

AIFMD / UCITS IV

Where are we now?

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AIFMD / UCITS IV – Where are we now?

Order of the day.



1. Introduction

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2. UCITS IV – What Next?

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3. Redomiciliation of Funds to Ireland

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4. Alternative Investment Fund Managers Directive – Where are we now?

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UCITS IV What is the Way Forward?



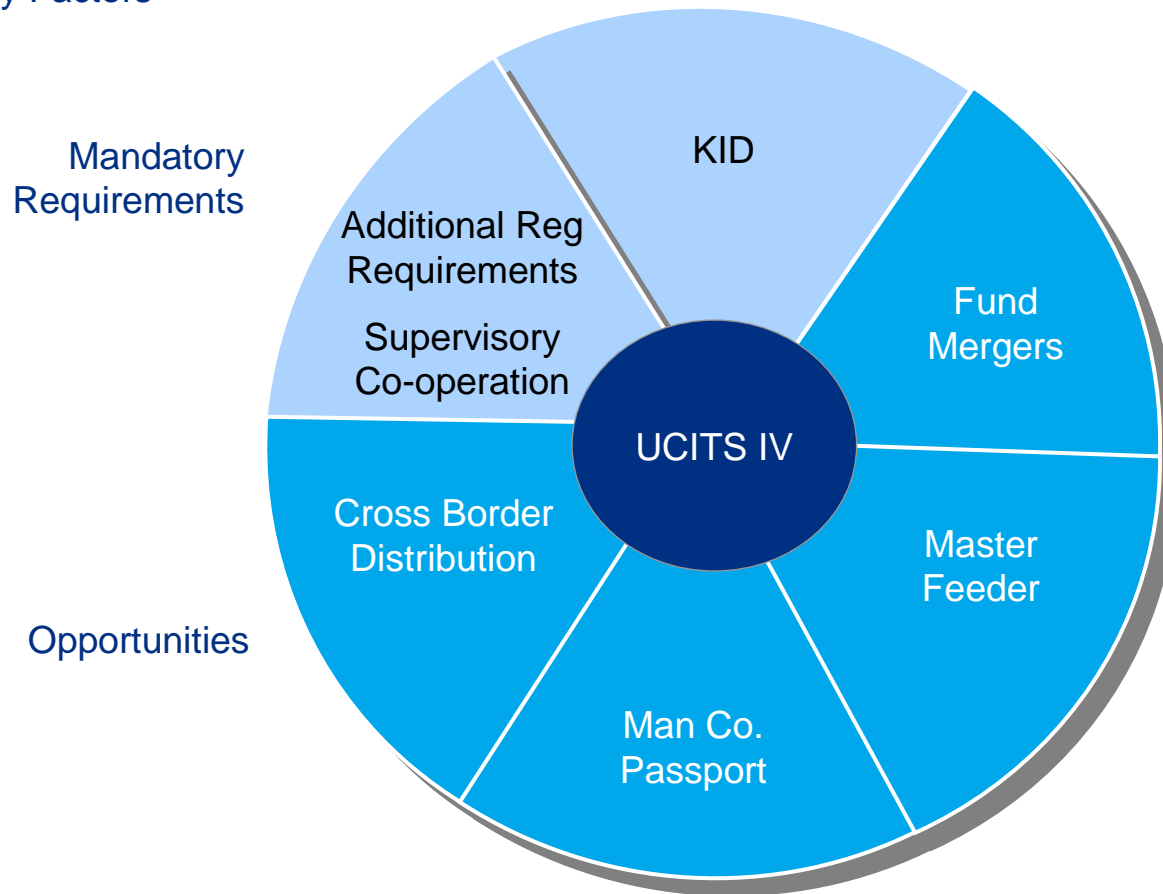
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UCITS IV

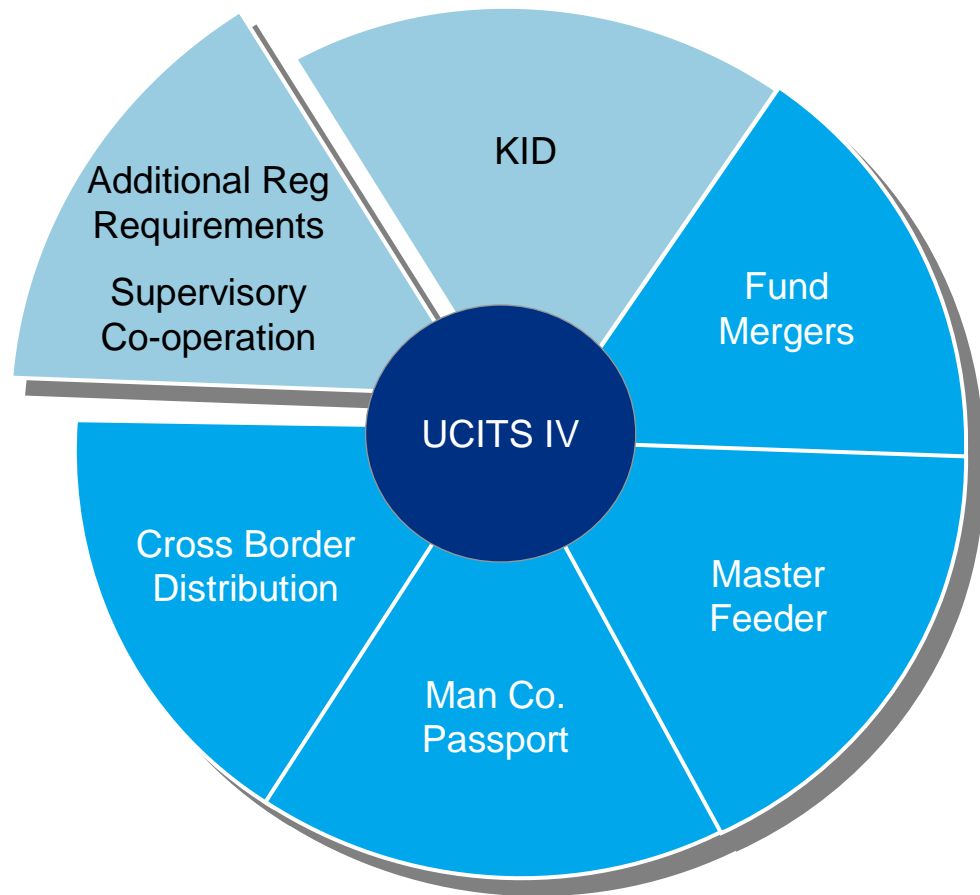
Overview.

