

Regulatory News Alert

UCI Administration CSSF 22/811 circular: The UCI all in one toolbox

1 June 2022

Introduction and context

On May 16, the CSSF issued a much-awaited circular on the Undertakings for Collective Investment (UCI) schemes. Interestingly, the circular defines rights and duties for all types of fund managers be they AIFs or UCITS. There are two primary impacts: first, it repeals the very old IML 91/75 circular, and second, it complements the applicable regulatory framework with hands-on application. Hence, it presents precision and context to the existing regulatory regime. It will help ManCos to benchmark their operations and affirm their practices in light of UCITS, AIFMD regulations – or as complement to the CSSF 18/698 circular.

In a nutshell: CSSF 22/811 mandates that all entities carrying out the activity of UCI administration are subject to the laws and regulations in force due to their status, authorizations or activities, including, but not limited to, legislation on anti-money laundering (AML), anti-terrorist financing, and/or regarding the delegation of activities.

Content

The circular is divided in three main chapters:

- a) Scope: with definitions of entities licenses, authorizations
- b) Organizational arrangement, general provisions, internal organization, and conflicts of interests
- c) Supporting documents and entry into force, with list of documents to submit.

A) Scope

Essentially, fund administration could be done by firms under the 2010 law (chapters 2, 15 or 16) or by non-Luxembourg entities investment firms managing UCI. Fund activity could also be performed by some entities under the 1993 law on the financial sector but only under a limited scope, namely for credit institutions registrar or communication agent as well as administrator (under chapter 2) for NAV calculations.

The CSSF reminds stakeholders that these activities are subject to licenses, but that operations could still be delegated or outsourced to other entities. In these circumstances, the CSSF strongly underlines that responsibility remains with the outsourcer. Interestingly in parallel, the outsourcing circular implementing the EBA 2019 was issued only a few days prior to this one. The CSSF points out it is the one entity approving the administrator of the UCI.

The CSSF splits UCI administration activity into three main functions:

- **The registrar function** covers tasks necessary to the maintenance of the UCI's unit-/shareholder register. This includes reception and execution of orders relating to units/shares subscriptions and redemptions, and/or distribution of income.
- **The NAV calculation and accounting function** covers the legal and fund accounting services and, also valuation and pricing (what might include tax returns); and
- **The client communication function** comprises the production and delivery of confidential documents addressed to investors.

The CSSF 22/811 further details what activities in the administration of UCI are under these three buckets, such as bookkeeping, reconciliation, reporting, maintenance of documentation, customer request. These are other activities are required to maintain up-to-date regulatory monitoring (both watch and inventory) . CSSF 22/811 also addresses rules for other functions like registrar's tasks for reception of orders (in the context of subscriptions/redemptions) or valuation of complex and illiquid investments. Regarding client communication, the CSSF directs which precise actions should be taken to draw-up financial reports or other documents for investors.

These tasks may be performed by the entity in charge of the NAV calculation and accounting function or by the entity in charge of the client communication function, provided it has been contractually documented/agreed upon between the UCI or its IFM.

B) Organizational arrangements

The CSSF circular informs that UCI administrators must have an adequate internal organization: structure, controls, and sufficient resources capacities (both human and technological). These should be documented in a contractual form defining KPIs for success and performance of the activities.

These organizational arrangements should not only address the flow of information between different stakeholders, delegation, and levels of responsibilities, but also procedures for frequency checks and controls processes, or escalation. Without extending the outreach, the Circular provides some inspiration from the outsourcing in terms of documentation and responsibility management.

All entities should anticipate how the UCI administrator grants access for the UCI (or when applicable, the IFM) to the statutory auditor or liquidator of the UCI, and to the CSSF or any other national competent authority of a UCI, as required. This information and procedures need to be available upon first request from the regulator, which means entities must adequately and swiftly manage data, processes, and structure.

C) Internal organization

The UCI administrator must equally implement internal organization adequate to covering and comprising a control framework.

