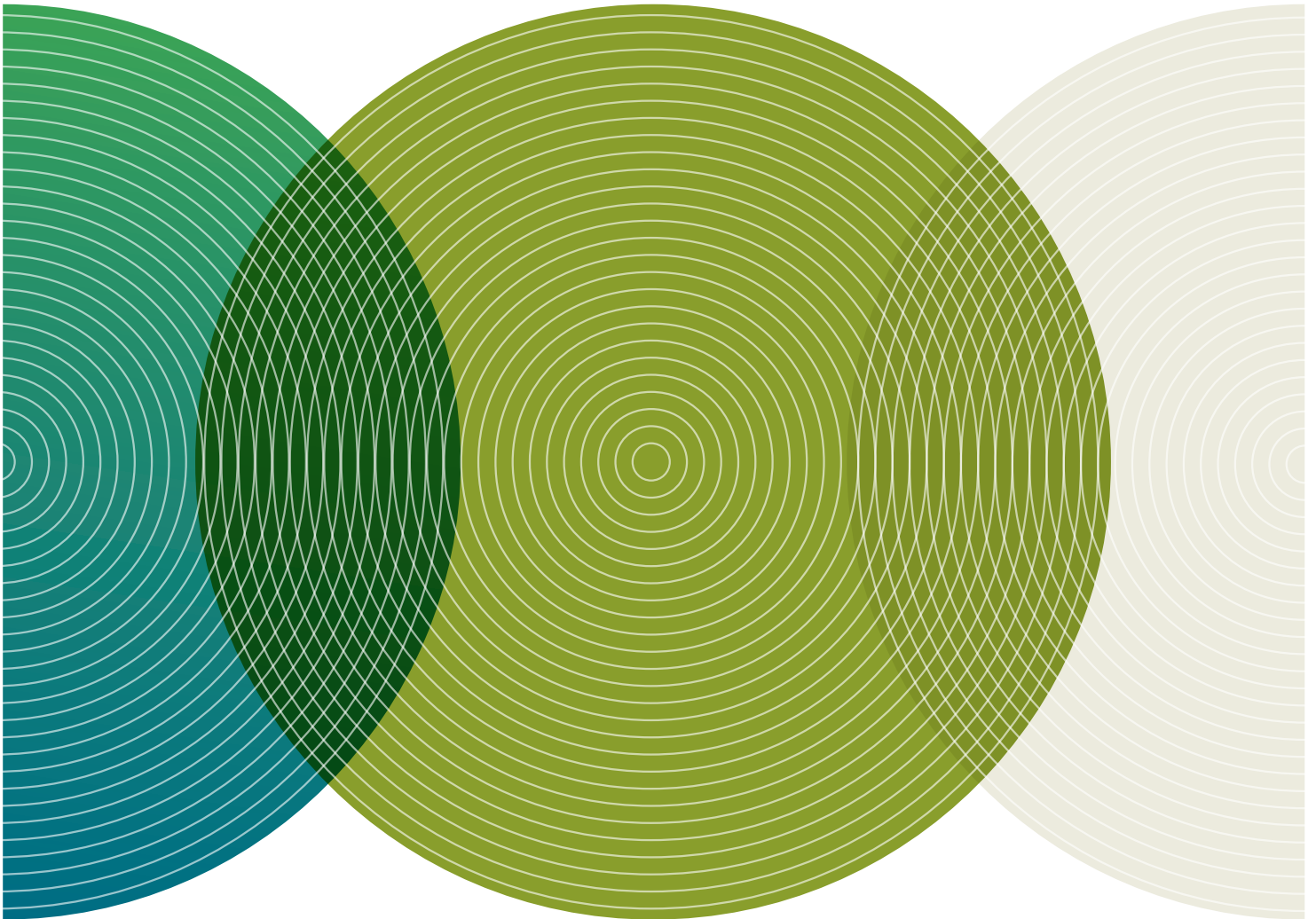

A Guide to
Investment Funds
in Ireland

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A Guide to Investment Funds in Ireland

