

National rules for marketing of units of UCITS units/shares in Hungary and other specific national regulations related to the notification procedure

By Subsection (5) - (6) of Section 119. of Act XVI. on 2014 on collective investment forms and its managers, and on the amendment of financial laws

15 March, 2014

Main legislation:

DIRECTIVE 2009/65/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (**UCITS IV Directive**)

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:302:0032:0096:en:PDF>

COMMISSION DIRECTIVE 2010/42/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards certain provisions concerning fund mergers, master-feeder structures and notification procedure (**Directive 2010/42/EU**)

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:176:0028:0041:en:PDF>

COMMISSION REGULATION (EU) No 584/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards the form and content of the standard notification letter and UCITS attestation, the use of electronic communication between competent authorities for the purpose of notification, and procedures for on-the-spot verifications and investigations and the exchange of information between competent authorities (**Regulation 584/2010/EU**)

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:176:0016:0027:en:PDF>

Act XVI. of 2014 on collective investment forms and its managers and on the amendment of financial laws (**Kbftv.**)

<http://jab.complex.hu/doc.php?docid=WKHU-QJ-XML-000000A1400016TV&hely=291>

I. The notification procedure

UCITS' shall mean:

- a) publicly available open-ended investment funds which comply with the provisions set out in the government decree adopted by authorization of this Act on the investment and borrowing policies of investment funds pertaining to UCITS, or
- b) publicly available open-ended collective investment trusts created upon the national transposition of the provisions of the UCITS Directive into the laws of another EEA Member State;

In notification procedure the competent authority of UCITS home EEA member state notifies the Central Bank of Hungary (**CBH**) in order to marketing the shares/units of UCITS in Hungary.

This document is intended to help the notification procedure of units/shares of UCITS authorized in another EEA member state.

In notification procedure the UCITS shall proceed in accordance with national law of home member state – which is in accordance with UCITS IV Directive and Directive 2010/44/EU - and 584/2010/EU regulation.

If a UCITS proposes to market its units in a Member State other than its home Member State, it shall first submit a notification letter to the competent authorities of its home Member State. (Subsection 1 of Article 93 of UCITS IV Directive)

The notification letter shall include information on arrangements made for marketing units of the UCITS in Hungary, including, where relevant, in respect of share classes. In the context of Article 16(1), it shall include an indication that the UCITS is marketed by the management company that manages the UCITS. (Subsection 1 of Article 93 of UCITS IV Directive)

A UCITS shall enclose with the notification letter the latest version of the following (Subsection 2 of Article 93 of UCITS IV Directive):

- its fund rules or its instruments of incorporation translated in Hungarian or English,
- its prospectus and translated in Hungarian or English,
- where appropriate, its latest annual report and any subsequent half-yearly report translated in Hungarian or English; and
- its key investor information translated in Hungarian.

The competent authorities of the UCITS home Member State shall verify whether the documentation submitted complete (Subsection 3 of Article 93 of UCITS IV Directive).

The competent authorities of the UCITS home Member State shall transmit the complete documentation to CBH, no later than 10 working days of the date of receipt of the notification letter accompanied by the complete documentation. They shall enclose with the documentation an attestation that the UCITS fulfils the conditions imposed by UCITS IV Directive (Subsection 3 of Article 93 of UCITS IV Directive).

Competent authorities of the UCITS home Member State shall transmit the complete documentation to CBH by e-mail. Any attachment to the notification letter as specified in Annex I of Regulation 584/2010/EU shall be listed in the e-mail and shall be provided in a format in common use that is capable of being viewed and printed (Subsection 1 of Article 4 of Regulation 584/2010/EU)

The transmission of the complete documentation shall not be considered as having taken place only in any of the following cases:

(a) a document that has to be transmitted is missing, incomplete or is in a format that is not capable of being viewed and printed,

(b) the competent authorities of the UCITS home Member State do not use the e-mail address designated by CBH,

(c) the competent authorities of the UCITS home Member State have failed to transmit the complete documentation as a result of a technical failure in their electronic system (Subsection 2 of Article 4 of Regulation 584/2010/EU).

Upon the transmission of the documentation, the competent authorities of the UCITS home Member State shall immediately notify the UCITS about the transmission. The UCITS may access the market of Hungary as from the date of that notification (Subsection 3 of Article 93 of UCITS IV Directive).

Competent authorities of the UCITS home Member State shall ensure that the transmission of the complete documentation as referred to in Article 93(3) of Directive 2009/65/EC has taken place before they notify the UCITS about the transmission (Subsection 3 of Article 4 of Regulation 584/2010/EU).

