

Frequently Asked Questions
(version 2, 24 August 2016)
concerning the Luxembourg Law of 17 December 2010
relating to undertakings for collective investment

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Preliminary remarks:

The following Frequently Asked Questions (“FAQs”) aim at highlighting some of the key aspects of the laws and regulations governing UCITS from a Luxembourg perspective. The FAQs are therefore primarily addressed to management companies managing undertakings of collective investment and undertakings for collective investment in transferable securities (“UCITS”) that are established in Luxembourg.

This document will be updated from time to time and the CSSF reserves the right to alter its approach to any matter covered by the FAQs at any time. You should regularly check the website of the CSSF in relation to any matter of importance to you to see if questions have been added and/or positions have been altered.

The present FAQs are to be read in conjunction with the questions and answers ESMA has published with respect to the application of the laws and regulations governing UCITS. These questions and answers, which will also be updated from time to time, are available on the following website:

<http://www.esma.europa.eu/page/Investment-management-0>

Please note that the FAQs on alternative investment fund managers are addressed in specific [FAQs](#).

I. Definitions:

AIF: An AIF is any collective investment vehicle, including investment compartments thereof, which in accordance with the definition under article 1(39) of the Law of 2013 in case of Luxembourg AIFs respectively under article 4 (1)a) of the AIFMD in case of AIFs established in another EU Member State or in a third country (i) raises capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and (ii) does not require authorisation pursuant to article 2(1) of the Law of 2010, respectively article 5 of the UCITS Directive).

For Luxembourg entities, AIF are:

- Investment funds subject to Part II of the Law of 2010;
- Specialised investment funds established under the Law of 2007 if they fulfil the criteria under article 1(39) of the Law of 2013;
- SICARs established under the Law of 2004 if they fulfil the criteria under article 1(39) of the Law of 2013
- Any entity not regulated under the Law of 2010, the Law of 2007 or the Law of 2004 that also meets the criteria of article 1(39) of the Law of 2013

AIFM: (Please refer to question 1 in [FAQs on AIFM](#))
An AIFM means any legal person whose regular business is managing one or more AIF(s) in accordance with the definition under article 1(46) of the Law of 2013. (Please refer to question 1 in [FAQs on AIFM](#))

Audit Directive: [Directive 2006/43/EC](#) of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts

CESR: Committee of European Securities Regulators

CESR guidelines: CESR guidelines concerning eligible assets for investment by UCITS, March 2007 (updated September 2008), Ref.: [CESR/07-044b](#)

Commission Regulation N° 583/2010: [Commission Regulation \(EU\) No 583/2010](#) of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website

CSSF Circular 08/380:	CSSF Circular 08/380 regarding the guidelines of the Committee of European Securities Regulators (CESR) concerning eligible assets for investment by UCITS
CSSF Circular 11/512:	CSSF Circular 11/512 on risk management rules
CSSF Circular 12/540	CSSF Circular 12/540 relating to non-launched compartments, compartments awaiting reactivation and compartments in liquidation
CSSF Circular 12/546	CSSF Circular 12/546 relating to the authorisation and organisation of the Luxembourg management companies subject to Chapter 15 of the Law of 17 December 2010 relating to undertakings for collective investment as well as to investment companies which have not designated a management company within the meaning of Article 27 of the Law of 17 December 2010 relating to undertakings for collective investment
CSSF Circular 14/592:	CSSF Circular 14/592 on guidelines of the European Securities and Markets Authority (ESMA) on ETFs and other UCITS issues
CSSF Regulation N° 10-05:	CSSF Regulation N°10-05 transposing Commission Directive 2010/44/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards certain provisions concerning fund mergers, master-feeder structures and notification procedure
EEA:	European Economic Area
ESMA:	European Securities and Markets Authority
ESMA ETFs guidelines:	ESMA guidelines on ETFs and other UCITS issues (last version ESMA/2014/937EN)
ESMA opinion 2012/721:	ESMA's opinion of 20 November 2012 on article 50(2)(a) of Directive 2009/65/EC (ESMA 2012/721)
ESMA ETFs FAQ:	Questions and Answers on ESMA's guidelines on ETFs and other UCITS issues (last version ESMA/2015/12)
ETF:	Exchange Traded Funds
EU:	European Union
IML 91/75:	IML Circular 91/75 relating to the revision and remodelling of the rules to which Luxembourg undertakings governed by the law of 30 March 1988 on undertakings for collective investment ("UCI") are subject
KIID:	Key Investor Information Document
Law of 2004:	Law of 15 June 2004 relating to the investment company in risk capital (« SICARs »)
Law of 2007:	Law of 13 February 2007 relating to specialised investment funds (« SIFs »)
Law of 2010:	Law of 17 December 2010 relating to undertakings for collective investment
Law of 2013:	Law of 12 July 2013 regarding alternative investment fund managers