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Since its establishment in the late 1980's, Ireland's international financial services sector has grown spectacularly, attracting significant levels of foreign investment. Overall, the funds industry has in excess of €4.1 trillion assets under administration with €2 trillion of this amount in Irish domiciled funds: 17 of the top 20 global asset managers have Irish domiciled funds. According to recent figures released by Irish Funds, there are over 887 fund promoters present in Ireland and over 14,000 professionals are employed exclusively in the servicing of investment funds, offering unrivalled expertise in services including funds administration, transfer agency, custody, legal, tax and audit services, stock exchange listing, compliance and consultancy services.

In Ireland, collective investment schemes are usually established as either an Undertaking for Collective Investment in Transferable Securities ("UCITS") or an Alternative Investment Fund ("AIF"), both of which can be marketed throughout the EU, once authorised in Ireland. Irish authorised UCITS and AIF Managers ("AIFMs") benefit from a management passport, allowing them to manage funds throughout the EU.

This briefing note provides a general outline of the legal, regulatory and tax regime applicable to the formation and operation of investment funds in Ireland, which has played a major role in establishing Ireland's pre-eminence as a global location

for establishing and administering investment funds.

Ireland is one of the leading regulated domiciles for internationally distributed investment funds. Irish funds are sold in seventy countries across Europe, the Americas, Asia and the Pacific, the Middle East and Africa. Ireland is Europe's top hedge fund domicile and is the largest hedge fund administration centre in the world, servicing over 40% of global hedge fund assets. It is also a centre of excellence for UCITS products and the fastest growing major cross border UCITS domicile in the world. Ireland is the leading European jurisdiction for both exchange-traded funds and money market funds.

Why Ireland?

Ireland's current pre-eminence in the investment funds industry is attributable to a wide-range of factors.

Why Ireland?

EU Member State	Ireland is an EU Member State and is part of the Eurozone. Funds established in Ireland as a UCITS or an AIF benefit from an EU-wide passporting regime.
Regulatory Environment	Ireland has an excellent reputation as a location for robust and efficient regulation which facilitates market and product developments while protecting investor interests. Both the Central Bank of Ireland ("Central Bank") and the Irish Stock Exchange have a proven track record in adapting and developing their regulation to keep pace with industry developments. The Central Bank authorised the first AIFM in Europe, following Ireland's early implementation of the Alternative Investment Fund Managers Directive 2011/61 ("AIFMD").
Tax Benefits	Ireland is an internationally recognised, open and tax efficient jurisdiction with a 12.5% corporate tax rate and no taxes on funds or investors. It has one of the most developed and favourable tax treaty networks in the world including double taxation treaties with 72 countries.
Pro-business Environment	Ireland is an internationally competitive location for doing business. Ireland is ranked seventh in the IMD World Competitiveness Yearbook rankings for 2016. The World Bank's Doing Business 2016 survey placed Ireland in 18th position in a survey of 190 economies for ease of doing business, ranking it ahead of Switzerland, the Netherlands and Luxembourg. Forbes named Ireland as the best country in the world for business, in December 2013.
Professional Work Force	Ireland has a young, highly skilled workforce with a positive, can-do work attitude. The IMD World Competitiveness Yearbook 2016 rated Ireland 1st in the world for Finance skills and for flexibility and adaptability of people.

Regulatory Framework

In Ireland, a collective investment scheme is usually established as either a UCITS or an AIF, each of which has its origins in EU legislation. Both UCITS and AIFs are also regulated by rules established by the Central Bank, which is the regulatory authority responsible for the authorisation and supervision of all collective investment schemes established in Ireland. Regulated funds and fund service providers (“FSPs”), must also comply with the Central Bank’s fitness and probity requirements for persons performing certain functions within those entities.

