
July 2011

Implementation of the UCITS IV Directive

Sweden is in the process of implementing the Directive (2009/65/EC) on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS IV Directive). The UCITS IV Directive is applicable within the European Economic Area (EEA) and will replace the old UCITS Directive (85/611/EEC) (UCITS III Directive).

As Sweden is implementing the UCITS IV Directive, the Act on Investment Funds (Sw: lag (2004:46) om investeringsfonder) and the Act on the Securities Market (Sw: lag (2007:528) om värdepappersmarknaden) will be amended. These amendments will come into force on 1 August 2011. Additionally the Swedish Financial Supervisory Authority (SFSA) will amend the regulations on investment services and activities (FFFS 2007:16) and the regulations on investment funds (FFFS 2008:11).

A vast majority of these amendments apply only to UCITS funds (Sw: värdepappersfonder) as the UCITS IV Directive solely applies to UCITS funds. However, some of the amendments will also apply to unregulated funds (Sw: specialfonder). The implementation of the UCITS IV Directive involves changes within five significant areas offering enhanced flexibility and increased opportunities for investment professionals.

A True Management Company Passport

Foreign UCITS management companies authorized by their home member states are entitled to conduct their operations in Sweden. However, as the UCITS III Directive provides that a UCITS fund may only be managed by a management company located in the same member state as the fund, the scope of the permitted activity is fairly limited. The implementation of the UCITS IV Directive changes this and provides for a true cross-border management passport enabling foreign UCITS managers to manage Swedish UCITS funds. Conversely, a Swedish UCITS management company will be able to set up and manage UCITS funds in all of the member states within the EEA.

A foreign management company wanting to set up and manage UCITS funds in Sweden must, in addition to notifying its home member state, apply for

permission from the SFSA. The SFSA grants such permission by approving the fund rules. A management company managing funds in Sweden must, among other things, effect the measures necessary in order to be able to make payments to unit holders and to redeem units to unit holders in Sweden. There is no requirement for a local facilities agent. However, from a practical standpoint, a local agent may be necessary in order to meet the legal obligations just mentioned. This can be arranged for by appointing a Swedish bank as paying agent.

Cross-border Marketing - with Implications for Unregulated Funds

The implementation of the UCITS IV Directive introduces a simplified procedure for UCITS funds wanting to market themselves across borders. The notification regime is transformed into a home state regulator to host state regulator regime meaning that the fund no longer has to notify the authorities of the host state in which it wishes to market itself, saving time and limiting administrative work.

In connection with implementing the new notification regime, the provisions governing cross-border marketing in the Act on Investment Funds are amended. The result is that the timing of the notification regime is being brought forward. As of today, the Act on Investment Funds stipulates that a UCITS fund must notify the SFSA in order to offer and market the fund in Sweden. Similar rules apply to unregulated funds, with the difference that an unregulated fund must apply for a license from the SFSA. Under the amended Act on Investment Funds, the notification/application must be made as soon as the fund wishes to market itself in Sweden even if no actual offers are made. This technical detail may not have much of an impact on UCITS funds as they generally meet the legal requirements and thus will have the opportunity to market themselves in Sweden without much hazel. For unregulated funds, however, the amendment might have a larger practical impact as they may find it more difficult to meet the legal requirements to receive a permit.

In short, unregulated funds will, as of 1 August 2011, no longer be able market themselves in Sweden without a license by having the actual offers of fund units made elsewhere, for example by referring investors to an off shore office. Under the amended legislation, such a regime will no longer be permissible as marketing per se will require home state regulator notification for UCITS funds or permission from the SFSA for unregulated funds irrespective of where the offer or sale of the fund units are made.

Harmonized Information to Investors

The UCITS IV Directive introduces a new document named "Key Investor

Information Document" (KIID). It applies to all UCITS funds and replaces the current simplified prospectus. The KIID should be fair, clear and understandable to ensure adequate investor protection and comparability. The more precise requirements of the contents are set out in Commission Regulation (EU) No 583/2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website. Under the Act on Investment Funds, the same rules regarding the KIID applies to unregulated funds.

Under the amended Act on Investment Funds, it is the responsibility of the management company to provide investors with the KIID before entering into an agreement. However, if the fund units are distributed by someone else, the responsibility is imposed on the distributor. Thus, the management company does not retain these responsibilities when fund units are distributed by someone else. Existing UCITS funds in Sweden must transform their simplified prospectus into KIID's by 1 July 2012, at the latest.

Possibility to Create Master-feeder Fund Structures

As of today, the assets of a UCITS fund cannot be invested solely in another fund. The implementation of the UCITS IV Directive, however, opens up the possibility for UCITS funds to become feeder funds. This means that 100% of the assets may be invested in another UCITS fund called master fund. Allowing investments in master-feeder structures will involve exceptions from the current investment rules under the Act on Investment Funds.

In order to create a feeder fund it is required that at least 85% of the assets are invested in a master fund. The other 15% may be invested in liquid assets and derivatives, which may be used only for hedging purposes. The master UCITS may not be a feeder fund and cannot invest in a feeder fund. Before a UCITS fund can convert to a feeder fund or change its master fund, the unit holders must be informed and must be given the opportunity to redeem their units without any other charges than the disinvestment costs. In order to place assets in a master-feeder structure authorization from the SFSA is required.

The new legislation on master-feeder structures will also apply to unregulated funds. This means that an unregulated fund that wants to invest at least 85% of its assets in another fund will be able to do so under the same standardized regime as UCITS funds.

Extended Possibilities to Merge Funds

The UCITS IV Directive also facilitates mergers of UCITS funds and the new provisions are somewhat more lenient than under the existing regime. Under the UCITS IV Directive, two different UCITS funds can merge even if they do not have the same management company. Additionally, there will be no requirement of the merger being “reasonable” as determined by the SFSA, which is a requirement for mergers today. UCITS funds with different investment strategies can also be subject to a merger. Today, such mergers are prohibited.

The UCITS IV Directive covers both cross-border mergers and domestic mergers. A cross-border merger is defined as either a merger of UCITS funds, where at least two funds are established in different member states, or a merger of UCITS funds established in the same member state, into a newly constituted fund established in another member state. A domestic merger is defined in the UCITS IV Directive as a merger between UCITS funds established in the same member state where at least one of the involved funds markets its shares in another member state. However, when implementing the UCITS IV Directive, the same rules will apply to all mergers of funds. As a consequence, mergers of UCITS funds excluded from the definition in the Directive, i.e. mergers of UCITS funds established in Sweden whose units are purely marketed in Sweden, will be covered by the scope of the new legislation. The new rules will also apply to mergers of unregulated funds.

Contacts:



Erica Johansson, Partner
Banking and Finance
Mobile phone: +46 709 25 25 49
erica.johansson@delphi.se



Amanda Wassén, Associate
Banking and Finance
Mobile phone: +46 76 772 00 17
amanda.wassen@delphi.se