

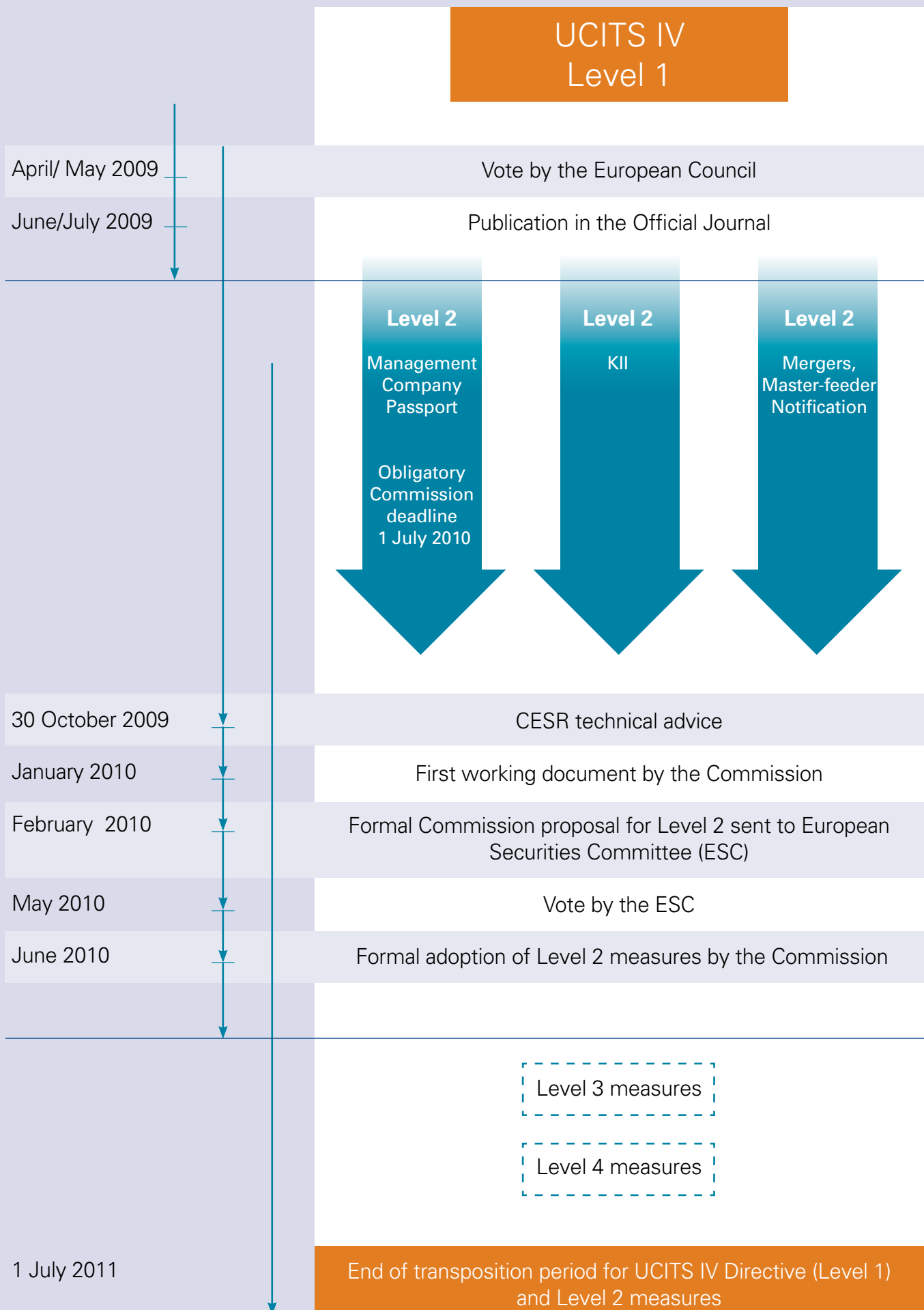


KPMG LUXEMBOURG

UCITS IV - Your new strategic options

March 2009

Provisional Timeframe for Implementation



Introducing UCITS IV

The European UCITS Directive¹ was first adopted in 1985 and transposed into Luxembourg law in 1988². The Directive had the aim of integrating the EU market for investment funds by offering both greater investment opportunities to investors and greater business opportunities to the asset management industry as a whole. UCITS have enjoyed outstanding success over the past twenty years and have been the cornerstone of the development of the European investment funds industry. Total assets reached a level of EUR 4,593 billion at the end of 2008 representing almost 75% of the total European investment fund market³. UCITS have also become a global brand enjoying considerable success in markets in Asia, Latin America and the Middle East where significant growth opportunities continue to exist.

There have been several amendments to the initial text of the Directive with the most significant taking the form of the so-called UCITS III⁴ amendments in 2001, that were transposed into local law by the Luxembourg authorities in 2002⁵. UCITS III substantially enlarged the investment powers available to UCITS but fell short in tackling industry consolidation and efficiency constraints, including the lack of a fully functioning Management Company Passport, that have driven this current wave of amendments.

In the past few years the European Commission engaged in significant preparatory work and public debate to determine the specific areas where the Directive was most in need of improvement. The outcome of their work came in the form of a "Green Paper on the enhancement of the EU framework for investment funds" issued in 2005, followed by a White Paper announcing a set of possible modifications to the UCITS Directive in 2006, a discussion paper in March 2007⁶ and the draft Directive in July 2008.

The UCITS IV package introduces the following six principal amendments to the UCITS legal regime:

- A full passport for the UCITS Management Company (allowing a UCITS to be managed by a Management Company authorised in another Member State).
- A framework for cross-border UCITS mergers.
- Master-feeder UCITS structures.
- Replacing the Simplified Prospectus by a Key Investor Information document.
- A new regulator-to-regulator notification procedure.