UCITS IV Key Factors



UCITS IV – Mandatory Requirements

Additional Regulatory Requirements for Management Companies.



Man Co: Regulatory Requirements

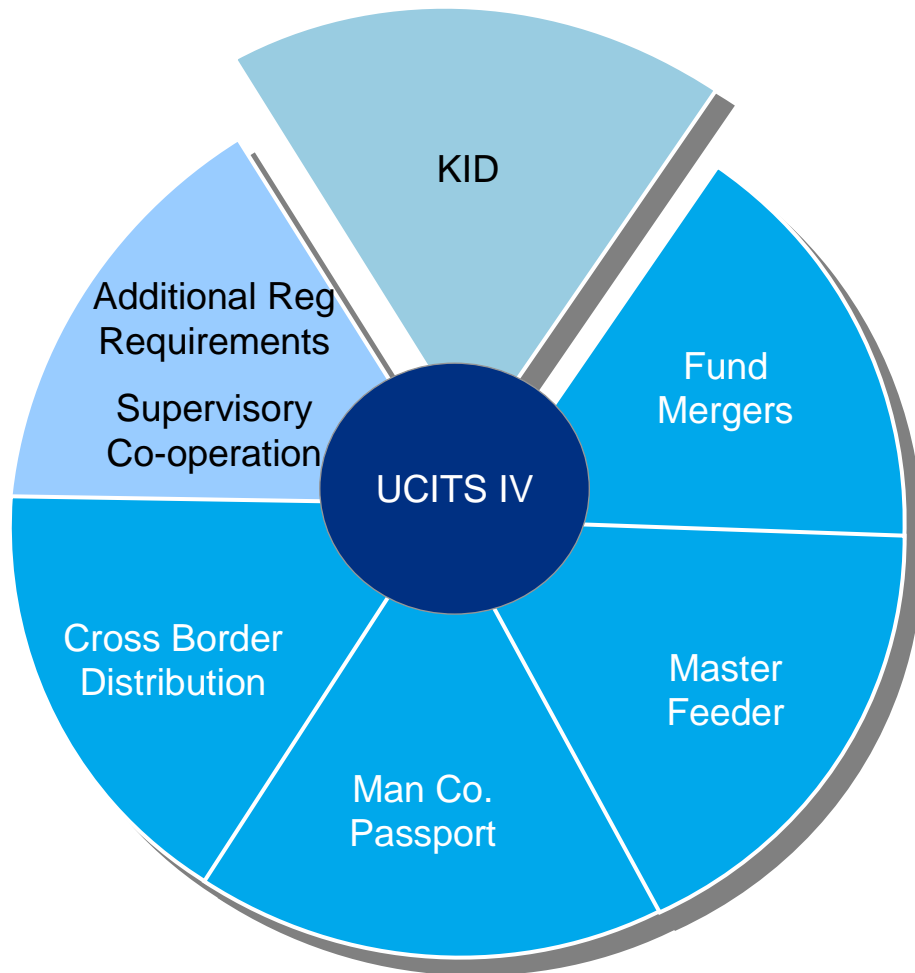
- Minimum Regulatory requirements for all Management Companies/Self Managed UCITS
 - Organisational requirements and conflicts of interest
 - Rules of Conduct
 - Risk management
- MiFID Alignment
- Compliance and Internal Audit Functions
- Duty to act in the best interests of investors
- Performing due-diligence when delegating activities to a third-party

Competent Supervisory Authorities

- Co-operation between supervisory authorities is key
- Provision for strengthening this co-operation is included

UCITS IV – Mandatory Requirements (Cont'd)

Key Information Document – the new Simplified Prospectus.

