# Retail investment funds in Luxembourg: regulatory overview

**by Hervé Leclercq and Edouard Albaret, *Luther S.A.***

Country Q&A | Law stated as at 01-Oct-2021 | Luxembourg

A Q&A guide to retail investment funds law in Luxembourg.

This Q&A is part of the global guide to investment funds. It provides a high level overview of retail investment funds in Luxembourg. Areas covered include a market overview, legislation and regulation, marketing, managers and operators, restrictions and requirements, tax and upcoming reform.



## Market Structure

© 2021 Thomson Reuters. All rights reserved. 

1. What is the structure of the retail funds market? What have been the main trends over the last year?

## Open-Ended Retail Funds

Over the last year, Luxembourg has maintained its position as a premier financial centre for the structuring and the distribution of retail investment funds.

Under the Law of 17 December 2010 on undertakings for collective investment (Collective Investment Law), retail investment funds in Luxembourg can be set up as either:

- Undertakings for collective investment in transferable securities (UCITS), subject to Part I of the Collective Investment Law.
- Undertakings for collective investment (UCIs), subject to Part II of the Collective Investment Law.

## Closed-Ended Retail Funds

Closed-ended retail funds can be set up as UCIs and will be subject to Part II of the Collective Investment Law (*see above, Open-Ended Retail Funds*).

2. How are interests in the open and closed-ended funds accessed and priced?

The interests in both open and closed-ended funds are priced after market close, in particular to prevent late trading and market timing practices, although indicative only intraday valuations may be provided for information purposes. Interests are priced at the net asset value (NAV) and may be purchased on stock exchanges if listed on a stock exchange, on selected platforms or other distribution networks.

3. Are there any other retail fund options not mentioned in Question 1?

There is no retail fund type other than the UCITS or UCI that may be distributed on a large scale to the public.

© 2021 Thomson Reuters. All rights reserved. 

# Fund Vehicles and Structures

4. What are the main legal vehicles used to set up a retail fund and what are the key advantages and disadvantages of using these structures?

## Open-Ended Retail Funds

**Legal Vehicles.** In principle, both UCITS and UCIs can be set up as any of the following types of legal vehicle:

- **Investment company with variable capital (*société d'investissement à capital variable*) (SICAV).** A SICAV can be self-managed or can appoint a management company. SICAVs issue shares **(***Chapters 3 and 12, Collective Investment Law*).
- **Common investment fund (*fonds commun de placement*) (FCP).** This is an undivided co-ownership of assets without legal personality that issues units. An FCP must appoint a management company (*Chapters 2 and 11, Collective Investment Law*).
- **Investment company with fixed capital (*société d'investissement à capital fixe*) (SICAF).** A SICAF can be self-managed or can appoint a management company. SICAFs issue shares. (*Chapters 4 and 13, Collective Investment Law*).

**Advantages.** The comparative advantages of these legal vehicles are as follows:

- **SICAV.** The share capital of a SICAV is equal to its total NAV, which facilitates the subscription and redemption procedures (*Articles 25 and 28, Collective Investment Law*).
- **FCP.** Due to its contractual form, an FCP is not subject to company law requirements, and therefore provides its participants with more organisational flexibility than a SICAV.

**Disadvantages.** As is the default rule for most companies, and unlike SICAVs, a SICAF must hold a general meeting before a notary to modify its capital at each subscription or redemption of shares.

## Closed-Ended Retail Funds

**Legal Vehicles.** The legal structures used for closed-ended UCIs are the same as for open-ended UCIs (see above, *Open-Ended Retail Funds: Legal Vehicles*).

**Advantages.** See above, *Open-Ended Retail Funds: Advantages*.

**Disadvantages.** See above, *Open-Ended Retail Funds: Disadvantages*.

© 2021 Thomson Reuters. All rights reserved. 

# Regulatory Framework and Bodies

## Key Statutes, Regulations and Rules

5. What are the key statutes, regulations and rules that govern retail funds? Which regulatory bodies regulate retail funds?

