

HOW TO SET UP

A UCITS FUND

DESCRIPTION

An Undertaking for Collective Investment in Transferable Securities (UCITS) is an investment fund that invests in liquid assets and can be distributed publicly to retail investors across the EU.

ELIGIBLE ASSETS

A UCITS must invest its funds in transferable securities and other liquid assets. This includes transferable securities admitted or dealt on a regulated market, investment funds, financial derivative instruments, cash and specific money market instruments.

Uncovered short sales and borrowings are not permitted. Precious metals and certificates representing them may not be acquired.

A detailed risk diversification is required by the 2010 Law.

LEGAL FRAMEWORK

UCITS are governed by the Luxembourg law of 17 December 2010 (2010 Law) as modified by the law of 10 May 2016 implementing EU Directive 2014/91/EU ("UCITS V"). In particular Chapter 5 of the 2010 Law outlines the investment policy of a UCITS including risk diversification requirements.

UCITS investing in short-term assets and having distinct or cumulative objectives offering returns in line with money market rates or preserving the value of the investment must also comply with the requirements of Regulation (EU) 2017/1131 on money market funds.

There are a number of additional rules that have to be observed at national and/or EU level (e.g. concerning AML, MiFID, market abuse, derivatives, securities financing transactions and shareholder rights).

LEGAL FORM

A UCITS may be constituted as:

- a common contractual fund (*fonds commun de placement* – FCP). The FCP has no legal personality and must be managed by a Luxembourg management company;
- an open or closed ended investment company with variable capital (*société d'investissement à capital variable* – SICAV), or fixed capital (*société d'investissement à capital*

fixe – SICAF). The creation of such a corporate entity requires the drafting of instruments of incorporation.

An FCP or a SICAV/F may be set up as a single fund or as an umbrella fund with multiple compartments. The fund and compartments respectively may have an unlimited number of share-/unit classes, depending on the needs of the investors to whom the fund is distributed. Subject to specific rules, it is possible to set up master-feeder structures and to merge funds on a cross-border basis.

AUTHORISATION AND SUPERVISION

A UCITS must be authorised by the *Commission de Surveillance du Secteur Financier* (CSSF) before commencing its activity. Afterwards, it is supervised by the same on an ongoing basis e.g. by means of regular reporting requirements. The CSSF charges an annual fee for its supervisory activity.

The draft documents and information to be submitted to the CSSF – via e-file (see www.e-file.lu) or email (setup.uci@cssf.lu) – for approval are set out in Articles 129-132 and 150-163 of the 2010 Law and Chapter K of IML Circular 91/75 (as modified).

The documents and information are generally compiled and submitted to the CSSF with the assistance of lawyers/ auditors and/or a bank in Luxembourg.

The approval process of a new UCITS or additional sub-funds is subject to the payment of a one-off fee.

The CSSF keeps an official list of the authorised UCITS that are subject to its supervision. A UCITS may start business as soon as authorisation has been granted. Cross-border distribution of UCITS is subject to a regulator-to-regulator notification procedure.

DISCLOSURE REQUIREMENTS AND FINANCIAL REPORTS

A UCITS must prepare a fund prospectus, a Key Investor Information Document (KIID), an annual report and a semi-annual report.

The contents of the prospectus are set out in Schedule A of Annex I of the 2010 Law and in Chapter L of IML Circular 91/75 (as modified).

SERVICE PROVIDERS

UCITS can be managed by a Luxembourg management company or by a management company based in another EU Member State.

A common fund must be managed by a management company, whereas a SICAV/F may either be self-managed or designate a management company. If applicable, the management company of an FCP must draw up the management regulations for the common fund.

Self-managed SICAV/Fs may only manage assets of their own portfolio and may not manage assets on behalf of a third party.

In the case of a Luxembourg management company, the central administration must be in Luxembourg.

A Luxembourg UCITS must appoint a Luxembourg depositary which is among other things responsible for the safekeeping of the fund's assets.

The eligible depositaries are Luxembourg established credit institutions, but also Luxembourg established investment firms fulfilling certain requirements laid down by the Law of 5 April 1993 on the financial sector, as amended.

The conducting officers of the UCITS and of the depositary must be of sufficiently good repute and have sufficient experience in relation to the type of UCITS concerned. "Conducting officers" (*dirigeants*) are persons who represent the UCITS or the depositary or who effectively determine the conduct of the activities of the UCITS.

The annual report must be audited by an authorised independent auditor with appropriate professional experience.

Other typical service providers to a UCITS include lawyers, portfolio managers (investment advisers), administrators/registrars/transfer agents/domiciliation agents, distributors/nominees, market makers and paying agents.

CAPITAL BASE

The net assets of an FCP may not be less than EUR 1,250,000. This minimum must be reached within a period of six months following its authorisation. The minimum capital of a self-managed SICAV/F may not be less than EUR 300,000 at the time of authorisation. The capital of a SICAV/F must reach EUR 1,250,000 within six months of its authorisation.

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