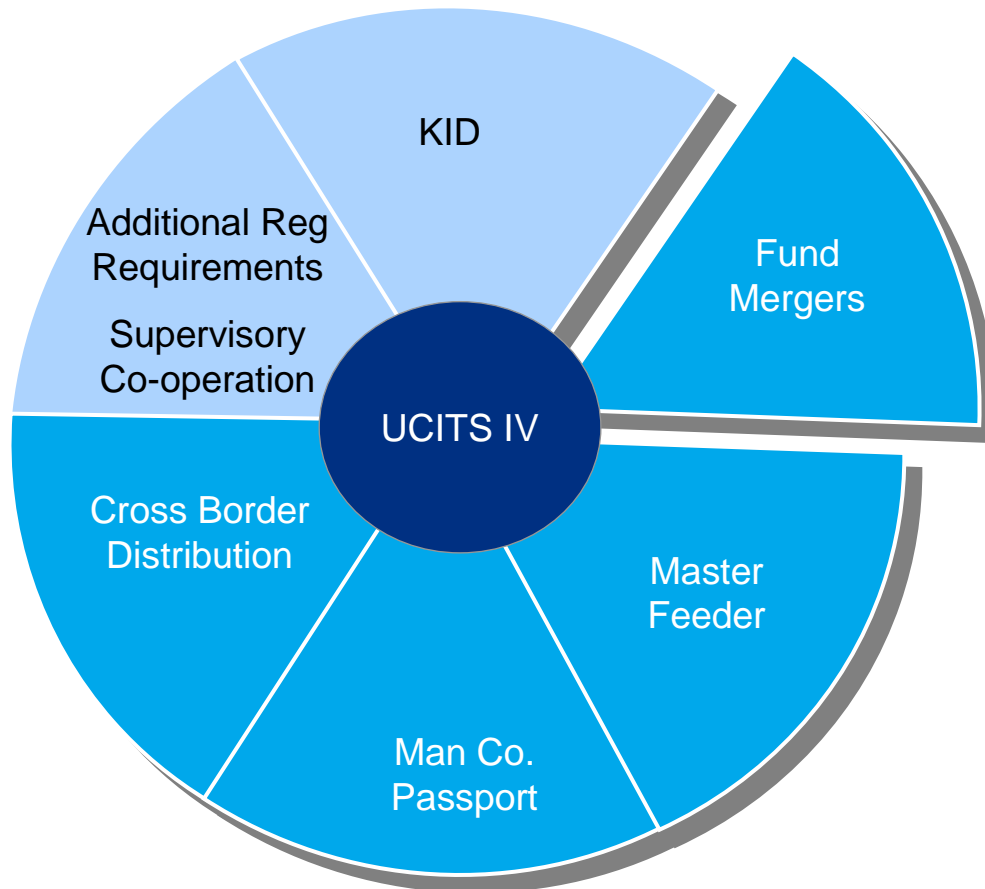


KID: Regulatory Requirements

- Fair, clear, understandable, brief
- Sub Fund and Share Class level
- Strategy and objectives – simple and easily understandable
- Past Performance
 - Bar chart
 - Percentages
 - Up to 10 years
- Charges
- Risk and Reward Disclosure
 - Synthetic
 - Narrative
 - Length is limited – 2 sides of A4 (3 for complex funds)
 - 12-month grandfathering period for existing funds

UCITS IV – Opportunities

Fund Mergers.



Requirements

- Merger Document
- Regulatory Approval
- Shareholder Voting
- Post Approval

Opportunities

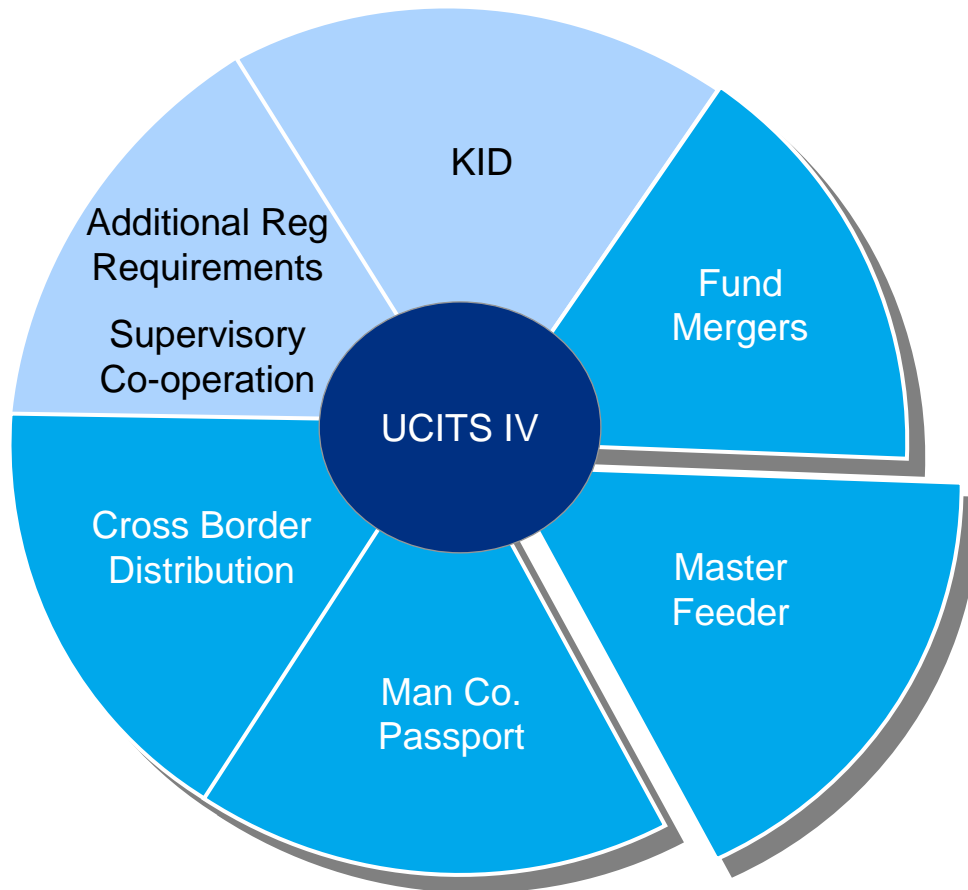
- Consolidation
- Reduction in TER's
- Potential tax benefits.
- Larger Asset pools e.g. White Labelling
- Revenue opportunity e.g. Securities Finance