### Open-Ended Retail Funds

**Regulatory Framework.** In addition to the Collective Investment Law, UCITS must comply with specific regulations issued by the Luxembourg financial supervisory authority, the *Commission de Surveillance du Secteur Financier* (CSSF) (see below, *Regulatory Bodies*), including:

- CSSF Regulation No 10-04 relating to UCITS organisational and procedural requirements (CSSF Regulation No 10-04).
- CSSF Circular 18/698 on approval and organisation of investment fund managers and specific provisions on the fight against money laundering and terrorist financing applicable to investment fund managers (Circular 18/698).
- CSSF Circular 16/644 on provisions applicable to UCITS depositaries, as amended by CSSF Circular 18/697 (Circular 16/644).
- CSSF Circular 11/512 clarifying risk management rules and procedures, as amended by CSSF Circular 18/698 (Circular 11/512).
- CSSF Circular 04/146 regarding protection against late trading and market timing practices (Circular 04/146).
- CSSF Circular 02/77 relating to NAV calculation errors and non-compliance with investment rules applicable to collective investment undertakings (Circular 02/77).
- IML Circular 91/75 on the revision and remodelling of rules applicable to Luxembourg collective investment undertakings, as amended by CSSF Circular 05/177 and Circular 18/697 (Circular 91/75).

Furthermore, the following government regulations are applicable to UCITS, amongst others:

- Grand-Ducal Regulation of 21 December 2017 relating to the fees to be levied by the CSSF.
- Grand-Ducal Regulation of 8 February 2008 clarifying certain definitions relating to UCITS.

UCIs are subject to:

© 2021 Thomson Reuters. All rights reserved.

- Part II of the Collective Investment Law.
- Certain regulations applicable to UCITS (such as Circular 18/698, Circular 04/146, Circular 02/77, and Circular 91/75).
- Specific regulations, such as CSSF Circular 02/80 relating to rules applicable to UCIs pursuing alternative investment strategies (Circular 02/80).

Further, Directive 2014/65/EU on markets in financial instruments (MIFID II), which has a significant impact on retail fund providers, entered into force on 3 January 2018. The Law of 30 May 2018 and Grand-Ducal regulation of 30 May 2018 implemented MIFID II and its delegated Directive 2017/593 provisions into Luxembourg law.

**Regulatory Bodies.**The CSSF is responsible for the initial authorisation and ongoing supervision of UCITS and UCIs, as well as their management companies. The CSSF carries out its duties exclusively in the interest of the public and has all supervisory and investigative powers necessary for the exercise of its functions.

## Closed-Ended Retail Funds

See above, *Open-Ended Retail Funds*.

## Local or State Legislation

6. Within the jurisdiction, are there local state, provincial or similar laws that could apply to retail funds?

There are no local laws that could apply to retail funds that would alter the national regime.

## Authorisation/Licensing of Funds

7. Do retail funds themselves have to be authorised, licensed or registered?

## Open-ended Retail Funds

**UCITS.** A Luxembourg UCITS must obtain prior authorisation from the CSSF to carry out its activities. As part of the authorisation procedure, the following elements must be submitted to the CSSF:

© 2021 Thomson Reuters. All rights reserved. 

- The relevant application questionnaire(s).
- The draft constitutive documents or management regulations.
- The draft prospectus and related Key Investor Information Document(s) (KIID).
- The draft agreements to be entered into by the UCITS and its service providers (including most notably the depositary).
- Application documents relating to the board of directors.
- Information relating to the management company (if any).
- The risk management process and other relevant operational procedures.

The requirement for prior authorisation, approval of the constitutive documents, and choice of the depositary are contained in Article 129 of the CIL. The requirement for the other documents arises from the administrative practice of the CSSF as set out on its website (*www.cssf.lu/en/*).

