTTs)	SICAV may directly benefit from certain DTTs ⁴⁶
VAT status (Value added tax)	VATable person (via its management company)	VATable person

Luxembourg's investment fund regimes and basic structures, and the requirements for each, are described in more detail in Chapter 2.

1.3.3. Traditional investment funds

Traditional investment funds include:

- Equity funds
- Bond funds
- Money market funds (MMF)
- Mixed funds
- Multiple-asset class investment funds: investment funds with multiple compartments investing in different asset classes
- Funds of traditional investment funds

Appendix I describes in more detail what UCIs are and explains the various types of funds and asset classes.

Traditional investment funds may be set up under any of Luxembourg's investment fund regimes (i.e., as UCITS, 2010 Law Part II UCIs, SIFs or RAIFs) using any of the basic structures mentioned previously.

⁴² See also Section 2.3.

⁴³ In the case of public limited companies and in the case of cooperatives in the form of a public limited company, the members of the Board of Directors, in the case of partnerships, the managers or general partner, and in the case of private limited liability companies, the manager(s).

⁴⁴ Idem.

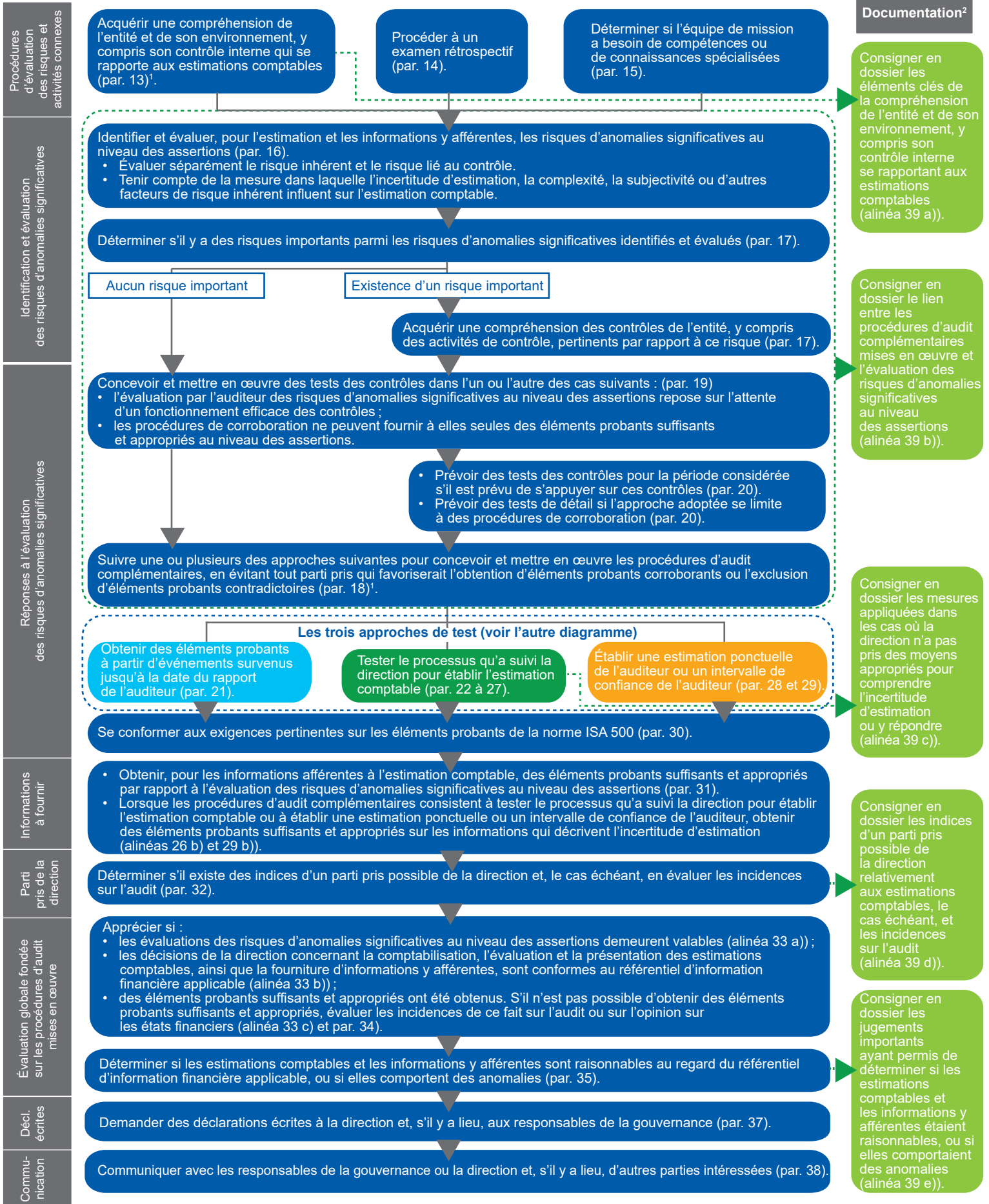
⁴⁵ Except in the case of a partnership.

⁴⁶ See Circular L.G. -1 n°61 on Certificates of Residence for Luxembourg UCIs.

2. Tableau récapitulatif des exigences de la norme ISA 540 (révisée) (IAASB, 2020).

Norme ISA 540 (révisée) – Exigences

Le diagramme ci-dessous montre comment s'enchaînent les exigences de la norme ISA 540 (révisée).



Notes

1. Adaptabilité

- La nature, le calendrier et l'étendue des procédures d'évaluation des risques et des procédures d'audit complémentaires dépendront de l'incertitude d'estimation et de l'évaluation des risques d'anomalies significatives s'y rattachant (par. 3).
 - Les procédures que l'auditeur met en œuvre afin d'acquérir une compréhension de l'entité et de son environnement doivent être suffisantes pour lui fournir une base appropriée aux fins de l'identification et de l'évaluation des risques d'anomalies significatives au niveau des états financiers et au niveau des assertions (par. 13).
 - Les procédures d'audit complémentaires mises en œuvre par l'auditeur doivent être adaptées à l'évaluation des risques d'anomalies significatives au niveau des assertions, compte tenu des raisons qui sous-tendent cette évaluation, et tenir compte du fait que plus les risques d'anomalies significatives sont considérés comme élevés, plus les éléments probants doivent être convaincants (par. 18).
- Des indications sur la façon d'adapter les exigences de la norme se trouvent aux paragraphes A20 à A22, A63, A67 et A84 (par. A7).

2. Documentation

- Les exigences de documentation spécifiques à l'audit des estimations comptables et des informations y afférentes sont énoncées au paragraphe 39 de la norme ISA 540 (révisée). Voir aussi la norme ISA 230, *Documentation de l'audit*, qui traite de la responsabilité qui incombe à l'auditeur de préparer la documentation de l'audit des états financiers, et l'annexe de cette norme, qui indique les autres normes ISA contenant des exigences et des indications spécifiques en matière de documentation.

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