- Improved cooperation mechanisms between national supervisors.

1 Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities

2 Law dated 30th March 1988 relating to Undertakings for Collective Investment

3 EFAMA Quarterly Statistical Release No 36 (Fourth Quarter of 2008)

4 Amending directives 2001/107/EC and 2001/108/EC

5 Law dated 20th December, 2002 relating to Undertakings for Collective Investment

6 Orientations for possible adjustments to the UCITS Directive dated 22 March 2007

These UCITS IV revisions are contained in a single legal text, the role of which is twofold, firstly to translate the UCITS IV package of amendments into concrete legal provisions, and secondly to consolidate and codify the current body of 10 existing Directives into one new recast Directive.

The legislative process at European level is nearing completion with the adoption of the Directive at first reading on 13 January 2009 by the European Parliament. It is expected that the European Council will bring to an end the legislative process in April 2009 with their vote in favour of the final text of the Directive, which will be followed by publication in the Official Journal two months later.

The Directive also refers to a large body of Implementing Measures (Level 2 measures) to be prepared by the European Commission that will clarify the details of the provisions contained in the Directive (Level 1 measure). The Commission has started preparing the Implementing Measures with the assistance of CESR⁷ and intends for the full body of Implementing Measures to be ready for adoption by Member States before 1 July 2011, which is the latest date by which the Directive will need to be transposed into local law in Member States.

UCITS IV is being finalised in the midst of a global financial crisis that hit UCITS hard in 2008 with a decline in total assets of 25.4%, with equity price losses accounting for 58% of this total decline. The UCITS IV toolbox of efficiency and consolidation measures that is widely supported by the asset management industry offers significant opportunities to improve the competitiveness of UCITS products in these challenging market conditions.

The UCITS IV package of amendments is summarised in the following pages and the text of the recast Directive that was approved by the European Parliament on 13 January 2009 is available on our website at www.kpmg.lu.