The CSSF keeps an official list of UCITS which are authorised in Luxembourg and subject to its supervision. Entry on the official list will mean that the CSSF has authorised the UCITS. This list is accessible through a dedicated search tool on the website of the CSSF (*https://searchentities.apps.cssf.lu/search-entities/search?lng=en*).

Further, a foreign UCITS can be marketed in Luxembourg subject to prior notification to the regulator of its home member state and the regulator transmitting that notification to the CSSF.

**UCIs.** The procedure for authorisation of UCIs is quite similar to that of UCITS (except for the KIID and certain substance or procedural requirements). As a UCI qualifies as an alternative investment fund (AIF) under the Law of 12 July 2013 on alternative investment fund managers, further specific requirements may apply.

## Closed-Ended Retail Funds

See above, *Open-Ended Retail Funds: UCIs*.

## Authorisation/Licensing of Managers/Operators

8. Do the operators of retail funds have to be authorised, licensed or registered? What are the key requirements that apply to managers or operators of retail funds?

## Open-Ended Retail Funds

**UCITS.** A UCITS management company acting on behalf of an FCP or as a SICAV can only commence its business activities once authorisation from the CSSF is obtained. For details of legal fund vehicles, see *Question 4*.

© 2021 Thomson Reuters. All rights reserved. 

Applications for authorisation must comprise all relevant information and documents allowing the CSSF to identify and assess the applicant, including:

- A programme of activities.
- Information on the organisation and infrastructure, management and shareholding structure.
- The policies and procedures.

These requirements arise from: Chapter 15 of the Collective Investment Law and other provisions (particularly Article 42(1)); CSSF regulations (particularly CSSF regulation 10-4); and CSSF circulars (particularly CSSF circulars 18/698 and 11/512).

A UCITS management company must comply with the general requirements set out in Chapter 15 of the Collective Investment Law, especially in relation to:

- Initial capital and own funds.
- Substance (for example, the head office and registered office must be located in Luxembourg).
- Governance (for example, the persons who effectively conduct the business of the management company must be of sufficiently good repute and be sufficiently experienced in relation to the type of funds managed).

A UCITS management company must (among other things) maintain permanent compliance, internal audit and risk management functions, and ensure adequate supervision of any delegated activities (*CSSF Regulation No 10-04; Circular 18/698*).

Under the UCITS management company passport regime, a UCITS management company established and duly authorised in another EU member state can manage Luxembourg UCITS.

**UCIs.** A UCI management company must seek CSSF authorisation prior to commencing its activities. The same authorisation requirements as for UCITS management companies apply (see above, *UCITS*).

A UCI management company must comply with the provisions of Chapter 16 of the Collective Investment Law (unless it also manages UCITS). These provisions are generally less strict than the provisions applicable to UCITS management companies. As a UCI qualifies as an AIF, further organisational and procedural requirements may apply with respect to its AIF manager (if any) (*Article 88-1, Collective Investment Law*).

## Closed-Ended Retail Funds

See above, *Open-Ended Retail Funds: UCIs*.

## Active and Passive Management

© 2021 Thomson Reuters. All rights reserved. 

9. Are the different types of retail funds typically actively managed or passively managed? Or can they be either?

Both UCITS and UCIs may be either actively managed or passively managed.

## Marketing of Funds

10. Who can market retail funds?

### Open-Ended Retail Funds

**UCITS.** Shares or units of a Luxembourg UCITS can be marketed by the fund itself or by its designated management company (if any) as part of its collective portfolio management function.

The appointed management company can delegate the marketing activities to third parties. These include:

- Local distributors subject primarily to the Law of 5 April 1993 on the financial sector.
- Foreign distributors with adequate financial resources and capabilities. A UCITS can also appoint such entities directly.

**UCIs.** See above, *UCITS*. If a UCI appoints an authorised AIF manager (AIFM), the AIFM will be in charge of marketing the UCI (but can also delegate this function).

### Closed-Ended Retail Funds

See above, *Open-Ended Retail Funds*.

