



FAQ Virtual Assets – Undertakings for collective investment

FAQ Virtual Assets – Undertakings for collective investment

TABLE OF CONTENTS

CONTEXT	3
Update information	3
Q1. May a UCITS invest in virtual assets?	4
Q2. May an AIF invest in virtual assets?	4
Q3. Do Luxembourg Investment Fund Managers need any authorisation for the management of virtual assets?	5
Q3 A. Is this "Other-Other Fund-Virtual assets" license also required in case of management of AIFs investing in target funds with underlying virtual assets?	6
Q4. Are there any specific considerations regarding the mitigation of the Money Laundering and Terrorist Financing risks?	7
Q5. May a Luxembourg depositary act as depositary for investment funds investing directly in virtual assets?	8
Q6. What is expected from Luxembourg Investment Fund Managers in terms of AML/CFT Due Diligence on Virtual Assets?	9

FAQ Virtual Assets – Undertakings for collective investment

CONTEXT

The present document refers to a list of questions & answers (FAQs), that will be regularly updated in relation to virtual assets, with the aim of providing professionals with concise answers to the main practical issues they are facing.

*This document will be updated when necessary and the CSSF reserves the right to adapt its approach to any matter covered by the FAQ at any time.
You should regularly check the CSSF’s website in relation to any matter of importance to you to see if questions have been added and/or positions have been adapted.*

Update information

22/02/2024	Modification of question 1 and 2
18/12/2023	Modification of question 3
06/04/2023	Modification of question 2 and publication of question 3A
15/03/2022	Publication of question 6
04/01/2022	Update of question 2 and publication of question 5
29/11/2021	First publication

FAQ Virtual Assets – Undertakings for collective investment

Q1. May a UCITS invest in virtual assets?

Updated on: 22/02/2024

Entities under the prudential supervision of the CSSF must bear in mind that investing in virtual assets as defined in Article 1 (20b) of the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended (hereinafter “the AML/CTF Law”) is not suitable for all kind of investors and/or all investment objectives. UCITS, UCIs addressing customers other than well-informed investors and pension funds are thus not allowed to invest directly or indirectly in virtual assets.

It is important to note that the definition of virtual assets in the context of the above article excludes, among other things, digital assets that fulfil the conditions of financial instruments within the meaning of the Law of 5 April 1993 on the financial sector. Any assets that qualify as financial instruments, such as shares of companies active in the virtual asset ecosystem, are not subject to the above position and could potentially fall within the scope of eligible investments for UCITS.

Q2. May an AIF invest in virtual assets?

Updated on: 22/02/2024

Investments in virtual assets as defined in the AML/CTF Law could be compatible with funds aimed at well-informed investors, as opposed to those aimed at the retail investor, on condition that the investment by the fund in virtual assets does not prevent the application of and compliance with existing regulatory requirements.

In consequence, an AIF may invest directly (and indirectly) in virtual assets under the condition that its units are marketed only to well-informed investors. Investments in financial instruments such as derivatives or transferable securities with underlying virtual assets, are to be considered as indirect investments in virtual assets. Without prejudice to Q3 A below, should such an AIF be managed by a Luxembourg-authorized AIFM, the latter must obtain an authorisation extension from the CSSF for this new investment strategy.

Virtual assets present specificities such as their volatility, liquidity and technological risk which could significantly affect the risk profile of the investment vehicle. The CSSF draws attention to the integration phase of virtual assets in the investment policy and reiterates the importance of having adequate internal control functions with their key role in the approval of new products/investment strategies.

Given the diverse range of virtual assets available, investment managers need to make a case-by-case assessment of the impact of these investments on the risk profile of the investment fund. Investment managers will have to ensure that investors are properly informed in a transparent and timely manner and that the relevant fund documentation is updated.

Q3. Do Luxembourg Investment Fund Managers need any authorisation for the management of virtual assets?

Updated on: 18/12/2023

Without prejudice to Q3A below, each Luxembourg authorised Investment Fund Manager ("IFM") which intends to manage an alternative investment fund, regulated or not ("AIF"), investing directly or indirectly in virtual assets, needs to obtain prior authorisation from the CSSF for the strategy "Other-Other Fund-Virtual assets". In this context, the CSSF expects to receive, among others, the following information/documents:

- A description of the project and of the different services providers/delegates involved;
- Information on whether or not the investments in virtual assets will be made directly or indirectly (by the means of derivatives for example);
- An updated risk management policy including in particular how the risks in relation to the virtual assets are managed;
- An updated valuation policy including the rules as to how the value of the virtual assets will be determined;
- A description regarding the experience of the portfolio manager (and other involved entities in the investment management process) in virtual assets;
- A description of how the custody of the assets will be organised by the depositary;
- Information regarding the targeted investors, as well as any information on the distribution channels of the AIF;
- The IFM's AML/CTF analysis on the assets side.

In addition, the CSSF expects that each initiator of an AIF which intends to invest in virtual assets presents its project beforehand to the CSSF.

Particular emphasis should be put on assessing:

- the conditions under which the IFM (or any participant in the fund business operations) is involved in the safekeeping of VA including the control of the virtual assets by means of access to/control over the cryptographic keys, as well as,
- the provision by the IFM of discretionary portfolio management.

In general, an analysis of the services performed needs to be conducted considering the activities listed under Article 1 (20c) of the AML/CTF Law. Should the IFM (or any other participant) provide these virtual asset services, a complete application file for registration as a virtual asset service provider ("VASP") needs to be submitted to the CSSF before commencing the activity.