CHECKLIST OF KEY CHANGES	REASONS FOR THE REFORM	SUMMARY OF THE NEW RULES	REFERENCE TO LEGAL PROVISIONS
<p>1 Management Company Passport</p> <p>A Management Company will be allowed to provide the full range of collective portfolio management services to UCITS established as either investment companies or common funds in another Member State of the European Union.</p> <p>The Management Company can provide these services either on a remote basis or by the establishment of a branch in the host Member State. The branch would not be subject to any authorisation requirement in the host Member State or to any additional capital requirements.</p>	<p>A consolidation and specialisation measure that should lead to economies of scale and reduction of costs.</p> <ul style="list-style-type: none"> – Freedom to locate operations around the EU. – Cross-border business models in management and administration. – Centres of excellence. 	<p>General provisions</p> <p>1 In the case of UCITS that are managed by a Management Company authorised in another Member State there is no requirement to locate any of the Management Company activities in the UCITS domicile.</p> <p>2 The foreign Management Company will be required to set up appropriate procedures and arrangements to</p> <ul style="list-style-type: none"> – deal with investor complaints (in investors' local language); and – make information available at the request of the public and to the UCITS regulator. <p>Authorisation procedure for a UCITS with foreign Management Company</p> <p>1 The UCITS regulator must approve the choice of the Management Company.</p> <p>2 The Management Company must submit to UCITS Regulator</p> <ul style="list-style-type: none"> – An attestation by Management Company's regulator proving authorisation status, scope of authorisation and any restrictions on types of UCITS authorised to manage. – Written agreement with depositary. – Information on delegation arrangements regarding investment management and administration. – Description of the risk management process put in place for specific type of UCITS. – Description of the arrangements to deal with investor complaints and make information available to the public and to the UCITS Regulator. <p>3 UCITS regulator may request additional information from Management Company regulator on above documentation and on authorisation to manage the type of UCITS. The Management Company regulator is required to provide their opinion within 10 working days.</p> <p>4 Regulators have a period of two months from receipt of complete file to decide on authorisation of a UCITS that has designated, or is managed by a foreign Management Company.</p>	<p>Article 5.3</p> <p>Article 15</p> <p>Article 5.2</p> <p>Article 17.3 – 18.2</p> <p>Article 20.1</p> <p>Article 20.1</p> <p>Article 18.1(b) – 17.2(b)</p> <p>Article 17.2(b)</p> <p>Articles 20.2</p> <p>Article 5.4</p>

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		<p>5 Refusal of the Management Company only on the following grounds:</p> <ul style="list-style-type: none"> – Management Company has not submitted above information. – The Management Company does not comply with fund rules. – The Management Company is not authorised by its regulator to manage this type of UCITS. <p>Delegation of activities by the Management Company</p> <p>1 No harmonised delegation arrangements imposed. (Member State will continue to have different rules on permitted delegated activities).</p> <p>2 If the Management Company regulator allows Management Company to delegate functions, they must inform UCITS Regulator without delay.</p> <p>3 Functions that are delegated by the Management Company with the approval of their home regulator must be disclosed in the Prospectus.</p> <p>Split of supervisory duties - Management Company Regulator</p> <p>1 The Management Company will be subject to home country rules and supervision in relation to the organisation of the Management Company, including delegation arrangements, risk management procedures, prudential rules and supervision, conflicts of interest and code of conduct rules; arrangements and organisation to comply with set-up and functioning of all UCITS managed (including foreign UCITS), and reporting requirements.</p> <p>2 Will inform UCITS Regulator of any change in scope of the authorisation given to the management company.</p> <p>Split of supervisory duties - UCITS Regulator</p> <p>1 The Management Company will be subject to the UCITS domicile rules and supervision which relate to the constitution and functioning of the UCITS, namely;</p> <ul style="list-style-type: none"> – set-up and authorisation of the UCITS; – issue and redemption of units/shares; 	<p>Articles 5.4 / 20.3</p> <p>Article 13.1</p> <p>Article 13.1(a)</p> <p>Article 13.1(i)</p> <p>Article 19.1</p> <p>Article 19.7</p> <p>Article 18.4</p> <p>Article 19.3</p>

