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# The Luxembourg 1988 Law on UCITS (Undertaking for Collective Investment in Transferable Securities)

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# Agenda

- I. Introduction
- II. Investment objectives
- III. Investors
- IV. Legal Form
- V. Strategies
- VI. Launch process
- VII. Minimum capital requirements
- VIII. AIFM
- IX. Taxation
- X. Conclusion

Appendix 1 : Applicable legal framework  
Appendix 2 : Diversification requirements  
Appendix 3 : Key documentation and reporting  
Appendix 5 : VAT  
Appendix 6 : Main differences between FCPs and SICAVs

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# I - Introduction

- UCITS is the acronym for Undertaking for Collective Investment in Transferable Securities.
- UCITS are open-ended, regulated investment funds.
- Non-UCITS that are not subject to a specific product law are considered Undertakings for Collective Investment (UCIs) established under Part II of the Law of 2010.
- The UCITS regime was implemented in Luxembourg in 1988.

## II – Objectives of the investment



- Obtain a positive yield or capital gain
- Spread risks via a diversified portfolio of investments.
- Professional management of the portfolios
- Sharing costs between investors
- Gaining exposure to specific investment in the case of investors who are not able to access the investment directly, for instance due to investor qualification requirements or critical mass.

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## III - Investors

- All investors are eligible.
- European Union retail and institutional investors can invest in UCITS.
- Many international investors are also attracted to UCITS, as they are EU regulated.

## IV – Legal Form

- Legal form of a common fund (fonds commun de placement). Managed by a Management company.
- Open-ended investment company (SICAV – Société d’investissement à capital variable)
- Closed-ended investment company (SICAF – Société d’investissement à capital fixe)
- SICAV/SICAF may take one of the legal forms:
  - *Société Anonyme*
  - *Société à Responsabilité Limitée*
  - *Société en Commandite par Actions*
  - *Société en Commandite Simple*
  - *Société en Commandite Spéciale*

# V - Strategies

**The investment Objective and Strategy is subject to prior approval by the CSSE.**

## **Equity :**

- Fund invests predominantly in equities, otherwise known as stocks or shares.

## **Fixed income :**

- Mainly in fixed income instruments such as bonds and money market instruments.

## **Mixed :**

- Mixed strategies involve investing in a mixture of equities, bonds and money market investments thereby providing investors with both income and capital gains.

## **Other :**

- It may include currencies and commodities derivatives

# V – Launch process

- UCITS must obtain authorization from the CSSF prior to setup.
- CSSF approval will only relate to a review of the Offering documents and a check whether the Luxembourg central administration, custodian, auditor and the members of the board of Directors have the required experience and reputation.
- CSSF approval of the promoter of the UCITS and of the investment manager or adviser is required.
- UCI are supervised by the CSSF and must fulfil detailed reporting requirements.

## VI. Minimum capital requirements

There is no minimum investment but :

- All UCITS require a minimum of EUR 1,250,00 which must be achieved within six months of authorization (SICAV/SICAF).
- *In the case of a multiple compartment UCITS, this capital requirement applies to the UCITS as a whole, not to the individual compartments.*
- For a self-managed UCITS SICAV, the minimum capital at the date of authorization is €300,000.
- The shares or units of a SICAV or SICAF must be fully subscribed.
- Net assets of an FCP may not be less than EUR 1,250,000, which must be achieved within six months of authorization

## VI. AIFM and services

- Required to appoint an AIFM, benefiting from the limited exemptions provided by AIFM.
- AIFM can be established in Luxembourg or another EU Member State or third country.
- UCIs managed by an EU authorised AIFM benefit from a passport.
- The management company must be of good repute and be sufficiently experienced in relation to the type of UCI to be managed.
- Initial capital of at least EUR 125,000.
- Appoint a depositary bank, must be of good repute and have experience in relation to the type of UCI concerned.

## VII – Taxation

- Luxembourg UCITS do not pay any Luxembourg profit and capital taxes.
- Exception of :
  - The annual subscription tax : 0,05% payable quarterly, based on the total NAV of the UCITS on the last day of every calendar quarter. This rate is reduced to 0.01% in case of money market cash funds and institutional funds.
  - The registration duty (in case of SICAV/SICAF) : €0 but 5.000 € filing tax once at incorporation, then 5.000 € yearly fee for umbrellas, 2.650 € for single funds.
  - Ex post modifications of the articles of incorporation and transfer of the effective place of management or registered office in Luxembourg are possible.

## VII – Taxation (continued)

- There are no withholding taxes on dividends paid by Luxembourg UCITs, or on the sale or refund of the shares or units, except possibly, in application of the EU Savings Directive.
- Luxembourg UCITS may be subject to withholding tax on dividends and interests and to tax on capital gains in the country of origin of their investments.
- Mergers, split and liquidations of a Luxembourg UCITS generally do not imply any additional Luxembourg tax.
- There is no stamp duty in Luxembourg on share issues or transfers.
- Investments in special institutional money market cash funds, special pension funds (including pension pooling vehicles) and funds investing in other funds which are already subject to subscription tax are exempt from subscription tax.

