

CSSF Circular 12/546

Key elements and impacts for UCITS management companies and self-managed SICAVs



The *Commission de Surveillance du Secteur Financier* (CSSF) issued a circular dated 24 October 2012, covering the authorisation and organisational requirements applicable to UCITS management companies and UCITS self-managed SICAVs.

This circular repeals the previous CSSF circular 03/108, together with the CSSF circular 05/185 supplementing the circular CSSF 03/108, while integrating the CSSF circular 11/508 so that the conditions in relation to the filling/maintaining of the authorisation are included in one unifying circular.

Main changes

Circular 12/546 came into force with immediate effect and describes the substance requirements on various topics such as shareholdership, capital, management bodies, provisions in relation to central administration, internal governance and delegation rules. The concept of "Promotorship" will not be required anymore for the self-managed SICAV's and UCITS whose management companies comply with the new circular.

Transitional provisions

While many provisions of the circular become effective immediately, some provisions are allowed a transitional period until 30 June 2013. This is described in the table on page 3.

UCITS management companies and self-managed SICAV's have until **15 April 2013** to submit a comprehensive report to the CSSF, who will establish their compliance with the new circular by 30 June 2013.

Every new fund established between the publication of the Circular and 30 June 2013 must either be a compliant self-managed SICAV, designate a compliant management company or support the **promotorship requirements** of the previous administrative practice.

Topic	General description of key substance requirements
Shareholdership	The shareholdership structure must be transparent and allow effective regulatory supervision by the CSSF. Shareholders with a qualifying holding must be clearly identified and potential conflicts of interests must be controlled. The CSSF will apply 5 evaluation criteria before authorising the proposed shareholdership structure and may request additional guarantees (<i>lettre de patronage</i>)
Capital	€125,000 initial capital with complementary capital in line with the management company's activities. Part of the complementary capital can be provided by a credit institution or an insurance company. Capital reinvestment is limited to a restricted list of liquid instruments
Governing bodies	<p>Board of directors</p> <p>The members of the board of directors (at least 3 persons) must show sufficient experience and make sure they give enough time/care to their respective functions</p> <p>The board composition must take into account conflicts of interest potentially arising with the shareholders' activities, in particular when the custodian of the funds is part of the shareholdership structure</p> <p>Conducting officers</p> <p>At least 2 persons must effectively conduct the business of a management company. They must be sufficiently experienced in relation to the type of UCITS managed. They must make themselves available to the CSSF and be able to provide any information required for the purpose of regulatory supervision</p> <p>The conducting officers form a management committee and closely cooperate under the ultimate responsibility of the board of directors. Periodical meetings must include discussions on the management information</p>
Central administration	<p>UCITS management companies must have a central administration. This includes a 'decision-making centre' and an administrative centre' with adequate human and technical infrastructure to enable the follow-up of the day-to-day business, regardless if it is delegated or not</p> <p>The technical and IT infrastructure must guarantee data security, confidentiality and integrity. The use of external service providers or group-shared infrastructure is permitted under specific conditions (e.g. data encryption)</p> <p>A robust IT infrastructure is required to guarantee sound administrative and accounting practices. If a management company outsources part of its collective portfolio management activities, it must closely supervise delegates via an initial and on-going due diligence</p>
Internal governance	<p>UCITS management companies must have a robust internal governance system, mainly articulated around five areas:</p> <ul style="list-style-type: none"> • Organisational requirements, including internal control mechanisms • Conflicts of interests, including personal transactions • Rules of conduct • Remuneration policy • Risk management
Delegation	<p>Some functions can be delegated, however their control and ultimate responsibility stays with the management company</p> <p>The decision to delegate must be notified to the CSSF. It should include a description of the delegated function, details on the service provider and the process for supervising the delegation. A due diligence on the service provider must be performed before the delegation actually occurs</p> <p>The delegation must be formalised via a contract between the management company and the service provider. The prospectus should detail the functions that the management company has been authorised to delegate</p>

Subjects within the new circular	Applies to SMS?	Proportionality?	Transitional period until 30 June 2013?
1. General principles	Yes		
2. Shareholdership	2,2 Yes		
3. Capital adequacy			Yes
4. The management bodies of the management company			
4.1. Board of Directors	Yes		Yes
4.2. Conducting Officers			
5. Central administration and internal governance			
5.1. Central administration			
5.1.1. Clarifications on the human resources of a management company	Yes	Yes	Yes
5.1.2. Clarifications on the execution systems of a management company			
5.1.3. Clarifications on the accounting function			
5.2. Internal governance			
5.2.1. General requirements on procedures and organisation		Yes	
5.2.2. Complaints handling	Yes		
5.2.3. Permanent compliance and audit function			
5.2.3.1. The compliance function		Yes	
5.2.3.2. The internal audit function		Yes	
5.2.4. The permanent risk management function and risk management process			
5.2.4.1. The permanent risk management function	Yes	Yes	
5.2.4.2. The risk management process			
5.2.5. Personal transactions			
5.2.6. Conflicts of interest			
5.2.6.1. Conflicts of interest policy	Yes	Yes	
5.2.6.2. Strategies for exercising voting rights			
5.2.7. Rules of conduct	Yes		
5.2.8. Remuneration policy	Yes		
5.2.9. Requirement to verify the existence of an internal governance device with delegates			
6. External audit	Yes		
7. Conditions for the approval of the delegation	Yes		
7.1. General principles	Yes		Yes
7.2. Specific conditions to the delegation of the investment management function	Yes		
7.3. Specific conditions to the delegation of the administration of undertakings for collective investments function			
8. Programme of operations	Yes		

How can Deloitte help?

Gap analysis, health check and CSSF report

We have developed a comprehensive gap analysis methodology to assess your specific situation with regards to UCITS management company and self-managed SICAV's requirements. Through responses to a series of questions our tool benchmarks your organisations compliance with the respective provision of the circular. This approach will help you becoming compliant with the new circular and it will help you submitting an accurate report for the CSSF within the required timeframe ending 15 April 2013

Strategic positioning

With the introduction of AIFMD in July 2013, increased UCITS governance requirements and the opportunity to passport UCITS management company services, fund managers are reviewing their strategic positioning and target operating models. Deloitte work with many of the largest and best regarded management companies to identify opportunities, delegation possibilities and product management strategies

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