UCITS

At EU level, UCITS are regulated by UCITS Directive 2009/65 as most recently amended by the UCITS Directive 2014/91 (“**the UCITS Directive**”), as well as by a number of delegated and implementing regulations and directives which set out the applicable requirements in more detail. The European Securities and Markets Authority (“**ESMA**”) and its predecessor, the Committee of European Securities Regulators (“**CESR**”) have also issued further guidance on UCITS.

The UCITS Directive was transposed into Irish law by the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (the “**Irish UCITS Regulations**”), as amended.

UCITS, UCITS Management Companies and UCITS depositaries are also subject to the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investment in Transferable Securities) Regulations 2015 (the

“**Central Bank UCITS Regulations**”), as amended. In addition to setting out the requirements for the authorisation of investment funds, the Central Bank UCITS Regulations cover issues such as the content of prospectuses and disclosure requirements, the administrative activities which must be carried out in Ireland, the duties of fund administrators and depositaries and the on-going reporting obligations of authorised funds.

The Central Bank has also published guidance on a number of topics to assist users of the Irish UCITS Regulations, as well as UCITS Q&A which sets out answers to queries likely to arise in relation to UCITS. In general, Ireland’s domestic law on UCITS reflects that applicable at EU level, without any significant additional national requirements or ‘gold-plating’.

From traditional ‘long only’ UCITS to complex alternative strategies, Ireland offers world-class product solutions catering to the widest spectrum of investment strategies.

Alternative Investment Funds

An AIF can be established in Ireland as either a Qualified Investor Alternative Investment Fund (“QIAIF”) or a Retail Investor Alternative Investment Fund (“RIAIF”). At EU level, both these types of AIF are indirectly regulated by AIFMD which sets out a harmonised regulatory framework across the EU for AIFMs operating in the EU. Key issues covered in AIFMD include: authorisation, capital requirements, conduct of business standards, remuneration, the valuation of assets, delegation, depositaries, transparency, and marketing.

The Commission has set out the AIFMD requirements in more detail by way of delegated and implementing acts. In addition, ESMA has issued guidance and Q&A providing further information on what is required by way of compliance with AIFMD.

AIFMD was transposed into Irish law by the European Union (Alternative Investment Fund Managers) Regulations 2013 (“AIFMD Regulations”). The Central Bank has also published an AIF Rulebook which contains its requirements applicable to RIAIFs, QIAIFs, Fund Administrators, AIFMs and AIF Depositaries.

In addition, the Central Bank has published guidance on a number of topics to assist users of the AIF Rulebook, as well as AIFMD Q&A which set out the answers to queries likely to arise in relation to the implementation of AIFMD. As in the case of UCITS, in general, Ireland’s domestic law on AIFMs reflects that applicable at EU level without any significant gold-plating.

Fitness and Probity

Persons performing certain prescribed “controlled functions” (“CF”) or pre-approval controlled functions (“PCF”) for a regulated fund or a fund service provider (“FSP”), must comply with the Central Bank’s fitness and probity requirements, which focus on competence, capability, honesty, integrity and financial prudence. These requirements are set out in the Central Bank Reform Act (sections 20 and 22) Regulations 2011 as amended, and in the Central Bank’s “Fitness and Probity Standards”.

Corporate Governance Code

The Irish Funds’ Corporate Governance Code applies to Irish regulated funds and their managers. It aims at providing a framework for the organisation and operation of investment funds to ensure that funds operate efficiently and in the interests of shareholders. Irish Funds has also published a Corporate Governance Code for Fund Service Providers.

Fund Vehicles

The recently established Irish Collective Asset-management Vehicle (“ICAV”) is quickly becoming the vehicle of choice for funds established in Ireland. Other types of fund vehicles are the investment company, the unit trust, the common contractual fund (“CCF”), and the investment limited partnership (“ILP”). Each of these vehicles is suitable for both UCITS and AIFs with the exception of the ILP which may only be used for AIFs. Various factors impact on the choice of fund vehicle, including potential distribution channels and the location and preferences of prospective investors.

