

## CSSF issues Circular on UCI administrators: what to know?

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The Luxembourg Financial Sector Supervisory Authority recently published Circular 22/811 on the authorisation, governance and internal organisation of administrators of undertakings for collective investment.

Circular 22/811 (the **Circular**), published on 16 May 2022, replaces Chapter D of Circular IML 91/175 and provides detailed guidance on collective investment (**UCI**) administration activities, other organisational requirements and, in particular, clarifies delegation models.

In this briefing, our Investment Funds team in Luxembourg summarise the Circular's key points and what they mean for fund managers and service providers.

### Scope

The Circular applies to all entities carrying out the activity of a UCI administrator for regulated [1] and non-regulated [2] UCIs. The activity may be carried out partially, ie the entity may perform only one of the three main functions of the administration activity (the registrar, the NAV calculation and accounting, or the client communication function).

### Eligible entities

- Management companies incorporated under Luxembourg Law and subject to Chapter 15 of the 2010 Law [3]
- Management companies incorporated under Luxembourg Law and subject to Chapter 16 of the 2010 Law
- Alternative investment fund managers (**AIFMs**) authorised under Chapter 2 of the 2013 Law [4]
- Foreign investment fund managers pursuing the activity of UCI administrator for UCIs established in Luxembourg

- Regulated Luxembourg UCIs (for themselves only)

Certain external service providers may also perform UCI administration activity: credit institutions, Luxembourg branches of foreign law credit institutions (client communication only), registrar agents, client communication agents (client communication only) and administrative agents (NAV calculation and client communication). [5]

## Delegation

Where the activity of UCI administration is wholly or partially delegated to one or more entities, the UCI itself or the investment fund manager (IFM) must monitor the delegate(s) and ensure coordination and supervision of the UCI administration activity.

# Administration activity

## Appointment: authorisation requirements

Each UCI administrator appointment is subject to prior authorisation from The Luxembourg Financial Sector Supervisory Authority (the CSSF), whether through a complete sectorial authorisation or through the defined administrative procedure. Before acting as such, it must perform a self-assessment on whether carrying out this activity would be permitted by law.

While registrar agents, client communication agents and administrative agents are authorised by law to perform all or some UCI administration functions (provided they remain compliant with sectorial legislation requirements), other entities set out in the previous section need to apply for authorisation under this Circular. The application file needs to be submitted in electronic format, and must contain detailed information listed in Annex A to the Circular.

The authorisation file needs to be kept up to date. Any substantial changes to the initial application is subject to prior CSSF authorisation (for example substantial changes to its operational model), or has to be notified in advance to the CSSF (eg aspects of delegation of critical or important operational tasks).

On an annual basis, the UCI administrator must submit to the CSSF significant information on its business activity and resources, using the template provided for in Annex B to the Circular.

## Main functions

The UCI administration activity is split into three main functions:

1. registrar function - all tasks necessary for the maintenance of the UCI's unit/shareholder register, reception and execution of orders relating to subscriptions and redemptions, income and liquidation proceedings' distribution

2. NAV calculation and accounting function - legal and fund management accounting services, valuation and pricing (including tax returns)
3. client communication function - production and delivery of the confidential documents intended for investors

Only one service provider may be designated for a specific function. In the case of multiple compartments, identical functions must be performed by the same provider. The UCI or the IFM may decide to perform the functions themselves, rely on delegates, or they may appoint a third party for certain activities.

In the Circular, the CSSF has provided a minimum scope of various tasks which need to be performed in carrying out the UCI administration activity:

- legal and fund management accounting services
- customer inquiries
- valuation, pricing, and tax returns
- regulatory compliance monitoring, including:
  - maintenance of the UCI's unit/shareholder register
  - distributions
  - issues and redemptions
  - contract settlements
- record keeping [6]

Roles and allocation of responsibilities must be precisely agreed between the UCI or its IFM and the UCI administrator. For instance, compliance monitoring of the investment policy, or a part of it, may be performed by the UCI administrator on a delegation basis, in which case the monitoring scope and its restrictions must be contractually agreed and non-compliance notification procedures put in place. Notification and escalation procedures, alongside corrective measures, need to be established for NAV breaches and errors, for which the UCI administrator must implement detection and assessment procedures.

The UCI administrator also needs to ensure adequate notifications are sent to the CSSF (or another national competent authority) by the UCI, the IFM or the UCI administrator itself. It is also the responsibility of the UCI administrator to notify the CSSF if it becomes aware that the UCI or its IFM do not fulfil their respective legal, regulatory, contractual or regulatory notification obligations.

## Registrar function

This function encompasses all aspects of the maintenance of the unit/shareholder register. The Circular lists minimum operations which make up the registrar function (for example execution of subscriptions and redemptions orders, their reconciliation with cash flows, income distribution etc [7]).

Execution of subscriptions and redemptions can be entrusted by the UCI or its IFM to a foreign intermediary as an authorised financial agent or representative, but must not restrict the ability of the investor to deal directly with the UCI, its IFM or the UCI administrator.

The registrar function also includes monitoring compliance with requirements related to professional and/or well-informed investors. For investor relations, the UCI administrator is responsible for any oversight of data confidentiality.

## NAV calculation and accounting function

Complete recording of UCI's transactions in compliance with applicable legal and contractual requirements as well as accounting principles must be available at all times to the UCI administrator. The entity in charge of the NAV calculation and accounting function must prepare adequate valuations, calculations and publications [8] for these purposes.

The UCI administrator is in charge of the correct booking of any entries in accordance with UCI rules, and applicable accounting and valuation policies - it being noted that the sole compilation of available information is insufficient; reliability of information received has to be critically assessed and unusual movements identified. For that purpose, the CSSF has listed minimum control functions that the UCI administrator has to perform on top of valuation and accounting.

