



cutting through complexity

UCITS

Where we are now

January 2015

Foreword

The Undertakings for Collective Investments in Transferrable Securities (UCITS) product has been a European success story since its creation almost 30 years ago and it is now a well-established and successful global brand. Importantly, UCITS has not stood still, but has evolved considerably since its inception, and there are more changes on the horizon.

The regulatory landscape for funds has changed considerably over the past 30 years with the enactment of UCITS I in 1985, UCITS III in 2001, and UCITS IV in 2009. The UCITS V Directive took legislative effect in August 2014, and in a further effort to improve the UCITS framework, the European Commission has proposed even more changes in a consultation on "Product Rules, Liquidity Management, Depositary, Money Market Funds, Long Term Investments", more widely known as UCITS VI.

On the domestic front, again, change is afoot. The Central Bank of Ireland has published a range of UCITS Notices which set down conditions with which UCITS funds, their management companies and depositaries must comply. The Central Bank has proposed replacing these Notices with a UCITS Rulebook which will consolidate all these conditions into one document.

Ireland has become a major player in the UCITS industry with net assets domiciled in Ireland now worth more than €1 trillion – more than 15 percent of all EU domiciled UCITS assets. Investment assets worldwide have been growing and this growth is set to continue. Ireland now occupies a pivotal position in this rapidly expanding and constantly evolving industry.

KPMG has produced this publication to provide an overview of the current state of play of the UCITS framework, which we hope will clarify the regulatory and taxation measures in place in Ireland, before the changes take effect. If you are an existing UCITS provider or are planning to become involved in this multi-trillion euro investment market, our team at KPMG can provide all the assistance you will need to navigate your way through what is a complex process.

We look forward to working with you.



Frank Gannon

*Head of Investment Management Advisory
KPMG Ireland*

t: +353 1 410 1552

e: frank.gannon@kpmg.ie

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An Introduction to UCITS

Evolution of UCITS

The concept of UCITS - Undertakings for Collective Investment in Transferable Securities - was first introduced in Europe in 1985. The first UCITS European directive set out a common set of rules for the cross-border distribution of collective investment schemes, the "European Passport", and was designed with the retail consumer in mind, enshrining appropriate levels of protection for these investors.

While the new regime did prove successful, flaws soon became apparent and early in the 1990s, the EU Council of Ministers failed to agree on measures to reform the regime and abandoned plans for a UCITS II. Two new directives, the Product Directive and the Management Directive, collectively known as UCITS III, introduced new rules which were implemented in Ireland in 2003. The rules related to the operations of management companies, prospectuses, consumer choice and investor protection and most significantly broadened the asset classes UCITS were permitted to invest in. These permitted asset classes were further clarified in the Eligible Assets Directive, which took effect in 2007.

In 2009 a new wave of amendments known as UCITS IV were approved, providing, among other things, for a management company passport, a revised notification procedure for cross-border fund sales, the introduction of a Key Investor Information Document (KIID), the creation of master feeder structures and enhanced regulator cooperation. These rules were introduced in Ireland in 2011.

In 2014 the UCITS V directive was adopted by the European Commission, focusing on harmonising the role and the liability of depositaries, remuneration policies for UCITS managers and sanctions for breaches of UCITS legislation. UCITS V will take effect from early 2016.

Notwithstanding the fact that UCITS V has been adopted, the European Commission has also proposed additional rules on risk management within a UCITS, eligible assets and the depositary passport - these potential changes to the framework have already been dubbed UCITS VI.

The key characteristics of UCITS funds are that they must be open-ended and liquid. They are flexible in that they may be set up as a single fund or as an umbrella fund that is comprised of several ring-fenced sub-funds, each with a different investment objective and policy. Each sub-fund is treated as a separate entity, with the assets and liabilities segregated from other sub-funds within the umbrella UCITS fund. Management of each sub-fund can be performed by a different investment manager and sub-funds are permitted to invest in each other, subject to certain investment restrictions.

UCITS funds may also issue multiple share classes to cater for different investor segments, currencies or fee structures. The number of share classes is unlimited. UCITS funds have to operate within strict parameters in terms of permitted asset classes and investment and borrowing restrictions.

The UCITS brand is now recognised globally and, due to its regulated status and emphasis on investor protection, many non-EU jurisdictions permit the distribution of UCITS products into their markets. Ireland transposed the first UCITS Directive in 1989 ahead of many other countries, an initiative which has helped over the past 25 years, to attract many international fund managers to the country to set up cross-border UCITS funds and which now places Ireland in a strong position to service an industry which is still growing. The investment fund industry is experiencing strong growth driven by investor optimism and encouraging economic data. All the indications are that the market is set to grow substantially in the short to medium-term. The evolving UCITS framework, coupled with the growth in investment assets, indicates that the outlook for the future for UCITS is bright.



UCITS in Ireland

With the advent of the IFSC and the implementation of the UCITS regime, Ireland has become one of the leading fund domicile and administration jurisdictions in the world. The value of UCITS funds domiciled in Ireland is greater than €1 trillion, which makes it the second largest UCITS fund domicile in Europe, after Luxembourg. The Irish Stock Exchange has become the listing location of choice for investment funds. Ireland has also earned a reputation for administering investment funds and in total administers €2.7 trillion in assets.

A number of factors have contributed to the growth of the Irish industry; the robust legal and regulatory system, a well-educated workforce with expertise in investment funds, a competitive tax regime and a proactive business culture. Most of the world's largest fund service providers have operations in Ireland and international fund managers have and continue to find Ireland attractive as a location in which to domicile and/or administer investment funds.

Table 1 - UCITS Market: Key Facts and Figures 2013

Worldwide investment fund assets increased 1.8 ¹ per cent in 2013 to €23.8 trillion – an all-time high
American fund providers account for 51 per cent of the global market, with European providers accounting for 29 per cent
More than 70 percent of all assets in regulated European funds are invested in UCITS products
Luxembourg, Ireland, France, Germany, the UK and Switzerland are the main investment fund domiciles
Value of investment funds domiciled or administered in Ireland - €2.7 trillion
Net assets of Irish domiciled funds increased 9.5 ² percent in 2013 to €1.34 trillion, with more than €1 trillion of these assets in UCITS funds
More than 900 fund managers from 50 different countries use Ireland as a base with 440 fund managers using Ireland as a domicile for their funds
More than 80 companies providing services to fund providers are now located in Ireland
The funds industry in Ireland employs more than 13,000 people
Ireland has the highest level of automation of any international funds centre in Europe
The Central Bank of Ireland has authorised 5,600 ³ funds (including sub-funds) of which in the region of 2,400 ⁴ were listed on the Irish Stock Exchange

¹ Source - EFAMA

² Source – Irish Funds Industry Association

³ Source – Central Bank of Ireland

⁴ Source – Irish Stock Exchange

Legal and Regulatory Frameworks in Ireland

Legal Structures in Ireland

Prior to registering a collective investment scheme as a regulated fund, a process which is overseen by the Central Bank of Ireland (the “Central Bank”), the fund must be established based on a specific underlying legal structure. There are three specific legal structures in Ireland available to UCITS: investment companies; unit trusts and common contractual funds.

Investment company

The main distinguishing feature of a fund structured as an investment company is that it has a separate legal personality and the shareholders of the company enjoy limited liability. In addition to the Irish UCITS Regulations, investment companies are subject to relevant Irish company law provisions.

The investment company is managed by a board of directors, which must have at least two Irish directors.

Irish investment companies structured as umbrella funds can segregate liability between their sub-funds and can also invest across sub-funds within the same umbrella.

The investment company is the most common structure used by funds established in Ireland.

Unit Trust

A unit trust operates as an investment fund established under a trust deed made between the management company and the trustee. The trustee acts as the registered owner of the fund's assets on behalf of the investors who are the beneficial owners.

The trust deed sets out the various rights and obligations of the trustee, the management company and the unit holders. The trust deed will usually delegate the day to day management of the unit trust to the management company which, in turn, usually delegates these functions to third party service providers. There is segregation of liability between sub-funds of an Irish unit trust.

This is the second most common form of fund structure used in Ireland.

Common Contractual Fund (CCF)

A common contractual fund is a contractual arrangement established under a deed, which provides that investors participate as co-owners of the assets of the fund. The ownership interests of investors are represented by ‘units’, which are issued and redeemed in a manner similar to a unit trust. The common contractual fund is an unincorporated body and not a separate legal entity. Control is vested in a management company. All investors in a CCF must be institutional investors.

The structure was specifically designed to facilitate the pooling of pension fund assets in a tax efficient manner. The common contractual fund is transparent for Irish legal and tax purposes and this tax transparency is the main feature, which differentiates the CCF from other types of Irish funds.

ICAV – Irish Collective Asset Management Vehicle

The ICAV is a very recent development for the investment management sector in Ireland. It is a new corporate structure for Irish investment funds which can be used for both UCITS and alternative investment funds. The ICAV enhances Ireland's attractiveness for the establishment of investment funds by providing two principal benefits;

1. A tailor-made corporate structure which will dis-apply elements of company law not appropriate to an investment fund; and
2. A regulated corporate fund structure which is more tax efficient for US investors.

The ICAV will retain investment fund characteristics but will not be subject to company law, so for example, if it is an umbrella fund it will not be required to produce consolidated accounts. Another noteworthy feature is that existing funds may convert or re-domicile to the new structure. One of the key features of an ICAV is that it can elect to be classified as an “eligible entity” which can allow it be treated as a partnership for US tax purposes. This would mean that US investors could avoid certain adverse tax consequences.



Legislative Process

The principles governing UCITS funds are laid down in a European Directive that was first adopted in 1985 with the objective of creating a retail collective investment fund that could be freely sold across the EU, subject to common rules on authorisation, supervision, structure, portfolio and the information to be provided to investors.

In the intervening years the UCITS Directive has undergone multiple amendments to modernise the regime with the latest changes, UCITS IV, being adopted in Ireland in 2011 (the Irish UCITS Regulations⁵). In 2014, in line with their investor protection agenda, the Commission adopted UCITS V to amend the UCITS framework. The Commission has also launched a wide-ranging consultation (UCITS VI) covering new areas where the framework could be further enhanced.

At a European level, only the European Commission proposes new pieces of legislation – either in the form of directives or regulations. UCITS take the form of a directive and accordingly must be enacted by EU member states, which requires either new national legislation or amendments to existing law. The implementation process is called “transposition”, and member states are normally required to comply within a specific deadline that is set in the Directive. In contrast, regulations are directly binding as soon as they are passed and do not need further legislation at a national level.