The ICAV

One of the ICAV’s primary advantages is that it has its own legislative regime. Consequently, unlike the traditional investment company, the ICAV is not subject to those aspects of company law which are irrelevant to or inappropriate for a collective investment scheme (thereby helping to reduce administrative burden and costs). Nor is it subject to the risk-spreading/diversification requirements currently applicable to investment companies. In addition, an ICAV is entitled to elect (*ie*, ‘check the box’) to be treated as a flow-through or partnership for US tax purposes.

An ICAV is a suitable fund vehicle for both UCITS and AIFs and can be used for self-managed or externally managed, open-ended or closed-ended collective investment schemes. An existing Irish investment company or certain foreign corporate funds can convert/redomicile to an ICAV by way of continuation. This means that the ICAV retains its corporate identity, track record and performance data existing on conversion.

Establishing an ICAV involves a two-step process. The ICAV must first be registered with the Central Bank and then authorised as either as a UCITS fund pursuant to the UCITS Regulations or as an AIF pursuant to the AIFMD Regulations. ICAVs are supervised by the Central Bank.

The ICAV highlights the Irish Government’s commitment to the Irish funds industry and enhances Ireland’s attractiveness as a leading global domicile for collective investment schemes. The ICAV is fast becoming Ireland’s most popular corporate fund vehicle.

The Investment Company

Until recently, the investment company was the most common vehicle used by funds established in Ireland. The investment company is incorporated in Ireland and is managed and controlled by its board of directors. While the board of directors of an Irish investment company will usually have a minimum of three directors, under Central Bank rules it must have a minimum of two directors, each of whom is Irish resident.

The ICAV is fast becoming Ireland's most popular corporate fund vehicle.

Although the board of directors may delegate certain duties to third parties (eg investment management duties to an investment manager and administration functions to an administrator), the board of directors remains responsible for ensuring that the company is managed in its shareholders' best interests.

UCITS Investment Company

A UCITS investment company is established under the UCITS Regulations but is generally subject to company law requirements save where specifically disappplied or varied by the UCITS Regulations. The UCITS Regulations introduced the concept of a variable capital company into Irish company law and allowed the creation of open-ended investment companies for the first time, reflecting the requirement that all UCITS must be open-ended.

A UCITS investment company will typically be incorporated with two types of shares, namely subscriber shares of €1 each (which are generally subscribed for by the promoter of the fund) and participating shares. These participating shares have no par value as the actual value of the paid-up share capital reflects the net asset value of the company.

If self-managed, the minimum capital requirement under the UCITS Regulations, is €300,000 (or equivalent). If a management company is established as part of the fund structure, certain minimum capitalisation rules (described on pages 13) apply to that entity rather than to the investment company, and the normal general company law rules apply to the capitalisation of the investment company.

AIF Investment Company

An AIF investment company is established under Part 24 of the Companies Act 2014 (previously Part XIII of the Companies Act 1990) and the AIF Rulebook. The provisions of the 2014 Act generally apply to Part 24 investment companies, save where specifically disappplied or varied.

Like a UCITS investment company, an AIF investment company will typically be incorporated with two types of shares, namely subscriber shares and participating shares. The minimum issued share capital of an AIF investment company is two shares of €1 each.

An internally managed AIF must meet a minimum capital requirement of €300,000 and if an AIFM is established as part of the fund structure, certain minimum capitalisation requirements will apply to that AIFM (as detailed on page 13).

Unit Trust

This is a common form of fund vehicle used in Ireland and is available for both UCITS and AIFs. Whilst this vehicle is often used by fund managers who are marketing a fund to Irish, UK, US or Japanese investors (as many civil law jurisdictions do not recognise the trust structure), it is not typically used by promoters who wish to sell their funds to continental European investors who have traditionally preferred the investment company structure.

A unit trust is constituted by a trust deed made between the trustee and the manager. The trust deed will set out the rules of the fund and the rights of the unitholders. Although the assets of the unit trust are registered in the name

of the trustee, the beneficial ownership remains at all times with the unitholders. The trust comes into effect upon the signing of the trust deed.

