

CORPORATE GOVERNANCE
Duties and Liabilities of board members in Investment Funds
The Legal Situation in Luxemburg and in Europe

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I. – Managers of an investment fund

A. – Investment company

- 1) Self-managed investment company
- 2) Investment company managed by a “designated” management company

B. – Contractual funds

II. - Rules of conduct regarding corporate governance in Investment Funds

A. - Fiduciary duty

1) Duty to act in the best interest

- a) Best interest of the investor or/and the UCITS?
- b) Best or sole interest of the investors ?

2) “Implementing” duties

- a) Duty of loyalty
- b) Duty of due care and diligence
- c) Duty to act independently
- d) Other duties
 - Duty of information
 - Duty of compliance

B. - Duty to avoid and manage conflicts of interest

III. – Managers liability in Investment Funds

A. - Civil liability

1) Investment company

- a) Vis-a-vis the company
 - 1° Luxembourg 1915 Act (art. 59, al. 1 & 2)
 - 2° Tort liability
- b) Vis-a-vis the shareholders
- c) Vis-a-vis the third parties

2) Contractual funds

B. Criminal liability

- 1) Criminal code
- 2) 1915 Act criminal offenses
- 3) 2010 Act regarding UCI (art. 165 to 171)

C. Administrative liability