MiFID:	Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments and Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU
NAV:	Net Asset Value
OECD:	Organisation for Economic Cooperation and Development
OTC:	Over-the-counter
Other UCI:	AIF, non-AIF other than UCITS and third country UCI equivalent to UCITS For Luxembourg entities, non-AIF other than UCITS are: <ul style="list-style-type: none">• Specialised investment funds established under the Law of 2007 if they do not fulfil the criteria under article 1(39) of the Law of 2013;• SICARs established under the Law of 2004 if they do not fulfil the criteria under article 1(39) of the Law of 2013• Any entity not regulated under the Law of 2010, the Law of 2007 or the Law of 2004 that does not meet the criteria of article 1(39) of the Law of 2013
Regulation 2008:	Grand-ducal regulation of 8 February 2008 relating to certain definitions of the amended law of 20 December 2002 on undertakings for collective investment and implementing Commission Directive 2007/16/EC of 19 March 2007 implementing Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards the clarification of certain definitions
SICAR:	Investment companies in risk capital governed by the Law of 2004
SIF:	Specialised investment funds governed by the Law of 2007
UCI:	Undertakings for collective investment (UCITS and other UCI)
UCITS:	Undertaking for collective investment in transferable securities subject to part I of the Law of 2010 and EU non Luxembourg UCITS falling under the scope of the UCITS Directive
UCITS Directive:	Directive 2009/65/EU of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as amended by Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014 as regards depositary functions, remuneration policies and sanctions

II. Questions and answers:

1. Eligible assets

Please note that this section only refers to the eligibility of assets and not to the diversification rules that apply to investments made in eligible assets. In addition to eligibility rules, eligible assets must in any case comply with relevant provisions on diversification rules.

1.1) What are the applicable provisions with regard to eligible assets for investment by UCITS? (8 December 2015)

The following provisions are applicable to eligible assets :

