



FAQ Virtual Assets – Undertakings for collective investment

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Question 1. May a UCITS invest in virtual assets?

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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 non-professional customers 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.

Question 2. May an AIF invest in virtual assets?

Modified on 4 January 2022

Investments in virtual assets as defined in the AML/CTF Law could be compatible with funds aimed at the professional investor, 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 professional investors. Should such AIF be managed by a Luxembourg authorised AIFM, the latter must obtain an extension of authorisation 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 and 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.

Question 3. Do Luxembourg Investment Fund Managers need any authorisation for the management of virtual assets?

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Each authorised Investment Fund Manager (“IFM”) which intends to manage an alternative investment fund, regulated or not (“AIF”), investing 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:

- 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;
- Description regarding the experience of the portfolio manager (and other involved entities in the investment management process) in virtual assets;
- 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 should present its project beforehand to the CSSF.

A 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 control of the virtual assets by means of access to/control over the cryptographic keys.

In general, an analysis of the services performed needs to be conducted in light of the activities listed under Article 1 (20c) of the AML/CTF Law. Should the IFM (or any other participant) provide these virtual assets 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](#).

Question 4. Are there any specific considerations regarding the mitigation of the Money Laundering and Terrorist Financing risks?

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Investing in virtual assets, whether direct or indirect, 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.

Question 5. May a Luxembourg depositary act as depositary for investment funds investing directly in virtual assets?

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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](#).

¹ *Vertical Risk Assessment: Virtual Asset Service Providers* ([gouvernement.lu](#))

² *Documents - Financial Action Task Force (FATF)* ([fatf-gafi.org](#))

In relation to depositary services, for virtual assets that qualify as “other assets”, the depositaries’ 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 the 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/CFT 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 to directly safeguard 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.



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