



## UCITS IV - New Generation of EU Compatible Schemes

The new rules of the revised UCITS Directive (UCITS IV) are set to be transposed into the national law of Member States by 1 July 2011. UCITS IV will modernise and codify the existing UCITS Directives under a single law and is expected to consolidate a fragmented European investment fund industry by reducing administrative barriers for the cross-border trading and management of funds, which will reduce costs by allowing economies of scale and increase the choice of investment products available to European investors while ensuring that they are provided with clear information on their investments. The major developments in UCITS IV relate to:

### Key Investor Information (KII)

The simplified prospectus will be abolished and replaced by a short and standardized fact sheet containing KII which will be valid in all Member States.

### Fund Mergers

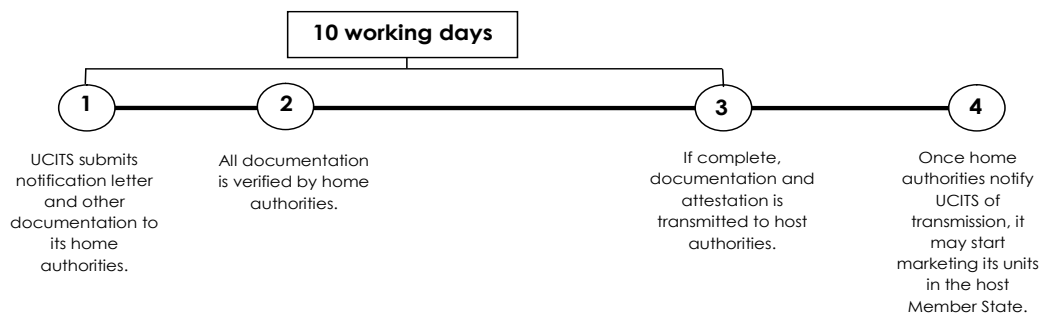
UCITS IV introduces a framework for the cross-border merger of funds. Such cross-border merger will be subject to the prior authorisation of the home Member State competent authorities (the "home authorities") of the merging UCITS' (i.e. the UCITS that will cease to exist). Three types of mergers will be possible, namely, merger by absorption, merger by formation of a new fund and merger by amalgamation. In each case, the merging and receiving UCITS must draw up a common draft terms of merger, the contents of which have been standardised. No costs of the merger shall be borne by the unit holders.

### Notification Procedure

UCITS IV creates a streamlined notification process for the cross-border marketing of UCITS, doing away with current burdensome and time-consuming notification procedure.

The new process can be summarised as follows.

1. The UCITS intending to market its fund in another Member State (the "host Member State") must submit a notification letter to its home authorities, enclosing its fund rules or its instruments of incorporation, its prospectus, its latest annual report and any subsequent half-yearly report, as well as the KII which must be translated into the official language of the host Member State.
2. All documentation is checked by the home authorities in order to verify whether it is complete.
3. If complete, the home authorities will transmit all documentation, together with an attestation that the UCITS has fulfilled the requisite conditions under the Directive, to the competent authorities of the host Member State (the "host authorities") within 10 working days from receipt of the notification letter and complete documentation. The host authorities cannot oppose entry of a UCITS established in another Member State or challenge the authorisation given by its home authorities.
4. The UCITS can start to market its units within the host Member State as soon as its home authorities notify it that all documentation has been transmitted to the host authorities.





## Management Company Passport

UCITS IV finally makes the cross-border management of UCITS possible. Under the new Directive, any management company which has been authorised by its home Member State may manage UCITS in other Member States, either through the establishment of a branch or the use of freedom to provide services, after having notified its home authorities and supplied the requisite information to home and host authorities as prescribed by the Directive.

## Asset Pooling

Under UCITS III, Master-Feeder structures were not permitted due to fund diversification rules. UCITS IV allows Master-Feeder arrangements whereby a feeder UCITS, or an investment compartment thereof (the "Feeder"), invests at least 85% of its assets in units of another UCITS or investment compartment thereof (the "Master"). A Master must (i) not be a Feeder itself, (ii) not hold units in a Feeder and (iii) have at least one Feeder as its unit-holders. If all unit-holders in a Master are Feeders, other investors may be excluded from holding units in the Master.

The prospectus of the Feeder must contain:

- a declaration that it is a Feeder of a particular Master, and invests a minimum of 85% of its assets in such Master. This fact must also be stated in all marketing communications of the Feeder;
- its investment objective and policy;
- a brief description of the Master, its organisation, its investment objective and policy, including the risk profile, and an indication of how the prospectus of the Master may be obtained;
- a summary of the Master-Feeder agreement;
- how the unit-holders may obtain further information on the Master and the Master-Feeder information-sharing agreement;
- a description of all remuneration or reimbursement of costs payable by the Feeder by virtue of its investment in units of the Master, as well as of the aggregate charges of the Feeder and Master; and
- a description of the tax implications of investment into the Master.

The annual report of the Feeder must include a statement on the aggregate charges of the Master and Feeder. The half-yearly report of the Feeder

must indicate how the annual and half-yearly reports of the Master can be obtained.

The Feeder is also required to send to its home authorities the following documents of the Master fund: the prospectus, the KII, any amendments to the prospectus and the KII; and the annual and half-yearly reports. A paper copy of the prospectus and the annual and half-yearly reports of the Master must be delivered by the Feeder to investors on request and free of charge.

If a UCITS would like to become a Feeder it must inform its unit-holders at least 30 days before it starts to invest in the Master, providing:

- a statement that the home authorities of the Feeder have approved the decision to invest in such Master;
- the KII of Master and Feeder;
- the effective date; and
- a statement that the unit-holders of the Feeder may, within the next 30 days, request the repurchase or redemption of their units without any charges other than those retained by the UCITS to cover disinvestment costs.

## Supervisory Cooperation

UCITS IV will provide for better supervision over UCITS through enhanced cooperation and obligations on exchange of information between supervisors, and the harmonisation of their supervisory and investigatory powers. Such powers may be exercised directly, in collaboration with other authorities, by delegation, or by application to the competent judicial authorities.

## lecocqassociate's Experience

lecocqassociate provides legal advice on fund legal structure. We have experience in Swiss, Maltese, Luxembourg and Offshore funds. This Legal Review is for information purpose only; it is neither a legal advice nor an opinion. Please contact Dominique Lecocq for any questions:

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