



UCITS 2022 webinar Series

UCITS Delegation and Oversight

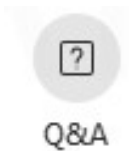
Stéphane Badey
Partner
Arendt & Medernach

Jasper Ronda
Senior Manager
Arendt Regulatory & Consulting

Piotr Giemza-Popowski
Counsel
Arendt & Medernach

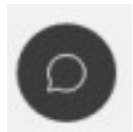
28 June 2022

Hello and welcome!



Q&A – please send your questions to the panelists

You can access the Q&A section by clicking on the 3 dots button in the toolbar at the bottom of your screen.



Chat – should you have technical issues, please let us know via the chat

You can access the chat section by clicking on the icon in the toolbar at the bottom of your screen.

Agenda

1. CSSF approval process
2. Focus on portfolio management
3. Delegation/outourcing rules under the CSSF Circulars CSSF Circular 18/698 and 22/806
4. Changes to UCITS delegation rules under AIFMD 2



CSSF approval process

CSSF approval process - elements

1. Rationale
2. Submission of documents
3. Prospectus description/changes
4. Corporate authorisations
5. Notice to investors



CSSF approval process - documents



List of documents that are usually asked by the CSSF for new service providers:

1. Confirmation of satisfactory due diligence;
2. signed service contract;
3. contract conformity letter; and
4. optionally, migration plan.

CSSF approval process – additional documents for portfolio managers

1. Proof of registration with the relevant supervisory authority;
2. dated and signed organisational chart;
3. articles of incorporation or any equivalent document;
4. excerpt from the local Trade and Companies' Register;
5. financial statements (last 3 years, if available); and
6. shareholding structure chart.



CSSF approval process – common issues

1. Due diligence
2. Timing delay due to regulator-to-regulator process
3. Termination rights
4. Update to the AML/CFT market entry form required
5. Outsourcing arrangements





on portfolio management

Focus on portfolio management – discretionary management vs investment advice

Investment management	Investment advice
Preliminary requirements	
<ul style="list-style-type: none"> The manager must be authorised or registered and subject to prudential supervision. If located in a third country, the cooperation between the CSSF and the supervisory authority of the investment fund manager must be ensured. 	N/A but see below re MiFID considerations
MiFID considerations - place of service where the “characteristic service” is supplied	
Investment management usually deemed to be performed where the investment manager is located – often outside of Luxembourg → passporting in Luxembourg not necessary (CSSF Circular 19/716)	Investment advice usually deemed to be performed where the advice is received – for Luxembourg UCITS in Luxembourg → passporting in Luxembourg necessary (CSSF Circular 19/716) <i>MiFID exemptions available?</i>

Focus on portfolio management – discretionary management vs investment advice

Investment management	Investment advice
Fee arrangements	
Method of calculation or the rate of the fee due to each recipient must be disclosed in the prospectus.	
	Sharing arrangement of the performance fee with any investment advisor(s) to be disclosed
	Generally investment advisor's fee expected to be lower than the investment manager's fee.
Prospectus disclosure	
Identity and scope of services to be disclosed	

Focus on portfolio management – multimanager model

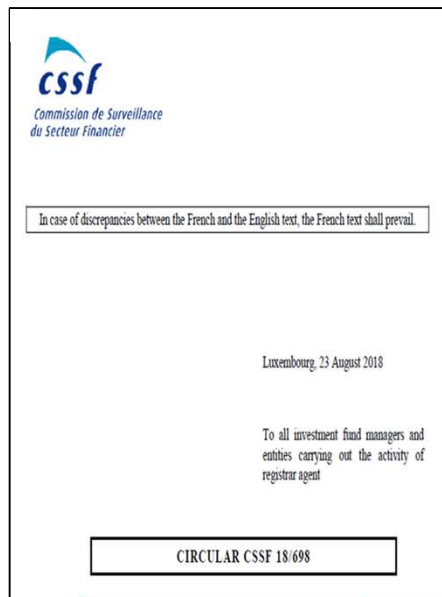
1. Delineation of responsibilities – investment process flow-chart
2. Focus on redundancy and excessive costs
3. Performance fee assessed on a sub-fund as a whole level (what about managers managing against different benchmarks?)



Delegation/outourcing rules under the CSSF Circulars CSSF Circular 18/698 and 22/806

