

Non-UCITS

Applicable legal framework

Luxembourg non-UCITS funds (“Part II” funds) are subject to the following main laws and regulations:

- Part II of the Law of 17 December 2010 on Undertakings for Collective Investment (“the Fund Law”);
- IML Circular 91/75 of 21 January 1991 clarifying certain aspects of the UCI legal framework;
- IML Circular 97/136 of 13 June 1997 on financial information to be provided by public funds;
- CSSF Circular 02/77 of 27 November 2002 on the protection of investors in case of NAV calculation error or breach of investment rules;
- CSSF Circular 02/80 of 5 December 2002 on the specific rules applicable to Luxembourg Part II funds pursuing alternative investment strategies;
- CSSF Circular 08/371 of 5 September 2008 regarding the electronic transmission of prospectuses and financial reports of UCIs and SIFs to the CSSF;
- CSSF Circular 11/498 of 10 January 2011 regarding the entry into force of the Law of 17 December 2010 relating to undertakings for collective investment.

Investors

Part II funds are open to the retail public in Luxembourg as well as to corporates or institutions. There is no limitation as to the type of investors. However, unlike UCITS, they do not have a European passport and hence cannot be freely marketed throughout the EU, once the CSSF has approved them. They are required to meet the specific conditions laid down by the regulatory authorities of the host countries in which they wish to market their shares or units.

Quick Reference Guide



Eligible investments and investment restrictions

Part II funds are required to invest their assets according to the principle of risk-spreading but are not restricted as to the type of assets they can acquire. The applicable risk-spreading requirements applicable to the funds are defined per investment strategy in various circulars:

<i>CSSF Circular 91/75 Chapter G</i>	Part II funds investing in transferable securities
<i>IML Circular 91/75 Chapter I.I.</i>	Part II funds investing in venture capital (*)
<i>IML Circular 91/75 Chapter I.II.</i>	Part II funds investing in futures contracts and options
<i>IML Circular 91/75 Chapter I.III.</i>	Part II funds investing in real estate (*)
<i>CSSF Circular 02/80</i>	Part II funds investing in alternative strategies (*)

The CSSF may grant exemptions from requirements in these circulars upon proper justification from the fund promoter.

The risk-spreading requirements applicable to the funds marked with a (*) are each detailed in a specific Quick Reference Guide. The risk-spreading requirements applicable to Part II funds investing in "traditional" transferable securities as well as to Part II funds of funds are detailed below.

Investment in transferable securities

<i>a) Investments in unlisted securities</i>	max. 10% of net assets
<i>b) Investments in securities of the same issuer</i>	max. 10% of net assets
<i>c) Acquisition of securities of the same kind of the same issuer</i>	max. 10% of the securities issued by the same issuer
<i>d) Borrowings</i>	max. 25% of net assets

Restrictions a), b) and c) are not applicable to securities issued or guaranteed by the OECD Member States, their local authorities or public international bodies with EU, regional or worldwide scope.

The 10% ceilings mentioned above can be increased up to 20% upon proper justification to the CSSF.

Investment in funds (Part II fund of funds)

<i>Investments in closed-ended funds</i>	Units of closed-ended funds are treated in the same way as other transferable securities and are therefore subject to the general rules applicable to transferable securities as mentioned above.
<i>Investments in open-ended funds</i>	Max. 20% of net assets unless the target open ended funds are subject to risk diversification requirements comparable to those applicable to a Part II fund, in which case the 20% restriction may not apply (case-by-case negotiation with the CSSF; master-feeder structures are even acceptable in certain cases). For the purpose of the application of this 20% ceiling, each compartment of a target fund is to be considered as a distinct fund provided that the principle of segregation of the commitments of the different compartments vis-à-vis third parties is ensured.
<i>Investments in securities issued by one or more compartments of the same fund</i>	Subject to the provisions of the management regulations, the constitutive documents and the prospectus, the target compartment may not invest more than 10% of its assets in units of other compartment of the same UCI, there is no duplication of the management/subscription or redemption fees and the value of the securities of the target compartment held by the UCI will not be taken into account for the calculation of the net assets of the UCI.

