



SPAIN: A GUIDE TO INTERNATIONAL FUND DISTRIBUTION

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ABOUT

IRISH FUNDS

Established in 1991 the Irish Funds Industry Association (Irish Funds) is the representative body of the international investment fund community in Ireland. We represent the fund promoters / managers, administrators, custodians, transfer agents and professional advisory firms involved in the international funds industry in Ireland, with more than 13,500 funds and net assets of more than €4 trillion. The objective of Irish Funds is to support and complement the development of the international funds industry in Ireland, ensuring it

continues to be the location of choice for the domiciling and servicing of investment funds. Through its work with governmental and industry committees and working groups, Irish Funds contributes to and influences the development of Ireland's regulatory and legislative framework. Irish Funds is also involved in defining market practice through the development of policy and guidance papers and the promotion of industry-specific training.

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MARKET OVERVIEW

Spain accounts for 2.1% of combined European net assets (UCITS and AIFs).

According to Inverco (Spanish Association of Mutual & Pension Funds) 40% of Spanish savings are invested in deposits, while 13% are in Mutual Funds. The number of funds registered in total is around 14,000.

The Spanish fund industry (excluding pension assets) currently stands at €394bn, which represents a 2016 increase of €21.1bn (5.7%). Together with inflows registered in previous years this represents an increase of more than €190bn since 2012. The total volume of investments by foreign UCITS marketed in Spain has been expanding since 2012.

INVERCO data (as of 31 December 2016) splits funds promoted in Spain into four categories:

- Local funds, which are mainly retail. (€235bn).
- Foreign funds, of which around 60% are retail and 40% are institutional (€125bn).
- SICAVs, which are mainly institutional (€33.5bn).
- Pension funds, which are mainly institutional (€106.8bn). Investments in private pension plans are at a standstill. There was net growth of just 2.3% during 2016 and this was mainly due to positive mark-to-market impacts.

The banking sector currently sees asset management and fund distribution as an opportunity to recover some of the profitability lost following the financial crisis.

MAIN PLAYERS IN THE SPANISH MARKET

The main players in Spain are the asset management divisions of the most important Spanish Banks:

- La Caixa
- BBVA
- Santander
- Bankia
- Sabadell

Foreign Groups:

- Blackrock (including ETFs)
- JP Morgan
- Fidelity
- Nordea
- Invesco

Conservative products, with low risk (fixed income, guaranteed funds) are the leading asset class among Spanish retail investors followed by mixed assets. Investment in Fixed Income products accounts for 58.3% of the market.

Fund of funds have boomed during the last 2 years while third-party fund penetration into fund of funds remains the highest in Europe. This is because Spanish banks typically offer their retail customers a range of in-house funds that invest in third-party funds as an alternative to deposits.

(Market Overview source: Accelerando Report 2015)

KEY DISTRIBUTION CHANNELS



BANKS

Around 90% of the distribution of retail funds is channelled through banks (this includes savings institutions ("cajas"), many of which have become banks through consolidation).



INSURANCE COMPANIES

Insurance companies (not controlled by banks) have a share of around 3%.



EAFI

The independent financial advisory (EAFI) channel is the 2nd most popular distribution channel with a share of around 5%.



ROBO SPACE

The robo space is much less crowded in Spain than in other European markets. Banks and D2C platforms have not yet developed robo solutions and banks are not focussing on automation while they run successful investment advisory units.

DISTRIBUTING UCITS IN SPAIN

Collective investment in Spain is carried out by means of two different types of schemes, depending on the nature of the commitment assumed by the relevant investors:

- a) open-ended schemes, which allow investors to apply for the redemption of their shares/units at any time, or at short notice;

and

- b) closed-ended schemes, where the investor assumes an irrevocable commitment and may not apply for redemption until a certain deadline.

The regulation of these two categories in Spain has undergone a change, driven principally by two EU Directives and their transposition into Spanish Law: the UCITS Directive, implemented in Spain by means of Law 31/2011, which amended Law 35/2003, of 4 November, on Collective Investment Schemes (CIS Law); and the AIFMD, as transposed in Spain by means of the Law 22/2014, of 12 November, on Venture Capital Entities, other Closed-Ended Collective Investment Undertakings and their Management Companies (Law 22/2014).

