

Administrative sanction of 15 November 2023 for non-compliance with professional obligations related to the governance, the portfolio management function, the risk management function, the compliance function, the delegation monitoring, the internal audit, the valuation function, the IT and the voting rights process of the entity.

Luxembourg, 3 July 2024

Administrative decision

On 15 November 2023 the CSSF imposed an administrative fine amounting to EUR 200,000 on the investment fund manager Garbe Logistic Management Company S.à r.l. ("**Garbe**" or "**the Company**"), authorised as alternative investment fund manager ("**AIFM**") in accordance with the Law of 12 July 2013 on alternative investment fund managers ("**AIFM Law**").

Legal framework/motivation

The administrative fine was imposed by the CSSF pursuant to Article 51(1), first indent of the AIFM Law, read together with Article 11(1), letters a), c), d) and e), Article 14(2) and (3), letter b), Article 17(1) and Article 18(1), letter f) of the AIFM Law, for non-compliance with (i) the general principles of operating conditions for AIFM, (ii) the requirements for the establishment of adequate risk management systems and the proper identification, measurement, management and monitoring of the AIF's risks, (iii) the requirements regarding the valuation process of the assets of the AIF, and (iv) the requirements regarding the monitoring of delegates.

In order to determine the type and amount of the administrative fine, the CSSF has duly taken into account (i) all the legal and factual elements presented and discussed, (ii) the nature, gravity and duration of the breaches existing at the time of the on-site inspection, (iii) the conduct and past record of the Company in accordance with the provisions of article 51(2), last paragraph of the AIFM Law, as well as (iv) the fact that the Company acknowledged and recognised the observations, provided a detailed action plan and immediately initiated remedial actions in order to resolve the breaches identified.

The professional obligations in relation to which the breaches were observed are set out in particular in the relevant provisions of:

- the **AIFM Law**;
- the Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers ("**AIFMD**");

- the Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers ("**AIFM Regulation**"); and
- the CSSF Circular 18/698 on the authorisation and organisation of investment fund managers under Luxembourg law ("**CSSF Circular 18/698**")

as applicable at the time of the facts.

Legal bases for the publication

The publication is made pursuant to the provisions of Article 51(2), last sub-paragraph of the AIFM Law, insofar as, following an assessment of proportionality, the CSSF considered that the present publication on a nominative basis does not jeopardise the stability of the financial markets or cause inappropriate damage to the parties involved.

Context and major cases of non-compliance with the professional obligations identified

This administrative fine is the result of an on-site inspection carried out by the CSSF on the AIFM between 15 December 2021 and 18 January 2022, during which the CSSF identified breaches in the internal governance framework of the AIFM which related in particular to the following points:

The AIFM did not comply with **the general principles of operating conditions for AIFM** as set out by Article 11(1) a), c), d), e) of the AIFM Law, as detailed below:

- (i) The AIFM did not have and employ at all times effectively the resources and procedures that are necessary for the proper performance of their business activities according to Article 11(1) c) of the AIFM Law as detailed by Article 57(1) e) of the AIFM Regulation supplementing Article 12(1) c) of the AIFMD. More specifically:
 - The management information system of the AIFM was not appropriate as the depth of content of the management information system did not meet the regulatory requirements as further specified by points 340 to 346 of CSSF Circular 18/698.
 - The organisation handbook and procedures was not appropriate as the last formal approval of the Company's organisational manual took place in 2014.
 - The Senior Management did not meet every month as required by point 100 of the CSSF Circular 18/698 supplementing Article 11(1) c) of the AIFM Law.
- (ii) The AIFM did not ensure that the portfolio management was executed in conformity with the portfolio management policy of the Company. The AIFM did not ensure that the portfolio management was executed with due skill, care and diligence, with the proper resources and procedures, complying with the regulatory requirements and avoiding conflicts of interest according to Article 11(1) a), c), d), e) of the AIFM Law as detailed by Article 57(1) e) of the

AIFM Regulation supplementing Article 12(1) a), c), d), e) of the AIFMD, and point 482 of CSSF Circular 18/698. More specifically:

- A review of the Company's investment transactions revealed several breaches of the portfolio management policy.
- Furthermore, the Company's portfolio management did not conduct formalised preliminary analyses in connection with the transactions. Consequently, the Company relied entirely on its investment advisor for the due diligence of the transactions.
- The Company did not perform a formalised conflict of interest review by the Investment Committee for each transaction.
- The Company's portfolio (or risk) management did not conduct formalised ex-ante investment restrictions checks on the investment transactions.