As part of its preparatory work prior to drafting a legislative proposal, the Commission normally launches a consultation process seeking feedback from the various stakeholders, although this phase is not compulsory. After the consultation phase the Commission submits a draft legislative proposal to the European Parliament and European Council for evaluation, comment and amendments, and then for approval or rejection.

Regulatory Framework

Once the legal vehicle has been established and the fund has been registered as a UCITS fund, it is subject to supplementary rules and conditions set out by the Central Bank in its UCITS Notices⁶, with further clarification being provided by the Central Bank in the form of various Guidance Notes⁷ and Policy Documents.

The UCITS Notices set out prescriptive conditions in relation to the operation of UCITS funds. They are amended periodically, for example, the latest version, which was issued in October 2013, contains requirements which the European Securities and Markets Authority (ESMA) has set out in the “Guidelines on ETFs and other UCITS issues”. This extensive document from ESMA imposes requirements in relation to the more technical aspects of UCITS i.e. rules on index-tracking UCITS, Exchange Traded Funds (ETF’s), EPM (efficient portfolio management techniques), derivatives, financial indices and collateral.

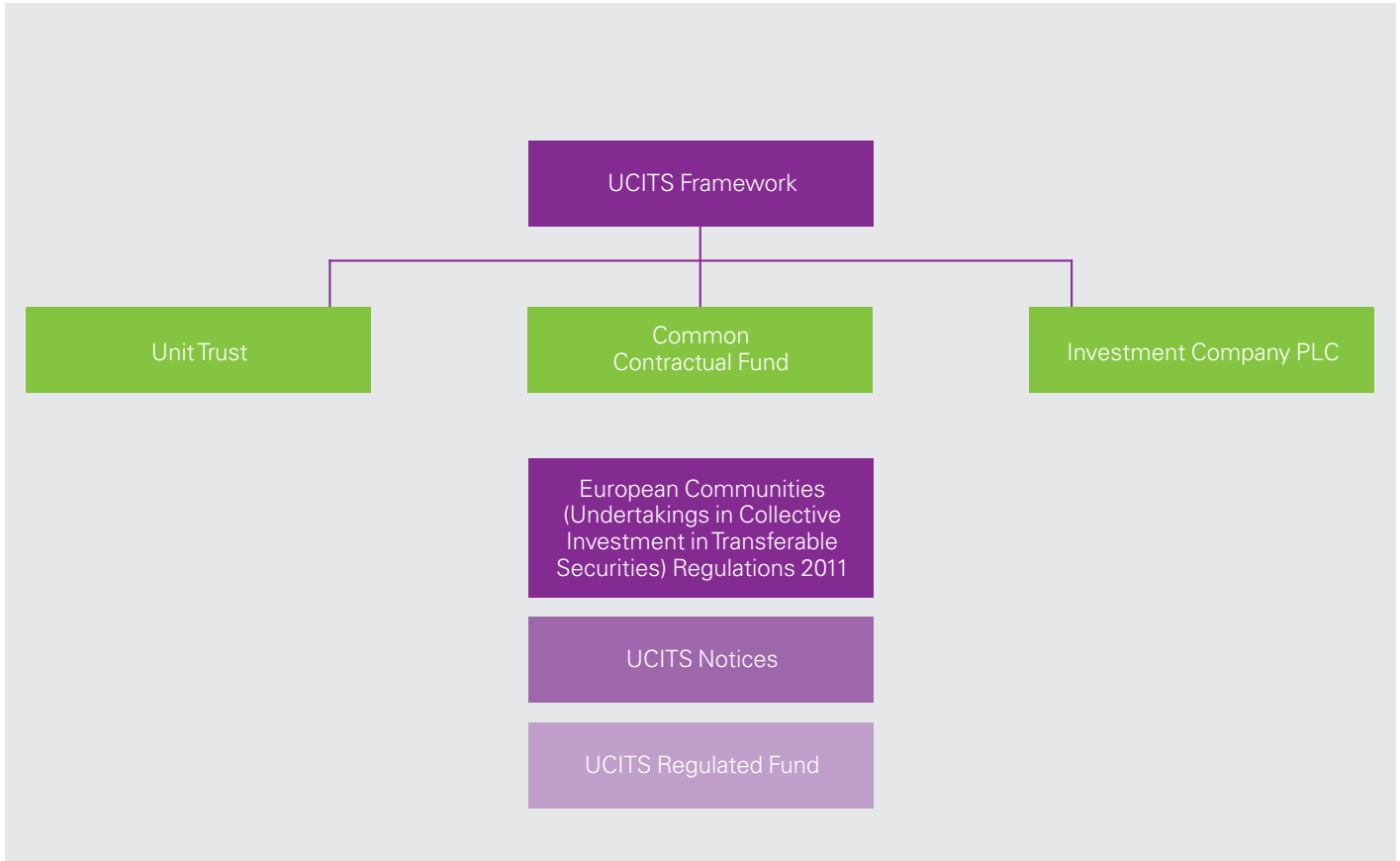
The Central Bank has issued Guidance Notes and Policy Documents on various matters relating to UCITS. They seek to provide clarification on the Central Bank’s approach and are not legally binding

⁵ European Communities (Undertakings in Collective Investment in Transferable Securities) Regulations 2011 S.I. 352 2011

⁶ Please see Appendix 2 - UCITS Notices October 2013 for details

⁷ Please see Appendix 1 - Requirements and Guidance applicable to UCITS for details

Figure 1: Regulatory framework in Ireland



Key Parties Involved



Many different parties are involved in the operation of UCITS funds. UCITS Notice 14⁸ sets out requirements for the parties involved in the operations of UCITS funds.

Promoter

Before an application for authorisation of a UCITS fund can be considered, the Central Bank must be satisfied that the promoter of the UCITS fund is approved. The promoter does not have a financial or contractual obligation to the fund. Instead it is deemed to be the driving force behind it and is often the entity that initially determines the fund's legal structure and investment policy. The promoter and the investment manager are often one and the same - if this is the case then only one approval from the Central Bank is required.

The obligation to have a promoter is under review by the Central Bank. The Central Bank has proposed eliminating the promoter regime and instead placing reliance on the fund's management company. This would bring the UCITS framework in line with the framework for AIFMD – the Alternative Investment Fund Management Directive.

Management Company

UCITS established as unit trusts or CCFs require a management company, due to the legal structure of these particular fund vehicles. UCITS established as investment companies have the option of appointing a management company, with those that opt to manage the fund themselves known as "self-managed investment companies" ("SMICs"). The management company or SMIC has ultimate responsibility for the overall management of the fund. Typically the main functions are delegated to service providers with the management company or SMIC retaining oversight and control. The conditions governing management companies and SMICs are set out in UCITS Notice 2⁹.

Investment Manager

Most UCITS funds will appoint an investment manager, who is responsible for the discretionary asset management of the UCITS portfolio. This activity is delegated typically to investment managers based in financial centres around the world.

The third party investment manager must be a regulated asset manager, and be subject to prudential supervision.

If the investment manager is located in a non-EU country then cooperation arrangements must exist between the Central Bank and the non-EU country.

Distributor

Ireland is a cross-border fund centre and the vast majority of Irish UCITS are sold in other countries through a complex web of distribution networks, not only in the EU, but also in more than seventy countries worldwide.

UCITS management companies often appoint a wide range of distributor intermediaries in different countries that include retail and private banks, fund distribution platforms, independent financial advisors and insurance companies. Direct sales to investors are also possible.

Distributors have an important role in selling UCITS to retail investors and provide product information such as the Key Investor Information Document ("KIID") and sales advice.

Distributors collect subscription and redemption orders from investors and pass the details to the transfer agent to process the transaction and register the investor data.

⁸ UCITS Notice 14 – Dealings by promoter, manager, trustee, investment adviser and group companies

⁹ UCITS Notice 2 – Supervisory and reporting requirements and conditions for UCITS management companies, UCITS self-managed investment companies and administration companies authorised by the Central Bank of Ireland.

Trustee

The trustee function in respect of a unit trust, a common contractual fund or an investment company includes the custodian function. A UCITS fund must have an Irish based trustee responsible for the safe-keeping of assets and other fiduciary type activities. The eligibility criteria for entities, to act as a trustee, is set out in UCITS Notice 3¹⁰. The trustee of a UCITS fund must be an Irish credit institution, a branch of a credit institution or a company which can provide appropriate protection to unit-holders. No company can act as both management company and trustee, although they may be part of the same group with each acting independently and solely in the interest of UCITS investors.

The duties of the trustee are set out in UCITS Notice 4¹¹. These duties include the custody of assets and in this regard the trustee can use a network of sub-custodians to provide custody services. The trustee also has a series of oversight and monitoring duties in relation to UCITS funds. The trustee is subject to a strict liability regime for any loss resulting from its unjustifiable failure to perform its obligations. UCITS V has introduced a host of new requirements for depositaries (trustees) to ensure that the role and responsibilities of depositaries is consistent between member states.

Administrator

Typically, in Ireland the administration of UCITS is delegated to a specialised, independent third party administrator. Under UCITS IV, there is now scope for these services to be passported into Ireland. If the administration function is carried out by an Irish administrator, it must be authorised by the Central Bank under the Investment Intermediaries Act 1995 (as amended) and/or MiFID – the Markets in Financial Instruments Directive.

The basic services of the administrator include fund accounting, net asset value (NAV) calculation, maintaining the shareholder register, handling of subscriptions and redemptions, preparation of the financial statements and communication with shareholders. The transfer agent function also has to deal with anti-money laundering and know-your-client procedures, as well as late trading and market timing monitoring and reporting. Fund administration and transfer agency services can be provided by separate entities.

Although an Irish authorised administration company may be permitted to outsource certain administration activities, the “core administration activities” of the final checking and release of the UCITS net asset value (NAV) calculation for dealing purposes and the maintenance of the shareholder register cannot be outsourced.

Auditor

UCITS funds domiciled in Ireland must have an auditor registered in Ireland to sign Irish audit opinions.

¹⁰ UCITS Notice 3 – Trustees – eligibility criteria

¹¹ UCITS Notice 4 – Trustees – duties, supervisory and reporting requirements and conditions

Management Companies



Management Company Passport

Management companies or “self-managed investment companies” (“SMICs”) have ultimate responsibility for the overall management of a UCITS fund. Due to their legal structure, UCITS established as unit trusts or CCFs require a management company. UCITS established as investment companies have the option of appointing a management company or can manage the fund themselves as SMIC’s.

UCITS IV has allowed the management company to be based in another EU member state from the domicile of the fund and it can passport the activities for which it is authorised into other EU member states. As with other financial services entities, passporting can be achieved through the establishment of a branch or on a freedom of services basis.