# Section VIII – Conclusion



## **A global solution**

The UCITS law introduces a new investment vehicle that offers both local and foreign promoters, even small-sized, a large panel of fund types regulated, supervised, flexible, tax optimized and marketable to a broad public of institutional, professional and private investors, well-informed.

A flexible and light legislation.

A new structure.

All kind of investment types.

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# Appendix 1 - Applicable Legal Framework



Luxembourg UCITS funds are subject to the following laws and regulation :

- CSSF Circular 14/591, regarding to protection of investors in case of a material change to an open-ended UCI
- CSSF Circular 16/644, provisions applicable to credit institutions acting as UCITS depository.
- CSSF Circular 03/108 and 05/185 on organisational requirements applicable to UCITS management companies and self-managed SICAVs
- CSSF Circular 03/122 on the simplified prospectus
- CSSF Circular 08/380 regarding guidelines of the Committee of European Securities Regulators (CERS) concerning eligible assets for investment by UCITS

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# Appendix 2 – Diversification Requirement



As well as meeting the eligible assets criteria, the investment of UCITS must meet the following diversification requirements :

- 5/10/40 rule, maximum of 10 per cent of a fund's net assets may be invested in securities from a single issuer, and that investments of more than 5 per cent with a single issuer may not make up more than 40 per cent of the whole portfolio.
- An individual investment in another fund must not exceed 20 per cent of assets, while no more than 30 per cent of the UCITS fund's portfolio can be invested in non-UCITS funds.
- The risk exposure to a counterparty in an OTC derivative transaction may not exceed 10% of net assets in the case of a credit institution and 5% in other cases.
- No more than 30% of net assets may be invested in aggregate in shares or units of other UCIS (excluding UCITS).
- A UCITS may acquire no more than :
  - 10% of the non-voting shares of the same issuer
  - 10% of the debt securities of the same issuer
  - 25% of the shares or units of the same UCI

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# Appendix 3 – Key documentation and reporting

- The fund must publish a Prospectus
- Simplified prospectus (KIID since July 2011 and UCITS IV directive)
- Key Investors Information (KIID)
- Annual report : audited annual report, by an approved Luxembourg independant auditor, is to be published within 4 months of the financial year end, after the annual audit.
- Semi annual report : an unaudited semi annual report is to be published (and communicated to the CSSF) within 2 months of the period end.
- General meetings : an investment company or the managment company of a FCP must generally hold at least one general meeting of shareholders each year within 6 months of the financial year end.

## Appendix 5 - VAT



« Intellectual » services provided to a Luxembourg FCP or SICAV or SICAF.

Supplier	Service	Place of Supply
Luxembourg company	Management services	Luxembourg
EU company (except Luxembourg)	Management services	Luxembourg
US advisory company	Legal advice	Luxembourg
Luxembourg central administration	Administration services	Luxembourg
Luxembourg custodian bank	Control and supervisory services	Luxembourg
Luxembourg auditor – lawyer-tax advisor	Audit - legal advice - tax advice	Luxembourg
EU lawyer (except Luxembourg)	Legal advice	Luxembourg

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# Our know-how at your service



- Finexis can offer the following services:

## **Domiciliation**

Fund setup and structuring, including some Tax structuring  
Filing to notaries and regulators of all required documents  
Corporate Agent, AGMs, Board meetings  
Legal reporting as foreseen by the Luxembourg legislation

**Fund NAV calculation** and reporting as legally required (base is yearly NAV for SIFs, or more frequent as required)

Booking of all transactions in the fund  
Billing and fees payments  
Overview and monitoring of custodized and non-custodized assets  
Corporate actions and Tax reclaim, Tax representative in Luxembourg  
Financial report

**Transfer Agency** services and appropriate reporting

Tax reporting EUSD, German tax, US tax, Austrian tax or Swiss tax to be provided upon specific request  
Maintenance of Register  
Payment of dividends  
Subscriptions and redemptions

## **Controls**

Investment restrictions monitoring  
Escalation with external auditors of any investment restriction breaches  
Filing of breaches to the regulator with appropriate wording  
Organization and monitoring of external audits of the funds in our premises

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# Our know-how at your service



## **Promotorship**

Management company for any type of European passport funds in Europe, as well as the typical SIF, SICAR or institutional dedicated (“part II”) funds

## **Directorship**

Provide independent board members for the funds and their linked companies

Act directly as the management company of investment funds of any kind

## **Asset Management**

Sound advices for the management of the portfolios,

Delegate the actual asset management to any dedicated asset manager

Perform the related controls and due diligence required

## **Risk Management**

Risks reports on each portfolio

Delegate the risk management to any dedicated risk manager

Perform the related controls and due diligence required.

## **Fund Compliance**

Fund compliance reports on each portfolio

Delegate the fund compliance management to any dedicated compliance manager

Perform the related controls and due diligence required.

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