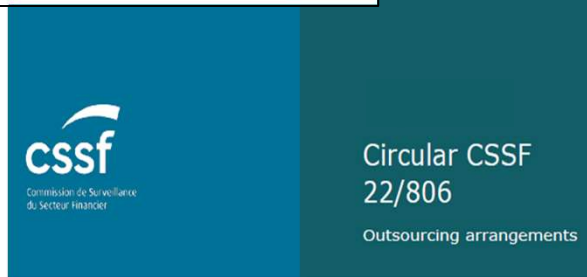


Different circulars, similar rules

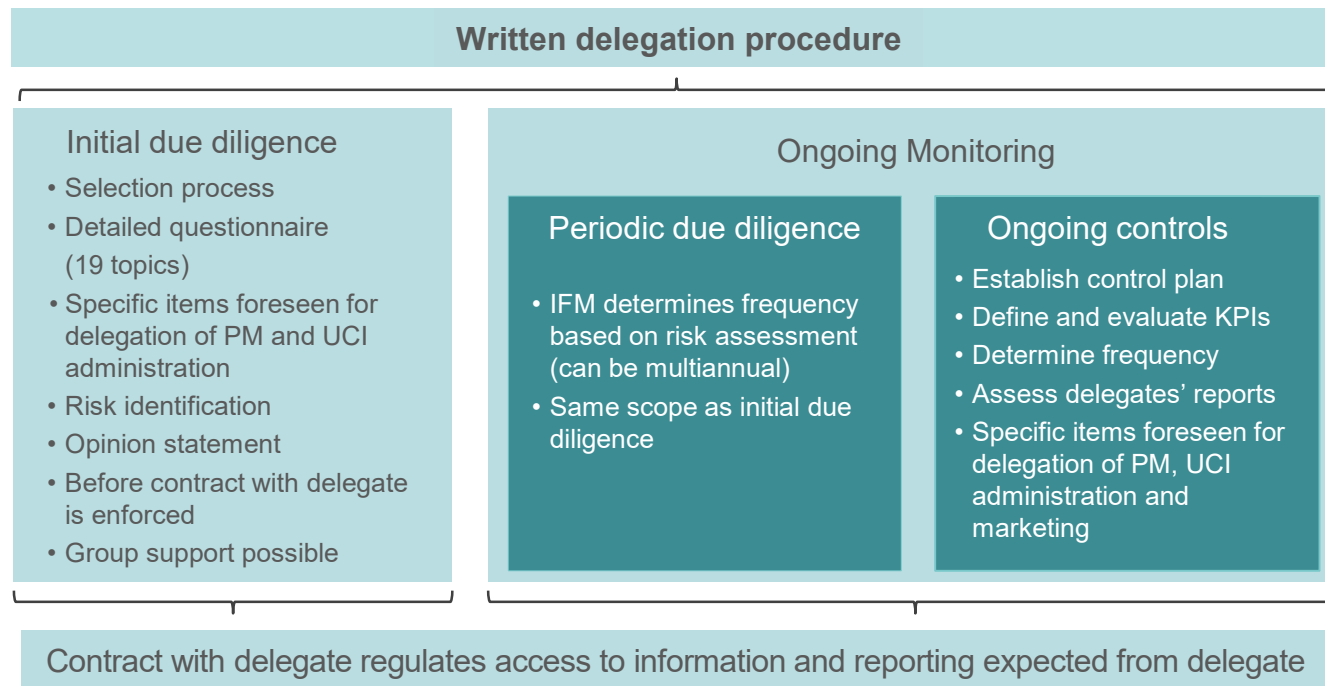


CSSF Circular 18-698 sets out delegation rules to those functions mention in art. 94 (portfolio management, risk management, valuation, administration, marketing, accounting, compliance, AML/KYC, complaints handling, internal audit)

CSSF Circular 22/806 sets out specific rules to be observed for the outsourcing of ICT functions



Oversight rules under Circular 18/698



Control of delegates cannot be outsourced (but possibility to use transversal or specific competences existing within the group)