Issues to be Considered

- Costs
- Tax – Investors and Management Companies
- Investors right to redeem/exchange
- Investor Voting
- National investor preference considerations
- Independent auditor or custodian must validate the criteria for valuation

UCITS IV – Opportunities (Cont'd)

Master/Feeder Structures: Expanding avenues for distribution.



Requirements

- Feeder investment provisions
- Feeder approval
- Master/Feeder detailed agreements
- Regulatory notifications
- Fund conversions

Opportunities

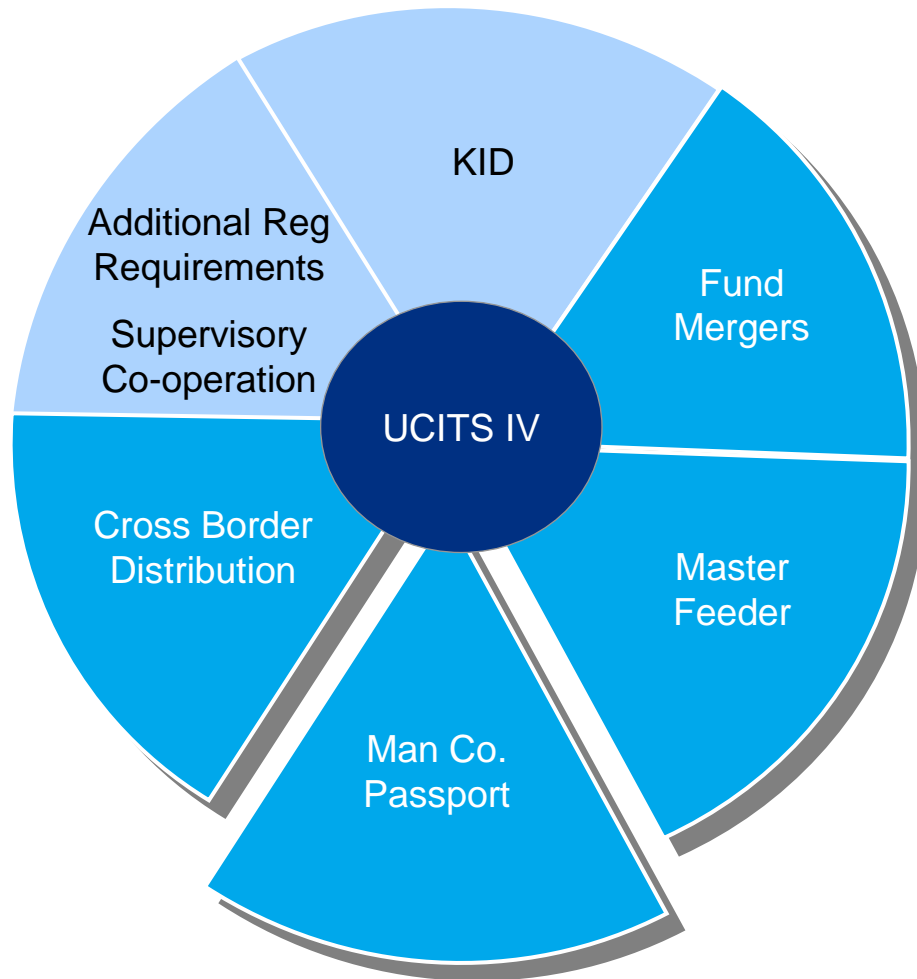
- Enhanced distribution channels
- Overcoming cultural preferences
- Potential reduction in TERs
- Potential tax benefits/tax treaties
- Larger Asset pools

Issues to be Considered

- Tax implications – funds/investors
- Valuation point co-ordination
- Managing multiple service providers
- Managing and mitigating the risk of market timing activities
- Enhanced role of the Master Depository

UCITS IV – Opportunities (Cont'd)

Management Companies – Centralisation?