A Part II fund which principally invests in other funds must make sure that its portfolio of target funds presents liquidity features in line with the redemption provisions of the prospectus.

Organisational requirements

Part II funds are not required to have a substance and an organisation comparable to that of UCITS funds, nor is there any explicit requirement in the Law to have in place specific risk management processes. As the UCITS IV directive does not affect Part II funds, the CSSF may continue to require, for such vehicles, a promoter complying with certain financial surface and reputation requirements.

A Part II fund can only use asset managers which are duly regulated, supervised, with relevant experience, human and technical means to exercise their functions. The Fund Law provides that the depositary bank of a Part II fund cannot perform the function of asset management. Existing Part II funds have until 30 June 2012 to adapt their functioning to this new requirement.

If the Part II fund is set up as an FCP, it requires a management company, which can be subject to Chapter 16 of the Fund Law. It may also be set up by a UCITS Management Company situated in Luxembourg.

Part II funds main features at a glance

<i>Legal forms available</i>	<ul style="list-style-type: none">• Investment company with variable capital (SICAV) to be incorporated as a public limited company (S.A.);• Investment company with fixed capital (SICAF);• Contractual fund (FCP).
<i>Eligible investors</i>	No restrictions.
<i>Licensing requirements</i>	<p>A Part II UCI must receive CSSF's prior authorisation to start its activities. CSSF will pay particular attention to:</p> <ul style="list-style-type: none">• the Part II UCI's draft constitutional documents, notably the prospectus;• the identity of the promoter and of the persons in charge of conducting the business of the Part II UCI; they must show good reputation and adequate experience for acting in such capacity. The promoter must show good reputation, be a professional in the financial sector, be supervised in its country of residence and have sufficient financial resources;• the identity of the directors;• the identity of the investment manager of the Part II UCI, which must be authorised or registered for the purpose of asset management and subject to the prudential supervision of a regulatory authority;• the identity of the Luxembourg central administration, the Luxembourg depositary and the Luxembourg external auditors.
<i>Compulsory service providers in Luxembourg</i>	<ul style="list-style-type: none">• Depositary – responsible for safekeeping of the UCIs assets and certain other supervisory duties – which must be a Luxembourg bank or a Luxembourg branch of a foreign bank;• Central administration – responsible for accounting, NAV calculation, keeping of the register of the shareholders/unitholders, handling subscriptions and redemptions, communication with investors and preparation of financial statements – which must be a Luxembourg bank or a branch of a foreign bank or a professional of the financial sector with a proper license;• A Chapter 16 Management Company if the Part II fund is set up as an FCP;• External auditors.
<i>Minimum frequency of NAV calculation</i>	Monthly (in principle).

Part II funds main features at a glance (continued)

<i>Valuation principle</i>	Valuation is made for officially listed securities on the basis of the last known stock exchange quotation. If it is not representative or for other securities, valuation is made based on the realisable value of the assets, estimated in good faith (unless differently provided for in the constitutional documents of the fund).
<i>Subscription/ Redemption</i>	<ul style="list-style-type: none">• Subscription at NAV plus subscription fees. A Part II fund can be closed to subscriptions;• Redemption price must in practice be made at NAV minus redemption fees. A Part II fund can be closed to redemptions.
<i>Minimum capital requirement in the fund</i>	EUR 1,25 Mio to be reached within six months following approval.
<i>Documents to be established according to laws and regulations</i>	<ul style="list-style-type: none">• Prospectus;• Articles of association (in case of a SICAV or SICAF);• Management regulations (in case of an FCP);• Agreements with the service providers;• Annual audited financial statements (annually within four months of period end);• Semi-annual non audited financial statements (annually within two months of period end);• Long Form Report describing the organisation of the fund (annually within four months of period end).

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