

HOW TO SET UP

INVESTMENT FUND MANAGERS (IFMs)

DESCRIPTION

'Investment Fund Managers' (IFMs, *Gestionnaires de fonds d'investissement*, GFI) is a term that was introduced by CSSF Circular 18/698 of 23 August 2018 on the authorisation and organisation of Luxembourg Investment Fund Managers. It refers to UCITS management companies, other management companies, Luxembourg branches of IFMs, self-managed investment companies, authorised Alternative Investment Fund Managers (AIFMs) and internally managed Alternative Investment Funds (AIFs). Multilateral development banks, family offices and registered AIFMs do not fall into this definition.

PRIOR AUTHORISATION AND REPORTING

Before starting business, IFMs must be authorised by the national competent authority, the CSSF (*Commission de Surveillance du Secteur Financier*). Relevant information must be communicated or reported to the CSSF typically within five months after the IFM's year end. The annual accounts must be sent to the CSSF within seven months of the IFM's year end.

UCITS MANAGEMENT COMPANIES

A UCITS management company manages at least one UCITS and typically performs the functions listed in Annex II of the UCI Law concerning collective portfolio management (investment management, administration and marketing). It can additionally manage other UCIs without marketing passport, offer discretionary portfolio management and provide non-core services.

UCITS management companies are authorised according to Article 101 of Chapter 15 of the 2010 Law (Luxembourg law of 17 December 2010 relating to undertakings for collective investment).

OTHER MANAGEMENT COMPANIES

Other management companies are those that manage:

- vehicles other than AIFs (SIFs, SICARs, limited partnerships or SOPARFIs which do not qualify as AIFs) – in this case, the management company is authorised according to Article 125-1 of Chapter 16 of the 2010 Law;
- above-threshold AIFs (UCI Part II Funds, SIFs, SICARs, RAIFs, limited partnerships, SOPARFIs) for which an external AIFM has been appointed – in this case, the management company is authorised according to Article 125-1 of Chapter 16 of the 2010 Law and authorised in accordance with Chapter 2 of the AIFM Law (Luxembourg

law of 12 July 2013 on Alternative Investment Fund Managers) or, if applicable, pursuant to other EU Member State law or in line with the third country rules of the AIFM Law (Chapter 7);

- below-threshold AIFs (UCI Part II Funds, SIFs, SICARs, limited partnerships, SOPARFIs) that are only subject to limited reporting – in this case, the management company is authorised according to Article 125-1 of Chapter 16 of the 2010 Law and registered in accordance with Chapter 2 of the AIFM Law or, if applicable, pursuant to other EU Member State law or in line with the third country rules of the AIFM Law (Chapter 7);
- AIFs that have not appointed an external AIFM, performing functions in line with Annex I of the AIFM Law (investment management including portfolio management and risk management, administration, marketing and activities related to the assets of AIFs) and non-core services – in this case, the management company is authorised according to Article 125-2 of Chapter 16 of the 2010 Law and authorised or registered in accordance with Chapter 2 of the AIFM Law.

SUPER MANCOS

The term Super ManCo is not legally defined. It refers to UCITS management companies which are appointed as AIFMs of at least one AIF (UCI Part II Funds, SIFs, SICARs, RAIFs, limited partnerships, SOPARFIs). Super ManCos are authorised according to Article 101-1 of Chapter 15 of the 2010 Law and authorised or registered in accordance with Chapter 2 of the AIFM Law.

ESTABLISHMENT OF BRANCHES

Management companies from other EU Member States that do not manage UCITS and management companies from third countries can establish branches in Luxembourg in accordance with Chapter 17 of the 2010 Law. They

are subject to the same authorisation rules like other management companies.

ALTERNATIVE INVESTMENT FUND MANAGERS

Apart from limited exemptions defined by the AIFM Law, each Luxembourg AIF must have a single AIFM, which is responsible for ensuring compliance with the provisions of the AIFM Law. AIFs can choose to be managed by an external AIFM or internally-managed, where the legal form of the AIF permits such an internal management. In the latter case, the AIF itself is authorised as AIFM according to Chapter 2 of the AIFM Law. An external AIFM can be established in Luxembourg, in another EU Member State or in a third country.

Smaller AIFMs are those that manage AIFs which do not exceed the following thresholds in terms of assets under management (AuM):

- AIFs which are not leveraged and without redemption rights for a period of five years, and with aggregate assets under management (AuM) below 500 million EUR;
- AIFs whose AuM, including any assets acquired through the use of leverage, do not exceed 100 million EUR.

They have to be registered and do have to comply with only very few requirements of the AIFM Law (resulting in limited reporting to the CSSF). Alternatively, these below-threshold AIFMs can decide to opt in by applying for a licence as above-threshold AIFM which benefits from a management and marketing passport across the EU / European Economic Area.

MANAGEMENT AND MARKETING PASSPORTS

UCITS (and indirectly their managers) and EU AIFMs benefit from both a management and a marketing passport across the EU / European Economic Area. The management passport means that the management company / AIFM can be established in a different EU Member State than the fund. The marketing passport allows that the fund's shares, units or partnership interests are marketed to investors across the EU through a regulator-to-regulator notification regime.

OWN FUNDS

IFMs must have adequate and sufficient financial resources, meaning an initial minimum capital of EUR 125,000, supplemented by an additional amount of own funds equal to 0.02% of the amount by which the value of the IFM's portfolio exceeds EUR 250 million. The required total amount of initial capital and additional own funds should however not exceed EUR 10 million. Self-managed funds must have an initial capital of at least EUR 300,000.

The required own funds can be invested in liquid assets or assets easily convertible into liquid short term assets and not containing any speculative positions. However, the required surplus own funds can be invested in non-liquid assets.

SUBSTANCE REQUIREMENTS

The managing or governing bodies of IFMs must consist of at least three members. In principle, these members cannot have more than 20 mandates in regulated entities and operational companies, and cannot dedicate more than 1920 hours per year to his / her professional commitments. Meetings of the management or governing body of the IFM should take place at least quarterly.

At least two conducting officers form part of the IFM's senior management. They should be domiciled in Luxembourg or able to come to Luxembourg every day. The management committee should meet on a monthly basis.

CENTRAL ADMINISTRATION

The central administration of IFMs (including premises) must be in Luxembourg. This refers on the one hand to the decision-making centre and on the other hand to the administrative centre.

The IFM must have in Luxembourg the human and technical resources necessary and sufficient to carry out its activities. The IFM should be staffed with at least three full-time employees (FTEs). This number includes the number of conducting officers. There is a need to work with an adapted technical and IT infrastructure, and IFMs must also maintain operational accounting policies / procedures and valuation rules.

INTERNAL GOVERNANCE FRAMEWORK

The IFM's internal governance framework consists of a three-lines-of-defence model, concerning:

- the operating units;
- the permanent compliance and risk function, support (IT) function and accounting function;
- the internal audit function.

The principle of proportionality may be invoked by an IFM in the application of certain requirements, taking into account the nature, scale and complexity of its activities as well as the range of services performed.

Useful information sources

www.cssf.lu

Commission de Surveillance du Secteur Financier
(Luxembourg financial supervisory authority)

www.alfi.lu

Association of the Luxembourg Fund Industry