In order to be authorised in Ireland a management company must submit an application to the Central Bank, along with a detailed business plan. It can be authorised to engage in collective portfolio management i.e. to collective investment schemes and (but not or) individual portfolio management i.e. to pension funds, corporates, insurance companies.

Management companies are subject to conditions set out in the UCITS Notice 2¹² regarding organisational requirements and regulatory capital.

Organisational and Substance Requirements

As the role of the management company is crucial to the management of UCITS funds, there are extensive organisational, internal control and conduct requirements on management companies and SMICs. These are applied proportionately, depending on the nature, scale and complexity of the management company’s activities.

In terms of infrastructure, the management company needs to have an adequate internal control framework in place, including an efficient administrative, accounting and IT infrastructure with proper internal controls and procedures. These controls and procedures must adequately manage resources, complaints, record-keeping, accounting procedures, personal transactions, conflicts of interest and inducements. Management companies are also obliged to have permanent compliance or internal audit, if appropriate, and risk management functions in place and must also have a risk management policy.

The Board of Directors has the ultimate responsibility for the activities of the management company. A minimum of two directors of the management company or SMIC must be Irish residents. Senior management are charged with overseeing the funds activities with a particular focus on supervising delegated activities.

¹² UCITS Notice 2 - Supervisory and reporting requirements and conditions for UCITS management companies, UCITS self-managed investment companies and administration companies authorised by the Central Bank of Ireland

Typically management companies or SMICs delegate the main activities of a UCITS fund to service providers. However management companies and SMICs cannot delegate to the extent that they become a “letter-box” entity. In order to ensure that the board of directors are exercising control over the affairs of the fund, the Central Bank has mandated that they are responsible for the following 10 key management functions:

- Decision taking
- Monitoring compliance
- Risk management
- Monitoring of investment policy, investment strategies and performance
- Financial control
- Monitoring of capital
- Internal audit
- Supervision of delegates
- Complaints handling
- Accounting policies and procedures.

Capital Requirements

In terms of capital a UCITS management company must have the higher of:

- An initial minimum capital requirement of €125K plus an additional amount of 0.02 percent of assets under management exceeding €250 million, capped at €10 million

or

- One quarter of total expenditure taken from the most recent financial accounts.

Member states may authorise management companies not to provide up to 50 percent of the additional amount if they benefit from a guarantee of the same amount given by a bank or insurance undertaking.

A SMIC must have initial minimum capital of €300,000. A Management Company or SMIC is required to have financial resources, at least equal to its minimum capital requirement. These financial resources should be held in the form of eligible assets, generally highly liquid assets.

UCITS IV



Permitted Investments

The UCITS Directive details the categories of assets that may be held in the portfolio and sets out detailed rules and criteria on how to assess whether an asset may be eligible for investment as well as detailing a list of portfolio risk diversification and liquidity requirements.

One of the core concepts of a UCITS fund is that it is a liquid investment and that investors can redeem their holdings at any time on request. This obliges the investment manager to construct a liquid portfolio of investments that they can sell off easily for cash to satisfy redemption requests from investors.

The broad categories of eligible investments are:

- Transferable securities either listed on a stock exchange or dealt on a regulated market, such as equities, bonds, structured financial instruments, depositary receipts and closed ended funds, the latter asset subject to some conditions. Recently issued transferable securities which will be admitted to official listing on a stock exchange or other market within a year are also permitted
- Money market instruments either listed on a stock exchange or dealt on a regulated market and money market instruments not dealt on a regulated market, provided that the issue or the issuer is itself regulated for the purpose of protecting investors and savings
- Units of UCITS and other collective investment funds in certain circumstances
- Deposits with credit institutions
- Financial derivative instruments that meet certain criteria.

Transferable Securities

The main investments for UCITS funds are transferable securities. They are defined as:

- shares in companies and other securities equivalent to shares in companies
- bonds and other forms of securitised debt
- other negotiable securities which carry the right to acquire such securities which fulfil the following criteria:
 - the potential loss which the UCITS may incur with respect to holding those instruments is limited to the amount paid for them
 - their liquidity does not compromise the ability of the UCITS to redeem units
 - there is a reliable valuation available for the securities
 - appropriate information on the securities is available
 - the securities are negotiable
 - their acquisition is consistent with the investment objectives and/or the investment policy of the UCITS, and
 - their risks and their contribution to the overall risk profile of the portfolio are adequately captured by the risk management process of the UCITS which must be assessed on an on-going basis.

Generally transferable securities admitted to trading on a regulated market are negotiable and fulfil the liquidity criteria. The following aspects of liquidity risk must always be considered before investing in such securities:

- The volume and turnover in the security
- If their price is determined by the market, then the size of the issue and the portion of the issue that the asset manager plans to buy should be taken into account
- The opportunity and timeframe to buy or sell the securities must be evaluated
- An independent analysis of historic bid and offer prices may indicate the relative liquidity and marketability of the instrument
- In assessing the quality of secondary market activity analysis of the quality and number of intermediaries and market makers dealing in the transferable security concerned should be considered.

If the security is assessed as insufficiently liquid to meet foreseeable redemption requests, the security must only be bought or held if there are other sufficiently liquid securities in the UCITS portfolio to redeem units on request.

Transferable securities also include units in closed-ended funds, constituted as investment companies or as unit trusts or as contracts:

- they are subject to similar corporate governance mechanisms as companies
- where asset management activity is carried out by another entity on behalf of the closed ended fund, that entity is subject to national regulation for the purpose of investor protection; in addition to
- fulfilling the liquidity criteria as set out above.

A UCITS may not make investments in closed ended funds for the purposes of circumventing the investment limits set out in the Regulations.

Transferable securities also include structured financial instruments which fulfil the criteria set out above, and are backed by or are linked to the performance of other assets. Where those assets contain an embedded derivative component, the rules regarding derivatives apply.

Money Market Instruments

UCITS funds can now invest in instruments normally dealt in on the money market which are both liquid, and have a value which can be accurately determined at any point in time.

They should fulfill the following criteria:

- have a maturity at issuance of up to and including 397 days
- have a residual maturity of up to and including 397 days
- undergo regular yield adjustments in line with money market conditions at least every 397 days
- the risk profile, including credit and interest rate risks, corresponds to that of financial instruments which have a maturity and residual maturity of 397 days or are subject to a yield adjustment at least every 397 days.

In terms of liquidity the instruments should be able to be sold at limited cost in an adequately short time frame, taking into account the obligation of the UCITS to repurchase or redeem its units at the request of any unit holder. When assessing the liquidity of a money market instrument, the following cumulative factors for both the instrument and the fund have to be considered.

At instrument level

- The frequency of trades and quotes for the instrument
- The number of dealers willing to purchase and sell the instrument, the willingness of the dealers to make a market for the instrument in question, the nature of market place trades (times needed to sell the instrument, method for soliciting offers and mechanics of transfer)
- The size of the issuance/programme
- The ability to repurchase, redeem or sell the money market instrument in a short period (e.g. seven business days), at limited cost, in terms of low fees and bid/offer prices and with very short settlement delay.

At fund level

- Unit holder structure and concentration of unit holders of the UCITS
- Purpose of funding of unit holders
- Quality of information on the fund's cash flow patterns
- Prospectuses' guidelines on limiting withdrawals.

In terms of the accurate valuation of money market instruments, values based on arm's length transactions or market data or valuation models are permitted.

In general money market instruments which are traded on a regulated market fulfil these liquidity and valuation criteria. Money market instruments, other than those listed or dealt in a regulated market, are also permitted as long as they fulfil the liquidity and valuation criteria, are freely transferable and appropriate information is available.

Units in Funds

UCITS funds are now permitted to invest up to 100 percent of their assets in other open-ended funds, both UCITS and non-UCITS funds, subject to the following investment restrictions:

- Investment in any one fund may not exceed 20 percent of the net asset value of the UCITS, although each sub-fund of an umbrella fund may be regarded as a separate fund for this purpose
- The maximum aggregate investment in non-UCITS funds must not exceed 30 percent of the UCITS' net asset value
- Investment in a fund which itself can invest more than 10 percent of net assets in another fund is prohibited
- Investment in a fund must not result in the acquisition of more than 25 percent of the units of any single fund or sub-fund.

In relation to investment in non-UCITS funds, the Central Bank has stated that non-UCITS funds authorised in Guernsey, Jersey, the Isle of Man, non-UCITS retail funds authorised by the Central Bank itself and non-UCITS funds authorised in the European Economic Area (EEA) or the EU member states which comply with the UCITS requirements are permitted.

Non-UCITS authorised in other jurisdictions are permitted where the Central Bank is satisfied that the State where the fund is authorised has equivalent supervision and investor protection and there are adequate co-operation agreements in place between the Central Bank and the other regulatory authority.

Where a UCITS fund is investing in funds managed by the same management company, that management company cannot charge fees. Any commission received by the UCITS fund when investing in other funds can only be paid back into the fund.

Deposits with Credit Institutions

UCITS funds can invest in deposits in credit institutions subject to certain conditions. The deposits must be:

- Repayable on demand or have the right to be withdrawn
- Must mature in no more than 12 months
- Must be placed with a credit institution which is either:
 - A credit institution authorised in the EEA (European Union member states, Norway, Iceland, Liechtenstein)
 - A credit institution authorised in Switzerland, Canada, Japan, United States
 - A credit institution authorised in Jersey, Guernsey, the Isle of Man, Australia or New Zealand.

UCITS funds:

- May also hold ancillary liquid assets; and
- May not invest more than 20 percent of NAV in deposits made with the same credit institution,
- In the case of deposits held as ancillary liquid assets and not held in a credit institution outlined above, that limit is reduced to 10 percent. This limit may be raised to 20 percent in the case of deposits made with the trustee.

Financial Derivatives

UCITS III significantly broadened the range of investment options open to UCITS funds. Under UCITS III, funds may invest in a range of financial derivatives (FDI's) as long as the derivative's underlying asset are eligible assets such as securities, money market instruments and deposits as well as financial instruments based around financial indices, interest rates, foreign exchange rates or currencies.

Investment in these derivatives must take full account of the associated risks and exposure and the derivatives must not expose the fund to risks it would otherwise not be exposed to or cause the fund to diverge from its stated investment objectives.

Permitted FDIs

- Financial indices as long as they are sufficiently diverse (see section on financial indices)
- Credit derivatives
- Over-the-counter ("OTC derivatives"); The counterparties to OTC derivatives must be subject to prudential supervision and have a minimum credit rating of A2 or an implied rating of A2. Exposure is limited to 5 percent of net asset value or 10 percent in the case of specified credit institutions. OTC derivatives must also provide reliable and verifiable valuations on a daily basis.