Common Contractual Fund

The CCF structure is available in Ireland for both a UCITS and an AIF. A CCF is a collective investment undertaking which is constituted as an unincorporated body established by a management company. The participants, by contractual arrangement, participate and share in the property of the collective investment undertaking as co-owners.

The CCF is essentially a facility whereby investors may pool their resources to enable them to be commonly managed for investment purposes provided certain investor criteria are met. Importantly, the CCF is treated as being transparent for Irish tax purposes as long as all of its investors are institutional investors (see “Taxation” on page 20).

The CCF tends to be popular with pension funds, given the efficiencies involved in pooling pension fund investments while managing to preserve any tax advantage enjoyed by each investor pension fund.

Investment Limited Partnership (ILP)

Introduced in 1994, this structure is the least common in Ireland and has been used on very few occasions. It is available only for AIFs. The ILP is recognised under the laws of a number of countries, including the United States, as a tax-transparent entity.

The rules relating to an ILP are set out in a limited partnership agreement. One general partner, which must be Irish resident, is appointed and this entity has responsibility for running and managing the fund. Investors subscribe to the partnership as limited partners. A limited partner is not liable for the debts or obligations of an ILP beyond the amount of capital contributed, except where he/it takes part in the business of the partnership.

UCITS

UCITS are regulated investment products established under a common EU legal and regulatory framework. They were first introduced in the EU in 1985 with the aim of creating a retail investment fund that could be sold across the EU, subject to common rules on authorisation, supervision, structure, portfolio and the information to be provided to investors. Since their introduction, UCITS have gone from strength to strength. They are currently distributed in over 80 countries across the globe, and total assets under management exceed €8 trillion. Exchange Traded Funds (ETFs) and Money Market Funds (MMFs) are almost always traded as UCITS.

Key Characteristics

UCITS are open-ended investment funds that have the sole object of collective investment in transferable securities or in other liquid financial assets. A UCITS can invest in a diverse range of investments, including transferable securities, units in collective investment schemes, approved money market instruments, derivatives and forward transactions and deposits.

Once a UCITS is authorised in an EEA member state, such as Ireland, it can be freely marketed on a retail basis throughout the EEA (subject to a simple registration process) without needing to comply with local securities laws in each member state. UCITS can also be sold globally (particularly throughout Asia) and can be restricted to institutional investors if the promoter wishes. The marketing passport is one of a UCITS' key advantages.

UCITS must operate on the principle of risk-spreading and are subject to investment and borrowing

restrictions as well as requirements regarding dealing frequency.

Ireland is the fastest growing major cross border UCITS domicile globally. The top 10 countries for the distribution of Irish ucits are; the uk, Germany, Switzerland, the Netherlands, Austria, Spain, France, Italy, Sweden and Finland.

Investment restrictions: among other things, no more than 10% of net assets may be invested in unlisted transferable securities and money market instruments. A UCITS is also prohibited from investing more than a certain percentage of its assets in certain securities issued by certain issuers, collective investment schemes, and deposits with a particular credit institution. A UCITS risk exposure to a counterparty to an over the counter (OTC) derivative may not exceed 5% of net assets (this can be raised to 10% in certain circumstances).

Borrowing restrictions: in general, a UCITS may not borrow money, grant loans or act as a guarantor for third

parties. However, a UCITS may borrow up to 10% of its net asset value on a temporary basis, for example, to fund redemption requests.

Dealing frequency: a UCITS must be open for redemption at least twice a month, at regular intervals. Ireland is the fastest growing major cross border UCITS domicile globally. The top 10 countries for the distribution of Irish UCITS are; the UK, Germany, Switzerland, the Netherlands, Austria, Spain, France, Italy, Sweden and Finland.

Passporting and Third Countries

UCITS funds benefit from an EEA wide “passport” which means that once a UCITS is authorised in one EEA member state (28 EU member states plus Iceland, Liechtenstein and Norway), it can be sold in any other EEA member state without the need for any additional authorisation, subject to a notification procedure.