Requirements

- Home/Host Regulator notification
- Home/Host Regulator management
- UCITS/Depository agreement

Opportunities

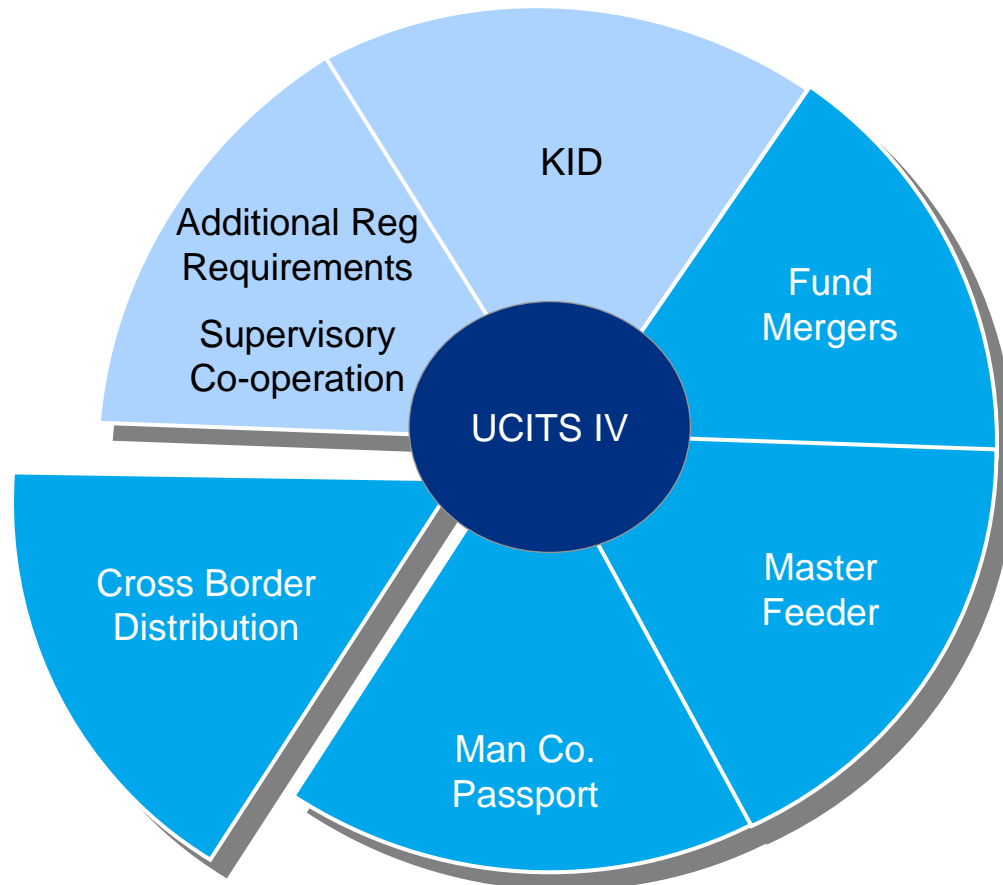
- Significant opportunity for cost reduction
- Potential reductions in capital requirements
- Potential tax benefits

Issues to be Considered

- Tax implications of changing management company
- Transfer pricing arrangements
- Requirement to comply with rules of UCITS Home member state
- Reporting requirements to UCITS Home Regulator
- Information flow with the UCITS depository
- Risk management and compliance services
- Establishing a branch – local paying agent/correspondent bank requirements

UCITS IV – Opportunities (Cont'd)

Cross border distribution – Improved time to market.



Requirements

- Simplified notification procedure – competent authority
- KID translation

Opportunities

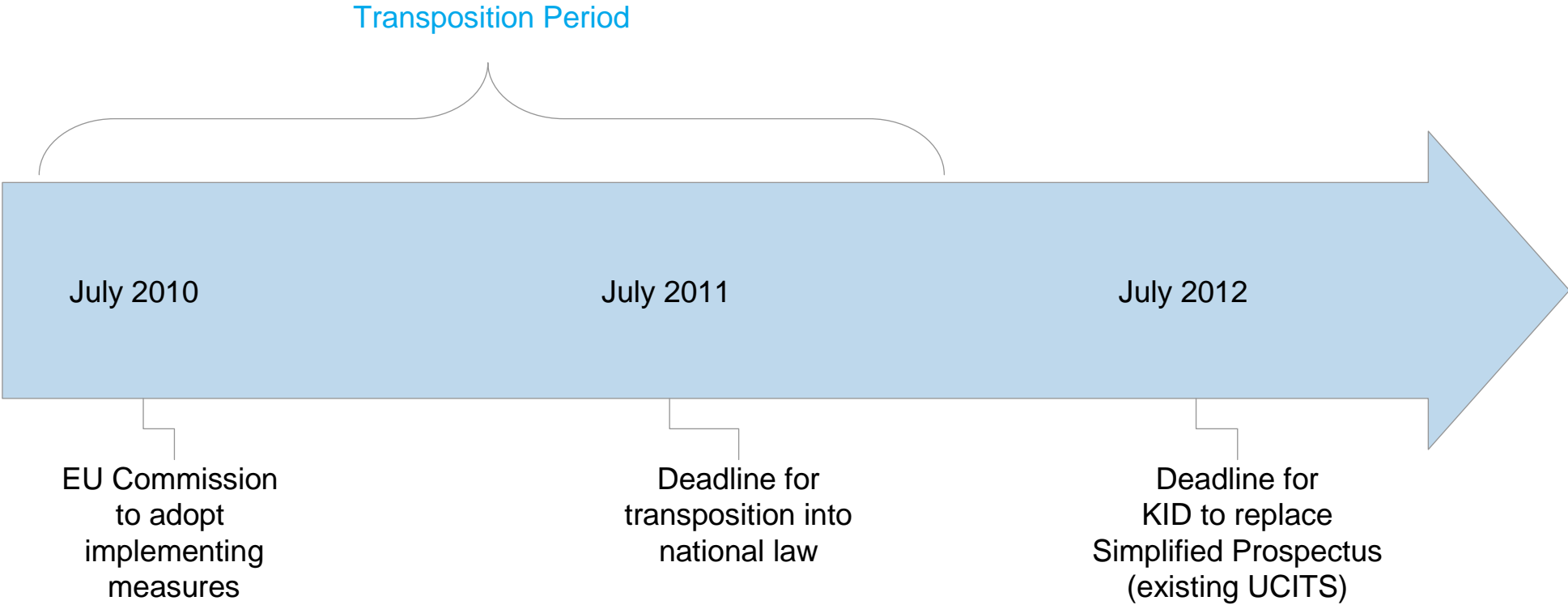
- New Avenues for distribution
- Growth in AUM
- Reduced Cost
- Reduced time to market (10 days)
- Less “red tape” – regulator to regulator notification