Books and records need to be kept in such a manner that any changes in balances are reconciled from one NAV date to another, and all assets and liabilities remain identifiable at all times, for each compartment and / or share class separately.

The UCI administrator remains in charge of the final NAV production and validation notwithstanding any delegation.

## Client communication function

This function comprises of various elements of confidential correspondence with investors (dispatch of offering documents, financial reports, drawing up subscription and redemption notes etc).

As with NAV calculation and accounting, the UCI administrator must maintain supervision over the dispatch of confidential documentation and implement adequate corresponding control procedures.

## Organisational arrangements

A written contract must be concluded between the UCI administrator and the UCI and/or the IFM, (as applicable). In this respect, the Circular lists minimum elements which the contract must include (for example services, function(s) and/or task(s) provided, rights and obligations of each party, confidentiality obligations applicable to the parties, etc [9]).

A right of access must be granted by the UCI administrator upon simple request of the UCI, the IFM, the statutory auditor of the UCI, the liquidator, the CSSF or any other national competent authority of a UCI, where applicable.

### Approval of new business relationships and new services

When approving new business relationships or services, the UCI administrator must follow a documented risk acceptance policy and decision-making process, perform an adequate risk assessment and a formalised and documented due diligence, and follow sound and prudent management principles, promoting a sound risk culture.

### Management of conflicts of interest

The UCI administrator is in charge of the establishment, implementation and maintenance of an effective conflicts of interest policy covering the specifics of the UCI administration business line. The policy setting out the procedures relating to the management of the conflicts of interest must be set up in writing, appropriate to the organisation and scale of the business and regularly updated.

In addition, the UCI administrator must maintain a record of the types of activities and clients in which a conflict of interest entailing a material risk of damage to the interests of one or more UCIs or its investors has arisen or, in the case of an ongoing activity, may arise. The Circular lists minimum elements which the record must include (for example description of the conflict of interest, identification of the persons or units concerned by the conflict of interest, etc [10]).

### Relationship with the depositary

It is essential that the UCI administrator and the depositary act independently from each other. When the functions are performed by the same entity, a functional and hierarchical separation between the business line should be implemented.

The UCI administrator and the depositary must make available to each other all the relevant information to carry on their respective duties. For this purpose, the UCI administrator and the depositary must agree on procedures which should be documented and formalised in an agreed-upon operating memorandum.

## Access and retention of the core UCI documentation, including in case of change of UCI administrator

The UCI administrator must keep all accounting and other documents which constitute the core UCI documentation and which are necessary to the proper performance of its obligations.

The UCI administrator must ensure that the essential documents necessary for the NAV calculation, are (i) stored for a period of 10 years after the end of the relevant accounting period, and (ii) made available upon request to the statutory auditor of the UCI and the CSSF.

In the case of a change of the UCI administrator, the current and future UCI administrators and the UCI or its IFM, when applicable, must agree upon a transfer process, which should be documented.

## Human resources

The UCI administrator must at all times have sufficient substance and resources. The staff must be sufficient in number and skills, taking into account the volume and complexity of UCIs serviced.

## Information and communication technology resources, business continuity and disaster recovery planning

The UCI administrator must comply with the information and communication technology (ICT) requirements under Luxembourg law. This implies that the UCI administrator has the necessary and appropriate technical resources for the performance of its activities.

Every UCI administrator must establish, implement and maintain an adequate business and service continuity policy to ensure the recovery of its activities and services after a disaster (within an adequate timeframe with regard to the NAV calculation frequency) and provide regular testing of those plans. In this context, the UCI administrator shall define and implement data and system backup and restoration procedures to ensure that they can be recovered as required.

## Delegation models

One or more UCI administration tasks may be delegated to third parties, subject to applicable sectorial legislation. It is important to note that the delegation of tasks does not relieve the UCI administrator of its responsibilities.

The delegation must be clearly detailed in a dedicated written contract. The Circular lists minimum elements which must be included in the contract (for example services, assigned function(s) and/or task(s), rights and obligations of each party, confidentiality obligations applicable to the parties, etc [\[11\]](#)). In addition, the UCI administrator must draft, implement and maintain adequate procedures and processes to efficiently monitor the delegated activities.

In the case of delegation of accounting function and NAV calculation, the UCI administrator must

control and validate the NAV calculated by the delegate. In performing its general supervisory function on its delegates, the UCI administrator must have access to all relevant data, which must be provided with immediate and unlimited editor access to the delegates' related systems, and to the essential documentation of the UCIs at all times.

The size of the staff performing the UCI administration must be appropriate given, for example, the complexity and number of NAVs administered by the UCI administrator, and must also be proportionate to the size of the team providing support to the delegate.

When a UCI administrator intends to assign a critical or important operational task to another party, the prior authorisation by the CSSF is replaced by a notification. Such notification is to be submitted at least three months before the contemplated delegation comes into effect.

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[1] UCITS, Part II UCIs, SIFs and SICARs

[2] UCIs established in Luxembourg that do not qualify as regulated UCIs

[3] Law of 17 December 2010 relating to undertakings for collective investment, as amended

[4] Law of 12 July 2013 on alternative investment fund managers, as amended

[5] Authorised under and defined by the Law of 5 April 1993 on the financial sector, as amended

[6] This list is further detailed in point 12 of the Circular

[7] Minimum tasks set out in point 20

[8] Minimum tasks set out in point 27

[9] Minimum elements set out in point 38

[10] Minimum elements set out in point 58

[11] Minimum elements set out in point 38 and point 88

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