

INVERCO'S REPORT ON THE CESR'S CONSULTATION PAPER ON UCITS MANAGEMENT COMPANY PASSPORT

1.- INTRODUCTION

INVERCO (Spanish Association of Collective Investment Schemes and Pension Funds) represents more than six thousands collective investment schemes and almost a thousand pension funds, with more than EUR 362 billions in assets under management.

INVERCO thanks CESR for the present consultation and strongly appreciates the valuable effort undertaken by CESR to facilitate and put under public consultation this document on Management Companies Passport, specially taking into account the importance of this issue for the European industry and the tight schedule available for the UCITS IV Directive discussions.

INVERCO broadly agrees on almost all the proposals included in the CESR advice. There are only a few questions that, in our opinion, should be included or clarified, as detailed in the second part of this response.

2.- COMENTS ON THE CONTENT

▪ **BOX 3, PARAGRAPH 1: LOCAL POINT OF CONTACT**

According to the current drafting, *"If the management company of a common fund is not established in the UCITS home Member State, it should appoint a financial institution or the depositary subject to prudential supervision established in that State, including through a branch, to act as a local point of contact for investors and the UCITS competent authority"*.

The requirement of a local point of contact is acceptable, insofar as this entity acts as the domestic speaker between investors and/or supervisors, on the one hand, and the remote management company, on the other. Notwithstanding, ***the range of eligible entities to be selected as local point of contact should not be confined to "financial institutions subject to prudential supervision"***.

It must be highlighted that financial entities subject to prudential supervision are management companies, credit institutions, investment firms and insurance companies, frequently belonging to the same financial group. A conflict of interest may arise if the management company is obliged to appoint one of these institutions as a local point of contact, insofar as the eventual institutions appointed are also management companies or belong to a group where a management

company is included. Therefore, it is very unlikely that this kind of agreements (whereby a domestic management company or an institution belonging to the same group becomes the local point of contact of another management company willing to provide services in the same market) can be achieved.

As a conclusion, ***it would be very convenient the range of entities eligible as local point of contact to be widen, to include, for example, some legal entities, such as lawyer's offices or consultant companies, whose core business is not coincident with that of management companies and who, therefore, do not face any conflict of interest when accepting this role.***

▪ **BOX 3, PARAGRAPH 2: MAINTENANCE OF THE UNIT-HOLDER REGISTER**

Amongst the questions regarding this Box, CESR raise the issue of whether the maintenance of the unit-holder register should be entrusted to the local point of contact or not. It is not possible to give a single answer to this question, insofar as such answer depends on the management company structure as well as on the jurisdictions where distribution of the UCITS is planned. Therefore, ***it should be convenient that the final regulation would allow both options (i.e. to entrust the unit-holder register to the local point of contact or to keep it in the management company's sphere), depending on the particular circumstances.***

Notwithstanding, the maintenance of the unit-holder register poses the issue of the global accounts and their different regulation across Europe, and recommends harmonization on the use of such accounts, as an essential pre-condition for the smooth functioning of the management company passport (at least in those countries where these accounts are banned).

It must be noted that most of the European legislations allow the use of global accounts for the unit-holders register keeping, whilst in others (the Spanish one amongst them) this kind of accounts are allowed for foreign Funds, but not for domestic Funds.

If finally a management company providing management services to a UCITS domiciled in another Member state decides to keep the register by itself, it is likely that the procedures to follow are the same than those applied when managing domestic UCITS (i.e. using global accounts, when it is possible); nevertheless, in those cases where the UCITS domestic legislation does not allow the use of global accounts, it would result in a breach of domestic law by a non-domestic management company, and therefore a conflict of competence. This conflict could be solved by ***including a new provision in the Directive, allowing the entities in charge of the unit-holders register to use global accounts***, in order to achieve a

greater harmonization of the applicable law across Member States and to foster a smooth functioning of the European management companies passport.

▪ ***BOX 5, PARAGRAPH 2: APPLICABLE LAW***

According to this Box, when a management company provides management services to a UCITS domiciled in another member state, some functions will be subject to the rules of the UCITS home member state, whilst others will be under the applicable law of the management company home member state.

Amongst the functions subject to the UCITS domestic law, we miss those regarding limits applicable to management and/or depository fees, as well as those regarding methods of calculation of such commissions. It must be noted that some jurisdictions provide limits on these fees, as well as detailed rules on fees calculation.

In case that a management company located in a certain Member State would apply for the registration of a Fund in another member State, such Fund should be subject to identical rules on commissions than every other Fund registered in the same Member State; otherwise legal framework of UCITS domiciled in the same State would be different, in an aspect so essential as fees are, depending on which is the home Member State of the management company in charge of its management.

▪ ***BOX 9 AND 12: INFORMATION FLOW TO THE COMPETENT AUTHORITIES AND ENFORCEMENT***

One of the main challenges that the management company passport poses is that regarding cooperation between authorities. This collaboration must combine the lack of gaps or “grey areas” (not subject to supervision by none of the competent authorities involved) with the absence of overlapping responsibilities (that would led to a duplication of the costs incurred to attend supervisory requirements).

In this sense, any Level 1 measures enhancing mutual cooperation between authorities, as well as a clear definition of their respective functions, will be welcomed by INVERCO.

Madrid, 2008, 15th October