Issues to be Considered

- Website
- Local marketing requirements
- Translation

UCITS IV

Timeline.



Redomiciliation of Funds to Ireland



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Redomiciliation of Funds to Ireland

A new straightforward process?

Overview

- Legislation passed on 23 December 2009
- New Act provides for the efficient re-domiciling of funds to Ireland
- Previously incorporation of a new fund was required
- New provisions recognise the existing corporate entity

Key Advantages

- No requirement to transfer assets between funds
- Continuity of contractual arrangements
- Co-ordination between Financial Regulator and Irish Companies Registration Office
- No requirement for a shareholder meeting in Ireland

Redomiciliation of Funds to Ireland (Cont'd)

What steps must you take?

- A shareholder meeting must be convened in the jurisdiction from which the company seeks to move
- Memorandum and Articles of Association to be amended to conform to Irish requirements
- Promoter and Investment Manager must be approved by the Irish Financial Regulator
- Application to Companies Registration Office
- Solvency declaration by Director
- Co-ordination between the Irish Financial Regulator and the CRO
- Once registered in Ireland the Company must de-register in its original home domicile

Additional Tax Developments

Facilitating the process.

- Irish Finance Act 2010
- Example of foreign fund managed by an Irish UCITS IV management company
- Stamp duty relief
- Removal of uncertainty

Alternative Investment Fund Managers Directive Where Are We Now?



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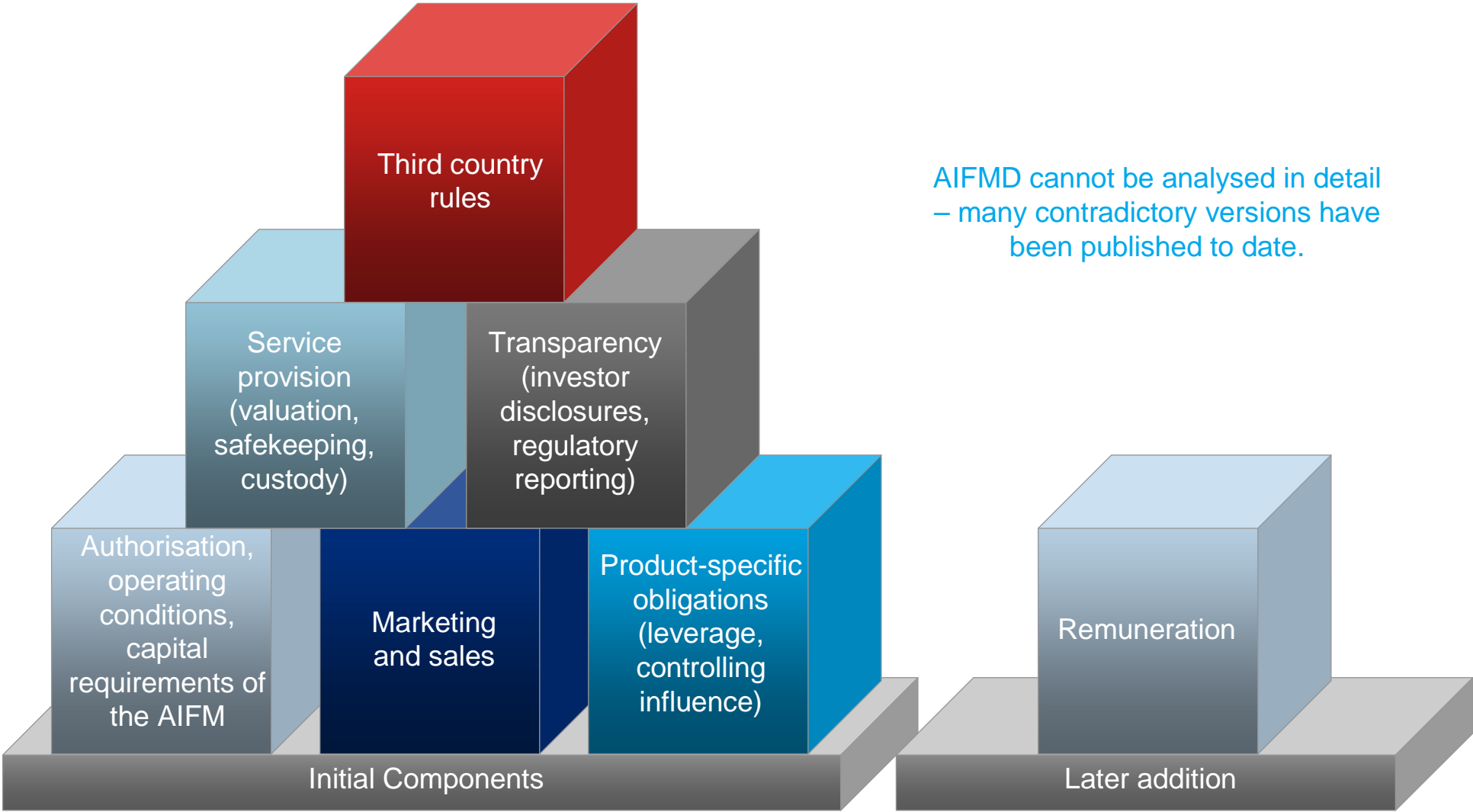
AIFMD – Key Considerations