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		<ul style="list-style-type: none"> – investment policies and limits, including calculation of total exposure and leverage; – restrictions on borrowing, lending and uncovered sales; – the valuation of assets and the accounting of the UCITS; – the calculation of the issue price and/or redemption price, and rules regarding errors in the calculation of the net asset value and the related investor compensation; – the distribution or reinvestment of the income; – the disclosure and reporting requirements of the UCITS, including the prospectus, the key investor information and periodic reports; – the arrangements made for marketing; – the relationship with unit(share)-holders; – the merging and restructuring of UCITS; – the winding-up and liquidation of the UCITS; – where applicable, the content of the unit(share)-holder register; – the licensing and supervision fees regarding the UCITS; – exercise of voting rights; investment policy and limits – any obligations set out in the fund rules or instruments of incorporation. <p>2 The UCITS regulator may require the Management Company to provide information necessary for the monitoring of their compliance with the rules under their responsibility.</p> <p>3 The UCITS regulator will supervise compliance with its local conflicts of interest management requirements and code of conduct rules applicable to branches of foreign management companies that have been set up in its jurisdiction.</p> <p>4 The UCITS regulator will be permitted to take any preventative measures as well as sanctions against the Management Company for breach of the UCITS rules. The new rules provide for communication between regulators before authorisation of the Management Company is withdrawn.</p>	<p>Article 19.4</p> <p>Article 21.2</p> <p>Article 17.5</p> <p>Article 21.4 – 21.5</p> <p>Article 21.8</p>

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		<p>Obligations regarding the Depositary of UCITS that are managed by a foreign Management Company</p> <p>1 The depositary must put in place mechanisms to provide, on request of the UCITS regulator, all information that it has obtained while discharging its duties that are necessary for the regulator to supervise the UCITS.</p> <p>2 The depositary must sign an agreement with the Management Company regulating the flow of information required for the depositary to carry out its supervisory duties.</p> <p>Implementing measures</p> <p>1 Structures and organisational requirements to minimise conflicts of interest by 1 July 2010.</p> <p>2 Code of conduct criteria by 1 July 2010</p> <p>3 Particulars to be included in the standard agreements to be used by the Management Company and depositary.</p> <p>4 Measures regarding the risk management process by 1 July 2010;</p> <ul style="list-style-type: none"> - criteria for assessing the adequacy of risk-management process employed by the Management Company. - detailed rules regarding the accurate and independent assessment of the value of OTC derivatives. - detailed rules regarding the content and procedure to be followed for communicating the information to the Management Company regulator. 	<p>Article 23.4</p> <p>Article 23.5</p> <p>Articles 12.3 - 14.2</p> <p>Article 14.2</p> <p>Article 33.6</p> <p>Article 51.4</p>
<p>2 Regulatory Framework for Cross-border UCITS Mergers</p> <p>Cross-border mergers between all types of UCITS funds (contractual, corporate and unit trusts) to be allowed and recognised by each Member State.</p>	<p>A consolidation and specialisation measure that may lead to consolidation of domestic and international fund ranges.</p>	<p>Three merger techniques</p> <p>1 One or more UCITS (sub-funds), the “merging UCITS”, on being dissolved, transfer all their assets and liabilities to an existing UCITS (sub-fund), “the receiving UCITS”, in exchange for units in the UCITS and potentially a maximum 10% cash payment.</p>	<p>Chapter VI (Articles 37-48)</p> <p>Article 37</p>

