



# UCITS V Directive ( UCITS V )

## Snapshot April 2016

### UCITS V: Ireland

Ireland is one of the first EU member states to implement UCITS V, highlighting once again Ireland's commitment to the international financial services sector. On the 21st of March 2016, the Irish Minister for Finance signed into law the *European Union (Undertakings for Collective Investment in Transferable Securities) (Amendment) Regulations 2016* ("UCITS Regulations"). In this snapshot Deloitte will discuss the practical implications for UCITS, UCITS Management Companies and depositaries.

### UCITS V: Delegated Level 2 Regulations - Obligations on depositaries

On the 24th of March 2016 the Delegated Level 2 Regulations, having been reviewed by the Council of the EU and the European Parliament, were published in the Official Journal. The Delegated Level 2 Regulations will supplement the Level 1 UCITS V provisions applicable to depositaries only and will come into force on the 13th of April 2016. Article 25 of the UCITS Regulations contains a reference to the Delegated Level 2 Regulations having legal effect six months after the date of entry into force, which means they will apply from 13 October 2016.

The Delegated Level 2 Regulations set out the particulars that must be included in the depositary contract and depositary duties. In relation to delegated functions to third parties they outline the due diligence requirements and segregation obligations including insolvency protection. They also set out the conditions which trigger a depositary's liability for loss of a financial instrument. UCITS management companies and self-managed UCITS companies must be independent from the depositary. The Delegated Level 2 Regulations set out the criteria for appointing a depositary, the delegation of safekeeping functions by the depositary and conflicts of interest policy.

### UCITS V: What are the key elements?

1. It revises the depositary regime as regards depositary eligibility, duties, responsibilities and liabilities and defines the conditions in which safekeeping duties can be delegated.
2. It introduces rules governing remuneration policies of UCITS managers.
3. It aims to harmonise the minimum administrative sanctions regime across member states.

### UCITS V : Practical Steps

On a practical level, the UCITS Regulations requires UCITS / UCITS Management Companies to update their relevant fund documentation to comply with the UCITS Regulations. UCITS V requires a self-managed UCITS or a UCITS management company to put in place a remuneration policy in relation to certain staff members and include certain financial disclosures in fund documentation. A UCITS must include the remuneration related information in the KIDDs, the prospectus and the annual report.

## Deloitte Focus: Annual Report

1. To be published within 4 months of the end of the financial year.
2. Information about the remuneration policy;
  - » Broken down by category of staff - the aggregate amount of remuneration.
  - » The total amount of remuneration for the financial year, separated into fixed and variable remuneration paid to its staff and the number of beneficiaries. Also if relevant any amounts paid by the UCITS, including performance fee.
  - » A description on how the remuneration and the benefits have been calculated.

Deloitte notes that in relation to annual reports ESMA has indicated that it is not necessary to include the remuneration related information in any annual report relating to a performance period that ended before 18 March 2016. For annual reports that relate to a period that end on or after 18 March 2016 but before the UCITS/UCITS Management Company has completed its first annual performance period in which the new remuneration rules of UCITS V must be complied, the UCITS / or the UCITS Management Company should include the remuneration related information in the report on a best efforts basis and where possible, explain the reason for any omission.

## UCITS V: ESMA Clarification: Deadlines for updating Fund Documentation

The European Securities and Markets Authority ("ESMA") published a questions and answers document ("ESMA UCITS Q&A") on 1st February 2016, this guidance had been very keenly awaited by UCITS and UCITS service providers. The ESMA UCITS Q&A takes into account the new requirements of UCITS V and the period until the 13 October 2016 when the Delegated Level 2 Regulations relating to depositaries apply. The ESMA UCITS Q&A is not a formal ESMA Guideline.

Flexibility appears to be available in relation to updating the prospectus and KIIDs in line with UCITS V. Unless the prospectus or KIIDs have to be updated for purposes other than UCITS V, a KIID will not need to be updated until the annual KIID update in February 2017 and the prospectus until 18th March 2017. However, the relevant remuneration information should be provided on an appropriate website as soon as it becomes available.

From 18th March 2016, the new UCITS V depositary liability rules came into effect and Deloitte believes many depositaries and UCITS have amended their existing agreements to reflect the new liability provisions and the new rules rather than avail of the transitional period offered.

In addition, Deloitte has considered other actions that may need to be taken by UCITS. By way of examples; a UCITS which is structured as a PLC, certain provisions in the memorandum and articles of association could require review if they are inconsistent with UCITS V. In addition a UCITS business plan may require updating in order to make reference to the remuneration policy.

## UCITS V : A New Horizon

ESMA has published the UCITS Remuneration Guidelines, applicable from the 1 January 2017, which clarify the requirements under the UCITS V for UCITS management companies when setting up and implementing a remuneration policy for their key staff. The remuneration guidelines ensure a uniform application of the remuneration provisions. However the guidelines have raised questions about the current understanding of the proportionality provisions set out in UCITS V when applying UCITS V remuneration rules. ESMA has written to the various European institutions to seek legal clarity on the proportionality principle and remuneration rules.

**Deep Dive:** Deloitte FS Reward Team: FS Remuneration Newsflash – ESMA published final guidelines on sound remuneration policies under UCITS V.

1. The ESMA UCITS Q and A provides clarity to UCITS and depositaries around the timelines and practicalities of ensuring full compliance with UCITS V.
2. On the 24th of March 2016 the Central Bank of Ireland updated UCITS application forms and published the 12th edition of the UCITS Questions and Answers document. The Central Bank of Ireland also wrote to the Irish Funds Industry Association confirming that for the updates to depositary agreements it will facilitate a fast – track procedure until the Delegated Level 2 Regulations become effective.
3. ESMA has published its UCITS Infringement reporting form template.

## Contacts

**If you have any queries in relation to UCITS V, please contact a member of our investment management team.**

### Mike Hartwell

Partner, Head of Investment Management  
T: + 353 1 417 2303  
E: mhartwell@deloitte.ie

### Derina Bannon

Manager, Regulatory and Knowledge  
T: +353 1 417 2637  
E: dbannon@deloitte.ie

Dublin  
Deloitte & Touche  
Deloitte & Touche House  
Earlsfort Terrace  
Dublin 2  
T: +353 1 417 2200  
F: +353 1 417 2300

[www.deloitte.com/ie](http://www.deloitte.com/ie)