UCITS IV Overview

Introduction and background

The UCITS IV Directive (Directive 2009/65/EC) seeks to further enhance the UCITS product, which has become a truly international brand. By improving existing UCITS regulatory framework, it aims to increase efficiencies for industry participants and reduce operating costs, thereby increasing the overall competitiveness of the UCITS product.

Ireland has established itself as the domicile of choice for UCITS funds and was one of only six countries to implement the UCITS IV Directive by the deadline of 1 July 2011. The Irish implementing regulations, the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (SI 352 of 2011) were published, together with updated versions of the Central Bank of Ireland’s notices and guidance notes reflecting the new UCITS IV provisions, on 1 July 2011.

The principal changes introduced under UCITS IV are outlined below.

Management company passport

Prior to the introduction of UCITS IV, a management company and the UCITS which it managed were required to be located in the same jurisdiction. Thus, an asset manager with UCITS in, for example, Ireland, France and the UK, was required to establish separate management companies in each of these jurisdictions.

UCITS IV permits a management company authorised in a member state to passport its services and act as manager to UCITS funds located in other member states. These services may be passported either remotely from the management company’s home member state or by the establishment of a branch in the UCITS home member state. This passport will allow for centralised management of UCITS funds by asset managers, which should lead to reduced costs through economies of scale.

In advance of UCITS IV, Ireland had already updated its domestic legislation to clarify that UCITS which are established in other member states, but which are managed by Irish resident management companies, will not have a taxable presence in Ireland by reason only of having an Irish management company.

As a well established centre of funds excellence, Ireland is a leading domicile for UCITS management companies managing UCITS across EU borders.

Simplified cross-border notification procedure

Ireland has long been recognised as the domicile of choice for cross-border fund distribution and accounts for 30% of the European cross-border fund market.

The ability to passport UCITS for sale in other member states was core to the original UCITS Directive. The pre-UCITS IV procedure for such passporting was, however, criticised as being inefficient, time consuming and expensive due to divergent member state practice, translation requirements and the standard two-month waiting period before cross-border marketing could commence.

Under UCITS IV, a simplified, streamlined procedure in respect of cross-border registrations has been introduced which should greatly shorten the time required to register in another jurisdiction and result in a decrease in costs. The tighter notification timelines reduce what had been a two month period in a number of member states to 10 working days from submission to the home regulator. Under UCITS IV, a regulator to regulator electronic notification process now applies in respect of new UCITS fund and sub-fund registrations. The new notification procedure does not apply to subsequent changes to a previously notified UCITS fund or sub-fund and any such changes will need to be notified directly by the UCITS to the host member state regulator.
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UCITS IV also provides for cost savings and speed to market by reducing the number of fund documents which are required to be translated so that only the key investor information document must now be translated as part of the notification process.

Rules requiring that facilities be made available in the host member state for making payments to investors, repurchasing or redeeming units and making information available have not been altered by UCITS IV and local marketing rules will also be applicable.

Master feeder structures

UCITS IV permits, for the first time, UCITS to be established as master-feeder structures. This is a further measure aimed at increasing economies of scale for asset managers in allowing larger, more cost effective funds. This permits asset managers to establish feeder funds in a number of jurisdictions, feeding into one master fund.

Cross-border merger regime

UCITS IV establishes a European framework for mergers between UCITS funds which will assist asset managers to consolidate their fund structures and thereby enhance economies of scale. Prior to UCITS IV, mergers were subject to the local rules in each jurisdiction which differed as between jurisdictions and such mergers were subject to both legislative and administrative obstacles.

UCITS IV mergers must be approved by the home state regulator of the merging UCITS, however, the merging UCITS regulator is required to consult with the home state regulator of the receiving UCITS. UCITS IV prescribes that where national laws of a member state require unitholder approval for the merger, such requirement cannot be set at greater than 75% of the votes actually cast by unit-holders present or represented at the general meeting.

Key investor information document

UCITS IV introduced a key investor information document (“KIID”) which is a concise document written in non-technical language delivering information regarding the essential characteristics of the UCITS, enabling investors to understand the nature and risks of the investment product being offered to them. The KIID constitutes a pre-contractual document to be provided to investors prior to subscription to enable them to make an informed investment decision. All UCITS are required to have KIIDs in place.

The KIID is a replacement for the simplified prospectus which was widely regarded as having failed to achieve its objective of being a simple document capable of being understood by the average retail investor.

Conclusion

Ireland is internationally recognised as one of the world’s most advantageous jurisdictions in which to establish investment funds. Between 2000 and December 2012, the net assets of Irish UCITS grew by 565% and Ireland is the domicile of choice for those asset managers seeking to avail of the additional benefits offered to UCITS under the UCITS IV Directive.

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