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		<p>2 Two or more UCITS (sub-funds) the “merging UCITS”, on being dissolved, transfer all their assets and liabilities to a new UCITS (sub-fund), the “receiving UCITS”, that they form in exchange for shares in new UCITS (sub-fund) and potentially a maximum 10% cash payment.</p> <p>3 One or more UCITS (sub-funds), the “merging UCITS”, transfer net assets either to another sub-fund in the same UCITS, to a UCITS which they form or to another existing UCITS, the “receiving UCITS”. The “merging UCITS” continues to exist until the liabilities are discharged.</p> <p>Regulatory approval process</p> <p>1 Mergers are subject to the prior authorisation of the merging UCITS home regulator within 20 working days of submission of a complete file.</p> <p>2 The merging UCITS should provide its supervisory authority with:</p> <ul style="list-style-type: none"> • The common draft terms of merger approved by both UCITS, the prospectus and Key Investor Information (KII) of the receiving UCITS. • A statement on the conformity of terms of merger with the laws and fund rules by the depositaries of both UCITS. • The information that both UCITS will provide to their investors on the proposed merger. <p>3 The regulator of the merging UCITS will transmit the complete file to the regulator of receiving UCITS. Each regulator will consider the impact of the merger on investors in the UCITS under their supervision and assess whether appropriate information is provided to unit-holders. Each regulator may require the information to investors to be clarified.</p> <p>Information to and Approval by shareholders</p> <p>1 Rationale of proposed merger; impact on unit(share)-holders; rights of unit(share)-holders; procedural aspects and planned effective date; KII of receiving UCITS to be provided to investors at least 30 days before the last day for requesting redemption.</p>	<p>Article 39</p> <p>Article 40.1</p> <p>Article 41</p> <p>Article 43.3</p> <p>Article 39.3</p> <p>Article 43.3</p> <p>Article 43.2</p>

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		<p>2 Unit(share)-holders of both the merging and receiving UCITS should have the right to redeem without charge, or where possible, to convert their units into units in another UCITS with similar investment policies and managed by the same management company or by another company linked to it.</p> <p>3 Approval should be a maximum of 75% of votes cast by unit(share)-holders present or represented at the general meeting.</p> <p>Costs of the Merger</p> <p>With the exception of Self-Managed SICAVs the merger costs should not be borne by the UCITS or their unit(share)-holders.</p> <p>Implementing Measures</p> <p>To specify the detailed content, format and way to provide information to the investors in the merging and receiving funds on the proposed merger.</p>	<p>Article 45.1</p> <p>Article 44</p> <p>Article 46</p> <p>Article 43.5</p>
<p>3 Master-feeder UCITS</p> <p>Subject to approval from the Regulator and from investors a UCITS feeder fund will be allowed to fully invest its assets into another UCITS (master fund).</p>	<p>1 Consolidation and specialisation measure.</p> <p>2 Economies of scale in the management of investments from pooling the assets of the master and feeder.</p>	<p>General provisions</p> <p>1 A feeder UCITS must invest at least 85% of its assets in one master UCITS.</p> <p>2 A feeder UCITS may invest 15% of its assets in ancillary liquid assets, financial derivatives instruments, movable and immovable property.</p> <p>3 A master UCITS cannot itself be a feeder UCITS, cannot hold units(shares) of a feeder UCITS and must have at least one feeder UCITS among its unit(share)-holders.</p> <p>4 The master and feeder need to enter into an agreement (internal conduct of business rules are sufficient if both are managed by the same Management Company) whereby the master provides the feeder with all the necessary documents and information for the feeder to comply with the requirements of the UCITS Directive (e.g. limits on global exposure to derivatives).</p> <p>5 The feeder is required to monitor the activity of the master.</p> <p>6 The master and feeder need to put in place measures to avoid market timing and prevent arbitrage.</p>	<p>Chapter VIII (Articles 58-65)</p> <p>Article 58.1</p> <p>Article 58.2</p> <p>Article 58.3</p> <p>Article 60</p> <p>Article 65</p> <p>Article 60.2</p>