The risk management process

In order for UCITS funds to invest in FDIs, the fund must have a Risk Management Process (RMP) in place which addresses the following points:

- How the various exposures (global exposure and leverage, counterparty exposure etc.) are measured
- What limits apply to each such exposure
- How these limits are monitored and enforced
- How breaches of limits are reported
- A worked example of exposure calculations should also be provided, including examples of each type of derivative and also demonstrating how hedging is used.

Global exposure

There are strict rules on the global exposure a UCITS fund may assume when dealing in derivatives and this exposure can be calculated using a number of approaches detailed below.

The commitment approach

Under the commitment approach, a UCITS must ensure that its global exposure does not exceed its net asset value (NAV), the exposure being calculated using the current value of the underlying assets, future market movements and the time available to liquidate the position

The Value at Risk (VaR) approach

A UCITS must use advanced risk measurement such as VaR to calculate its global exposure where:

- The UCITS engages in complex investment strategies which represent more than a negligible part of the UCITS investment policy; and/or
- The UCITS has a material exposure to exotic derivatives; and/or
- The commitment approach does not adequately capture the market risk of the UCITS portfolio.

The Central Bank requires that the VaR model employed by the UCITS meets specific quantitative and qualitative criteria.



General Rules

The exposure to the underlying assets of derivatives may not exceed the general investment limits. This exposure must be calculated using the commitment approach when appropriate or the maximum potential loss as a result of default by the issuer if more conservative.

In addition, a combination of the following instruments produced by the same body may not exceed 20 percent of a UCITS' net asset value:

- Transferable securities or money market instruments; and/or
- Deposits; and/or
- Counterparty risk exposures from OTC; and/or
- Position exposure to the underlying assets of derivatives.

Cover requirements

Where a UCITS fund invests in a FDI which includes a future commitment, that commitment must be covered:

- By liquid assets sufficient to cover the exposure if the FDI in question involves cash settlement, and
- If the FDI requires physical delivery of the underlying asset, then that asset must either be held at all times by the UCITS, or the UCITS can cover the FDI exposure with sufficient liquid assets where the underlying asset consists of a highly liquid fixed income security; and/or the investment manager considers that the exposure can be adequately covered without the need to hold the underlying asset.

Netting

Netting arrangements are permitted in certain circumstances to eliminate risks attached to FDI or security positions.

Collateral

Where a UCITS invests in a FDI, the collateral required to reduce counterparty risk exposure must be:

- Highly liquid and traded on a regulated market with transparent pricing
- Valued at least daily
- Be of high quality
- Issued by an entity independent of the counterparty
- Adequately diversified in terms of country, market and issuer with a maximum 20 percent exposure to any one FDI issuer
- Be fully enforceable by the UCITS without the approval of the counterparty.

Cash collateral can only be invested in a restricted list of assets and any re-invested cash collateral must be diversified in accordance with the diversification requirements applicable to non-cash collateral.

If a UCITS receives collateral for at least 30 percent of its assets, it is required to have an appropriate stress testing policy in place to ensure that regular stress tests are carried out to enable it to assess the liquidity risk attached to collateral.

Annual derivatives report

A UCITS fund must submit a report to the Central Bank on its FDI positions on an annual basis together with the annual report of the UCITS. A UCITS must, at the request of the Central Bank, provide this report at any time.

Financial Indices

To be eligible for investment by a UCITS, in general financial indices must be sufficiently diverse and must represent an adequate benchmark for the market on which the indices are based.

Diversification limits

The diversification limits applicable to an index tracker are a balance of 20 percent – 35 percent of investments in shares or debt securities issued by the same body.

A UCITS fund is not permitted to invest in a financial index which has a single component that has an impact on the overall index return which exceeds these diversification limits. In the case of a leveraged index, the impact of one component on the overall return of the index, after having taken into account the leverage, must respect the same diversification requirements.

When a UCITS intends to make use of the increased diversification limits this must be disclosed clearly in the prospectus together with a description of the exceptional market conditions which justify this investment.

Index Criteria

A number of restrictions apply for UCITS investment in financial indices

- Single commodity indices are not permitted
- The index must satisfy certain criteria, including being a benchmark for the market to which it refers
- The index must be representative of a number of market participants
- UCITS funds must not invest in a financial index whose rebalancing frequency prevents investors from being able to replicate the financial index and the rebalancing frequency must be disclosed in the prospectus
- The full calculation methodology of the index (including the provision of detailed information on index constituents, index calculation, rebalancing methodologies, index changes and operational difficulties) must be disclosed by the index provider and be available to investors
- The methodology for the selection and the rebalancing of the components of the index must be based on a set of predetermined rules and objective criteria
- The constituents of the index together with their respective weightings must be published and be made available to investors
- The financial index must be subject to independent valuation.

Due diligence by UCITS

A UCITS is also required to carry out due diligence on the quality of the index, which should take into account whether the index methodology contains an adequate explanation of the weightings and classification of the components on the basis of the investment strategy and whether the index represents an adequate benchmark.

The UCITS must also be satisfied with the information available on the index, including:

- Whether there is a clear description of the benchmark
- Whether there is an independent audit and the scope of the audit
- The frequency of index publication and whether this will affect the ability of the UCITS to calculate its net asset value (NAV).

Investment Restrictions

The main investment focus of a UCITS is on portfolio diversification to reduce risk and liquidity to ensure that redemption requests by investors can be met promptly.

As a result of these twin priorities, UCITS are subject to a number of investment restrictions and risk limits that fully apply within six months of launch date.

A UCITS fund:

- Can invest a maximum of 10 percent of its assets in unlisted securities;
- Can invest up to 10 percent of its net assets in transferable securities or money market instruments issued by the same body, provided that the total value of these securities and instruments in each of which it invests more than five percent, is less than 40 percent.

There are exceptions to this restriction for investments issued or guaranteed by governments, local authorities or certain public international or supranational bodies. For example, the Central Bank of Ireland allows a UCITS fund to invest up to 100 percent of its assets in instruments issued or guaranteed by a single sovereign issuer. In this case the UCITS fund must hold securities from at least six different issues and no issue may exceed 30 percent of assets;

- Up to 100 percent of a fund's assets can be invested in other collective investment schemes, provided no more than 20 percent are invested in any one scheme with an aggregate restriction of 30 percent of assets applying to investments in non-UCITS. There are also strict rules regarding the nature of funds in which a UCITS can invest. Also a UCITS fund may not acquire more than 25 percent of the units of any single fund
- May only invest up to 20 percent of its assets in deposits in the same credit institution and only up to 10 percent of assets may be held for ancillary liquidity purposes although this limit is raised to 20 percent where deposits are placed with a custodian or trustee
- The risk exposure of a UCITS fund to a counterparty to an OTC derivative may be up to five percent of its assets although this limit is raised to 10 percent where the counterparty is a credit institution

- Up to 20 percent of a UCITS assets can be invested in index tracking funds, with up to 35 percent to a single issuer permitted in exceptional market conditions
- There is a “combined” limit of 20 percent whereby a UCITS must combine exposures from transferable securities, money market instruments, deposits and OTC derivatives, issued by the same body, whose combined exposure must not exceed 20 percent
- There is a 20 percent “group” limit in companies within a group which are consolidated for accounting purposes.

In addition a UCITS fund:

- Must comply with ownership and control limits on the amount of voting and non-voting shares that a UCITS can hold in a particular company or fund, to prevent the UCITS from exercising a controlling influence on the management of any issue
- Is not permitted to invest in precious metals
- Cannot grant loans nor act as a guarantor on behalf of third parties
- Generally may not borrow for investment purposes, but if it does so, it must stay within a 10 percent limit, the borrowing must be temporary and cannot form part of the UCITS’ investment policy other than on a temporary basis
- Is not permitted to invest in real estate apart from property which is necessary for pursuit of business.

In terms of risk limits, a UCITS is required to monitor and measure at any time the risk of the positions and their contribution to the overall risk profile of the portfolio, and ensure that the global exposure to derivatives does not exceed net assets.

If these limits are exceeded due to market fluctuations and other circumstances beyond the control of the investment manager (“passive breach”), the UCITS is required in principle to correct the breach, but always in the best interests of investors. This means that the UCITS is not obliged to immediately sell the investments that have breached the applicable restrictions, if this would lead to a loss for the fund.

Efficient Portfolio Management (EPM) Techniques

UCITS are permitted to use EPM techniques in the management of their portfolios as long as those techniques do not allow the UCITS to diverge from its stated investment objectives. Permitted EPM techniques include: securities lending, repurchase agreements (repos) and reverse repurchase agreements (reverse repos). These EPM techniques are not considered lending or borrowing. Their use is subject to conditions laid down by the Central Bank¹³.

The general principle is that the use of these techniques should not allow UCITS funds to diverge from its investment objectives as set out in the prospectus. They need to be economically appropriate and be entered into with the aims of reducing risk, reducing cost or generating additional capital or income, consistent with the UCITS risk profile. Derivatives used for EPM purposes must comply with normal rules for investment in financial derivative instruments.

A UCITS must also ensure that it is able at any time to recall any security that has been lent out or that is subject to a repurchase agreement, or terminate any securities lending or repurchase agreement into which it has entered. Consideration of the risks involved in using EPM techniques e.g. collateral management risk or liquidity risk must be incorporated into the risk management methodologies used by UCITS. Disclosures regarding EPM techniques need to be made in the UCITS prospectus and further disclosures are required in the fund’s annual and half-yearly report.

Separately, ESMA has also produced guidance including introducing the obligation on investment managers to return all EPM revenues, net of direct and indirect operational costs, to the UCITS and to disclose the entity to which the fees are paid. The UCITS must make it clear if the entity receiving fees is connected to the UCITS management company or the depositary. In relation to collateral, the ESMA guidelines include detailed liquidity, issuer credit quality, valuation, correlation, diversification and risk management provisions. ESMA also requires that collateral should be capable of being fully enforced by the UCITS at any time without reference to or approval from the counterparty.

Specialist funds

The Central Bank of Ireland has set out specific restrictions applying to UCITS investment in a range of specialist funds including:

1. Money Market Funds
2. Index Tracking UCITS
3. Exchange Traded Funds
4. Feeder Funds
5. Funds of Funds

Money Market Funds

UCITS are now specifically permitted to invest in money market instruments. Funds which invest in such instruments are established as constant NAV funds and/or accumulating NAV funds and have the primary aim of preserving capital and maintaining liquidity.