If the competent authorities of the UCITS home Member State are informed or become aware that the transmission of the complete documentation has not taken place, they shall immediately take steps to transmit the complete documentation (Subsection 4 of Article 4 of Regulation 584/2010/EU).

When the competent authorities of a Member State in which a UCITS proposes to market its units receive the documentation to be transmitted to them pursuant to Article 93(3) of Directive 2009/65/EC, they shall confirm to the competent authorities of the UCITS home Member State as soon as possible, but no later than five working days from the date of the receipt of such documentation whether or not:

(a) all attachments which have to be listed in accordance with Article 4(1) of this Regulation have been received; and

(b) the documentation which have to be transmitted to them can be viewed or printed.

The confirmation may be sent by e-mail to the competent authorities of the UCITS home Member State, using the address designated pursuant to Article 3(1) unless the relevant competent authorities have agreed on a more sophisticated method for the acknowledgement of receipt (Subsection 1 of Article 5 of Regulation 584/2010/EU).

Where the competent authorities of the UCITS home Member State have not received confirmation from the competent authorities of a Member State in which the UCITS proposes to market its units within the time limits specified in paragraph 1, they shall contact the competent authorities of the Member State in which the UCITS proposes to market its units and verify that the transmission of the complete documentation has taken place (Subsection 2 of Article 5 of Regulation 584/2010/EU).

II. Regulation of Hungarian marketing of units of UCITS

a) The definition of the term ‘marketing of units of UCITS’ or the equivalent legal term either as stated in national legislation or as developed in practice

Continuous marketing of investment units shall mean an operation where the investment units of an open-ended collective investment form are continuously offered and redeemed in the name of the collective investment form (Point 40. Subsection 1 of Article 4 of Kbfvtv.).

b) Requirements for the contents, format and manner of presentation of marketing communications, including all compulsory warnings and restrictions on the use of certain words or phrases

Commercial communication shall mean any form of communication - with the exception of prospectuses, management policies and public notices - made for the purposes of informing investors, and directly connected to information conveyed in advertising or by some other means in connection with the public offering of collective investment instruments (Point. 55. Subsection 1 of Article 4 of Kbfvtv);

The name of the investment fund or the UCITS, their prospectus, management policy, public notices or commercial communications may contain any reference for guarantee to protect the capital invested (capital guarantee) and may undertake to guarantee the earnings (yield guarantee), where the yield guarantee can be redeemed in due time relative to the nature of the commitment and if covered by sufficient bank guarantee granted by a credit institute, or some other comparable guarantee. The yield guarantee incorporates a guarantee to preserve the capital invested, lacking any specific reference thereto (Subsection 1 of Article 25 of Kbfvtv)

The name of the investment fund or the UCITS, their prospectus, management policy, public notices or commercial communications may contain any reference for a pledge to protect the capital invested (capital protection) and may undertake to guarantee the earnings (yield protection), where the yield and capital protection is supported by an adequate investment policy pertaining to assets made available within a collective investment trust. The yield promise incorporates a pledge to preserve the capital invested, lacking any specific reference thereto (Subsection 2 of Article 25 of Kbfvtv)

Selection of investors by drawing among investors having subscribed investment units in the marketing process is prohibited, as well as the publication of any information to that effect in the documents referred to in Subsections (2) and (4) and in the investment fund’s commercial communication (Subsection 5 of Article 103 of Kbfvtv.)

Where an investment fund replicates a specific index, its prospectus and, where necessary, marketing communications shall include a prominent statement drawing attention to that fact (Subsection 4 of Article 129 of Kbfvtv.).

Where the net asset value of an investment fund is likely to have a high volatility due to its portfolio composition or the portfolio management techniques that may be used, its prospectus and, where necessary, marketing communications shall include a prominent statement drawing attention to that characteristic (Subsection 5 of Article 129 of Kbfvtv.).

All marketing communications to investors shall be fair, clear and not misleading, and shall make no statement that contradicts or diminishes the significance of the information contained in the prospectus and the key investor information. Marketing communications shall indicate that a prospectus exists and that the key investor information relating to the marketing and distribution of investment units is available. It shall specify where the prospectus and such marketing communications may be obtained by investors, and in which language they may obtain them in the case of collective investment trusts established in other EEA Member States (Subsection 1 of Article 137 of Kbfv.).

The Authority may ban the publication of a marketing communications if it contains any information that is in contrast with the draft version of the prospectus submitted and approved for publication, as well as any information that is misleading, or that falls within the scope of the Act XLVII of 2008 on the Prohibition of Unfair Business-to-Consumer Commercial Practices (UCPA) (Subsection 2 of Article 137 of Kbfv.).