As underlined by the CSSF, the UCI administrator should maintain a manual of procedures and processes easily accessible to the UCI administrator's staff. The manual should document the overall activity of the entire framework and include necessary details to cover each UCI's type and profile. At a high level the procedure manual should address duties and obligations toward:

- The UCI or its IFM, when applicable.
- The depositary.
- All stakeholders appearing in the written contract (as mentioned above).
- Delegates.

Then as part of a modern business practice, the UCI administrator should follow a documented risk acceptance policy and decision-making process (based on an evidenced due diligence with clear attribution of risks and responsibilities) when approving new business relationships or services. This system should be secured when dealing with by non-Luxembourg based entities, just as for any other form of delegation or outsourcing.

The CSSF informs that the system and general organization should be in line and proportionate to the level of activities and risks. The CSSF takes the opportunity to remind stakeholders that this should also cover potential delegations or outsourcings (as referred to by the CSSF in its new outsourcing circular(22/806), as when delegating, responsibility remains always with the delegating firm.

Timeline

Circular 22/811 repeals the very old IML 91/75; if it directly enters into effect, stakeholders will have until 30/06/2023 to become compliant.

What's in it for me?

This circular will at the very least require all fund managers to undertake a sound gap analysis and to assess for potential remediation to adapt to the new regulatory environment. Like the rest of the world, regulatory demands are moving ever faster.

How can Deloitte help?

Deloitte can help you navigate these shifting regulatory standards by assisting with gap assessment, planning remediation, and defining business objectives.

Through our RegWatch service, Deloitte can also help you anticipate change and stay ahead of the regulatory curve.

Your Contacts

Subject matter specialists

Simon Ramos

Partner – Investment Management

Tel: +352 45145 2702

siramos@deloitte.lu

Nicolas Xanthopoulos

Partner – Operations Transformation

Tel: +352 45145 3382

nxanthopoulos@deloitte.lu

Arnaud Bon

Partner – Consulting IM & PERE

Tel: +352 45145 4165

abon@deloitte.lu

Jérôme Sosnowski

Partner – Risk Advisory

Tel: +352 45145 4353

jsosnowski@deloitte.lu

Regulatory Watch Kaleidoscope service

Jean-Philippe Peters

Partner – Risk Advisory

Tel: +352 45145 2276

jppeters@deloitte.lu

Marijana Vuksic

Senior Manager – Risk Advisory

Tel: +352 45145 2311

mvuksic@deloitte.lu

Benoit Sauvage

Director – Risk Advisory

Tel: +352 45145 4220

bsauvage@deloitte.lu

Deloitte Luxembourg
20 Boulevard de Kockelscheuer
L-1821 Luxembourg
Grand Duchy of Luxembourg

Tel: +352 451 451

Fax: +352 451 452 401

www.deloitte.lu

Deloitte is a multidisciplinary service organisation which is subject to certain regulatory and professional restrictions on the types of services we can provide to our clients, particularly where an audit relationship exists, as independence issues and other conflicts of interest may arise. Any services we commit to deliver to you will comply fully with applicable restrictions.

Due to the constant changes and amendments to Luxembourg legislation, Deloitte cannot assume any liability for the content of this leaflet. It shall only serve as general information and shall not replace the need to consult your Deloitte advisor.

About Deloitte Touche Tohmatsu Limited:

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.

Deloitte provides industry-leading audit and assurance, tax and legal, consulting, financial advisory, and risk advisory services to nearly 90% of the Fortune Global 500® and thousands of private companies. Our professionals deliver measurable and lasting results that help reinforce public trust in capital markets, enable clients to transform and thrive, and lead the way toward a stronger economy, a more equitable society and a sustainable world. Building on its 175-plus year history, Deloitte spans more than 150 countries and territories. Learn how Deloitte’s more than 345,000 people worldwide make an impact that matters at www.deloitte.com.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms or their related entities (collectively, the “Deloitte organization”) is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTTL and each of its member firms, and their related entities, are legally separate and independent entities.