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Recent Developments in UCITS

By Claire Cummings and Helen Busby

This is the first part in a three-part series on recent developments relating to the Undertakings for Collective Investment in Transferable Securities (UCITS). This first part will provide an introduction to UCITS and a brief overview of the UCITS scheme, while subsequent parts will focus on the most important changes introduced by UCITS V and a discussion of UCITS VI.

Background

The UCITS Directives are a set of EU Directives that aim to allow collective investment schemes to operate freely throughout the EU on the basis of a single authorisation from one member state. In practice, many EU Member States have imposed additional regulatory requirements that have impeded free operation with the effect of protecting local asset managers.

The first UCITS Directive was adopted in 1985 and the current and consolidated Directive which governs UCITS is UCITS IV [2009/65/EC], as amended by UCITS V [2014/91/EU], which came into force on 17 September 2014.

UCITS V amends the parts of UCITS IV which deal, amongst others, with depositary functions, remuneration policies and sanctions for failure to comply with the Directive. Member States have until 18 March 2016 to transpose it into national law.

General Introduction to UCITS Schemes

The purpose of the UCITS Directive is to facilitate the cross-border marketing within the EU of open-ended investment funds which are available to the general public, while incorporating certain investor protection mechanisms. The UCITS Directive thus establishes common basic rules for the authorisation, supervision, structure and activities of UCITS schemes in the EU.

A UCITS scheme must be authorised by the Member State in which it is established. Once it is authorised, the scheme may then be promoted in every other Member State, provided it complies with the local marketing regulations, without needing further re-authorisation.

The following provides a brief overview of the UCITS scheme.

Conditions

In order to qualify as a UCITS scheme, a fund must meet the following conditions:

(i) the sole object of the fund must be to invest capital collected from the public in transferable securities and other liquid assets based on the principle of risk spreading;

(ii) units or shares issued by the fund must be directly or indirectly redeemable out of the fund's assets at the request of the unitholders/shareholders i.e. a UCITS fund must be open-ended; and

(iii) the head office of the fund must be situated in the same Member State as the registered office.

Exclusions

The following types of funds are not UCITS schemes:

- Closed-ended funds.
- Funds not directly available to the general public.
- Funds sold only in non-Member States.
- Funds investing in physical assets such as property or commodities.

Investment Restrictions

The UCITS Directive imposes several restrictions on the investment policies of a UCITS scheme, including:

(i) in general, it may invest no more than 10 percent of its assets in transferable securities or approved money-market instruments which are issued by any single body and all holdings in excess of 5 percent of its assets may not, in aggregate, exceed 40 percent of the assets;

(ii) no more than 20 percent of scheme property may be in transferable securities or approved money-market instruments issued by entities in the same group;

(iii) no more than 20 percent of assets may be invested in any one single collective investment scheme (both UCITS and non-UCITS schemes) with a general restriction of a maximum of 30 percent of assets invested in non-UCITS schemes;

(iv) maximum over-the-counter counterparty exposure is limited to 5 percent (10 percent in the case of approved banks);

(v) no more than 20 percent of assets may be invested in a combination of transferable securities and approved money-market instruments issued by, and deposits or OTC derivative transactions made with, a single body;

(vi) no more than 35 percent of assets may be invested in the government or public securities of a single body (subject to (vii) below); and

(vii) over 35 percent of scheme property may be invested in a single government or public securities body, but there is a restriction that no more than 30 percent of the scheme property consists of securities of any single issue and a requirement that the securities must come from at least six different issues.

The next part in this series, will look at UCITS V in more detail.

For more detailed information regarding UK UCITS, please visit http://www.cummingslaw.com/publications.

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