Funds must specify in the prospectus whether they are either a “Short-term Money Market Fund” or a “Money Market Fund.” Short-term money market funds can have either a constant or fluctuating NAV and can follow an amortised cost valuation methodology. Money market funds must have a fluctuating NAV and are not permitted to follow an amortised cost valuation methodology.

¹³ UCITS Notice 12 - Techniques and instruments, including Repurchase/Reverse Repurchase Agreements and Securities Lending, for the purposes of efficient portfolio management and Guidance Note 3/03 Undertakings in Collective Investment in Transferrable Securities Financial Derivative Instruments

Both funds can only invest in money market instruments which hold one of the two highest available short-term credit ratings by each recognised credit rating agency, or, if the instrument is not rated, it is of an equivalent quality as determined by the UCITS. There are specified limits on the maturity dates of instruments included in each type of fund. Both types of fund must provide daily NAV and price calculations and provide daily subscription and redemption of units/shares. They are obliged to comply with additional monthly and quarterly reporting requirements to the ECB through the Central Bank.

Index-Tracking UCITS

An index-tracking UCITS aims to replicate or track the performance of a specified index – some UCITS funds may have a leveraged exposure to an index or to a leveraged index. An index-tracking UCITS may, if its constitution allows, invest up to 20 percent of its assets in securities issued by a single issuer – rather than the usual 10 percent. This limit can be raised to 35 percent for a single issuer where this is justified by “exceptional market conditions”, as long as the Central Bank is satisfied that the index in question is sufficiently diversified and represents an adequate benchmark for the market on which it based.

An index-tracking UCITS is also required to disclose in its prospectus, its KIID and any other marketing materials inter alia: a description of the index; how it is going to be tracked i.e. physical replication or synthetic replication; the anticipated level of tracking errors in normal market conditions and other factors such as costs that might affect the fund’s performance.

If the index-tracking UCITS is leveraged, the prospectus must include a description of the leverage policy, the impact of reversed leverage and how the performance of the UCITS may differ from the index performance over the medium to long-term. This information must also be summarised in the KIID.

The UCITS annual and half-yearly report must detail the scale of any tracking error during the period under review, explain any divergence between the anticipated and actual tracking error and explain the difference between the performance of the UCITS and the index that is tracked.

Exchange Traded Funds – ETFs

A UCITS ETF fund is structured to facilitate trading of its shares on an exchange. Such a fund must have at least one class of shares traded daily on at least one regulated market or multilateral trading facility with at least one market-maker in the listed shares. Such a fund must also use the identifier “UCITS ETF” and this identifier must be used throughout the fund documentation.

UCITS ETFs may be either actively-managed by the investment manager subject to the stated investment objectives, or passively-managed tracking an index. The prospectus of an actively-managed UCITS must state clearly that this is the investment strategy.

Where units of a UCITS ETF purchased on a secondary market are generally not redeemable from the UCITS, the prospectus and marketing material of the UCITS must include a risk warning to that effect. Units purchased on a secondary market can be redeemed in certain circumstances, for example, where the price of the units varies significantly from the NAV.

Feeder Funds

A feeder UCITS is a UCITS, or a sub-fund of an umbrella UCITS, which can invest in the assets of another UCITS or sub-fund. The UCITS IV directive allowed the establishment of a master-feeder structure which facilitated increased economies of scale and lower operating costs.

Under UCITS IV, the feeder fund must have at least 85 percent of its assets in a single master UCITS fund, while the master fund cannot be, or invest in, a feeder UCITS. In addition, investment by a feeder UCITS into a master fund must satisfy a range of conditions required by the Central Bank.

Investor approval is required if a non-feeder UCITS proposes to convert to a feeder UCITS or a feeder UCITS proposes to change the underlying master UCITS. If the master UCITS is liquidated, the feeder UCITS must also be liquidated unless it has approval from the Central Bank to invest in another master or to convert to a non-feeder. Master and feeder UCITS must co-ordinate their arrangements, for example; the timing and publication of net asset value calculations, information sharing between custodians and reporting by auditors.

Fund of Funds

UCITS are now specifically permitted to invest into other funds thereby creating the possibility of having fund of funds schemes authorised as UCITS.

In particular the following points should be borne in mind;

- Investment in any one fund may not exceed 20 percent of the net asset value of the UCITS, although each sub-fund of an umbrella fund may be regarded as a separate fund for this purpose
- Where a UCITS fund is investing in funds managed by the same management company, that management company cannot charge fees. Any commission received by the UCITS fund when investing in other funds can only be paid back into the fund
- Certain disclosures are required to be made in the prospectus and in the annual report. The prospectus must set out the maximum level of management fees and the jurisdictions and types of funds the UCITS will invest in. The annual report must disclose information in relation to management fees which have been charged to the UCITS and to the underlying fund.

Authorisation and Supervision

Authorisation of UCITS Funds

Authorisation process

A UCITS must be authorised by the competent regulatory authority of its home member state – and in the case of Ireland this is the Central Bank. Once authorised, the UCITS can do business in any EU member state and this is commonly known as the “EU Passport”.

In Ireland the authorisation process for UCITS funds has two parts; one dealing with approval of the service providers and the other dealing with approval of UCITS documentation. These requirements are set out in UCITS Notices 1¹⁴ and 2¹⁵.

In assessing the application for authorisation, the Central Bank will consider the professional reputation, experience and authorised status of the service providers and will consider the competence, reputation and experience of the fund’s directors.

Applications to the Central Bank must include the following:

- The instrument of incorporation of the fund which includes details of the investment policy and objectives
- The prospectus which will include details on the fund and its legal structure, details on the management company, sub-funds (if they exist) and their specific investment objectives, investment restrictions, profiles of the typical investor in the fund, taxes that would apply, information on the trustee, investment manager and auditor as well as rules setting out how assets are valued and provisions for liquidation of the fund
- Agreements with the service providers
- Business Plan
- The fund’s Key Investor Information Document (KIID).

A decision on the authorisation (or refusal) should be provided by the Central Bank within two months of the application being submitted.

Key Investor Information Document

The KIID was introduced as part of UCITS IV and has been a requirement for UCITS funds since July 2012. The KIID is designed to provide investors with easy to understand and comparable information on the key features of a UCITS, including costs, risk and rewards. It is a deliberately concise document comprising just two pages in a standard format. This is the only document that must be translated into the language of the investor.

The KIID must provide basic detail on:

- The fund’s investment strategy
- Charges – including entry and exit charges and any ongoing charges
- Past performance over the past 10 years based on the UCITS’ net asset value and on an assumption that dividends have been reinvested
- Risks and rewards.

An umbrella UCITS must publish a separate KIID for each sub-fund. Individual share classes within a UCITS or within a sub-fund of an umbrella UCITS may publish a KIID but are not required to do so.

A review of the KIID needs to be carried out at least every twelve months.

Additional authorisation processes

Converting a non-ucits fund to a UCITS

A non-UCITS fund can be converted to a UCITS as long as it meets UCITS requirements, particularly in relation to the fund’s trustee arrangements and its investment restrictions. The fund documentation, including its constitutional documents, will need to be amended. The non-UCITS fund will also need to have a business plan and a risk management process in place to complete the UCITS authorisation procedure.

¹⁴ UCITS Notice 1 – Information and document requirements of the Central Bank of Ireland in support of an application for authorisation as a UCITS

¹⁵ UCITS Notice 2 – Supervisory and reporting requirements and conditions for UCITS management companies, UCITS self-managed companies and administration companies authorised by the Central Bank of Ireland.



Re-domiciling funds to Ireland as UCITS funds

Legislation introduced in 2009¹⁶ provides a streamlined procedure to re-domicile unregulated corporate funds to Ireland. The fund that is being re-domiciled must register with the Companies Registration Office and the fund – and its promoter and investment manager – must also obtain authorisation from the Central Bank. Non-corporate funds such as unit trusts and contractual funds can also be re-domiciled in Ireland subject to Central Bank authorisation.

A fund that migrates to Ireland can retain its corporate identity, its performance history and existing contractual arrangements.

Mergers

Under UCITS IV, EU member states must allow cross-border and domestic mergers of UCITS and mergers may only be refused if regulatory requirements are not met. The aim is to facilitate consolidation within the funds industry in Europe, enabling UCITS to benefit from greater economies of scale.

Listing on the Irish Stock Exchange

The Irish Stock Exchange (“ISE”) is one of the leading centres worldwide for the listing of investment funds, and as of Q3 2014 almost 2,200 funds and sub-funds from over 40 jurisdictions were listed on the ISE.

A listing on the ISE is especially attractive to those investors whose rules and investment restrictions require them to invest only in securities that are listed on a regulated market. An ISE listing also provides a forum to make information, such as the NAV, publicly available to investors.

UCITS are particularly suited to listing on the ISE as they already meet many of the listing requirements, particularly in relation to transferability of fund units and investment restrictions. Once a fund’s service providers, such as custodian, administrator, investment managers – and its dividend policy - is approved by the Central Bank, this approval is automatically accepted by the ISE.

Supervision

Central Bank Supervision

UCITS management companies and SMICs are subject to ongoing supervision by the Central Bank. The Central Bank oversees compliance with UCITS IV requirements in relation to their organisation, internal controls, conflict of interest and new conduct of business rules.

They must satisfy the Central Bank that they have the necessary resources to conduct their business effectively; they must monitor any third party valuations; maintain a permanent risk management function and develop procedures to prevent any conflicts of interest.

The UCITS fund must also notify the Central Bank of any material changes to its activities, such as changes to its investment policy or changes of service providers, auditors or its own board of directors. Books and records must be kept for at least six years and be available to the Central Bank for inspection at any time.

UCITS funds must publish a prospectus and a KIID and these must be available to investors in both electronic (via a website) and paper formats.

The Central Bank has the power to revoke the authorisation of any Irish-domiciled investment fund if it believes UCITS regulations have been breached or if the prudential interests of investors are threatened.

UCITS management companies are subject to additional requirements, notably the requirement for a permanent compliance function and, if appropriate, a permanent internal audit function. The management company must also consult the Central Bank before it engages in any significant new activities or establishes new subsidiaries. A UCITS management company which is authorised to provide individual portfolio management services must comply with MiFID .

¹⁶ Companies (Miscellaneous Provisions) Act 2009

¹⁷ Transposed in Ireland as European Communities (Markets in Financial Instruments) Regulations 2007

Reporting to the Central Bank

An Irish UCITS fund must publish an annual report within four months of its year end and a half-yearly report within two months of the half-year end. These reports must be filed with the Central Bank and also be available to investors. Both annual and half-yearly reports must be accompanied by a Minimum Capital Requirement Report.