In order for Collective Investment Schemes (Instituciones de Inversión Colectiva) to be marketed in Spain they must be expressly authorised by the Comisión Nacional del Mercado de Valores (CNMV) and both Collective Investment Schemes (CIS) and their managers must be registered with the CNMV.

Marketing a CIS is included in Article 2 of Law 35/2003: defined as the acquisition through advertising, (on behalf of the CIS or any entity acting on its behalf or that of one of its promoters), of clients for contributions to the CIS. There is advertising when the public is addressed through telephone calls initiated by the entity or its manager, house calls, personalised letters, emails or any other electronic means, which form part of a publicity, marketing or promotion campaign.

Prior to engaging in marketing activities it is necessary to meet the following requirements and conditions.

MARKETING OF EU COLLECTIVE INVESTMENT SCHEMES SUBJECT TO THE UCITS DIRECTIVE:

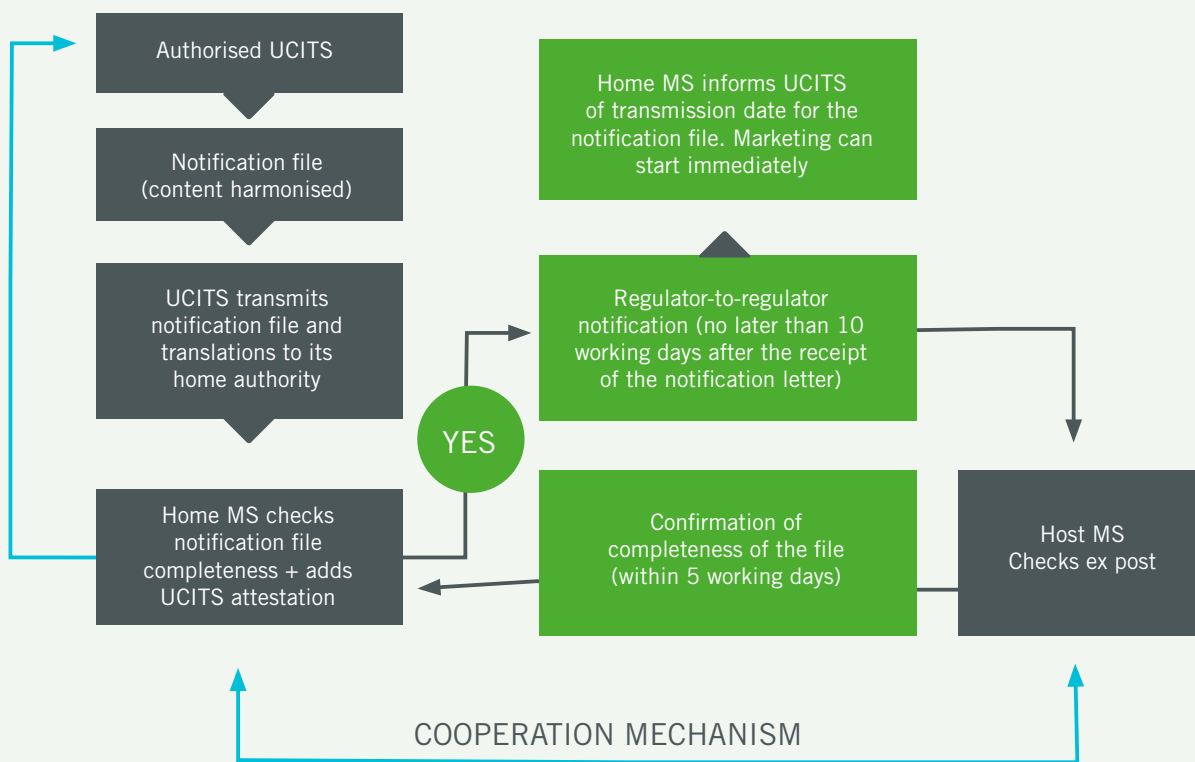
Marketing will be permitted from the moment the competent authority of the CIS's home Member State notifies the CIS it has submitted written notification to the CNMV with the following:

- a) Information regarding the provisions and methods of marketing shares or units in Spain
- b) Classes of shares or units
- c) Fund rules or incorporation documents
- d) Prospectus
- e) Last annual report and, where appropriate, half-year reports
- f) Certificate evidencing that the CIS complies with the requirements imposed by the UCITS directive

Implemented with the transposition of the UCITS Directive, the registration procedure for UCITS in Spain is straightforward.

DISTRIBUTING UCITS IN SPAIN

UCITS Notification Process



DISTRIBUTING UCITS IN SPAIN

The UCITS passport into Spain requires the following local agents to be appointed:

DESIGNATED ENTITY:

The distribution of a foreign UCITS to the public in Spain entails the appointment of a designated entity, which can be either:

- the foreign UCITS itself,
- the management company of the foreign UCITS (if any) or
- one of the appointed local distributors of the foreign UCITS in Spain.

The designated entity should appoint a contact person with sufficient capacity and resources to meet its responsibilities to ensure the performance of the foreign UCITS' duties towards CNMV.

The designated entity is responsible for:

- representing the foreign UCITS with respect to the CNMV,
- communicating information regarding changes to the foreign UCITS and/or deregistration, to CNMV.

Once the foreign UCITS is authorised to be marketed in Spain, the contact person appointed by the designated entity must:

- (i) enter information about the foreign UCITS, the designated entity, the entity responsible for paying CNMV fees, the appointed local distributor(s) and the estimated volume to be raised from investors in Spain as well as;
- (ii) publish any important investors letters / notices issued by the foreign UCITS, onto the CNMV Electronic System, CIFRADO.

DISTRIBUTING UCITS IN SPAIN

LOCAL DISTRIBUTOR:

The distribution of a foreign UCITS to the public in Spain entails the appointment of at least one local distributor (entidad comercializadora).

The local distributor must be domiciled in Spain (it can be a branch in Spain of an EU firm) and approved by CNMV.

If there are multiple Local Distributors, one of them must be appointed by the foreign UCITS as the main Local Distributor responsible for reporting to the CNMV on the number of investors for the purposes of article 52 of the Personal Income Tax Regulation (more than 500 shareholders).

The appointed Local Distributor is responsible for:

- allowing investors to redeem their shares / units in the foreign UCITS in Spain,
- providing the foreign UCITS' existing investors and / or prospective investors with all required information and documents, including the prospectus, KIID(s) and financial report(s).

The designated entity should appoint a contact person with sufficient capacity and resources to meet its responsibilities to ensure the performance of the foreign UCITS' duties towards CNMV.

ENTITY RESPONSIBLE FOR PAYMENT OF CNMV FEES:

Foreign UCITS must appoint a person responsible for payment of all applicable fees.

The KIIDs of those unit / share classes to be marketed are required to be translated into Spanish.

Under Spanish law, the distribution of units / shares of UCITS should be carried out through licensed intermediaries and / or a licensed management company.

DISTRIBUTING AIFS IN SPAIN

Unlike some other EU jurisdictions, neither the CNMV nor Spanish laws have a specific definition of an AIF. Collective investment undertakings that do not qualify as UCITS should be considered AIFs. Therefore, AIFs may take the form of closed-ended schemes, open-ended schemes, private equity firms, venture capital entities (VCEs) and other minority entities. Depending on the form they take, AIFs may be managed by open-ended schemes management companies (SGIIC) or closed-ended schemes management companies (SGEIC).

The marketing definition for AIFs in Spain is the same as that for UCITS. The regime on cross-border marketing of closed-ended AIFs according to Spanish law may be summarised as follows:

- Marketing of Spanish AIFs in the EU and EU AIFs in Spain is possible through the passporting process.
- Marketing of non-EU AIFs by EU alternative investment fund managers (AIFMs) and by non-EU AIFMs is possible by prior verification of the relevant conditions and submission for filing all the requested information in order to apply for the authorisation and registration of the non-EU AIFs.