11. To whom can retail funds be marketed?

### Open-Ended Retail Funds

© 2021 Thomson Reuters. All rights reserved. 

**UCITS.** A Luxembourg UCITS can be marketed to all types of investors, including retail, professional and institutional investors. However, a UCITS can also choose to create sub-funds or share/unit classes that are reserved for certain investors only.

**UCIs.** In principle, the marketing rules for UCITS are applicable to open-ended UCIs.

### Closed-Ended Retail Funds

See above, *Open-Ended Retail Funds*.

## Assets Portfolio

12. Who holds the portfolio of assets? What regulations are in place for its protection?

### Open-Ended Retail Funds

**UCITS.** A UCITS must appoint a depositary bank to ensure the safekeeping and monitoring of its portfolio assets. This bank must be a Luxembourg credit institution supervised by the CSSF.

UCITS depositaries are subject to the organisational, operational and other requirements set out in the:

- Collective Investment Law.
- Regulation (EU) 2016/438 on the obligations of depositaries (UCITS V Delegated Regulation).
- Circular 16/644 as amended by Circular 18/697.

**UCIs.** The Law of 10 May 2016 had imposed a single depositary regime by aligning the requirements applicable to UCI depositaries with the requirements applicable to UCITS depositaries (see above, *Open-Ended Retail Funds: UCITS*). However, the Law of 27 February 2018 has introduced a differentiated regime by providing that only UCIs targeting retail investors will be subject to UCITS depositary obligations.

### Closed-Ended Retail Funds

See above, *Open-Ended Retail Funds: UCITS*.

## Investment and Borrowing Restrictions

© 2021 Thomson Reuters. All rights reserved. 

13. Are there any investment or diversification restrictions for retail funds? If so, what are they?

## Open-Ended Retail Funds

**UCITS.** A UCITS can invest in the following types of assets, subject to certain eligibility criteria and concentration limits being met:

- Transferable securities and structured financial instruments.
- Money market instruments.
- Units of UCITS and other collective investment undertakings.
- Deposits with credit institutions.
- Financial derivative instruments.

(*Article 41, Collective Investment Law*.)

Among the applicable risk diversification requirements, a UCITS must comply with the "5/10/40" rule. This rule requires that both:

- A maximum 10% of the fund's net assets must be invested in transferable securities and money market instruments issued by a single issuer.
- The aggregate value of transferable securities and money market instruments held by the relevant UCITS in the issuers in which it invests more than 5% must be limited to 40% of its net assets.

(*Article 43, Collective Investment Law*.)

**UCIs.** Unless it is granted derogation from the CSSF for pursuing a specific investment strategy (for example, in relation to venture capital, futures contracts/options, and/or real estate), an open-ended UCI must not:

- Invest more than 10% of its net assets in unlisted securities (that is, securities that are not listed on a stock exchange or dealt in on another regulated market that operates regularly and is recognised and open to the public).
- Invest more than 10% of its net assets in securities issued by a single issuer.
- Acquire more than 10% of the same type of securities issued by a single issuer.

(*IML Circular 91/75 and CSSF Circular 02/80*.)

## Closed-Ended Retail Funds

See above, *Open-Ended Retail Funds*: UCIs.

© 2021 Thomson Reuters. All rights reserved.

14. Are there borrowing restrictions or conditions for retail funds? If so, what are they?

### Open-Ended Retail Funds

**UCITS.** A UCITS can borrow up to 10% of its net assets on a temporary basis and/or to acquire immovable property essential for the direct pursuit of its business. However, this must not exceed 15% of its net assets cumulatively (*Article 50, Collective Investment Law*).

**UCIs.** Unless it is granted derogation from the CSSF for pursuing a specific investment strategy (for example, in relation to venture capital, futures contracts/options, and/or real estate), an open-ended UCI must not borrow more than an amount corresponding to 25% of its net assets (*IML Circular 91/75*).