In addition a UCITS fund must submit monthly returns¹⁸ to the Central Bank detailing:

- Total gross asset value
- Total net asset value
- Number of units in circulation
- Net asset value per unit
- Payments received from the issue of units during the month
- Payments made from the repurchase of units during the month
- Net amount from issues and repurchases during the month.

UCITS funds must also send statistical information to the Central Bank on a quarterly basis. Management companies and trustees are required to submit a quarterly return to the Central Bank containing the following aggregate information:

- Domicile of the funds
- Number of funds
- Number of unitholders
- Total net asset value.

A UCITS fund must also submit a report every year to the Central Bank detailing its exposure to financial derivatives, related risks and limits and the methods used to estimate those risks.

A UCITS fund which intends to market its fund in another EU member state must notify the Central Bank and also inform the Central Bank when it receives authorisation in another member state.

European Securities and Markets Authority

The European Securities and Markets Authority (ESMA) is the European agency charged with supervising financial markets. ESMA's supervising role is performed in various ways including publishing binding technical standards and guidelines. Unlike standards which are binding, guidelines are quasi-binding, meaning there is no automatic obligation to comply with them, but national competent authorities have a two month period to "comply or explain" why the guidelines have not been adopted. ESMA can also ask financial market participants to publicly report if they comply with the guidelines.

ESMA also has an important mediation role to try and resolve disputes between national supervisory authorities.

Liquidity

It is important that UCITS funds have sufficient liquid assets to meet potential redemption obligations and in this regard UCITS must operate an efficient liquidity risk management system. Trustees must ensure that all redemption obligations are discharged properly and efficiently.

If a UCITS fund plans to increase its charges for redemptions or repurchases, a reasonable notice period must be given to unit-holders to redeem their units before any increase is put in place. In addition, the prospectus must disclose the period within which the proceeds of a redemption are paid to investors.

Corporate governance

To ensure that a fund does not become a "letter box entity," the Central Bank has outlined the 10 key managerial functions a UCITS management company or SMIC is responsible for (see Chapter on Management Companies for details).

Directors of a fund must be approved by the Central Bank under its 'Fit and Proper' regime. The current requirement for two Irish resident directors is under review and it is likely that this will be amended to one Irish resident director and a director who is available to the Central Bank when required.

The Central Bank has also endorsed a voluntary corporate governance code – *Corporate Governance Code for Collective Investment Schemes and Management Companies*, drawn up under the Irish Funds Industry Association (IFIA) which came into effect in January 2012. This IFIA code contains provisions in relation to the composition and role of the board of a fund, conduct of board meetings and reviews of board performance.

In August 2014, the IFIA published a separate voluntary corporate governance code – *Corporate Governance Code for Fund Service Providers*, specifically for service providers to funds, which has also been endorsed by the Central Bank. This new voluntary code provides directors of trustees, administrators and depositaries with a framework for good corporate governance and provides clear guidance on oversight, risk and compliance, key appointments and the prevention of conflicts of interest. This code for service providers comes into effect on 1 January 2015.

¹⁸ UCITS Notice 12 - techniques and instruments, including Repurchase/Reverse Repurchase Agreements and Securities Lending, for the purposes of efficient portfolio management and Guidance Note 3/03 Undertakings in Collective Investment in Transferrable Securities Financial Derivative Instruments

Distribution



Distribution Globally and in Europe

Ireland has become a major global centre for the distribution of UCITS and other funds to more than 70 countries around the world. The UCITS brand is now globally recognised, particularly in the Far East, the Middle East and Latin America – primarily due to its regulated status and its strong focus on investor protection. While the facility to passport funds into other countries only applies in the EU, registration of UCITS in countries outside the EU is often permitted. Typically, UCITS are treated as regulated retail funds in countries outside the EU and some non-EU countries have a fast-track approval process for these funds.

In terms of passporting funds across Europe, the introduction of a streamlined notification process in the UCITS IV directive has resulted in a true cross-border distribution network. All that a UCITS fund needs to do now is notify the regulator in its home member state of its intention to market its funds in other EU member states. If the home member state regulator is satisfied with the notification documents, he then, in turn, notifies the regulator in the host member state that the UCITS has fulfilled its obligations under the directive. UCITS IV has also speeded up the process dramatically, as authorisation to market a fund in another member state must now be completed within 10 working days compared to up to two months previously.

UCITS IV also improved the information sharing and co-operation arrangements between member state regulators, for example, by allowing the regulator in one member state to carry out on-the-spot verifications within another member state, or alternatively have the regulator in another member state carry out the checks.

Outward Marketing Requirements – the Process

An Irish-domiciled UCITS which plans to market its units in another member state must first inform the Central Bank of its plans through a notification letter, accompanied by a variety of documents (translated if required) including:

- The fund's trust deed, the deed of constitution and its articles of association
- The latest prospectus
- The latest annual report and any subsequent half-yearly report
- KIID.

The UCITS must notify the regulator in the host member states of any changes or amendments to these documents, including any changes to the marketing arrangements for the units or any changes to the share classes being marketed. The UCITS must also inform the Central Bank if it ceases to market units in another member state.

Inward Marketing Requirements – the Process

A UCITS authorised in another EU member state which markets its units in Ireland must ensure that it has facilities in Ireland for making payments to unit holders, repurchasing or redeeming units and providing all information to unit holders that the UCITS is obliged to provide. The facilities agent providing these services to the non-Irish UCITS must inform the Central Bank that it has agreed to act on behalf of the UCITS.

The non-Irish UCITS prospectus for Irish investors must include details of the facilities agent and how Irish tax laws apply to the UCITS, if applicable. The facilities agent must also provide clear information to Irish resident investors on how redemption requests can be made and how the proceeds of redemptions will be paid. The UCITS must also comply with all relevant advertising standards that operate in Ireland.

The non-Irish UCITS must also notify the Central Bank in advance of any change to its marketing information and must also inform the Central Bank if it, or any of its sub-funds, ceases marketing to Irish investors.

Substance and tax residency issues applicable to UCITS/fund managers

The Irish tax rules for UCITS and fund managers are very favourable when compared to many other countries. Ireland has transparent and consistent tax policies and there are very attractive tax regulations for fund managers. Ireland has an extensive tax treaty network and there is a full tax exemption available for UCITS.

General

In order for an Irish corporate entity (such as a corporate UCITS or fund manager) to be tax resident in Ireland, its central management and control should be exercised in Ireland. The concept of “central management and control” of a company’s business goes beyond the day-to-day carrying out of that company’s normal business transactions and instead concerns the highest level of control over such matters as:

- The formulation of company policy
- How the company deals with such matters as financing and capital structure
- Decisions on how the company invests surplus funds
- Whether it should acquire other businesses or dispose of some of its existing businesses
- Whether it should enter new markets
- Whether it should be involved with new products and services.

The location of a company’s centre of management and control must be determined on a case-by-case basis with regard to the particular facts and circumstances taken together. There is a significant body of case law in the area of residence, out of which it is possible to identify various factors which the Courts have considered as being relevant when determining the location of a company’s central management and control. The judgements to date indicate that some of the factors carry greater weight than others. In particular, the relevant case law indicates that as central management and control is, in most cases exercised through the medium of directors’ meetings, the place where the directors’ of the company meet is usually the critical factor in determining where central management and control is based and consequently, where the company is resident.

In practice, therefore, this means that the meetings of the board of directors (in the case of a corporate UCITS or a fund manager) should be conducted in Ireland.

Specific considerations for Irish UCITS

While a UCITS will appoint a fund manager and delegate certain powers/authority to it, the board of directors of the UCITS should retain the ultimate strategic and policy making power in respect of the UCITS and should oversee the services provided by the fund manager (and other service providers).

Where an Irish tax resident UCITS appoints a fund manager which is based in a foreign jurisdiction, this may create a risk that the UCITS could become subject to tax in the fund manager’s country of tax residence if the UCITS is treated (under the tax law in the fund manager’s country of residence) as carrying on business in that country through an agent (i.e. the fund manager).

This issue can arise where the level of delegated authority and nature and scope of the services provided by the UCITS is such that the local tax authorities treat the UCITS as carrying on business through a branch, “permanent establishment” or other taxable agency in that country. Even where the fund manager’s country of residence has a tax exemption regime for UCITS, typically that regime will only apply to UCITS formed under the laws of that country.

Many countries have introduced exemptions for foreign UCITS which are managed by locally tax resident fund managers. In Ireland, for example, the Revenue Commissioners do not consider a non-Irish UCITS to be within the scope of Irish income tax where it has an Irish fund manager which is managing the UCITS in accordance with the terms of authorisation, provided that the fund manager acts as an “independent agent” (as defined), when providing services to the UCITS. Such exemptions (where they exist) will vary from country to country and typically will be subject to satisfying various conditions.



Therefore, as a practical matter, if an Irish UCITS has a foreign fund manager, careful consideration will need to be given to how the tax rules in the fund manager's country of residence operate and whether there could be a foreign tax exposure for the Irish UCITS (or whether the conditions for any local exemption could be satisfied). In this regard, the extent and nature of the delegated authority is often a key factor and, consequently, careful analysis of this issue and the implementation of appropriate parameters and constraints in respect of delegated authority may be important.

Similarly, consideration would need to be given to whether a non-Irish UCITS with an Irish fund manager could be subject to tax in Ireland.

Specific considerations for Irish fund managers

While an Irish fund manager should be able to achieve Irish tax residence, it is possible that it could have a foreign taxable presence if it carries on any activities in another jurisdiction (by being treated as having a branch or "permanent establishment" in that other country for tax purposes). This could be a particular concern where the fund manager is distributing the fund in other countries and, as a result, has some substance/personnel based outside its country of residence (e.g. in the UCITS' country of residence) in order to support its provision of services to those foreign UCITS.

Consequently, careful attention to taxation issues needs to be given to how a fund manager sets up its operations, particularly where it will act as manager to foreign UCITS and/or conduct some activities/have part of its platform located abroad.

The Irish tax regime for fund managers

Ireland has a very attractive regime for inward investment, including for fund managers. Irish resident companies are subject to tax on their worldwide income at a rate of 12.5 percent for trading income and gains, 25 percent for passive income, and 33 percent for capital gains. In this regard, the profits earned by a fund manager in respect of services provided to a UCITS should be taxable at the 12.5 percent trading rate of tax.