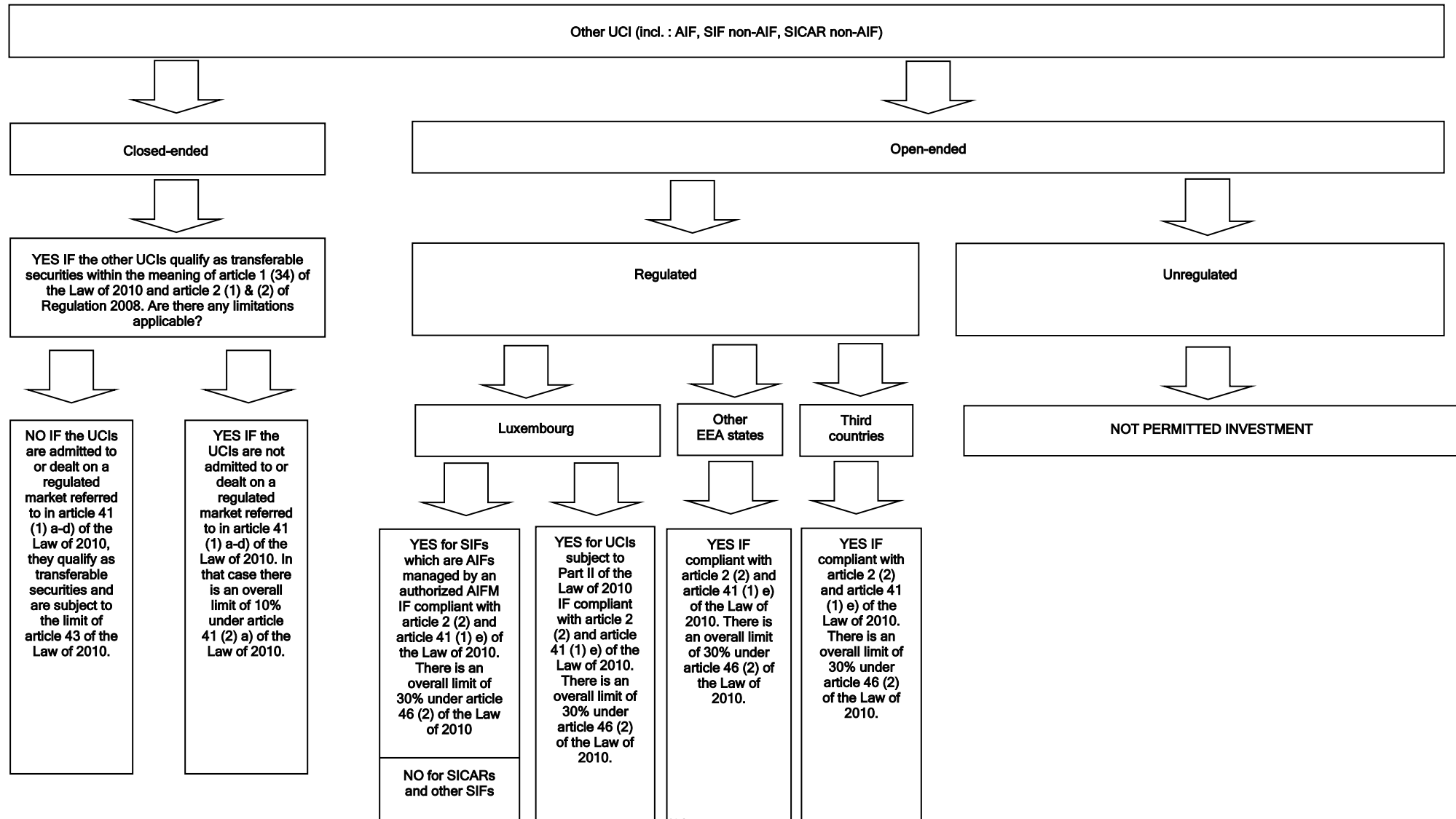
- Chapter 5 of the Law of 2010,
- Regulation 2008,
- CCSR guidelines,
- ESMA opinion 2012/71,
- ESMA ETFs guidelines,
- ESMA ETFs FAQ.

1.2) Under what conditions are UCITS eligible investment for a UCITS? (8 December 2015)

UCITS are eligible investment for a UCITS if such UCITS do not invest more than 10% in aggregate of their net assets in units of UCI as foreseen under article 41 (1) e) 4th indent of the Law of 2010.

1.3) UCITS may invest under certain conditions in another UCI. What are the steps to be considered in order to determine if the investment in the other UCI is eligible? What eligibility rules apply, if any?

(24 August 2016)



1.4) Are non-UCITS ETFs eligible investments for UCITS?

(8 December 2015)

Non-UCITS ETFs belong to the category of open-ended "Other UCI" as illustrated in the chart under question 1.3). Such non-UCITS ETFs are eligible investments for UCITS if they effectively comply with all criteria of articles 2 (2) and 41 (1) e) of the Law 2010 notwithstanding that the offering documents of non-UCITS ETFs grant possibilities which are not equivalent to requirements applicable to UCITS.

Given the specificities of each other ETF, an eligibility analysis must be carried out on a case-by-case basis and the UCITS must continuously ensure that the investment rules applied are equivalent to the investment rules applicable to UCITS, for example, via a system of compliance control or a written confirmation of the ETF or its manager.

1.5) Are UCITS master funds eligible investments for a UCITS which is not a feeder fund?

