



August 2017

CBI UCITS (Amendment) Regulations 2017

Publication of CBI UCITS (Amendment) Regulations 2017

The Central Bank has published the CBI UCITS (Amendment) Regulations 2017 (the “**Amending Regulations**”).

While many of the amendments introduced under the Amending Regulations are technical in nature or clarify existing provisions of the CBI UCITS Regulations, the Amending Regulations give legislative effect to certain of the rules set down in the Central Bank’s Guidance on Fund Management Companies which was published in December last year (“**CP 86**”).

CP86

(i) Location Rule

As readers will recall, at the time of publishing CP 86, the Central Bank also issued a feedback statement in which it set out its intentions to impose a “*location rule*” on fund management companies, internally managed AIF and self-managed UCITS funds (together “**Management Companies**”) which would require that, depending on the PRISM rating of the Management Company, at least half of its directors must be resident in the EEA and half of the managerial functions must be performed by designated persons in the EEA.

For further information on any of the issues discussed in this article please contact:



Donnacha O’Connor

DD: +353 (0)1 673 1729

donnacha.oconnor@dilloneustace.ie



Áine McCarthy

DD: + 353 (0)1 673 1861

aine.mccarthy@dilloneustace.ie

However, the Amending Regulations, which put the “*location rule*” on a statutory footing, provide welcome additional flexibility to the rule in providing that, again depending on the PRISM rating of the Management Company, at least half of its directors and half of the managerial functions must be performed by designated persons in the EEA or “*such other country as the Bank may, taking into account criteria regarding effective supervision*” determine.

It is reasonable to assume that the purpose of this additional text in the Amending Regulations is to permit the Central Bank, should it consider it appropriate to do so taking into account its need to be able to “effectively supervise” Fund Management Companies, to designate the UK as an acceptable jurisdiction for the purposes of satisfying this residence requirement.

(ii) Records Immediately Retrievable

CP86 introduced a requirement that records of a Management Company be “immediately retrievable in or from the State”. This is incorporated as a new Regulation 123(3) with the Amending Regulations confirming that this provision will apply from 1 July 2018.

Disclosure requirements

(i) Disclosure on long/short positions held by a UCITS

The CBI UCITS Regulations had introduced a requirement for a UCITS to disclose in its prospectus whether the UCITS intended taking long or short positions or both and the percentage of assets that it anticipated would be invested in long and short positions respectively.

Helpfully this has been revised in the Amending Regulations to provide that a UCITS can now either:

- (a) disclose the anticipated percentage (relative to the NAV) of the maximum value of long positions and the maximum of the absolute values of the short positions; or
- (b) disclose the anticipated maximum of the ratio of the value of the long positions to the absolute value of the short positions.

(ii) Disclosure of costs relating to EPM techniques and instruments

The CBI UCITS Regulations had previously imposed an obligation to contain certain disclosures in the prospectus relating to operational costs and fees which could be deducted from any revenue generated by the UCITS from either EPM techniques (i.e. stock-lending/repos/reverse repo arrangements) or EPM instruments (i.e. financial derivative instruments).

However the Amending Regulations clarify that this disclosure obligation relates to EPM techniques only, bringing the CBI UCITS Regulations in line with the ESMA Guidelines on ETFs and other UCITS issues.

Other Miscellaneous Changes

Other miscellaneous amendments made to the CBI UCITS Regulations include:

- (i) imposing the requirements relating to establishment of a wholly owned subsidiary of a UCITS on a statutory basis;
- (ii) permitting the periodic reports of a UCITS to disclose open financial derivative positions on a condensed basis where the volume of these positions is high;
- (iii) revising the rules relating to the minimum capital requirements applicable to certain categories of depositaries authorised by the Central Bank; and
- (iv) making certain other amendments relating to depositary obligations which were inconsistent with the provisions of UCITS V.

The publication of the Amending Regulations serve as a reminder to existing Fund Management Companies of the need to take necessary steps to ensure compliance with all of the requirements of CP86 by 1 July next. For further assistance in implementing CP86 or if you have any questions in relation arising from this briefing, please contact your usual Dillon Eustace contact.

DILLON  EUSTACE

Dublin

33 Sir John Rogerson's Quay, Dublin 2, Ireland. Tel: +353 1 667 0022 Fax: +353 1 667 0042.

Cayman Islands

Landmark Square, West Bay Road, PO Box 775, Grand Cayman KY1-9006, Cayman Islands. Tel: +1 345 949 0022 Fax: +1 345 945 0042.

New York

245 Park Avenue, 39th Floor, New York, NY 10167, U.S.A. Tel: +1 212 792 4166 Fax: +1 212 792 4167.

Tokyo

12th Floor, Yurakucho Itocia Building, 2-7-1 Yurakucho, Chiyoda-ku, Tokyo 100-0006, Japan. Tel: +813 6860 4885 Fax: +813 6860 4501.

DISCLAIMER:

This document is for information purposes only and does not purport to represent legal advice. If you have any queries or would like further information relating to any of the above matters, please refer to the contacts above or your usual contact in Dillon Eustace.

Copyright Notice:

© 2017 Dillon Eustace. All rights reserved.