

UCITS IV, at last

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Approval of UCITS IV proposals will, among other measures, introduce an EU management company passport aimed at enabling more specialisation and efficiency savings for asset managers.



Odile Renner

PricewaterhouseCoopers
(Luxembourg)
+352 49 48 48 3053
odile.renner@lu.pwc.com

On January 13, 2009, the European Parliament voted massively in favour of the proposed reform of the UCITS directives. This paves the way for the cross-border 'remote' management of funds (the 'management company passport' or 'MCP'), cross-border reorganisations of fund ranges through mergers and master-feeder structures, a streamlined procedure for cross-border distribution and a standardised information document for investors (key investor information).

The end of a long process, this will increase efficiency in Europe's fund market. Expert groups set up by the EU Commission first recommended major changes to the 2001 UCITS III directives in 2004. In March 2007, the MCP, the most controversial of these measures, was first presented by the Commission in its 'partial' version, where certain 'core' administrative services had to remain in the fund's domicile. Yet come the Commission's July 2008 official proposal for a recast directive, the passport had vanished, and The Committee of European Securities Regulators was tasked with defining what it should look like.

Management company passport

Well, now we know what it looks like. A management company (MC) based in one country will be able to set up and run a fund, even in contractual form, in another country. The fund's nationality is no longer determined by the location of its MC's registered office – it will, instead, simply be that of the country where it is authorised.

The issue of which laws and competent supervisory authority have jurisdiction over funds are as below.

- Rules governing a fund's establishment and functioning will be those of its domicile, and the local supervisory authority will enforce the rules. This includes, notably: accounting and net asset value calculations, investment compliance, issuance of units, unit-holders' rights.
- Meanwhile, the MC will be subject to the rules and supervisory authority where it is based. This includes: operations and organisation, fund risk management procedures, delegation of all tasks included in collective portfolio management functions and the rules of conduct applicable to its business.



In practice, this can get complex. A MC in country A could establish a fund in country B and delegate, for example, the administration of that fund to a service provider in country C. In which case, the service provider would have to follow country B's rules. But the Commission is confident that close cooperation and collaboration among supervisory authorities will overcome these potential difficulties.

Other measures

Close collaboration will also be necessary to permit UCITS IV's other measures to deliver their promises. The simplified notification procedure for cross-border distribution of UCITS will depend on the host Member State's confidence in the review of the file by the MC's regulator – a review which has to be performed within 10 working days. Cross-border mergers and master-feeder structures will