- What are the key Directive goals?
 - Establish a EU framework to monitor and supervise risks that AIFMs pose to investors, counterparties, market participants and financial stability
 - Permit AIFMs to provide services across the internal market
 - Establish a EU product passport for AIFs
- Why it is the Directive so important?
 - Any non-UCITS product in scope (minor exceptions)
 - Changes the way AIFs are managed, administered, sold
 - It sets minimum standards also for the UCITS industry
- What are the possible consequences? (What is the worst case scenario?)
 - Non-EU funds banned from sale in Europe
 - EU AIFMs prevented from managing non-EU funds
 - Depositaries may consider exiting the market

AIFMD – State of Play

- So far ...
 - Draft AIFM directive (April 2009) still the reference text
 - One European Parliament's rapporteur's report (November 2009)
 - Multiple Swedish and Spanish Presidency compromise proposals
- Where are we now?
 - More than 1,600 amendments tabled by MEPs (including proposals to reject the directive)
 - AIFMD discussions taken off the 16 March 2010 ECOFIN agenda due to lack of consensus
- Next steps ...
 - 12 April 2010: Expected vote of the EP ECON Committee (may be delayed to 27 April 2010)
 - May and June: Trialogue between EP, EC and Council
 - July 2010: EP vote in plenary, and following that Council approval