EU AIFMs and non-EU AIFMs both need to be registered with the CNMV.

AIFMD PASSPORT

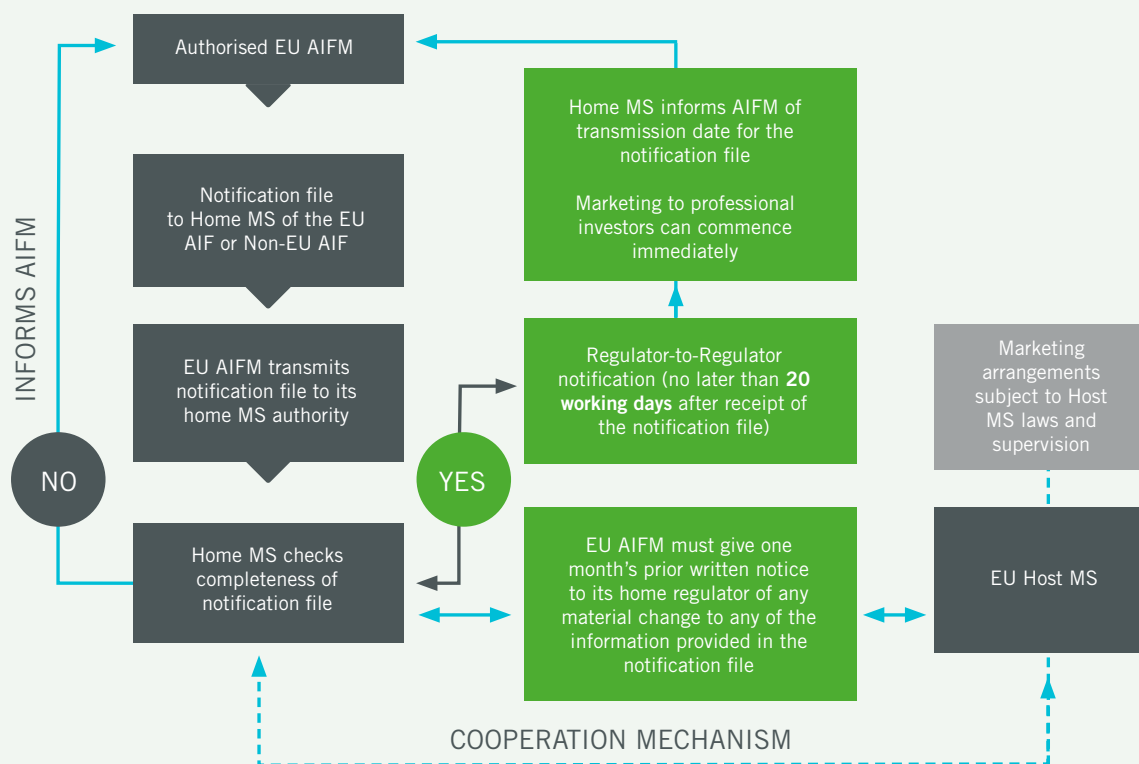
Spanish AIFMs can manage EU AIFs, either cross-border or by establishing a branch, provided that the AIFM is authorised to manage that type of AIF in Spain and fulfils all the requirements established in Spanish laws. The same provision exists for Irish authorised management companies wishing to manage Spanish AIFs.

Spanish AIFMs will also be able to manage AIFs which are not registered in an EU Member State provided that they fulfil all the requirements established in Spanish laws, albeit not through the AIFMD passport.

SPANISH AIFMS CAN MANAGE EU AIFS, EITHER CROSS-BORDER OR BY ESTABLISHING A BRANCH, PROVIDED THAT THE AIFM IS AUTHORISED TO MANAGE THAT TYPE OF AIF IN SPAIN AND FULFILS ALL THE REQUIREMENTS ESTABLISHED IN SPANISH LAWS. THE SAME PROVISION EXISTS FOR IRISH AUTHORISED MANAGEMENT COMPANIES WISHING TO MANAGE SPANISH AIFS.