Further details with respect to the VASP registration procedures can be found under [Registration of a virtual asset service provider \(VASP\) – CSSF.](#)

Q3 A. Is this "Other-Other Fund-Virtual assets" license also required in case of management of AIFs investing in target funds with underlying virtual assets?

Published on: 06/04/2023

1. No application for the "Other-Other Fund-Virtual assets" licence is required for a Luxembourg IFM managing an AIF investing in virtual assets through one or several target funds ("TF"). When the AIF invests more than 20% of its NAV in one or several TFs, an IFM authorisation for the "fund of funds" strategy is required.
2. However, considering the risks related to investing in virtual assets, the CSSF requires that in relation to each TF with virtual assets as the main underlying exposure, the IFM undertakes an assessment of the ability of the TF's manager to identify and manage the risks pertaining to investments in virtual assets. The assessment should include the operational risks arising from the activities of the parties which intervene in the administration, notably the registrar and transfer function, and custody of the virtual assets. The IFM should be able to provide the CSSF with the results of its assessment on demand.
3. The CSSF specifies that it is the responsibility of the relevant IFM to determine if a TF has virtual assets as main exposure.
4. Without prejudice to the above, please note that an investment in virtual assets through one or several TF constitutes an indirect investment in virtual assets, subject to all other conditions of the present FAQ.

Q4. Are there any specific considerations regarding the mitigation of the Money Laundering and Terrorist Financing risks?

Published on: 29/11/2021

Investing in virtual assets, whether directly or indirectly, increases the risk of Money Laundering ("ML"), Terrorist Financing ("TF") and Proliferation Financing to which the supervised entity is exposed. Therefore, in accordance with applicable Luxembourg laws and regulations, the CSSF stresses that the mitigation measures implemented by the supervised entity must be commensurate with these increased risks. The CSSF expects that the *Responsable du Contrôle* (RC) and the *Responsable du Respect* (RR) of supervised entities investing in virtual assets possess and can demonstrate an adequate understanding of the new ML, TF, Proliferation Financing risks posed by virtual assets and the necessary measures to mitigate them.

In this regard, the CSSF refers to the national vertical risk assessment of money laundering and terrorist financing related to virtual asset service providers¹ which provides elements of information as regards the ML/TF context and risks linked to virtual assets as well as the FATF guidelines and notably the Guidance for a Risk-Based Approach to Virtual Assets and VASPs².

¹ [Vertical Risk Assessment: Virtual Asset Service Providers \(gouvernement.lu\)](https://gouvernement.lu)

² [Documents - Financial Action Task Force \(FATF\) \(fatf-gafi.org\)](https://fatf-gafi.org)

Q5. May a Luxembourg depositary act as depositary for investment funds investing directly in virtual assets?

Published on: 04/01/2022

Luxembourg fund depositaries may be mandated to act as depositary for investment funds investing directly in virtual assets. Certain conditions would need to be complied with as the regulatory requirements that depositaries are subject to would remain applicable. In this context, fund depositaries must put in place adequate organisational arrangements and an appropriate operational model, considering the specific risks related to the safekeeping of virtual assets. Moreover, depositaries shall notify the CSSF beforehand when they intend to act as depositary for an investment fund investing directly in virtual assets. For credit institutions acting as fund depositaries, please also refer to the [FAQ on virtual assets for credit institutions](#).

In relation to depositary services, for virtual assets that qualify as “other assets”, the depositary’s liability in its depositary function is limited to safekeeping duties regarding ownership verification and record keeping in line with Article 19 (8) (b) of the AIFM law and Article 90 of Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 (“DR 231/2013”).

Where the depositary does not offer safekeeping or administration type of services for the virtual assets and the IFM/investment fund directly appoints a specialised virtual asset service provider offering a “custodian wallet type of service”, the virtual assets are not recognised in the off-balance sheet of the depositary as the depositary is not liable for the restitution of the assets. Indeed, this liability is directly incumbent on the specialised virtual asset service provider. To that effect, the IFM/investment fund is required to have a direct contractual relationship with the specialised service provider.

A depositary providing administrative and depositary services to an investment fund investing in virtual assets triggers an obligation to register as a virtual asset service provider within the meaning of the AML/CTF Law, if the depositary directly provides services related to the safekeeping or the administration of virtual assets, including the custodian wallet service, to its client. Under this setup, virtual assets are recognised in the off-balance sheet and the depositary has an obligation of restitution for the loss or theft of said assets within the meaning of the civil law. Fund depositaries that envisage directly safeguarding virtual assets are required to inform the CSSF of such plans in a timely manner. This requirement is additional to the registration as a virtual asset service provider.

Q6. What is expected from Luxembourg Investment Fund Managers in terms of AML/CFT Due Diligence on Virtual Assets?

Published on: 15/03/2022

As per Article 34 of RCSSF 12-02 as amended, when performing an investment, the professional (the IFM/investment fund) must compute an ML/FT risk scoring of the asset and perform an AML/CFT due diligence in line with the computed risk scoring. In this context, the professional is encouraged to take into account the [Vertical Risk Assessment on Virtual Assets Service Providers published in December 2020](#).

Depending on the type of investment (direct or indirect), the type of virtual asset (for example cryptocurrency, utility token, etc...) and the method of acquisition (exchange platform, ITO, ICO, etc. ...), the level of ML/FT risk as well as the due diligence will vary.

The key outcome of the due diligence on virtual assets is to understand where the virtual assets are coming from and/or where they are going to (buy/sell side) in order to mitigate the risk of the investment fund being abused by money launderers or terrorist financing.



Commission de Surveillance du Secteur Financier
283, route d'Arlon
L-2991 Luxembourg (+352) 26 25 1-1
direction@cssf.lu
www.cssf.lu