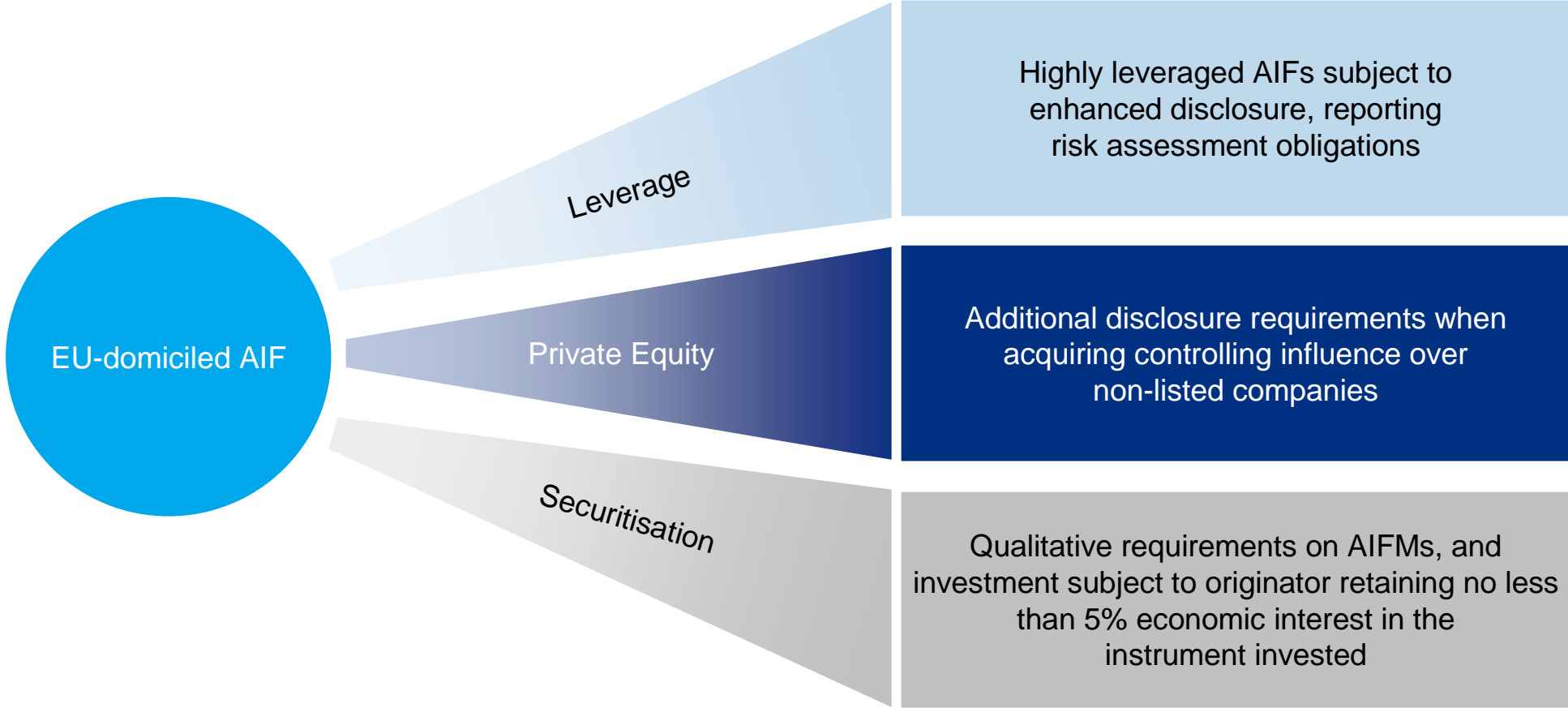
AIFMD – Building Blocks



AIFMD – Manager Rules

- Any AIFM providing it is domiciled in the EC should
 - Be authorised (two months approval process in the initial draft)
 - Comply with conduct of business rules (MiFID or UCITS IV – like)
 - Employ risk management and liquidity management systems
- Minimum capital requirements of 125k Euros
 - Additional capital may be required on the basis of the assets managed
- AIFMs shall introduce remuneration policies and practices, which
 - Are consistent with sound and effective risk management
 - Do not encourage risk-taking in a manner not consistent with the risk profile of the AIF

AIFMD – Product Rules (Investment Side)



AIFMD – Product Rules (Distribution Side)

- AIFs authorised in the EU can be freely sold (EU passport) to EU professional investors
 - Notification process in line with UCITS IV provisions
 - Retail sale allowed but no passport rights apply
- Initial draft: Non-EU-domiciled funds prevented from sale in the EU
 - Approval granted at Member State level only (no passport)
 - Approval subject to third country's signature of an OECD Model Tax convention with the concerned Member State
 - Approval subject to satisfactory depositary (safekeeping and custody) arrangements
- Most recent proposals: Non-EU-domiciled funds may benefit from grandfathering rules
 - Applicable for 3–5 years
 - Only for funds already sold in the EU

AIFMD – Valuation and Portfolio Management

- Independent valuation

- Initial requirement: Appointment of an “independent valuator”. The production of the NAV is however the AIFM’s responsibility
- EP rapporteur’s version: No need for the manager to appoint an independent valuator, but the depositary is co-responsible for the NAV production process
- Latest versions: AIFM fully responsible for the NAV production (function can be outsourced or retained in-house). Independence can be functional

- Portfolio management

- No delegation to conflicted service providers (e.g. depositary)
- Initial draft: Delegation allowed only to other AIFMs
- Later drafts: Delegation allowed to authorised and regulated institutions
- Later drafts: If the delegated manager is non-EU domiciled, delegation allowed only if co-operation arrangements exist between concerned regulators

AIFMD – Depositary Appointment

- Initial rules
 - Depositary must be a EU credit institution
 - Depositary delegations (including: Custody) only to other Depositaries
 - Result: AIFs prevented from investing on non-EU basis
 - Additional depositary tasks unclearly defined
- Later drafts
 - Eligibility criteria for depositaries relaxed
 - Custody delegation allowed
 - Confusion still reigns on the definition of depositary tasks

AIFMD – Depository Liability (in a Nutshell)



- Responsible for any losses
 - Caused by its “failure to perform its obligations”
 - Liability discharge subject to reversal of burden of proof
 - Must prove it “could not have avoided the loss”
- Liability not affected by any delegation
- Probably the most debated issue for asset managers

AIFMD – Depository Rules, Possible Scenarios

- **Worst case: Initial AIFMD remains unaltered**
 - Custody delegation impossible on a cross border basis
 - Some depositaries exit the market (too risky)
 - Remaining depositaries subject to unbearable systemic risk
 - Alternative funds market, and by consequence UCITS market, disrupted/closed
- **Best case**
 - UCITS rules taken as example
 - Recognition that depositaries may not be held liable for acts/event beyond their direct control
 - CESR called to define level 2 and level 3 rules
- **Other scenarios**
 - Anything too different from best case scenario could be business disruptive

AIFMD – Conclusions

- Positive points
 - ▲ Establishment of EU product and management passports
 - ▲ Possibility to create an alter-UCITS global brand for sophisticated investors
 - ▲ Creation of an EU harmonised framework
- Negative points
 - ▼ Debate initiated, and influenced, by political agenda
 - ▼ Too poorly drafted at the origin, the regulatory initiative has been left to the EP
 - ▼ Problematic lawmaking process so far, no space for thought discussions
 - ▼ Potentially disruptive also from a systemic point of view
- What can we expect in the future?
 - Prepare for the worst
 - If you are a EU manager, review own internal organisation in line with CESR's MCP advice
 - If you are a non-EU promoter, consider onshoring funds and establishing EU regulated subsidiary

Concluding Comments

- How much of an impact will AIFMD and UCITS IV have on our industry?
- UCITS IV – A major step forward, but a clear strategy is required
- Redomiciliation – Opportunities abound, but complex, strategic decisions are required

Questions and Contacts

If you have any questions or would like to talk further please contact one of our experts.



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