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		<p>7 An existing UCITS can convert into a feeder UCITS subject to providing certain information on the feeder and master to investors, and subject to providing the right for investors to redeem their units without charges within 30 days.</p> <p>8 Master may not charge feeder subscription and redemption fees.</p> <p>9 Liquidation of the master will lead to liquidation of the feeder unless the regulator of the feeder approves amendment to feeder funds rules either to invest in another master or to become a non-feeder type of UCITS.</p> <p>Approval process</p> <p>1 The feeder must seek prior approval from home Member State for initial investment in a master (approval within 15 working days) and submit the following documents:</p> <ul style="list-style-type: none"> – Fund rules, instruments of incorporation, KII and Prospectus of master and feeder, and in the case where the master is a foreign UCITS an attestation by the regulator of the master that the master is not a feeder. The Prospectus of the feeder must declare that UCITS is a feeder in a given master. It must contain a brief description of the master, indicating how the Prospectus can be obtained. – The agreement between the feeder and master. – The information-sharing agreements between the depositaries and the auditors of the feeder and master UCITS, if different, to ensure the flow of information and documents needed to fulfil their duties. <p>Implementing Measures</p> <p>1 Content of information sharing agreement between depositaries, auditors and UCITS.</p> <p>2 Types of irregularities in the master that need to be reported to the feeder.</p> <p>3 Content of the internal conduct of business rules when the feeder and master are managed by the same management company.</p> <p>4 Appropriate measures to avoid market timing.</p>	<p>Article 64</p> <p>Article 66.2</p> <p>Article 60.4</p> <p>Article 59</p> <p>Article 63</p> <p>Article 60.1</p> <p>Articles 61-62</p> <p>Articles 61.3 ; 62.2 ; 60.6</p> <p>Article 61.3</p> <p>Article 60.6</p> <p>Article 60.6</p>

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		<p>5 Procedures for the required approvals in the event of liquidation, merger or division of a master.</p> <p>6 Format of information for conversion of an existing UCITS into a master.</p> <p>7 Procedure for valuating and auditing contributions in kind of assets from feeder to master and role of depositary in the process.</p>	<p>Article 64.4</p> <p>Article 64.4</p> <p>Article 64.4</p>
<p>4 New regulator-to-regulator notification procedure for cross-border marketing of UCITS in the EU.</p>	<p>The current notification procedures did not allow for easy cross-border distribution of funds.</p> <p>The two-month period to check notifications is often not respected and additional requirements imposed on foreign funds.</p> <p>> Obstructed competition between local and foreign funds</p> <p>The new notification procedure is a measure to remove administrative obstacles and delays to cross-border distribution of UCITS with the aim of :</p> <p>> Improving time to market, > Reducing costs.</p>	<p>New notification procedure</p> <p>1 The UCITS must submit a notification letter to its home regulator, including arrangements made for marketing the UCITS in the host Member State. The UCITS shall also enclose the latest fund rules or instruments of incorporation, annual/half yearly reports and KII.</p> <p>2 The UCITS home regulator will electronically transmit these documents and an attestation that the UCITS complies with the Directive to the host regulator within 10 working days. The UCITS home regulator will immediately notify the UCITS of this transmission and the UCITS can access the market as soon as this notification by their home regulator is received.</p> <p>3 The host Regulator is not permitted to request any additional documents, certificates or information from the UCITS. The host regulator is not permitted to impose any additional requirements or administrative procedures. In general the notification letter and attestation by the home Regulator are to be provided in a language customary to the sphere of international finance.</p> <p>Other provisions</p> <p>1 Each Member State must make available by electronic means complete information on laws, regulations and administrative provisions for the marketing of foreign UCITS in their territory. This information needs to be available in a language customary to the sphere of international finance and kept up to date.</p>	<p>Chapter XI (Articles 91-96)</p> <p>Article 93.1 - 93.2</p> <p>Article 93.3</p> <p>Article 93.6 Article 91.2</p> <p>Article 93.4</p> <p>Article 91.3</p>

