

NEW CNMV RULES ON INVESTMENT FUNDS - DELOITTE ABOGADOS Y ASESORES TRIBUTARIOS

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The Spanish securities supervisor (CNMV) has recently published new regulations on reporting obligations of Foreign Collective Investment Institutions aimed at implementing on time the product passport rules of UCITS IV, which enters into force July 1st.

As regards the remaining UCITS IV Directive provisions, the necessary amendments to the Spanish

Collective Investment Institutions Act will not be approved by the Spanish Parliament on time for compliance with the implementation date of UCITS IV.

The main features of the new registration procedure are that it will now be online and take place between supervisory authorities; the Key Investor Document (KID) replaces the simplified prospectus; the translation regime of the documentation changes; and the term for registration is now three to 10 days since the communication between supervisor authorities.

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Although the main purpose of the new regulation is to implement the UCITS IV product passport rules on time, its scope also includes the reporting obligations for foreign non-UCITS.

The main features of the new registration procedure are:

- The Key Investor Document (KID) replaces the simplified prospectus (there is a period of one year from 1st July 2011 to transform all simplified prospectus of the UCITS into the KID). Until implementation of the KID the simplified prospectus will continue to be in force;

Maintenance obligations

As regards the maintenance obligations for foreign UCITS, while obligations before the CNMV have been reduced obligations before investors remain practically the same.

The marketing of new sub-funds of an already registered umbrella in Spain will not require a new registration procedure and modifications of the KID/simplified prospectus need not be sent to the CNMV. However, the obligation for the designated legal person by the foreign UCITS, as well as all Distributors to keep in their premises Economic Reports for six years at the CNMV disposal, remains in force.

Regarding obligations towards investors, the following apply:

- (i) Obligations prior to investing in the foreign UCITS: the Management Company or the Spanish distributor must provide the investor with the last version of the KID (Spanish translation), Economic Reports and Marketing memorandum. Prior the investor request, the rest of the UCITS documentation must be provided online. The information on the NAV and last versions of the official documentation of the UCITS must be accessible through the web page of the management company or at least of one Spanish distributor.
- (ii) Ongoing reporting obligations: Economic Reports must be sent by the Management Company/Spanish Distributors to Spanish investors within one month after elaboration in the home country. Online submission is allowed after investor request. All information provided to the UCITS investors in the Home Country must be provided to Spanish investors in the same terms.

Finally, it must be noted that tax issues and marketing rules are still not harmonised throughout Europe. In order to benefit from the same tax treatment as investments in Spanish funds, UCITS must be registered for marketing in Spain. Marketing materials of foreign UCITS must comply with Spanish

legislation.

The main conclusion of the new regulation is that registration costs and terms are drastically reduced offering an opportunity to enter the Spanish market without incurring substantial costs. This aspect is important as prior registration is compulsory for the active marketing of a UCITS and no private placement exemption is available in Spain for UCITS.

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