- Programme
- Risk based approach
- Identified staff with relevant skills

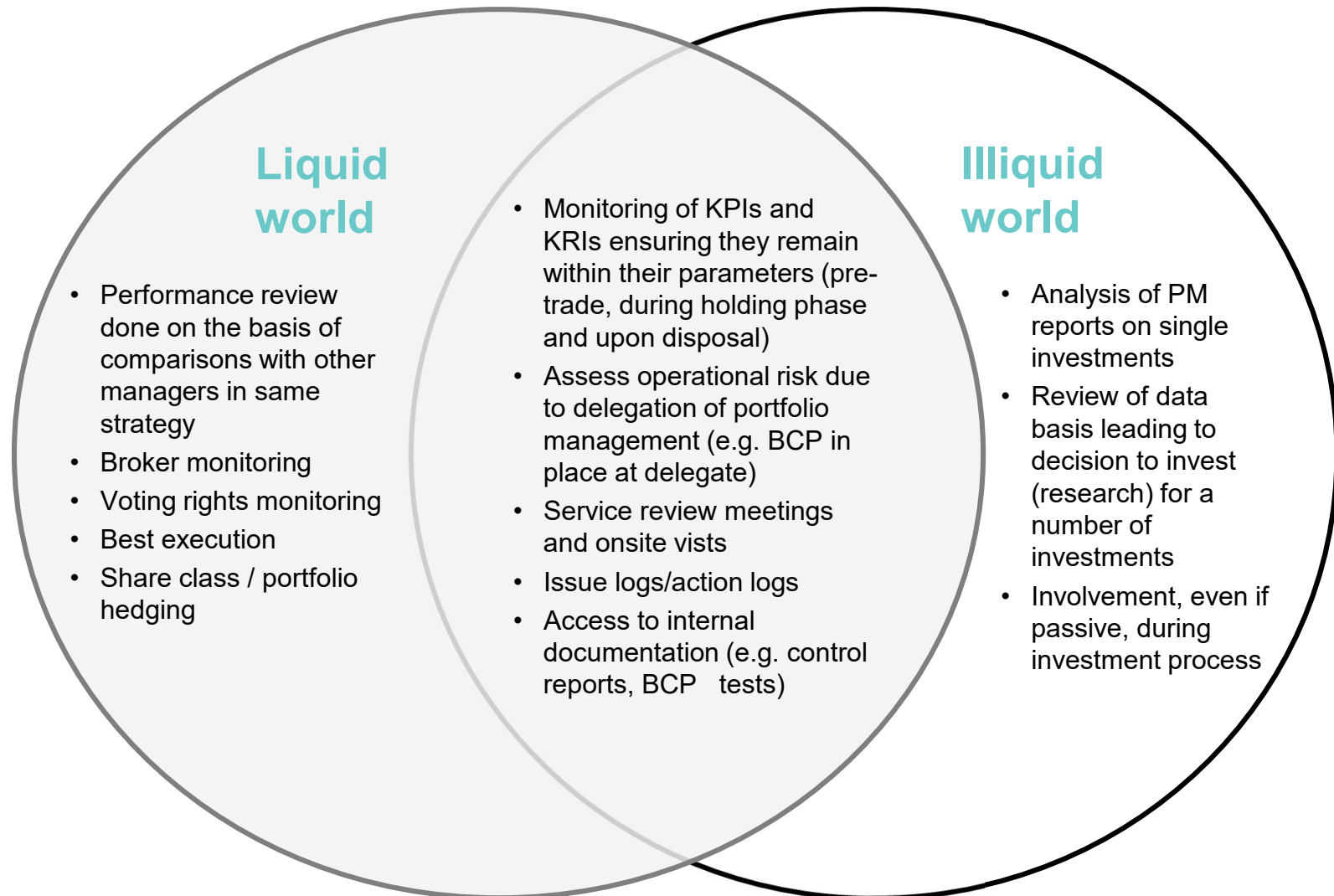
Written contract with delegate

Documentation evidencing governing bodies involvement and decision making

Dated and signed conclusions of due diligence

1. Escalation process
2. Periodic reporting to governing bodies
 - follow-up on previously identified weak points
 - opinion statement
 - dated and signed

Oversight on portfolio manager



Changes to UCITS delegation rules under AIFMD 2



Changes to UCITS delegation rules under AIFMD 2

- Disclosure of delegation arrangements as part of the authorisation application ✓
- Notification also in respect of top-up activities ✓
- Justification of the entire delegation function based on objective reasons ✓
- Welcome clarification that distributors acting on their own behalf should not be considered as delegates ✗
- Regular and detailed reporting to the national supervising authority on delegation and sub-delegation arrangements which involve the delegation of collective or discretionary portfolio management or risk management functions ✓?

Enhanced scrutiny on third-country delegation?

Contact



Stéphane Badey

Partner, Arendt Regulatory & Consulting
stephane.badey@arendt.com
T +352 26 09 10 7743



Jasper Ronda

Senior Manager, Arendt Regulatory & Consulting
Jasper.ronda@arendt.com
T +352 40 78 78 7761



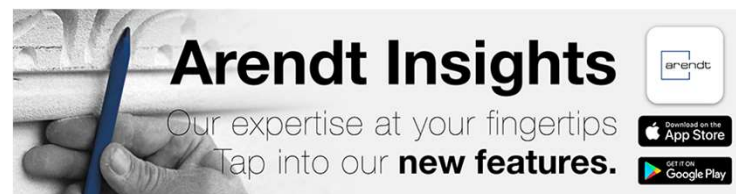
Piotr Giemza-Popowski

Counsel, Arendt & Medernach
Piotr.Giemza-Popowski@arendt.com
T +352 40 78 78 2296

Discover the next webinars of the serie

Tuesday 4 October	1 pm - 1:45 pm CET	UCITS Liquidity Risk Management from a proper assessment to the implementation of mitigation techniques	Alexandre Brajou, Henning Schwabe	REGISTER HERE_	More info_
Tuesday 11 October	1 pm - 1:45 pm CET	UCITS Tax Trends and Solutions update on key tax trends and solutions including on tax reclaims	Farah-El-Messiri, Yann Fihey, Dr Philipp Jost	REGISTER HERE_	More info_
Wednesday 19 October	1 pm - 1:45 pm CET	Closing: 'UCITS State of Play' 2023	Florence Stainier	REGISTER HERE_	More info_

Listen to **Arendt Podcasts** and install the **Arendt Insights App** to never miss a beat with the latest legal, tax and business developments in Luxembourg.



Important Notice and Disclaimer: Whilst a best efforts approach has been taken to ensure the accuracy of the information provided in this presentation, as at the date thereof, this information is only designed to provide with summarised, and therefore non complete, information regarding the topics covered. As such, this presentation does not constitute legal advice, it does not substitute for the consultation with legal counsel required prior to any undertakings and it should not be understood as investment guidelines. If you would like to receive a legal advice on any of the issues raised in this presentation, please contact us.