



## Luxembourg Newsflash - 17 May 2022

# New CSSF Circular on UCI Administrators

**The Commission de Surveillance du Secteur Financier issued a circular regarding the authorisation and organisation of entities acting as UCI administrator**

On 16 May 2022, the Commission de Surveillance du Secteur Financier ("**CSSF**") issued Circular 22/811 regarding the authorisation and organisation of entities acting as UCI administrator (the "**Circular**").

In the Circular, the CSSF repeals Chapter D of IML Circular 91/75 issued in January 1991 dealing with the rules on the central administration of Luxembourg undertakings for collective investment ("**UCIs**"). Here, the objective of the CSSF was to set out, in a specific circular, all of the rules governing the role of central administrator of a UCI, taking into consideration legal and regulatory developments, changes in the IT environment and evolutions in the market.

At the same time, the CSSF (i) specifies the scope of the Circular and (ii) takes the opportunity to set out the organisational and substance requirements that apply when acting as UCI administrator. In this article, the terms "UCI" and "UCI administrator" have the same meaning as in the Circular.

## Scope of the Circular

UCI administration may be performed by:

- investment fund managers ("**IFMs**") established in Luxembourg, as well as foreign IFMs carrying out the activity of UCI administrator for UCIs established in Luxembourg;
- regulated Luxembourg UCIs
- external service providers set up under the law of 5 April 1993 on the financial sector, such as licenced credit institutions, registrar agents, client communication agents and administrative agents.

The Circular clarifies that the regulated Luxembourg UCIs listed above may only act as UCI administrator for themselves, and that they are not allowed to offer those services to other UCIs. In the Circular, the CSSF emphasises that "before acting as an administrator for a given UCI, it is up to the entities and service providers to assess whether the carrying out of this activity by them is permitted taking into account applicable legal provisions". It should be borne in mind that, under current law, the head office must be located in Luxembourg for SIFs (specialised investment funds), SICARs (investment companies in risk capital), funds governed by Part II of the law of 17 December 2010 on undertakings for collective investment and RAIFs (reserved alternative investment funds).

The process to become authorised to act as UCI administrator varies depending on whether the entity eligible to act as UCI administrator under the Circular (i) is, by operation of law, authorised to perform the UCI administration activity or (ii) will have to submit an authorisation request. In addition, going forward, any entity acting as UCI administrator will have to report information regarding its business activities and resources on an annual basis. This report will have to be submitted to the CSSF within five months following the end of the UCI administrator's financial year.

The Circular sets out a detailed list of the activities encompassed by UCI administration. These can be grouped into the following three main categories: (i) registrar function, (ii) net asset value calculation and accounting and (iii) client communication. For each of these activities, the CSSF has provided a description of the specific tasks covered with the applicable rules and requirements, while also cross-referencing existing rules – e.g. those in Circular 02/77 on NAV calculation errors and Circular 04/146 on market timing and late trading, and the legal and regulatory AML/CFT framework.

## **Organisational requirements**

Taking into account the rapid and continuous developments in IT and the fund market, the Circular sets out a framework concerning the organisational and control requirements for entities performing UCI administration (in addition to applicable sectorial legislation where relevant), including the following in particular:

- **Documents**

A major component of the framework is the obligation for a written agreement between the UCI administrator and the UCI and/or IFM (when applicable), containing at least certain standard information and setting out their respective roles, rights, duties and obligations. Additional key components are obligations to create and maintain (i) a manual of procedures on various topics, to be reviewed at least on an annual basis; (ii) a policy governing the approval of new business relationships and new services and (iii) a conflicts of interest policy. Provisions on the keeping of and access to records and data of the UCI's activity, including in the event of a change of UCI administrator, are further detailed in the Circular.

- **Resources**

At all times, the UCI administrator must have sufficient substance and resources (e.g. human resources, technical infrastructure and IT means) to perform its functions. Staff must be sufficient in number (in order to ensure that the four eyes principle can always be complied with) and in skill, taking into account the volume and complexity of UCIs serviced.

- **Depositary**

It is essential that the UCI administrator and the depositary act independently of one another. Where the same entity performs both the administration and the depositary functions, a functional and hierarchical separation between the two business lines should be maintained. At the same time, however, the flows of information between these entities or business lines must be ensured in order for them to properly perform their duties.

- **ICT, business continuity and disaster recovery planning**

For UCI administrators, identifying, managing and mitigating information and communication technology (ICT) risks, as well as ensuring business continuity and the recovery of activities following a disaster, are essential tasks. This is why the Circular requires UCI administration to be performed using professional software, in order to safeguard the confidentiality, security, integrity and availability of the information at all times.

- **Delegation**

While one or more tasks within UCI administration may be delegated (subject to compliance with the Circular and applicable sectorial legislation), it is not permitted to delegate the monitoring of such tasks or the due diligence / oversight of delegates. There must be a written contract between the UCI administrator and each of its delegates, which must set out their respective roles, rights, obligations and responsibilities in detail. The conditions on delegation set out in the Circular apply mutatis mutandis where delegated UCI administration tasks are sub-delegated (with the exception of ICT delegation).

## Entry into force

The Circular enters into force with immediate effect, i.e. on 16 May 2022. For entities already acting as UCI administrator at the date of entry in force of the Circular, a grandfathering period until 30 June 2023 is granted for compliance with its provisions – except for the authorisation requirement set out in section 2.2.1 of the Circular, which does not apply to those entities.

Starting from 30 June 2023, UCI administrators will have to file the requisite annual report on business activities and resources no more than five months after the closing date of their financial statements (i.e. by 30 November 2023 for the first instance, for 2022/2023 financial statements closing on or after 30 June 2023).

UCI administrators will have to carefully consider the content of the Circular in order to ensure that they are compliant with the new requirements going forward.

Should you require more detailed information and assistance on the above topic and its implications, please liaise with your usual contact on the Fund Formation Team.

**Read the Circular here\_**

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