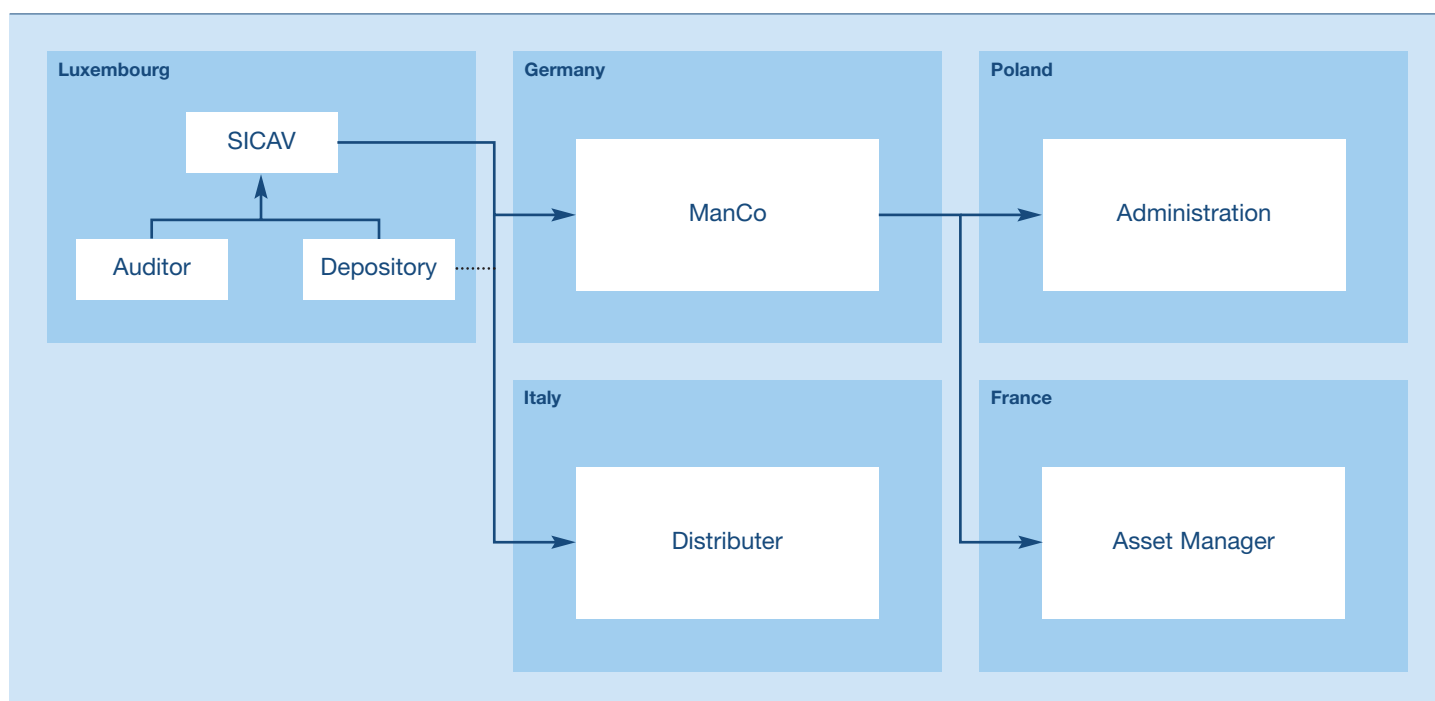
require that the authorities collaborate and respect relatively stringent deadlines – which means that their readings of the 'interest of investors' are basically the same. Finally, one can hope that the key investor information document, the content of which should be fully harmonised, will end the ridiculous situation where simplified prospectuses were as big as complete ones.

The EU Parliament's vote still needs to be followed by a Council vote, probably in March, a formality given the large consensus. It will take over two years, until July 1, 2011, for UCITS IV to be fully implemented in the 27 Member States' legislation. Only then will it become real...and show that things are perhaps not as difficult as everyone thought!

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UCITS IV may open the way to...



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Global Investment Management and Real Estate Leadership Team



Marc Saluzzi
PricewaterhouseCoopers (Luxembourg)
Global Investment Management
and Real Estate Leader
+352 49 48 48 2511
marc.saluzzi@lu.pwc.com



Kees Hage
PricewaterhouseCoopers (Luxembourg)
Global Real Estate Leader
+352 49 48 48 2059
kees.hage@lu.pwc.com



Barry Benjamin
PricewaterhouseCoopers (US)
Americas Investment Management
and Real Estate Leader
+1 410 783 7623
barry.p.benjamin@us.pwc.com



Pars Purewal
PricewaterhouseCoopers (UK)
UK Investment Management
and Real Estate Leader
+44 20 7212 4738
pars.s.purewal@uk.pwc.com



Brendan McMahon
PricewaterhouseCoopers (Channel Islands)
Global IMRE Private Equity Leader
+44 1534 838234
brendan.mcmahon@je.pwc.com



Robert Grome
PricewaterhouseCoopers (Hong Kong)
Asia Pacific Investment Management
and Real Estate Leader
+852 2289 1133
robert.grome@hk.pwc.com



David Newton
PricewaterhouseCoopers (UK)
Global Investment Management
Tax Leader
+44 20 7804 2069
david.newton@uk.pwc.com



Tony Artabane
PricewaterhouseCoopers (US)
Global Hedge Funds Leader
+1 646 471 7830
anthony.artabane@us.pwc.com

If you would like to receive copies of this newsletter or would like further information about PricewaterhouseCoopers Investment Management and Real Estate publications, please contact Denise Cook at denise.cook@uk.pwc.com

Editor: Rupert Bruce

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