

MADRID

Castellana, 216
28046 Madrid
Tel.: (34) 91 582 91 00

BARCELONA

Diagonal, 640 bis
08017 Barcelona
Tel.: (34) 93 415 74 00

BILBAO

Alameda Recalde, 36
48009 Bilbao
Tel.: (34) 94 415 70 15

MALAGA

Marqués de Larios, 3
29015 Málaga
Tel.: (34) 952 12 00 51

VALENCIA

Gran Vía Marqués
del Turia, 49
46005 Valencia
Tel.: (34) 96 351 38 35

VIGO

Colón, 36
36201 Vigo
Tel.: (34) 986 44 33 80

BRUSSELS

Avenue Louise, 267
1050 Bruselas
Tel.: (322) 231 12 20

LONDON

Five Kings House
1 Queen Street Place
EC 4R 1QS Londres
Tel.: +44 (0) 20 7329 5407

LISBON

Avenida da Liberdade, 131
1250-140 Lisboa
Tel.: (351) 213 408 600

CIRCULAR 2/2011, OF 22 JUNE, ON INFORMATION OF FOREIGN COLLECTIVE INVESTMENT UNDERTAKINGS OF THE SPANISH SECURITIES AND EXCHANGE COMMISSION

Valentina Rodríguez Hernández
Lawyer Gómez-Acebo & Pombo

1. Delivery of information to the Spanish Securities and Exchange Commission (the "CNMV"):

1.1 Initial registration of UCITS in Spain:

The procedure to be followed for the initial registration of any UCITS in Spain is the one established by the UCITS IV Directive and the Commission Regulation 584/2010 dated 1 July 2010.

In addition to the information required by the Notification Letter approved by the Commission Regulation 584/2010, the CNMV requires that the following information is included in Section B of the Letter:

- a) Identity of the entity in charge of representing the UCITS before the CNMV (which can be the UCITS, the management company, a Spanish distributor or any other legal entity).
- b) Identity of the entity in charge of filing the information for tax purposes required by article 52 of the Personal Income Tax Rules (which can only be a Spanish distributor).
- c) Identity of the entity that will be jointly liable with the UCITS for the payment of the CNMV fees (it has to be an entity resident for tax purpose in Spain).

Based on the UCITS IV Directive the long and expensive initial registration process of UCITS in Spain is finally harmonized with the other EU countries significantly simplifying the process.

1.2 Subsequent information on the UCITS:

The entity in charge of representing the UCITS before the CNMV (UCITS, management company, Spanish distributor or any other legal entity) will be obliged to deliver to the CNMV the following information through the CIFRADOC system:

- a) Registration and de-registration of distributors.
- b) Changes in the data of the UCITS.
- c) Changes in any of the entities referred to in 1.1 above.
- d) Changes in the estimated volume of sales of the UCITS.
- e) De-registration of the UCITS in Spain.

The above information must be delivered within a period of 7 days following the date in which the change has occurred.

This new Circular eliminates the following obligations (i) registration and de-registration of sub-funds; (ii) registration and de-

registration of share classes; and (iii) filing of hard copies of documents.

2. Delivery of information to investors:

The abolished Circular 2/2006 indicated that the information obligations could be complied with by either the management company or by the Spanish distributors. However, under the new Circular 2/2011 this obligation is exclusively imposed on the Spanish distributors who must deliver to investors the following information before subscription:

- a) A copy of the simplified prospectus or document replacing it in the state of origin of the UCITS (simplified prospectus may be replaced by the KID, if permitted by the laws of the state of origin of the UCITS).
- b) A copy of the last economic report of the UCITS.
- c) A copy of the marketing report of the UCITS in the form approved by the CNMV.
- d) The rest of the documents of the UCITS, if requested by the investor (full prospectus, articles of association and previous economic reports).

The delivery of the above information is mandatory and cannot be waived by the investor

The Spanish distributors must deliver to investors after subscription and at no cost a copy of the subsequent economic (semi-annual and annual) reports of the UCITS within a period of 1 month from the date in which the reports are published in the state of origin (the previous Circular did not indicate the date from which the 1 month period had to be counted) and any other information required by the laws of the state of origin of the UCITS.

Investors can waive the delivery of the subsequent economic (semi-annual and annual) reports of the UCITS at any time.

The entity in charge of representing the UCITS before the CNMV and the Spanish distributors will have to keep in their files for a period of 6 years the subsequent economic (semi-annual and annual) reports of the UCITS. The Circular of the CNMV eliminates the obligation for the representative and distributors to keep in their files copies of other documents of the UCITS such as the prospectuses, articles of association or management rules.

It is important to highlight that the Circular of the CNMV does not make any reference to the translation of the documents of the UCITS. However, article 15 of the Draft Act amending Act 35/2003 on collective investment undertakings indicates that the KIID and its amendments must be delivered to investors in Spanish or in any other language admitted by the CNMV. Also, the Draft Act indicates that the prospectuses and economic reports must be delivered to investors in Spanish, in a language commonly used in the financial sector or in any other language admitted by the CNMV.

The proposed wording relating to the language of the documents to be provided to investors is confusing since it gives three different alternatives but does not indicate how these apply. Based on this wording and bearing in mind how the CNMV normally works, we believe that it is quite possible that the CNMV will require that the documents provided to retail investors are provided in Spanish (although sworn translations are no longer required).

3. Delivery of information to the CNMV for tax purposes:

Those UCITS incorporated as investment companies (i.e. SICAVs or similar) continue to be obliged to file information requi-

red for tax purposes which to date included name of the sub-fund, number of investors, patrimony of the sub-fund and date of the communication. However according to the Circular of the CNMV the information to be filed will also include the share classes of the sub-funds with more than 500 investors and the ISIN Codes of the share classes of the sub-funds with more than 500 investors (although calculation of the 500 investors threshold will still be made

by each sub-fund and not by share class). The above information must be delivered to the CNMV at least once a year.

4. Delivery of statistical information to the CNMV:

Spanish distributors continue to be obliged to deliver quarterly to the CNMV the statistical information relating to the shares commercialized in Spain.