In addition, there are a number of provisions in Irish tax legislation which would be of potential benefit to an Irish corporate fund manager. For example:

- Exemption from Irish capital gains tax where a company disposes of a shareholding in a company where it has at least a 5 percent shareholding in that company and additional requirements are satisfied (more commonly known as the "participation exemption")
- Low tax rate on inbound dividends with unilateral credit relief for foreign tax suffered and, in certain circumstances, relief for natural foreign tax credits
- Onshore pooling of foreign tax credits to reduce further any incremental tax payable in Ireland on dividends and interest
- No thin capitalisation rules or controlled foreign companies legislation
- Extensive treaty network allowing for reduced withholding tax on inbound payments and relief for foreign tax suffered on trading income
- Availability of a deduction for interest on borrowings used to finance or acquire subsidiaries
- Tax credit regime where "Research and Development" activities are undertaken by a company
- Corporation tax relief for new companies which start to trade in Ireland
- 'Special Assignee Relief Programme' which is a personal tax relief aimed at encouraging the relocation of key talented individuals to Irish organisations.

The Irish tax regime for UCITS

Irish UCITS benefit from an attractive taxation regime. In particular:

- Irish UCITS are exempt from Irish tax on their income and gains, irrespective of where their investors are resident
- No withholding taxes apply on income distributions or redemption payments made by an Irish UCITS to non-Irish resident investors
- While an exit tax of 41 percent applies to distributions or redemption payments made to Irish resident investors, there are exemptions for various categories of Irish investors (e.g. Irish pension funds)
- Depending on the tax status of the investor in an Irish UCITS in their home jurisdiction (for example, a tax exempt pension fund) an Irish UCITS can also be structured as a tax transparent vehicle resulting in the retention of the tax benefits (e.g. reduced withholding taxes) that would be enjoyed by the investors through direct ownership of the underlying asset
- There is a full exemption from stamp duties on the issue and transfer of units in an Irish UCITS.

Where an Irish UCITS holds investments through Special Purpose Vehicles this may result in additional tax efficiencies.

Value Added Tax ("VAT")

The EU VAT legislation generally provides for an exemption in respect of the management of certain "qualifying" funds (i.e. investment management, fund administration and marketing services).

However, as each EU Member State can define what funds qualify for the "management" exemption its implementation can vary from country to country. This can create issues and opportunities for UCITS and fund managers. In Ireland, there is a broad VAT exemption for the management of regulated UCITS. As a result, a regulated Irish UCITS should not, in general, suffer Irish VAT on fees charged by a fund manager to it in respect of management activities.

However, it should be noted that it is possible that a fund manager might provide some services which do not fall within the scope of this exemption, in which case VAT would arise on these services. Examples of such services would include legal or advisory services.

Where the UCITS is based in the same country as the fund manager, then the fund manager will charge local VAT on the supply of any VAT-taxable services it provides (in the case of Ireland the standard rate of VAT is currently 23 percent). Where the fund manager is not based in the same country as the UCITS, in general the supplier will not charge VAT on its supply of goods or services and instead the UCITS will be obliged to charge itself VAT in the country in which it is based. This is known as a "reverse charge." For example, an Irish UCITS or fund manager which receives VAT-taxable services from a UK legal firm will generally not be charged UK VAT by the law firm but will have to reverse charge itself Irish VAT on the supply and account for this reverse charge VAT to the Irish Revenue authorities.

Where a UCITS incurs Irish VAT on goods or services that it procures from other parties (including the fund manager), then the ability of the UCITS to recover VAT it incurs will depend on whether it is engaged in VAT-taxable or VAT-exempt activities. In this regard, many financial services activities (such as lending money or trading in stocks and securities) are VAT-exempt activities. VAT recovery is generally not possible in respect of VAT exempt activities, except where the activities undertaken are financial services with non-EU persons.

The management of an Irish UCITS will generally be treated as the provision of a VAT-exempt service by an Irish fund manager. However, management services provided to non-Irish established UCITS would be regarded as a VAT-taxable activity with an entitlement to recover VAT on underlying costs for the fund manager.

In summary, where the fund manager is based in the EU it will, in general, suffer VAT on any VAT-taxable goods or services it procures. Where the supplier is not based in the same country as the fund manager, in general the supplier will not charge VAT on its supply of goods or services but the fund manager will be obliged to charge itself VAT on a "reverse charge" basis.

Foreign Account Tax Compliance Act ("FATCA") reporting

The Foreign Account Tax Compliance Act ("FATCA") was introduced to improve tax compliance and to reduce overseas tax evasion by US persons. It requires Foreign Financial Institutions ("FFIs") (as defined) to report information on accounts held by US persons and certain US controlled foreign entities. Failure to comply with the FATCA provisions could result in a 30 percent withholding tax penalty on US sourced Withholdable Payments (as defined) from 1 July 2014. An entity's approach to FATCA compliance will typically be governed by the jurisdiction in which they are tax resident. Therefore, fund managers that do business in multiple jurisdictions may be subject to a dynamic mix of obligations as defined under the relevant FATCA provisions.

Ireland signed a Model I Intergovernmental Agreement ("IGA") with the United States in December 2012, which governs Irish tax resident entities, subsidiaries and branches. Failure to comply with the FATCA obligations imposed by Ireland's IGA may still result in a 30 percent withholding tax penalty, however only in very limited circumstances.

Across the investment management industry, a number of vehicles may fall within the definition of an FFI and correspondingly have FATCA registration and reporting obligations, including funds (e.g. UCITS), investment managers, administrators, etc. If classified as an FFI, a fund may delegate certain FATCA related functions to its various service providers, including its investment manager or administrator; however, the fund itself will ultimately remain responsible for complying with its own FATCA obligations. This includes obligations that are performed on the fund's behalf by its service providers with respect to investor accounts, due diligence, monitoring, reporting, etc.

Therefore, a key challenge facing funds is to ensure that they are appropriately supported by their service providers in fulfilling their obligations under Ireland's IGA to be FATCA compliant and to be able to demonstrate their FATCA compliance to both their investors and relevant stakeholders.

It will also be crucial for fund directors and their managers to both understand their FATCA related obligations and to ensure that these obligations are being appropriately met, whether internally or with support from their service providers. The key action steps to be undertaken by an FFI to ensure it meets its FATCA compliance obligations include the following:

- Determine the FATCA/IGA legal entity classification of each relevant vehicle
- Register with the IRS to obtain a Global Intermediary Identification Number (“GIIN”) via the online portal (by 22 December 2014 under Ireland’s IGA)
- Update existing client onboarding procedure over “New Accounts” to identify “US Reportable Accounts” (e.g. obtain self-certifications)
- Perform due diligence procedures over “Pre-existing Accounts” to identify “US Reportable Accounts”
- Prepare FATCA Returns to submit annually to the Irish Revenue Commissioners (beginning 30 June 2015 for the 2014 calendar year) via Revenue Online Service (“ROS”)
- Complete relevant Form W-8 to ensure 30 percent FATCA withholding tax is not applied in error
- Review FATCA language in legal documents to ensure the vehicle is not taking on FATCA risks for matters outside of its control.

In addition to FATCA, a number of other Automatic Exchange of Information (“AEOI”) initiatives have been developed at both the OECD and EU to help combat offshore tax evasion. These AEOI initiatives should also be considered in due course by funds and their managers to ensure they are compliant with these provisions in addition to FATCA.

In particular, the OECD has recently developed the “Common Reporting Standard” (“CRS”), which will see the automatic exchange of information on a multilateral basis between numerous countries. The CRS will be broadly based on the Model I IGA and will be a pure reporting regime with no withholding tax imposed, which will involve the collection of information in 2016 with reporting in 2017 for early adopters.

In October 2014 at the Global Forum on Transparency and Exchange of Information for Tax purposes in Berlin, 51 jurisdictions (including Ireland), many represented at Ministerial level, were involved in a signing ceremony of a Multilateral Competent Authority Agreement. The signing of the Multilateral Competent Authority Agreement will activate the automatic exchange of information under the CRS, based on the Multilateral Convention on Mutual Administrative Assistance in Tax Matters and now means that funds and their managers will also have to consider and evaluate their reporting obligations under the CRS as well as FATCA. The timely consideration of both may present an opportunity to save both cost and time putting in place new processes and procedures.

Other tax issues

There are various other tax matters which a UCITS and fund manager may need to consider. These include:

- Provision of tax reporting information to investors based in those jurisdictions where the tax treatment of the investors requires certain information to be provided by the UCITS. (This may be affected by whether the tax authorities in the relevant investor country consider the UCITS to be a “transparent” vehicle under their local tax law)
- Managing tax compliance obligations (e.g. VAT compliance, corporate tax compliance for any Special Purpose Companies held by the UCITS)
- Considering the application of transfer taxes and transaction taxes to investments and disposals made by the UCITS (e.g. VAT, stamp duties, EU Financial Transaction Tax)
- Managing incidence of ongoing taxes arising in connection with investments made by the UCITS (e.g. property taxes, franchise taxes, net wealth taxes, withholding taxes)
- Tax issues arising from use of Special Purpose Companies (including use of financing structures);
- Tax issues on carried interest schemes
- Evaluating the ability of the UCITS to access benefits of tax treaties and EU directives which provide for tax reliefs (this may be affected by whether the tax authorities in the other country consider the UCITS to be a “transparent” vehicle under their local tax law). In this regard, certain non-corporate UCITS may be considered to be transparent from the perspective of the jurisdiction in which the UCITS holds the benefits. For example, if a common contractual fund (“CCF”) held shares in Germany, would Germany look to the Ireland-Germany double tax treaty or consider the CCF to be a transparent vehicle and only grant treaty access if the investors in the CCF were tax resident in Ireland. This is a particularly important question where the UCITS is in non-corporate form, e.g. a unit trust, a CCF or an investment limited partnership.



Future Developments for the UCITS industry

The UCITS framework continues to evolve as is evident by the recent enactment of UCITS V and the proposals set out by the European Commission in UCITS VI. Constant enhancements to the UCITS regime, along with growth in assets in the investment management sector, are healthy indicators that the outlook for UCITS into the future is positive.

UCITS V **Background**

The financial crisis of recent years and in particular the Madoff fraud and the Lehman Brothers default highlighted flaws in the UCITS framework. These serious shortcomings resulted in the European Commission publishing a proposal in July 2012 to amend the UCITS regime.

The most fundamental shortcoming was in the area of depositary rules. The existing UCITS IV directive did not define what was meant by safekeeping or even the duties covered by safekeeping and this resulted in different interpretations on liability in different member states.

Another identified deficiency was that there were no rules on remuneration for UCITS managers, with rules on remuneration increasingly becoming an inherent feature of regulation in other sectors.

After going through the three-pronged EU decision-making process, the UCITS V directive took legislative effect in August 2014 leaving member states 18 months to transpose the new directive into their national legislation. This means that the provisions of UCITS V will take effect in Ireland in early 2016.