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		<p>2 The information or documents other than the KII can be provided to investors in the official language of the host Member State, or a language approved by the host Member State regulator, or in a language customary to the sphere of international finance at the choice of the UCITS.</p> <p>Implementing Measures</p> <p>1 Scope of information to be provided on laws, regulations and administrative provisions for the marketing of foreign UCITS in the Member State.</p> <p>2 How to facilitate access by host regulator to UCITS information and documents.</p> <p>3 Form and content of standard model of the notification letter to be used by the UCITS and the attestation to be used by the UCITS regulator.</p> <p>4 Procedure for the exchange of information and use of electronic communication between regulators for the notification process.</p>	<p>Article 94.1c)</p> <p>Article 95</p>
<p>5 Key Investor Information (KII) document to replace the Simplified Prospectus</p> <p>The KII is intended to be a short pre-contractual document written in a non-technical manner, provided to investors free of charge and before the subscription that is easily understandable and relevant, with the aim of assisting the UCITS investor to reach an informed investment decision.</p>	<p>Measure to improve investor protection through improved disclosures.</p> <p>The Simplified Prospectus proved to be of limited use to investors and a source of unnecessary costs for the industry.</p>	<p>Content of the KII</p> <p>1 Identification of the UCITS; short description of investment objectives and policy; past performance presentation; risk/reward profile and risk warnings; costs and charges; specify where additional information can be obtained.</p> <p>Other provisions</p> <p>1 The KII must be written in one of the official languages of the host Member State or in another language approved by the host Member State regulator.</p> <p>2 The essential elements shall be kept up-to-date, and an up-to-date version available on the website of the Management Company.</p> <p>Implementing Measures</p> <p>1 Detailed and exhaustive content of the KII, including guidance for UCITS with the following characteristics; umbrella UCITS; UCITS offering different share classes; fund of funds structures; master-feeder structures; structured or capital guaranteed UCITS.</p>	<p>Chapter IX (section 3 - articles 78-82)</p> <p>Article 78.3</p> <p>Article 94.1(b)</p> <p>Article 82.2</p> <p>Article 81.1</p> <p>Article 78.7</p>

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		<p>2 Details of the form and presentation of the KII to ensure ease of comparability.</p> <p>3 Define the specific conditions which need to be met when providing KII in a durable medium other than on paper or via a website.</p>	<p>Article 78.7</p> <p>Article 81.2</p>
<p>6 Supervision of the UCITS</p> <p>These provisions are designed to improve the cooperation mechanisms between national supervisors.</p>	<p>Measure to remove administrative obstacles and delays.</p>	<p>1 Introduces possibility to exercise supervisory and investigatory powers either directly, in collaboration with other authorities, through delegation or through the judiciary.</p> <p>2 Improved supervisory co-operation between regulators;</p> <ul style="list-style-type: none"> – Take the necessary administrative and organisational measures to facilitate cooperation. – Develop existing mechanisms for exchange of information. – Put in place mechanisms to cooperate for on-the- spot verifications of information and investigations. The regulator may either perform the work itself or allow the foreign regulator or experts to carry out the work. <p>3 List the detailed powers and rights of the regulator.</p> <p>4 Requires regulators to lay down rules on measures and penalties for infringements of national provisions, and public disclosure of any measure/ sanction imposed.</p> <p>5 Requires establishment of complaints and redress procedures for out-of-court settlement of UCITS investor disputes.</p> <p>Implementing Measures</p> <p>1 On the spot verifications and investigations.</p> <p>2 Procedure for exchange of information between regulators.</p>	<p>Chapter XII (articles 97-110)</p> <p>Article 98.1</p> <p>Article 101</p> <p>Article 98.2</p> <p>Article 99</p> <p>Article 100</p> <p>Article 101.9</p> <p>Article 105</p>

KPMG Contacts - Luxembourg

Karin Riehl

Managing Partner
karin.riehl@kpmg.lu
Tel +352 22 51 51 6210

John Li

Partner,
Chairman of the Supervisory Board
john.li@kpmg.lu
Tel +352 22 51 51 6200

Nathalie Dogniez

Partner
nathalie.dogniez@kpmg.lu
Tel +352 22 51 51 6353

Ravi Beegun

Partner
ravi.beegun@kpmg.lu
Tel +352 22 51 51 6248

Georges Bock

Partner
georges.bock@kpmg.lu
Tel +352 22 51 51 5522

Vincent Heymans

Partner
vincent.heyman@kpmg.lu
Tel +352 22 51 51 7917

Walter Koob

Partner
walter.koob@kpmg.lu
Tel +352 22 51 51 6340

Claude Poncelet

Partner
claude.poncelet@kpmg.lu
Tel +352 22 51 51 5567

Jörg Roth

Partner
joerg.roth@kpmg.lu
Tel +352 22 51 51 6344

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