

HOW TO SET UP

A UCITS MANAGEMENT COMPANY

DESCRIPTION

A UCITS management company is authorised to manage undertakings for collective investment in transferable securities, as defined by EU Directives 2009/65/EC (as amended by Directive 2014/91/EU) and 2010/43/EU.

The activities of such a company include investment management, the marketing of units in an FCP and administrative functions such as legal services, fund accounting, portfolio evaluation and the calculation of net asset value per share (including tax aspects), the sale and redemption of units/shares, client administration, compliance and client servicing.

Under certain conditions, a management company may also offer discretionary portfolio investment services to individual clients, including pension funds, in accordance with mandates given by those investors. As non-core services it can offer investment advice on instruments listed in section B of Annex II of the Law of 5 April 1993 on the financial sector (as amended) and the safekeeping and administration of units in UCIs.

Management companies authorised under the UCITS Directive may also apply for authorisation as Alternative Investment Fund Manager (and vice versa) as defined by Directive 2011/61/EU, in order to manage both UCITS and alternative investment funds.

AUTHORISATION REQUIREMENT

Commencing business as a management company is subject to prior authorisation by the CSSF. Authorisation granted to a management company under the 2010 Law is valid for all EU Member States.

SUPERVISORY AUTHORITY

The supervisory authority of a management company is the *Commission de Surveillance du Secteur Financier* (CSSF), whether or not the management company establishes a branch or provides services in another EU Member State.

LEGAL FRAMEWORK

The legal framework for a UCITS management company is laid down in chapters 15 and 16 of the law of 17 December 2010 (the "2010 Law"), CSSF Regulation 10-4 and is further detailed in Circular 12/546.

LEGAL FORM

A management company may be incorporated as a public limited company (*société anonyme*), a private limited company (*société à responsabilité limitée*), a cooperative company (*société coopérative*), a cooperative company set up as a public limited company (*société coopérative organisée comme une société anonyme*) or a corporate limited partnership (*société en commandite par actions*). The capital of the company must be represented by registered shares.

CENTRAL ADMINISTRATION

The registered office of the company and its central administration must be in Luxembourg or in another EU Member State.

SHAREHOLDERS

The CSSF will not grant authorisation to a management company until it has been informed of the identities of the shareholders or members, whether direct or indirect,

CAPITAL BASE

The management company must have an initial capital of at least EUR 125,000.

If the value of its portfolios exceeds EUR 250 million, the management company is required to provide an additional amount of own funds. This is equal to 0.02% of the amount by which the value of the portfolios exceeds EUR 250 million. However, the required total of initial capital plus additional capital is capped at EUR 10 million. 50% of the required minimum capital can be provided by a guarantee received from a bank or an insurance company.

natural or legal persons, that have qualifying holdings and of the amounts of those holdings. The CSSF will refuse authorisation if, taking into account the need to ensure sound and prudent management of the management company, it is not satisfied as to the suitability of the shareholders or members.

The CSSF will also ensure that any close links between the management company and other natural or legal persons with which it has close links do not prevent the effective exercise of its supervisory functions.

INFRASTRUCTURE

Both the central administration of a Luxembourg based management company and its registered office must be in Luxembourg. Central administration includes accounting and administrative functions which covers, inter alia, the NAV calculation as well as the issue and redemption of shares or units.

A management company must have sound administrative and accounting procedures, control and safeguard arrangements for electronic data processing and adequate internal control mechanisms. It must be structured and organised in such a way as to minimise the risk that conflicts of interest prejudice the interests of UCITS or clients. A management company may delegate one or more of its functions to third parties for the purpose of more efficient conduct of its business.

Investment management may be delegated only to authorised asset managers subject to prudential supervision by EU Member States or, if cooperation between supervisory authorities is ensured, by non-Member States. Investment management may not be delegated to the fund's custodian. CSSF authorisation is required to outsource administration or investment management tasks to an entity located outside Luxembourg. The management company prospectus must disclose the functions that have been delegated.

CONDUCTING OFFICERS

Two conducting officers must be appointed who are in charge of the oversight of activity by the management company. They must demonstrate experience, time availability, be of good repute and be granted effective access to the resources required to assume their functions.

To that end, the identities of these persons and of every person succeeding them in office must be communicated to the CSSF. Some requirements are enforced by the regulator as to their residence in Luxembourg. Those requirements vary with the type of vehicles managed.

EXTERNAL AUDITING

The management company must appoint an authorised independent auditor, who must possess appropriate professional experience and be duly approved by the CSSF.

SPECIALIST SERVICE PROVIDERS

A number of legal firms have specialist expertise in the creation of companies and can assist applicants during the process of setting up a credit establishment in Luxembourg.

AUTHORISATION PROCEDURE

The application for authorisation must be accompanied by a programme of activity setting out, inter alia, the organisational structure of the management company.

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