DISTRIBUTING AIFS IN SPAIN

Passport / Marketing Approval Process



DISTRIBUTING AIFS IN SPAIN

NPPR - MARKETING WITHOUT AIFMD PASSPORT

Offering units / shares in a foreign AIF without prior authorisation from the CNMV is not possible in Spain.

The CNMV provides for a separate approval process for non-EU AIFMs to distribute AIFs to professional investors in Spain under Spain's national private placement regime (NPPR).

Non-EU AIFMs marketing AIFs managed by them to Spanish investors requires an (NPPR) application in compliance with the provisions of applicable Spanish laws to be filed with and approved by the CNMV. The timeframe for approval from the CNMV to market under NPPR may take between 2-4 months depending on the structure of the AIF.

In circumstances where foreign and EU AIFMs intend to market AIFs to retail investors in Spain special provisions of Spanish laws would apply.

Private placement of a foreign closed-ended AIF is allowed and regulated by article 30a of the Spanish Stock Market Act, the Law 24/1988 of 28 July as amended.

A foreign closed-ended AIF can be offered in Spain without being registered by the CNMV provided that **at least one** of the following conditions is met:

- The offer is addressed solely to qualified investors,
- The offer is addressed to less than 150 physical or legal persons, other than qualified investors, per Member State,
- The offer requires a minimum subscription amount of €100,000 per investor,
- The offer has a unit / share value of at least €100,000, or
- The offer has a total amount of less than €5,000,000, calculated over a period of 12 months.

Foreign closed-ended AIFs distributed on a private placement basis are exempt from any reporting requirements or filings to the CNMV.

TAXATION IN SPAIN

Capital gains obtained from redemptions are subject to withholding tax at a current rate of 21%. Nonetheless, in Spain investors can switch between funds without having to pay Spanish tax on redemptions from the original fund. This is possible as long as both funds involved in the transfer qualify as 'traspasable'. The CNMV considers the following funds to be 'traspasable':



FUNDS DOMICILED IN SPAIN



NON-SPANISH DOMICILED FUNDS

registered for distribution with the CNMV and with more than 500 participants (globally). A declaration needs to be made on an annual basis on the CIFRADOC System.

There are around 25,500 'traspasable' funds in Spain. This tax relief encourages active switching that might be inhibited by capital gains taxes in other markets.

REGULATORY AUTHORITIES AND KEY REGULATIONS

The regulatory body for foreign fund distribution in Spain is the Comisión Nacional del Mercado de Valores (CNMV).



WWW.CNMV.ES

The key regulations for offshore UCITS and AIFs are:

FOREIGN UCITS



LAW 35/2003
of 4 November 2003 on CIS



CNMV CIRCULAR 2/2011
of 9 June 2011 - Rules 1, 2, 4 and 5



ROYAL DECREE 1082/2012
of 13 July 2012 - Article 20



CNMV CIRCULAR 2/2013
of 9 May 2013 regarding KIIDs and
Prospectus of Collective Investment Schemes

FOREIGN AIFs



LAW 35/2003
of 4 November 2003 on CIS



CNMV CIRCULAR 2/2011
of 9 June 2011 - Rules 1, 2, 4 and 5



ROYAL DECREE 1082/2012
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CNMV CIRCULAR 2/2013
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LAW 22/2014
of 12 November on Venture capital
and close-ended CIS

COSTS OF REGISTRATION IN SPAIN

Regulatory levy (CNMV)

	UCITS PASSPORT	AIFMD PASSPORT / AIFMD NPPR
Initial registration fee	Foreign UCITS: €1,000	Foreign AIF: €2,500
Annual fee	Foreign UCITS: €2,500	Foreign AIF: €3,000
	Foreign UCITS must appoint a person responsible for payment of all applicable fees.	Foreign AIFs must appoint a person responsible for payment of all applicable fees.

Scale of required local agents and / or translation fees



TRANSLATION (UCITS ONLY)

Cost per KIID = €200 - €1,000
Fees vary depending on the word count of the document.



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