(8 December 2015)

Yes, if such UCITS master funds fulfil all the criteria of article 41 (1) e) of the Law of 2010.

1.6) Which are the analyses to be conducted to determine the eligibility of transferable securities linked to the performance of other underlying assets (structured financial instruments) within the investment policy of a UCITS?

(8 December 2015)

The analysis of the eligibility of structured financial instruments covers several points.

In order to be eligible in terms of article 41 (1) a-d) of the Law of 2010 and to qualify as transferable securities, the securities in question shall first comply with the legal provisions set down in article 2 of Regulation 2008, completed by point 17 of the CESR guidelines which are attached to CSSF Circular 08/380.

In addition it should be assessed whether these transferable securities contain an embedded derivative within the meaning of articles 2 (3) and 10 of Regulation 2008 or of point 23 of the CESR guidelines.

Two scenarios are possible:

1. Transferable securities embedding a derivative within the meaning of articles 2 (3) and 10 of Regulation 2008 and of point 23 of the CESR guidelines respectively.

In this case, the portfolio manager must apply the "look-through" principle and assess the eligibility of the underlying assets in relation to the provisions regarding financial derivative instruments under article 8 of Regulation 2008.

(A) If the assets underlying the derivative financial instruments qualify as eligible assets according to article 41 (1) of the Law of 2010 and to article 8 of Regulation 2008, then the transferable securities in question are eligible as investments of UCITS.

(B) If the assets underlying the derivative financial instruments do not qualify as eligible assets according to article 41 (1) of the Law of 2010 and to article 8 of Regulation 2008, then the transferable securities in question are not eligible as investments of UCITS pursuant to article 41 (1) a-d) of the Law of 2010.

Nevertheless, if the assets underlying the derivative financial instruments qualify as eligible assets according to article 41 (2) a) of the Law of 2010, the transferable securities in question are eligible as investments of UCITS pursuant to article 41 (2) of the Law of 2010.

Where a transferable security contains an embedded derivative within the meaning of articles 2 (3) and 10 of Regulation 2008 or of point 23 of the CESR guidelines, the requirements of article 42 of the Law of 2010 shall apply to this derivative instrument.

II. Transferable securities which do not contain an embedded derivative within the meaning of articles 2 (3) and 10 of Regulation 2008 or of point 23 of the CESR guidelines.

In principle, the portfolio manager does not need to apply the look-through principle nor assess the eligibility of the underlying assets in relation to the provisions relating to derivative financial instruments set out in article 8 of Regulation 2008.

That said, a UCITS must always be managed in accordance with the principle of risk-spreading. It is therefore, for example, not acceptable for a UCITS to invest exclusively in different securities which are all linked to the performance of the same underlying asset.

As a consequence, the principle of risk-spreading applies to each transferable security as well as to its underlying assets, independently of whether the security contains or not an embedded instrument within the meaning of articles 2 (3) and 10 of Regulation 2008 or of point 23 of the CESR guidelines.

It follows that the portfolio manager as well as the persons responsible for the UCITS shall possess the necessary means to comply with the principle of risk-spreading.

1.7) What kind of investments are eligible in the 10% limit of article 41 (2) a) of the Law (“trash ratio”)?

(8 December 2015)

Only investments in transferable securities and money market instruments other than those referred to in articles 41 (1) a) to d) and 41 (1) h) of the Law of 2010 are eligible in the trash ratio. As a consequence, no instruments other than transferable securities or money market instruments may be eligible under article 41 (2) a) of the Law of 2010.

1.8) Are OTC bond markets in a non-Member State of the European Union eligible markets for a UCITS?

(8 December 2015)

Yes, if such OTC bond markets are regulated, operate regularly and are recognised and open to the public according to article 41 (1) c) of the Law of 2010.

In relation to several OTC bond markets such as, the US OTC Fixed Income Bond Market, the Hong Kong OTC Corporate Bond Market and the China Interbank Bond Market and the OTC bond market organized by the International Capital Market Association (ICMA), the CSSF confirms their eligibility according to art 41 (1) c) of the Law of 2010.

