

# ATOZ ALERT



## New CSSF Circular on AIFMs/UCITS ManCos

27 August 2018

On 23 August 2018, CSSF released its new [Circular 18/698](#) on the authorisation and organisation of Luxembourg investment fund managers (the **Circular**) replacing CSSF Circular 12/546 on authorisation of UCITS ManCos and is applicable with immediate effect. CSSF Circular 12/546 was construed extensively by the CSSF to apply to AIFMs. This new Circular therefore has the merit of clarifying requirements applicable to all investment fund managers in Luxembourg (UCITS ManCos and AIFMs included).

It reflects to a large extent the sector-specific opinions issued by ESMA in July 2017 in the context of relocations of UK entities to the EU27, and among others, the need to have sufficient full-time equivalent staff on the ground.

There is not much gold-plating, but some provisions of the Circular are noteworthy, i.e. it sets:

- additional requirements for AIFMs'/ManCos' board members, e.g. **(i)** maximum number of mandates (20, subject to the consolidation of some SPVs' mandates relating to funds under management), **(ii)** independency requirement of a majority of board members (i.e. *vis-à-vis* the board of the funds under management), **(iii)** limited number of hours to be performed per year (1920h- i.e. 40h/week on the basis of 240 days per year); subject to the application by the CSSF of the proportionality criteria in light of e.g. the complexity, risks, size and administrative needs of the business;
- a threshold of 1.5Bio AuM above which substance requirements and delegation restrictions are strengthened (the **Threshold**). Notwithstanding the application of the proportionality criteria, a Luxembourg investment management company will be required to employ at least 3 full-time equivalents (FTEs) that reside in Luxembourg (or the *Greater Region*), including senior staff (*conducting officers*) and other staff members. The Threshold is applied as follows:
  - *below the Threshold*: **(i)** conducting officers may only have up to 2 mandates in investment fund managers (e.g. if, in the same group of companies, a UCITS ManCo and an AIFM co-exist, if there is no *Super ManCo* grouping both businesses, a conducting officer may only have one mandate in the UCITS ManCo and one mandate in the AIFM of the same group of companies) and **(ii)** one of them may be employed on a *fly-in fly-out* basis, subject however to a potential request from the CSSF to increase staff on the ground in Luxembourg.

- *above the Threshold*: (i) conducting officers may have only one mandate in an investment fund manager (i.e. may not exercise a double-hatted function as described above) and (ii) at least two of them must reside in Luxembourg or in the *Greater Region*, so that an investment fund manager above the Threshold employing a senior staff member on a *fly-in fly-out basis* will be required to appoint at least 3 conducting officers;
- additional rules on delegation with a particular emphasis on the initial and ongoing due diligence of delegates (including, and in particular, in an intragroup relationship).

Since the Circular is applicable with immediate effect, it will have to be taken into consideration by fund managers intending to set up UCITS ManCos and/or AIFMs in Luxembourg, but also by those who are already present in Luxembourg.

Note that CSSF has also released Circular 18/697 on non-UCITS depositaries – additional update to come.

**We can assist you with reviewing your current or expected set-up in light of the Circular. Feel free to reach out!**



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