### Closed-Ended retail funds

See above, *Open-Ended Retail Funds*: UCIs.

## Redemption of Interests

15. Can participants redeem their interest? Can the manager or operator place any restrictions on the issue and redemption of interests in retail funds? Are there any restrictions on the rights of participants to transfer or assign their interests to third parties?

### Open-Ended Retail Funds

**Issue of Interest.** The following applies:

- **UCITS.** UCITS must offer their shares/units for subscription at least twice a month, generally UCITS offer their shares/units on a daily basis.

  Within a UCITS, it is possible to create sub-funds and share/unit classes that are restricted to certain investors (see *Question 11*, *Open-Ended Retail Funds*).

  In addition, a UCITS sub-fund can be closed to further subscriptions (on either a temporary or permanent basis) when reaching the end of the initial subscription period or achieving an economically efficient size.

- **UCIs.** UCIs must offer their shares/units for subscription at least once a month. Similarly to UCITS it is possible for UCIs to create sub-funds and share/unit classes that are restricted to certain investors (see

© 2021 Thomson Reuters. All rights reserved. 

*Question 11, Open-Ended Retail Funds*) and a UCI sub-fund can be closed to further subscriptions (on either a temporary or permanent basis) when reaching the end of the initial subscription period or achieving an economically efficient size.

**Restrictions on Redemption of Interest.** The following applies:

- **UCITS.** UCITS must redeem their shares/units at the request of investors at least twice a month, generally UCITS offer redemption possibility on a daily basis.

  A UCITS can foresee special circumstances (such as a temporary liquidity shortage) allowing for a delayed settlement of redemptions and a prorated reduction of redemption requests.

- **UCIs.** UCIs must redeem their shares/units at the request of investors at least once a month. A UCI can foresee special circumstances (such as a temporary liquidity shortage) allowing for a delayed settlement of redemptions and a prorated reduction of redemption requests.

**Restrictions on Rights to Transfer or Assign Interests to Third Parties.** The following applies:

- **UCITS.** Under the Collective Investment Law, there are no restrictions on the transfer of rights held in a UCITS to third parties.
- **UCIs.** There are no specific legal restrictions to transfer rights held in a UCI to third parties. Any contractual restrictions should be provided for in the fund documents.

### Closed-Ended Retail Funds

See above, *Open-Ended Retail Funds: UCIs*. Closed-ended funds do not offer any redemption rights.

## Reporting Requirements

16. What are the general periodic reporting requirements for retail funds?

### Open-Ended Retail Funds

**Investors.** UCITS must publish a prospectus, an audited annual report within four months from the end of each financial year, and a semi-annual (unaudited) report within two months from the end of the relevant financial period (*Article 150, Collective Investment Law*). UCIs must also publish a prospectus and similar financial reports (but within six and three months respectively from the end of the relevant financial period) (*Article 150, Collective Investment Law*).

© 2021 Thomson Reuters. All rights reserved.

**Regulators.** UCITS and UCIs must submit monthly, semi-annual and annual financial information to the CSSF. Self-managed UCITS and UCITS management companies must submit additional periodic reports to the CSSF in accordance with Circular 18/698.

### Closed-Ended Retail Funds

See above, *Open-Ended Retail Funds*. As a UCI qualifies as an AIF, further specific reporting requirements may apply.

## Tax Treatment

17. What is the tax treatment for retail funds?

### Open-Ended Retail Funds

**Funds.** UCITS and UCIs must pay an annual subscription tax of 0.05% on their NAV. This rate is reduced to 0.01% for certain money market funds/cash funds and sub-funds or classes reserved for institutional investors (*Article 174, Collective Investment Law*). UCITS and UCIs may also, subject to certain conditions, benefit from reduced subscription tax rates when such UCITS or UCIs invest in environmentally sustainable economic activities within the meaning of Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable lending (Taxonomy Regulation). The subscription tax rate would range from 0.01% to 0.04% depending on the percentage of eligible sustainable assets in which the UCITS or UCIs are invested.