It is worth recalling that the qualification of a given market as regulated market within the meaning of article 41 (1) c) of the Law of 2010 is the responsibility of the UCITS.

1.9) What are the criteria a financial index must comply with in order to qualify as financial index within the meaning of article 41 (1) g) of the Law of 2010?

(8 December 2015)

In order to qualify as a financial index under article 41 (1) g) of the Law of 2010, the following provisions are applicable:

- article 9 of Regulation 2008,
- point 22 of the CESR guidelines,
- ESMA ETFs guidelines,
- ESMA ETFs FAQ.

UCITS are invited to fulfil the [financial index eligibility table](#) available on the website of the CSSF in order to provide the CSSF with an overview of the financial index and its use.

1.10) Are investment funds eligible for a UCITS master fund under article 77 (3) of the Law of 2010?

(24 August 2016)

Yes, a UCITS master fund can invest in funds or be a fund of funds provided that its target funds are eligible under article 41 (1) e) of the Law of 2010.

1.11) Under the conditions disclosed in FAQ 1.3), UCITS may invest in open and closed-ended funds. In this context, how to assess if a fund is open or closed-ended? What are the eligibility rules to be applied?

(24 August 2016)

An open-ended fund is a fund with units which are, at the request of holders, repurchased, directly or indirectly, out of this undertaking's assets even if its constitutional documents provide for certain limitations on the exercise of such a right of redemption. A fund, the constitutional documents of which do not provide for the right to investors to request their redemptions qualifies as a closed-ended fund.

Investments made in open-ended non UCITS are subject to the global limit of 30% under article 46 (2) of the Law of 2010. In any case, a UCITS must assess risks linked to its investments made in open and closed-ended funds and, such risks must be adequately captured by its risk management process.

Please refer to FAQ 1.3) for eligibility rules applicable to open and closed-ended funds.

1.12) What are the conditions an institution has to fulfil to be an eligible counterparty in the context of OTC derivative transactions under article 41 (1) g) of the Law of 2010 or in the context of efficient portfolio management techniques under article 42 (2) of the Law of 2010?

(24 August 2016)

Counterparties to OTC derivative transactions or to efficient portfolio management techniques must be establishments:

- authorised by a financial authority,
- subject to prudential supervision,
- and either be located in the EEA or in a country belonging to the Group of ten or have at least an investment grade rating,
- specialised in such transactions.

If the counterparty does not fulfil any one of the three first criteria, a UCITS has to demonstrate that the prudential rules applicable to such counterparty are equivalent to those laid down in the EU law.

2. Diversification rules

2.1) Article 48 (2) of the Law of 2010 introduces control/holding limits to UCITS. Do these limits apply at sub-fund level or at umbrella fund level?

(8 December 2015)

For the purpose of this Article, the term UCITS shall mean sub-fund. Consequently, the limits apply at sub-fund level.

2.2) Articles 43 (3) and 45 (1) of the Law of 2010 refer to investments in transferable securities or money market instruments issued or guaranteed by non EEA country. Does an official list of admitted third countries exist?

(24 August 2016)

No, there is no official list. In the context of article 43 (3) of the Law of 2010, any country may be acceptable. With regard to article 45 (1) of the Law of 2010, in principle member states of the EEA, OECD, the G20, Singapore and Hong Kong are acceptable. For the other countries, a case-by-case analysis must be conducted by the UCITS and be subject to the approval of the CSSF.

In any case, a UCITS must assess the country risk of its investments made under articles 43 (3) and 45 (1) of the Law of 2010 and such country risk must be adequately captured by its risk management process.

2.3) Pursuant to article 49 (1) of the Law of 2010, a UCITS may derogate from articles 43, 44, 45, and 46 for a period of 6 months following their date of authorisation. When does this period start?

(24 August 2016)

The date of authorisation should be understood as the date when the UCITS is entered by the CSSF on a list. However, in practice, the date of authorisation of a UCITS may differ from its effective launching date. In that case, the derogation period starts from the date of the launch date of the UCITS provided that the latter date has been communicated to the CSSF. In addition, and in line with point 2 of CSSF Circular 12/540 the launch date must occur within eighteen months of the date of the authorisation of the UCITS.