In addition the relevant articles of following acts shall be also applied:

- UCPA (http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A0800047.TV)
- Act XLVIII of 2008 on the Basic Requirements and Certain Restrictions of Commercial Advertising Activities (http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A0800048.TV)
- Act LVII of 1996 on the Prohibition of Unfair Trading Practices and Unfair Competition (http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99600057.TV)

c) Details of any additional information required to be disclosed to investors

Where a UCITS authorized in another EEA Member State markets or distributes its collective investment instruments in Hungary, such UCITS must comply with the provisions of its home Member State, with the proviso that it shall provide to investors within the territory of Hungary all information and documents which it is required to provide to investors in the UCITS home Member State. Key investor information shall be made available in Hungarian; other information and documents shall be provided, at the choice of the UCITS, in Hungarian or translated into the language approved by the Authority, or into a language customary in the sphere of international finance (it's English by the Decree No. 28/2013 of CBH). Key investor information shall be provided at the investors' request at the time of conclusion of the contract free of charge and in writing (Subsection 1 of Article 119 of Kbfv.).

The abovementioned requirements shall also be applicable to any changes to the information and documents referred therein (Subsection 2 of Article 119 of Kbfv.).

d) Details of any exemptions from rules or requirements governing arrangements made for marketing applicable in Hungary for certain UCITS, certain share classes of UCITS or certain categories of investors

Following the notification procedure performed by the UCITS home Member State covering the adequacy of arrangements made for marketing, the UCITS shall send to the Authority before the commencement of marketing operations the distribution agreement between the UCITS and the distributor, where marketing is carried out by a contractor other than the investment fund management company. If an intermediary established in Hungary is also involved, the contract with such intermediary shall also be submitted. In the absence of a

distributor established in Hungary, an intermediary established in Hungary must be involved (Subsection 3 of Article 119 of Kbtv.).

e) Requirements for any reporting or transmission of information to CBH, and the procedure for lodging updated versions of required documents

In the event of a change in the information regarding the arrangements made for marketing communicated in the notification letter, or a change regarding share classes to be marketed, the UCITS shall give written notice thereof to CBH before implementing the change. The UCITS shall notify any amendments to the documents referred in point b) of Subfund 1 of Article 117 of Kbtv (UCITS fund rules or its instruments of incorporation, its prospectus and, where appropriate, its latest annual report, subsequent half-yearly report and the key investor information) to CBH and shall indicate where those documents can be obtained electronically (Subsection 4 of Article 119. of Kbtv.)

The notification in connection with the changes in information can be sent to the CBH in a form of a hard copy or in electronic form – via UCITS@mnf.hu e-mail address.

f) Requirements for any fees or other sums to be paid to CBH, either when marketing commences or periodically thereafter

There is no requirement for any fees or other sums to be paid.

g) Requirements in relation to the facilities to be made available to unit-holders as required by Article 92 of Directive 2009/65/EC

Based on point c) the UCITS shall comply with requirements of home member state concerning the arrangements for making payments to investors, repurchasing or redeeming collective investment instruments and making available information concerning the UCITS, in addition UCITS shall provide all information and document for investors in Hungary which shall be provided in the home member state.

h) Conditions for the termination of marketing of units of UCITS in Hungary by a UCITS authorized in another Member State

In the event of termination of marketing of units of UCITS the relevant regulation of home member state shall be applied.

In the event of marketing of shares of UCITS is authorized in another EEA member state can be terminated only in Hungary – taking into consideration that relevant regulation does not exist in Hungary by the opinion of CBH - if UCITS shall make sure that Hungarian investor does not own units/shares, otherwise the requirements of redemption shall be provided.

In the event of a change in the information regarding the arrangements made for marketing, or a change regarding share classes to be marketed, the UCITS shall give written notice thereof to the CBH before implementing the change. Taking into consideration that CBH registers

securities series, the notification of termination marketing in Hungary shall performed by security series. The notification of termination marketing in Hungary can be sent to CBH in a form of a hard copy or in electronic form – via UCITS@mnb.hu e-mail address.

i) Detailed contents of the information required in Part B of the notification letter as referred to in Article 1 of Regulation 584/2010/EU

Information contained by Annex I of Regulation 584/2010/EU and the following additional information shall be disclosed:

- Name and head office of the distributor who manages marketing and redemption of units (cross border service notification is mandatory via single.passport@mnb.hu e-mail address in case of distributor is not established in Hungary)
- Name and head office of Hungarian intermediary (In the absence of a distributor established in Hungary, an intermediary established in Hungary must be involved)
- An indication of where the net asset value, redemption price, latest prospectus and financial statements (e.g annual report) and other relevant documents, agreements and public notices concerning UCITS planned to distribute in Hungary on display may be inspected.

j) The e-mail address designated for the purpose of notification

UCITS@mnb.hu