Main Features of UCITS V **Depositary**

UCITS V has introduced a host of requirements for depositaries, to ensure that the role and responsibilities of depositaries is consistent between member states:

- UCITS V imposes consistent eligibility criteria on entities permitted to act as depositary. Banks, MiFID firms and firms subject to capital adequacy rules are eligible
- UCITS V defines precisely what the duties of a depositary are and what is meant by them. They include safe-keeping, cash monitoring and oversight duties. Specifically in relation to safe-keeping duties, only these duties can be delegated. The directive also introduces a distinction between safe-keeping duties for financial assets that can be held in custody and safe-keeping duties (e.g. verification and record-keeping) for other assets
- UCITS V strengthens the liability regime. The depositary is liable for all losses suffered by a UCITS if those losses are the result of negligence by the depositary or failure to fulfil its obligations. The depositary is also liable for the loss of any financial instrument held in custody by the depositary or any third party sub-custodian to whom custody has been delegated. If a financial instrument is lost, then the depositary is obliged to replace that instrument with an identical type of instrument, or the corresponding amount to the UCITS. The depositary is not liable for losses where it is established that these losses were the result of an external unavoidable event beyond the depositary's control. Unlike the AIFMD directive, under UCITS V the depositary's liability cannot be transferred or delegated to a third party
- UCITS assets must be separated from the assets of the depositary. The reuse of financial assets is only permitted for the benefit of the UCITS fund and any transaction must be covered by high quality and liquid collateral. This will facilitate UCITS which wish to engage in securities lending
- In the case of insolvency of the sub-custodian, the depositary must ensure that the assets held in sub-custody are not available to pay off creditors.



Remuneration

UCITS V introduces rules on remuneration which aligns UCITS legislation with other financial legislation e.g. AIFMD.

- UCITS V requires remuneration policies and practices to be put in place for risk takers. These include senior management and persons whose professional activities have a material impact on the risk profiles of the UCITS they manage. These policies and practices seek to discourage disproportionate risk taking by the UCITS
- Guaranteed variable remuneration should be an exception and there should be an “appropriate” balance between fixed and variable, with fixed remuneration representing a sufficiently high proportion of the overall package. At least half of variable remuneration must be in the form of UCITS shares and 40 percent must be deferred for at least three – five years
- The annual report of the UCITS management company must disclose the remuneration - split into fixed and variable remuneration – paid in that financial year, the number of beneficiaries and whether any carried interest has been paid
- The rules will be applied to UCITS on a proportionate basis according to the nature, scale and complexity of the funds operations.

Sanctions

The directive gives national authorities the power to levy sanctions for breaches of the directive’s provisions, and to ensure consistency across member states. A harmonised list of sanctions and rules in relation to whistle-blowing are laid out.

UCITS VI

In a further effort to improve the UCITS framework, in July 2012 the European Commission issued another UCITS consultation document “Product Rules, Liquidity Management, Depositary, Money Market Funds, Long Term Investments”; an initiative which has been dubbed UCITS VI.

The Consultation was to a degree triggered by an international regulatory focus on securities lending and repos, over-the-counter (OTC) derivatives and liquidity and systemic issues regarding exchange traded funds (ETFs) and Money Market Funds, and is complementary to the European Commission’s work on Shadow Banking. However the Commission also included targeted improvements to the UCITS framework and also consulted on wider conceptual areas such as long-term investments and a Depositary Passport.

This UCITS VI Consultation closed in October 2012 but it is unlikely that the European Commission will issue a single legislative proposal covering all the topics of the consultation.

Features of UCITS VI

Eligible assets and use of derivatives

- Review of scope of eligible assets and exposures
- Further rules on liquidity of eligible assets
- Redefine rules on exposure to non-eligible asset
- Limit derivatives to traded contracts

Efficient Portfolio Management (EPM) Techniques (Securities lending, repos and related collateral management)

- Limits to amount of fund assets subject to EPM
- Define criteria on eligibility, liquidity, diversification and re-use of received collateral
- Mandatory haircuts on collateral received
- Liquidity considerations on duration of EPM transactions
- Enhanced transparency to investors

Over the Counter (OTC) Derivatives

- Clarification of treatment of OTC derivatives cleared through central counterparties
- Additional measures to mitigate risks of dealing with a single counterparty
- Calculation of counterparty risk and issuer concentration on a daily basis
- Limit derivatives to traded contracts

Extraordinary liquidity management tools

- Introduce time limits for temporary suspension and deferral of redemptions
- Define “exceptional cases” when a suspension of redemptions can be applied
- Introduce side pockets in UCITS
- Liquidity safeguards in ETF secondary markets
- Common rules and time limits for execution of redemptions in normal circumstances

UCITS Depositary Passport

- Introduction of a Depositary Passport
- Specific authorisation regime for depositary

Money Market Funds (MMF)

- More detailed and harmonised regulation of MMFs at EU level, either as part of UCITS, AIFMD or another instrument
- Reduction or phasing out of Constant NAV MMFs
- Introduce capital buffers for CNAV MMF
- Impose liquidity fees and redemption restrictions
- Add liquidity constraints to portfolio assets
- Review Money Market Instruments eligibility criteria
- Prohibit investment criteria related to ratings
- Ban of rating of MMF

UCITS IV framework improvement

- Revision of timelines for fund mergers
- Improvement to the notification procedure
- Alignment with AIFMD organisational rules, risk and liquidity management

Long-term investments

- Create a common framework to long term investments for retail investors; either modify UCITS or a stand-alone initiative
- Long-term assets include unlisted companies, infrastructure projects, real estate, socially responsible investments

Appendix 1 - Requirements and Guidance applicable to UCITS



Guidance Notes

Guidance Note 1/96 - Permitted Markets for Retail Collective Investment Schemes

Guidance Note 2/96 - Promoters of collective investment schemes

Guidance Note 3/97 - Guaranteed Collective Investment Schemes

Guidance Note 1/99 - Administration Companies and the Investor Compensation Act, 1998

Guidance Note 2/99 - Money Market Funds: European Central Bank Reporting Requirements

Guidance Note 3/99 - Share classes - Hedging against exchange rate movements

Guidance Note 1/00 - Valuation of Assets of Collective Investment Schemes

Guidance Note 1/03 - Amalgamation of Irish authorised collective investment schemes with other collective investment schemes

Guidance Note 2/03 - Undertakings for Collective Investment in Transferable Securities (UCITS) - Acceptable investments in other collective investment undertakings

Guidance Note 3/03 - Undertaking for Collective Investment in Transferable Securities Financial Derivative Instruments

Guidance Note 1/05 - Undertakings for Collective Investment in Transferable Securities (UCITS) - Publication of a Simplified Prospectus

Guidance Note 2/07 - Undertakings for Collective Investment in Transferable Securities (UCITS) Financial Indices

Guidance Note 3/07 - Undertakings for Collective Investment in Transferable Securities - Structured Products and Complex Trading Strategies

Guidance Note 4/07 - Undertakings for Collective Investment in Transferable Securities (UCITS) - Organisation of Management Companies

Guidance Note 1/11 - Undertakings for Collective Investment in Transferable Securities (UCITS) – Publication of a Key Investor Information Document

Policy Documents

CIS Policy Changes and Related Matters

Investment Managers and Investment Advisors approval and disclosure

Trust Deeds/custodian agreements

Directed brokerage programmes and similar arrangements

Undertakings for Collective Investment in Transferable Securities (UCITS) - Policy Change December 2009

Policy Update 1/2010 - Multiple share classes within a single collective investment scheme

Policy Update 2 2010 Collateral passed by UCITS to OTC derivative counterparties

Policy Update 3/2010- Charging fees and expenses to capital in fixed income funds, Names of sub-funds within umbrella funds

Policy Update – 1/2011 UCITS - Transition from the Simplified Prospectus to the Key Investor Information Document

UCITS authorised in another Member State intending to market units in Ireland

Implementation of ESMA guidelines on ETFs and other UCITS issues- Amendments to UCITS Notices and related Guidance Notes

Implementation of ESMA guidelines on ETFs and other UCITS issues: Issues arising

Other

ESMA Guidelines on ETFs and other UCITS issues

Appendix 2 - UCITS Notices October 2013



UCITS 1

Information and document requirements of the Central Bank of Ireland in support of an application for authorisation as a UCITS July 2011

UCITS 2

Supervisory and reporting requirements and conditions for UCITS management companies , UCITS self-managed investment companies and administration companies authorised by the Central Bank of Ireland February 2013

UCITS 3

Trustees - eligibility criteria July 2011

UCITS 4

Trustees – duties, supervisory and reporting requirements and conditions December 2011

UCITS 5

Supervisory and reporting requirements and conditions for UCITS authorised by the Central Bank of Ireland December 2011

UCITS 6

Prospectus February 2013

UCITS 7

Information to be included in the monthly returns July 2011

UCITS 8

Publication of annual and half-yearly reports May 2013

UCITS 9

Eligible assets and investment restrictions July 2011

UCITS 10

Financial derivative instruments October 2013

UCITS 11

Borrowing powers December 2011

UCITS 12

Techniques and instruments, including Repurchase/Reverse Repurchase Agreements and Securities Lending, for the purposes of efficient portfolio management March 2013

UCITS 13

Umbrella UCITS December 2011

UCITS 14

Dealings by promoter, manager, trustee, investment adviser and group companies May 2013

UCITS 15

Cross-border notification of UCITS December 2011

UCITS 16

Code of conduct in relation to collective portfolio management July 2011

UCITS 17

Money Market Funds July 2011

UCITS 18

Master-Feeder Structures December 2011

UCITS 19

Key Investor Information Document February 2013

UCITS 20

Exchange Traded Funds February 2013

UCITS 21

Financial Indices February 2013

Contact us



Frank Gannon

*Head of Investment Management Advisory
KPMG Ireland*

t: +353 1 410 1552

e: frank.gannon@kpmg.ie



Darina Barrett

*Head of Financial Services
KPMG Ireland*

t: +353 1 410 1376

e: darina.barrett@kpmg.ie



Brian Clavin

*Head of Investment Management
KPMG Ireland*

t: +353 1 410 1252

e: brian.clavin@kpmg.ie



Gareth Bryan

*Tax Partner
KPMG Ireland*

t: +353 1 410 2434

e: gareth.bryan@kpmg.ie



Paul O'Connor

*Head of Regulatory Advisory Services
KPMG Ireland*

t: +353 1 700 4038

e: paul.oconnor@kpmg.ie



www.kpmg.ie/investmentmanagement

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