2.4) What is the “principle of risk-spreading” applicable to the underlying assets of transferable securities that do not embed a derivative as specified under FAQ 1.6)?

(24 August 2016)

A UCITS must always be managed in accordance with the principle of risk-spreading. UCITS must ensure that the underlying assets of transferable securities that do not embed a derivative comply with the principle of risk-spreading. It would therefore not be acceptable, if the portfolio of a UCITS would consist exclusively of different structured transferable securities not embedding a derivative, but where the structured transferable securities are all linked to the performance of the same underlying asset.

In this context, the application of a 20% limit of the net assets to each underlying asset of such transferable securities that do not contain an embedded derivative, has to be respected. This limit may be raised up to 35% for a single underlying asset.

3. Delegations to third parties

3.1) What are the conditions to comply with in case of a delegation by a UCITS of the investment management function?

(24 August 2016)

UCITS may delegate the function of investment management according to the requirements of article 110 of the Law. The investment manager:

- Must be authorised or registered and subject to prudential supervision.
- If located in a third country, the cooperation between the CSSF and the supervisory authority of the investment fund manager must be ensured.

Investment fund managers located in an EEA or an OECD country and subject to prudential supervision of an authority fulfil in principle the above criteria. Investment fund managers located in another country are in principle acceptable if the CSSF has signed with the relevant supervisory authority, a Memorandum of Understanding covering UCITS.

Finally, the conditions foreseen under point 7.2 of the CSSF Circular 12/546 must be met.

4. Public-interest entities

4.1) What are public-interest entities (“PIE”)?

(24 August 2016)

According to Article 2 point 13 of the Audit Directive as amended by Directive 2014/56/EC of 16 April 2014, “public-interest entities” means:

- (a) entities governed by the law of a Member State whose transferable securities are admitted to trading on a regulated market of any Member State within the meaning of point 14 of Article 4(1) of Directive 2004/39/EC;
- (b) credit institutions as defined in point 1 of Article 3(1) of Directive 2013/36/EU of the European Parliament and of the Council, other than those referred to in Article 2 of that Directive;
- (c) insurance undertakings within the meaning of Article 2(1) of Directive 91/674/EEC; or
- (d) entities designated by Member States as public-interest entities, for instance undertakings that are of significant public relevance because of the nature of their business, their size or the number of their employees;

4.2) Under what conditions a UCITS has to be considered as a PIE ?

(24 August 2016)

Under the conditions that the units of a UCITS are admitted to trading on a regulated market within the meaning of point 14 of Article 4(1) of MiFID are PIEs.

4.3) What are the main implications for a UCITS considered as a PIE?

(24 August 2016)

The Audit Directive and PIE Regulation have following implications for UCITS:

- a) Mandatory audit firm rotation is requested after twenty years subject to a public tendering process for the statutory audit after a period of ten years (article 17 of the PIE Regulation;
- b) Provision of non-audit services are only allowed to the (articles 4 and 5 of the PIE Regulation):
 - (i) preparation of tax forms;
 - (ii) identification of public subsidies and tax incentives;
 - (iii) support regarding tax inspections by tax authorities;
 - (iv) calculation of direct and indirect tax and deferred tax;
 - (v) provision of tax advice;
 - (vi) valuation services, including valuations performed in connection with actuarial services or litigation support services, provided that the following requirements are complied with :
 - (a) they have no direct or have immaterial effect, separately or in the aggregate on the audited financial statements;
 - (b) the estimation of the effect on the audited financial statements is comprehensively documented and explained in the additional report to the audit committee;
 - (c) the principles of independence laid down in Directive 2006/43/EC are complied with by the statutory auditor or the audit firm;
- c) Audit report will be enlarged mainly with a description of the most significant assessed risks of material misstatement, including assessed risks of material misstatement due to fraud (article 10 of the PIE Regulation).

However, by way of derogation, UCITS are not required to have an audit committee (point 6 (b) of article 41 of the Audit Directive).