(iii) The AIFM did not ensure that the compliance function was executed effectively with the resources and procedures that are necessary to Article 11(1) c) of the AIFM Law and in compliance with all regulatory requirements applicable to the conduct of their business activities according to Article 11(1) e) of the AIFM Law as detailed by Article 61(1) and (2) a) of the AIFM Regulation, supplementing Article 12 of the AIFMD. More specifically, no compliance monitoring plan was created until 2020. Furthermore, no quarterly compliance reports were prepared until December 2021. All other reports provided to the CSSF did not identify any instances of non-compliance with all applicable laws, regulations, codes of conduct and industry standards, in contradiction with the findings of the internal audit function and with the breaches noted by the CSSF during its inspection. CSSF concluded that the controls performed by the compliance function were not carried out at all or were carried out inadequately.

(iv) The AIFM did not ensure that the internal audit function was executed in compliance with all regulatory requirements applicable to the conduct of their business activities according to Article 11(1) e) of the AIFM Law as detailed by Article 60(4) of the AIFM Regulation, supplementing Article 12 of the AIFMD, and points 102 and 298 of CSSF Circular 18/698. Indeed, the internal audit report for 2019 was not discussed by the Board of Managers and the Management Board. There were no records of a discussion by the Board of Managers on the findings of the internal audit report for 2022 or an approval of the said report.

(v) The AIFM did not ensure that IT support function was executed effectively with the resources and procedures that are necessary according to Article 11(1) c) of the AIFM Law as detailed by Articles 57(2), (3) and 58(2) of the AIFM Regulation supplementing Article 12(1) c) of the AIFMD. More specifically:

- The Company's IT procedures had not been formally approved by the Board of Managers and did not reflect the Company's existing IT setup.
- No effective IT data backup and no effective server maintenance were performed. The latest BCP were carried out in 2018 and related to the former premises of the Company.

- (vi) The AIFM did not ensure that the voting rights were executed effectively with the resources and procedures that are necessary according to Article 11(1) c) of the AIFM Law. More specifically, the voting rights procedure of the Company was not applied in practice.

Additionally, the AIFM did not comply with **the requirements for the establishment of adequate risk management systems and the proper identification, measurement, management and monitoring of the AIF's risks** as set out by Article 14(2) and 14(3) b) of the AIFM Law as detailed by Article 39(1) and 45(1) a) and b) of the AIFM Regulation supplementing Article 15(2) and (3) of the AIFMD, as detailed below:

- (i) The AIFM did not ensure the establishment of adequate risk management systems according to Article 14(2) of the AIFM Law. No quarterly risk management report was submitted to the Board of Managers for discussion throughout 2020 and onto the first quarter of 2021. In the same period, no report was submitted to the Senior Management for discussion. As the Company's ongoing risk management was solely based on the risk reports of the delegated risk manager, it had to be stated that there was no risk management in place at the AIFM during this period.
- (ii) The AIFM did not ensure a proper identification, measurement, management and monitoring of the AIF's risks according to Article 14(3) b) of the AIFM Law. More specifically, the risk management function was not involved in the acquisition process of new investments. There was no evidence that investment restrictions were reviewed neither by the risk management nor by portfolio management function or the investment advisor.

Furthermore, the AIFM did not comply with the **requirements regarding the valuation process of the assets of the AIF** as set out by Article 17(1) of the AIFM Law. In particular, the AIFM did not 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 according to Article 17(1) of the AIFM Law. The valuation reports for 2020 and 2021 from the external valuers of GARBE Logistic European Strategic Fund were not subject to a review by the AIFM's valuation function, although the AIFM explicitly performs the valuation function internally.

Finally, the AIFM did not comply with the **requirements regarding the monitoring of delegates** as set out in Article 18(1) f) of the AIFM Law. Indeed, the AIFM was not 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 according to Article 18(1) f) of the AIFM Law. More specifically, initial and ongoing due diligences on the risk managers, registrars and transfer agents did not meet the requirements of Article 18(1) f) of the AIFM Law.