

# CSSF Circular 22/811 on UCI Administrators

On 16 May 2022, the CSSF issued [Circular 22/811](#) concerning the authorisation and organisation of entities acting as UCI administrators ("Circular"), which rewrites and repeals Chapter D of [IML Circular 91/75](#) setting out the rules concerning the central administration of Luxembourg undertakings for collective investment ("UCIs").

As announced in the CSSF's [Press Release 22/10](#), the objective of the Circular is to formalise the CSSF's regulatory practice concerning the activity of UCI administration by taking into account the legal, regulatory, market and technology evolutions and developments of the past decades. In its Circular, the CSSF also determines the principles of sound governance and the requirements to be complied with by entities providing UCI administration services in terms of substance, internal organisation (including but not limited to delegation models) and reporting.

## I. SCOPE OF CIRCULAR

- The **UCI administration activity** covers any one, or any two or all of the following three main functions, all as defined and detailed in the Circular: (i) registrar (TA) function, (ii) NAV calculation and accounting function, and (iii) client communication function.
- The **following entities are eligible** to act as UCI administrator ("Eligible Entities"):
  - Luxembourg investment fund managers ("**IFMs**"), such as UCITS ManCos and AIFMs;
  - Foreign IFMs pursuing the activity of UCI administrator for Luxembourg UCIs;
  - Luxembourg-regulated UCIs (i.e. UCITS, Part II UCIs, SIFs, and SICARs) which, however, may only act as UCI administrator for themselves; and
  - Luxembourg external service providers authorised under the Law of 5 April 1993 on the financial sector as amended ("**1993 Law**"), such as credit institutions, registrar agents, client communication agents and administrative agents.
- **Luxembourg non-regulated UCIs** (i.e. RAIFs and other AIFs not regulated by the CSSF) remain, in principle, **outside the scope of the Circular** in the sense that they can continue to act as UCI administrator for themselves without being subject to the Circular requirements. However, they may be affected indirectly, should they use an external UCI administrator. This external UCI administrator will, in turn, be subject to

the Circular as the latter applies to all Luxembourg Eligible Entities carrying out the activity as UCI administrator (or part thereof) for regulated and non-regulated UCIs.

- To act as UCI administrator, an Eligible Entity is subject to CSSF prior authorisation, but the scope of the procedure will vary depending on whether or not the relevant entity is already authorised by operation of law to perform all or some of the functions of the UCI administration activity (such as a TA authorised under the 1993 Law).
- The requirements of the Circular shall apply at the level of the UCI administrator, which means that any Eligible Entity, which performs one or more of the three above mentioned functions encompassed by the UCI administration activity, is subject to the provisions of the Circular as UCI administrator. In this context, an IFM that has delegated all three functions to one or several other entities will not be subject to the provisions of the Circular as UCI administrator, but those other entities will be. By contrast, if an IFM retains, i.e. itself performs, any one or more of these functions, it will be subject to the Circular in respect of those function(s).

## II. SELECTED KEY POINTS OF ATTENTION AND PRACTICAL IMPACTS OF CIRCULAR

- Scope and control of UCI administration tasks:
  - Inclusion by the CSSF in the administration activity of certain tasks, which are not required to be regulated in principle (e.g. drawing-up of prospectuses, reception of customers' complaints or regulatory compliance monitoring). These inclusions may, however, be mitigated by the fact that the CSSF considers that *"not all of the aforementioned tasks included in the scope of UCI administration activity when provided individually necessarily require an authorisation as UCI administrator"*.
  - Handling customer inquiries, regulatory compliance monitoring and record-keeping tasks must apply in the context of all three main functions covered by the UCI administration, and there is an obligation for the UCI administrator and the UCI or its IFM to agree, in a written contract, on the exact roles and the allocation of responsibilities of each party with regard to these tasks to ensure that adequate means and procedures are in place for the proper performance of their respective obligations. For instance, in the case of delegation to the UCI administrator of all or part of regulatory compliance monitoring of the investment policy and investment restrictions in respect of a particular UCI, the CSSF expects (i) the restrictions and limits in the scope of such delegated compliance monitoring to be agreed upon between the UCI administrator and the UCI or its IFM in a contract, and (ii) the UCI administrator to establish procedures to detect and notify the UCI or its IFM without delay of any non-compliance with the investment policy and investment restrictions.
- **Secure backup:** When the UCI administrator uses a system that is located outside Luxembourg, requirement for the UCI administrator to have a secure backup stored within the European Economic Area of all accounting and registrar positions in a readable format at the end of each NAV calculation day. It is hoped that the CSSF might grant derogations from this territorial requirement in specific justified circumstances.
- **Delegation of UCI administration tasks:**
  - In the case of delegation of the fund accounting function and NAV calculation

by the UCI administrator, there is a requirement for the UCI administrator to control and validate the final NAV calculated by the delegate.

- In the case of delegation by the UCI administrator, there is a requirement for the latter to have immediate and unlimited editor access to the delegate's related system(s) allowing it to directly intervene in the processing of information. If this is not possible, the UCI administrator must have at least non-restrictive and immediate reader access.
- Prohibition for the delegate of a UCI administrator to sub-delegate UCI administration tasks (excluding ICT delegation) outside the group to which the UCI administrator belongs to an entity not supervised by the CSSF.
- Replacement of the CSSF prior authorisation by a notification in the event that a UCI administrator wants to delegate a critical or important operational task, which will now only have to be notified to the CSSF three months in advance of the planned delegation (this notice period being further reduced to one month in the event of delegation to certain Luxembourg-regulated service providers).

For the avoidance of doubt, the requirements mentioned above apply at the level of the UCI administrator itself, not at the level of the IFM that has delegated the three administration functions to the UCI administrator.

- **New extended reporting requirements for UCI administrators** as regards their business activities and resources, to be filed on an annual basis to the CSSF within five months of the end of the UCI administrator's financial year as from 30 June 2023.

### III. ENTRY INTO FORCE OF CIRCULAR AND GRANDFATHERING

- The Circular entered into force and applied with immediate effect on **16 May 2022**.
- Eligible Entities already acting as UCI administrator on 16 May 2022 do not need to apply for the CSSF's authorisation to act as UCI administrator and further benefit from a **grandfathering period until 30 June 2023** to comply with the other requirements of the Circular.

### IV. WHAT TO DO NEXT?

- Luxembourg Eligible Entities performing UCI administration activities shall review their policies and procedures as well as their delegation models and contracts to make sure that they are compliant with the requirements of the Circular.
- Luxembourg non-regulated service providers performing (certain) UCI administration activities shall assess whether they can continue to carry out their activities without being authorised to that effect by the CSSF.
- Luxembourg UCIs and IFMs shall assess whether their UCI administration set-up complies with the requirements of the Circular.

For any further information please contact us or visit our website at [www.elvingerhoss.lu](http://www.elvingerhoss.lu).

The information contained herein is not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific legal advice concerning particular situations.

We undertake no responsibility to notify any change in law or practice after the date of this newsletter.