

The PRIIPs Regulation and Investment Funds

The EU Regulation on Key Information Documents for Packaged Retail and Insurance-based Investment Products (the “**PRIIPs Regulation**”) applies from 1 January 2018. The PRIIPs Regulation imposes obligations on any entity that manufactures or sells packaged retail and insurance based products (“**PRIIPs**”) to retail investors in the European Economic Area (“**EEA**”).

The main purpose of the PRIIPs Regulation is to require that PRIIPs manufacturers (eg, the fund manager in the case of an investment fund) prepare a pre-contractual key information document (“**KID**”) to accompany all PRIIPs that are marketed and sold to retail investors in the EEA. The KID disclosure requirements are designed to improve the quality of information provided to retail investors when considering investments in PRIIPs, allowing them to compare PRIIPs more easily.

What is a PRIIP?

PRIIPs include investment funds, life insurance policies with an investment element, structured investment products, structured deposits and financial instruments issued by special purpose vehicles that meet the definition of PRIIPs.

What is a PRIIPs KID?

The KID is a pre-contractual disclosure document that is intended to inform retail investors of the main features of the product, as well as the risks, costs, potential gains and losses associated with investment in that product, in a clear and accessible manner in advance of any potential investment. KIDs must comply with a standard prescribed format intended to assist retail investors in understanding the information provided to them and comparing different investment products.

Which investment funds must prepare a KID?

Applicability to Alternative Investment Funds

Any Irish retail investor alternative investment fund (“**RIAIF**”), professional investor fund (“**PIF**”) or qualifying investor alternative investment fund (“**QIAIF**”) which make units of their offerings available to retail investors within the EEA on or after 1 January 2018 are impacted by the PRIIPs Regulation and must prepare a KID.

A retail investor for the purposes of the PRIIPs Regulation is any investor who is not a MiFID “professional client”. PIFs and RIAIFs will therefore typically fall within the definition of a PRIIP. QIAIFs that do not limit investor eligibility to MiFID professional clients will also be required to prepare a KID.

Applicability to UCITS

Undertakings for investment in transferable securities (“**UCITS**”) are exempt from the provisions of the PRIIPs Regulation until 31 December 2019. Until this date, UCITS will continue to prepare a Key Investor Information Document (“**UCITS KIID**”) as required by the UCITS Directive. The PRIIPs Regulation requires the European Commission, by 31 December 2018, to assess whether this transitional arrangement should be prolonged, or whether the UCITS KIID provisions as outlined in the UCITS Directive might be replaced by or considered equivalent to the PRIIPs KID provisions.

Structure and Content of the PRIIPs KID

KIDs must be a standalone document, three pages in length and must follow a common standard as regards structure, content and presentation. The title “Key Information Document” must appear at the top of the first page of the KID, followed by a prescribed explanatory statement.

The KID must then set out the following information:

- general information including the name of the PRIIP, the identity and contact details of the PRIIP manufacturer and information about the PRIIP manufacturer's competent authority and the date of the document;
- where applicable, a comprehension alert that will read: “You are about to purchase a product that is not simple and may be difficult to understand”;
- Under the heading “**What is this product?**” - the nature and main features of the PRIIP, including:
 - the type of PRIIP;
 - its objectives and the means of achieving them;
 - a description of the type of retail investor to whom the PRIIP is intended to be marketed;
 - where the PRIIP offers insurance benefits, details of those benefits including the circumstances that would trigger them; and
 - the term of the PRIIP, where known.
- “**What are the risks and what could I get in return?**” - a brief description of the risk- reward profile comprising the following elements:
 - a summary risk indicator (or SRI);

- the possible maximum loss of invested capital;
 - appropriate performance scenarios, and the assumptions made to produce them;
 - where applicable, information on conditions for returns to retail investors or built-in performance caps; and
 - a statement that the tax legislation of the investor's home member state may have an impact on the actual payout.
- **"What happens if [name of the PRIIP manufacturer] is unable to pay out?"** - a brief description setting out whether the related loss is covered by an investor compensation or guarantee scheme.
 - **"What are the costs?"** - the costs associated with an investment in the PRIIP, comprising both direct and indirect costs to be borne by the investor, including one-off and recurring costs, presented by means of summary indicators of those costs and total aggregate costs expressed in monetary and percentage terms to show the compound effects of the total costs on the investment. There should also be a clear indication that advisers, distributors and any other person advising on, or selling, the PRIIP will provide information about any distribution costs not already included, so as to enable the investor to understand the cumulative effect that these aggregate costs have on the investment return.
 - **"How long should I hold it and can I take money out early?"** -
 - where applicable, whether there is a cooling off or cancellation period for the PRIIP;
 - an indication of the recommended and, where applicable, required minimum holding period;
 - the ability to make and the conditions for any disinvestments before maturity; and
 - information about the potential consequences of cashing in before the end of the term or recommended holding period.
 - **"How can I complain?"** - information about how and to whom a retail investor can make a complaint.
 - **"Other relevant information"** - a brief indication of any additional information documents to be provided at the pre-contractual and / or post-contractual stage, excluding any marketing material.

The KID must be standalone document that is clearly separate from marketing materials and not contain cross-references or contradictions to marketing material. KIDs must be available in the official language of the member state where the PRIIP is being distributed and the manufacturer of the PRIIP is required to publish the KID on its website. Furthermore, the KID must be reviewed and updated every twelve months or where there is a material change to the product.

When should the KID be provided?

The PRIIPs Regulation prescribes that the entity that manufactures or distributes the PRIIP must provide the KID to retail investors in good time before an investment decision is taken.

Therefore, it will be necessary to ensure that a potential investor receives a KID in advance of accepting any contract or offer relating to that PRIIP.

Liability of the PRIIP Manufacturer

The PRIIPs Regulation provides that the PRIIP manufacturer shall not incur civil liability solely on the basis of the KID, including any translation thereof, unless the KID is misleading, inaccurate, inconsistent with the relevant parts of legally binding pre-contractual and contractual documents, or inconsistent with the requirements regarding the structure and content of the KID.

Next Steps

As noted above, a transitional period for UCITS management companies and entities selling and advising on UCITS will apply until 31 December 2019. PRIIP manufacturers that currently have the ability to sell their product to non-professional investors, but wish to remain outside the scope of the PRIIPs Regulation, should limit the distribution and sale of the fund to professional clients or non-EEA investors only. QIAIFs that currently have EEA retail investors or that intend to make units of their offerings available to non-professional investors should ensure that a PRIIPs KID is available to those investors.

Please get in touch with your usual Asset Management and Investment Funds Department contact or any of the contacts listed in this publication should you require further information in relation to the material referred to in this briefing note. Full details of the Asset Management and Investment Funds Department, together with further updates, articles and briefing notes written by members of the Asset Management and Investment Funds team, can be accessed at www.matheson.com.

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