Exemptions apply to:

- The value of the assets represented by shares/units held in other collective investment undertakings, provided these are already subject to subscription tax.
- Special institutional money market funds.
- Pension funds.
- Collective investment undertakings investing in microfinance.
- Exchange traded funds.

Since 1 January 2021, a new annual 20% real estate tax is levied on income and gains arising from real estate assets situated in Luxembourg and realised directly or indirectly by non-tax-transparent UCIs.

**Resident Investors.** No withholding tax applies on dividend and capital gains distributions to resident investors. Any distributions received will be subject to Luxembourg income tax.

© 2021 Thomson Reuters. All rights reserved. 

**Non-resident Investors.** No withholding tax applies on dividend and capital gains distributions to non-resident investors. Furthermore, non-resident investors are not subject to Luxembourg income tax when investing in Luxembourg UCITS and UCIs.

**Tax Reporting.** UCITS and UCIs are subject to tax reporting requirements imposed under the US Foreign Account Tax Compliance Act (FATCA) and the OECD Common Reporting Standard (CRS) rules.

**VAT.** Management services rendered to UCITS and UCIs are exempt from VAT.

### Closed-Ended Retail Funds

See above, *Open-Ended Retail Funds*.

## Reform

18. What proposals are there (if any) for the reform of retail fund regulation?

Bill of law n°7737 transposing Directive (EU) 2019/1160 amending the UCITS Directive and the AIFMD with regard to cross-border distribution of collective investment undertakings has been lodged with the Luxembourg Parliament. Directive 2019/1160, together with Regulation (EU) 2019/1156 on facilitating cross-border distribution of collective investment undertakings and amending the EuVECA Regulation, the EuSEF Regulation and the PRIIPs Regulation, is intended to harmonise and facilitate the cross-border marketing and distribution of UCITS and UCIs in the EU. This legislation attempts to achieve this by reducing the remaining regulatory barriers and improving cost efficiency whilst continuing to strive for better investor protection. In this context, the Directive provides for new rules for:

- The pre-marketing of UCIs in the EU.
- The provision of local facilities for UCITS and UCIs being marketed to retail investors.
- The de-notification procedure for discontinuing the marketing of UCITS and certain UCIs in a host member state.
- The alignment of certain notification requirements for the marketing of UCITS and UCIs in a host Member State.

Directive 2019/1160 has been implemented in Luxembourg by a law dated 21 July 2021, entered into force 2 August 2021, which amended the Collective Investment Law and the Law of 12 July 2013 on alternative investment fund managers. The CSSF published on 28 July 2021 CSSF Circular 21/778 amending the previous CSSF Circular 11/509 on the notification procedures to be followed by a UCITS wishing to market its units in another EU member state and by a EU UCITS of another member state wishing to market its units in Luxembourg.

© 2021 Thomson Reuters. All rights reserved.

**Contributor Profiles**

## Hervé Leclercq, Partner

**Luther S.A.**
**T** +352 27484 663
**F** +352 27484 690
**E** *herve.leclercq@luther-lawfirm.com*
**W** *www.luther-lawfirm.lu*

**Professional Qualifications.** Avocat à la Cour, Luxembourg

**Areas of Practice.** Investment management; financial services

**Languages.** English, French, Japanese

**Professional Associations/Memberships.** Luxembourg Bar Association; Association of the Luxembourg Fund Industry

## Edouard Albaret, Senior Associate

**Luther S.A.**
**T** +352 27484 650
**F** +352 27484 690
**E** *edouard.albaret@luther-lawfirm.com*
**W** *www.luther-lawfirm.lu*

**Professional Qualifications.** Avocat à la Cour, Luxembourg

**Areas of Practice.** Investment management; financial services

**Languages.** English, French

**Professional Associations/Memberships.** Luxembourg Bar Association

**END OF DOCUMENT**

© 2021 Thomson Reuters. All rights reserved.