

Summaries of national provisions governing the marketing requirements for AIFs and UCITS

Summary of the marketing requirements for UCITS

(a) notification and prior approval of marketing communications;

The rules on the format and content of marketing communications are Orden EHA/717/2010 and Circular CNMV 2/2020.

In relation to marketing material, we do not register it prior the commencement of marketing.

(b) any other requirements for the marketing of UCITS that the competent authority considers appropriate.

Law 35/2003 on CIS and Law 22/2014 on private equity were amended transposing the cross-border marketing Directive. Please note that CNMV Circular 2/2011 will undergo an amendment process to adapt to the cross-border marketing Directive and Regulation.

Circular 2/2011 amended by Circular 2/2017:

www.cnmv.es/DocPortal/Legislacion/ModelosNormalizados/IIC/Circular211.pdf

http://cnmv.es/DocPortal/Legislacion/Circulares/Circular_2_2017_en.pdf

1. Information required to be disclosed to investors: Rule four of CNMV Circular 2/2011

- Marketing memorandum for subscribers in Spain:

www.cnmv.es/DocPortal/Legislacion/ModelosNormalizados/IIC/Marketingmemorandum.doc

- Please note that the PRIIPs KID shall be translated into Spanish.

2. Information to be included in Part B of the notification letter:

- The notifying UCITS must appoint a person or entity entrusted with representing the UCITS before the CNMV and to act on its behalf and it can be either a local or a foreign person or entity. This person or entity shall obtain access to the CIFRADO/CNMV Service.

Once the UCITS has been registered, this entity must communicate by electronic means the registrations and de-registrations of marketing entities of the UCITS in Spain and the modifications to the data of the UCITS.

- For those UCITS which have a legal form of “investment company”: Designation of a distributor (established in Spain) responsible for submitting by electronic means (RIX/Cifradoc) the required information according to article 52 of the Spanish personal income tax regulation.

This is one of the requirements to allow investors in Spain to benefit from a more favorable tax treatment.

This information is available on the CNMV website.

As this requirement is not mandatory, in the event the UCITS does not designate a distributor established in Spain, the distributors should include, if necessary, a warning about the tax consequences of the lack of such designation in the aforementioned “Marketing memorandum for subscribers in Spain”, which should be provided to each

shareholder prior to subscribing shares, as the tax treatment of the Spanish investors in this UCITS could be negatively affected.

3. Updates and amendments to the documents: ucits.updates@cnmv.es

4. Termination of marketing: Since the CNMV's Register of UCITS is structured at an umbrella level, please note that, to proceed with the de-registration of the UCITS, the notification shall clearly indicate the intention to deregister the umbrella as a whole.

5. All marketing entities of foreign UCITS, are obliged to submit a quarterly statistical statement referred to in CNMV Circular 2/2017.

The marketing of UCITS also falls under general regulatory provisions regarding conduct of business rules applicable to the provision of (MiFID) investment services by firms (UCITS management companies and investment firms and banks).

The most relevant regulations derive from the Securities Market Act ([English text](#)) hereinafter, LMV – Ley del Mercado de Valores (in [Spanish](#)), specifically in Title VII – Conduct of Business Rules and its supplementing regulation.

Summary of the marketing requirements for AIFs

(a) notification and prior approval of marketing;

Law 35/2003 on CIS and Law 22/2014 on private equity were amended transposing the cross-border marketing Directive. Please note that CNMV Circular 2/2011 will undergo an amendment process to adapt to the cross-border marketing Directive and Regulation.

Marketing to professional investors with a passport of an EU AIF managed by an EU AIFM: Article 15 bis of Law 35/2003 on CIS or Article 79 of Law 22/2014 on private equity.

Marketing of AIF to retail investors and marketing of:

- non-EU AIFs managed by an EU AIFM or
- AIFs managed by a non-EU AIFM

is subject to prior authorisation from the CNMV, in accordance with the regime established in Articles 15 ter, quater and 15 quinquies of Law 35/2003 on CIS or Articles 77, 78 and 79 of Law 22/2014 on private equity, which establish the requirements that must be accredited.

The CNMV may require a legal opinion from an independent expert to confirm compliance with all requirements and for the corresponding supervisor to confirm the equivalent treatment of Spanish CISs in the corresponding home country.

In addition, a manager of an AIF may engage in pre-marketing according to the Regulation (EU) 2019/1156

(b) notification and prior approval of marketing communications;

Regarding the format and content of marketing material is the same as that mentioned for UCITS in the previous section.

In relation to marketing material, we do not register it prior the commencement of marketing.

(c) marketing to retail or to professional investors;

Please refer to section a) above.

- (d) **additional requirements applicable in particular to the marketing of certain categories of AIFs that exist under national law (e.g. private equity or real estate AIFs);**

Please refer to section a) above.

- (e) **any other requirements for the marketing of AIFs that the competent authority considers appropriate.**

All marketing entities of foreign AIFs are obliged to submit a quarterly statistical statement referred to in Circular 2/2017.

AIFs must identify the entity charged with representing them before the CNMV for statistical purposes. This entity must report the registrations and de-registrations of entities marketing the AIFs in Spain.

The marketing of AIFs also falls under general regulatory provisions regarding conduct of business rules. Please refer to letter b) above regarding UCITS.