It is also straightforward to register UCITS for public distribution in other non-EU jurisdictions: Irish funds are registered for sale in, for example, Switzerland, Singapore, Hong Kong, Macau, Taiwan, Chile, Peru, South Africa and Bahrain.

Ireland is a centre of excellence for UCITS products with over 80% of Irish domiciled funds falling under the UCITS umbrella. Ireland is the leading European jurisdiction for two of the main types of UCITS, ETFs and MMFs. In 2015, the net assets of Irish domiciled UCITS funds exceeded €1.4 trillion, an increase of 13% over the previous year and of over 200% in the last ten years.

Alternative Investment Funds

Ireland is home to a funds industry that services over €1 trillion in AIF assets, employing over 4,000 professionals specialised in the area of alternatives. Over 40% of global hedge fund assets are administered in Ireland and the number of AIFs established in Ireland has grown to over 2,200. The range of Irish AIFs spans hedge funds, private equity and real estate funds, with fund distribution to over seventy countries.

Key Characteristics

Irish AIFs are established either as RIAIFs or as QIAIFs, depending on whether the relevant AIF is targeted at retail or institutional investors. While both types of AIFs have a wider choice of eligible assets and are subject to fewer investment restrictions than a UCITS, the requirements applicable to RIAIFs are more restrictive than those applicable to QIAIFs.

Retail Investor Alternative Investment Funds (RIAIFs)

A RIAIF is an AIF authorised by the Central Bank that may be marketed to retail investors. A RIAIF has no regulatory minimum subscription. The Central Bank has set out, in its AIF Rulebook, general investment and borrowing restrictions applicable to RIAIFs.

Under Central Bank rules, a RIAIF may only have a fully authorised AIFM. Consequently, non-EU managers that do not have a fully authorised EU based AIFM and sub-threshold AIFMs cannot manage a RIAIF.

Qualifying Investor Alternative Investment Funds (QIAIFs)

At the name suggests, a QIAIF is a regulated AIF structure targeted at sophisticated and institutional investors. The minimum subscription must be at least €100,000 or its equivalent in another currency.

The QIAIF has a number of advantages over other fund structures, not least the fact that it can avail of a 24-hour fast track approval process with the Central Bank. It can also avail of an EU wide-marketing passport when managed by an EU-based AIFM. Other advantages include the fact that a QIAIF:

- is not subject to Central Bank investment restrictions or to any borrowing or leverage limits;
- is not subject to risk diversification requirements, save that, in the case of investment companies, a QIAIF must observe the general principle of risk spreading: an ICAV is not subject to this requirement; and
- is subject to a favourable tax regime which ensures that Irish QIAIFs are not subject to Irish tax on their income, gains or dividend payments to non-Irish investors.

It is also noteworthy, that under the current transitional arrangements for AIFMD, a QIAIF can have a non-EU AIFMD.

Once authorised, a QIAIF could seek to:

- carry on short selling without restriction;
- enter into borrowing arrangements without restriction;
- enter into derivative contracts (including the buying and selling of futures and options); and repurchase, reverse repurchase and stock-lending arrangements in order to pursue hedge fund strategies.

Passporting and Third Countries

As mentioned, once authorised, an Irish QIAIF which is managed by an EU-based AIFM, can avail of an EU-wide marketing passport and can be distributed freely to professional investors across the EU.

As the RIAIF is a retail fund product, it cannot avail of the automatic right to market across Europe under the AIFMD market passport as this is only available for professional investors. Access to individual markets may, however, be granted on a case by case basis.

Both an EU AIFM and a non-EU AIFM can market a non-EU AIF in Ireland subject to compliance with the requirements set out in the AIFMD Regulations, which mirror those contained in AIFMD: to date, Ireland has not imposed any additional national requirements.

Ireland is the largest hedge fund administration centre in the world, servicing over 40% of global hedge funds assets. Fund managers can rely on the full spectrum of fund services including fund structuring and set up, fund administration, depositary, compliance and risk management, tax, legal, audit, corporate governance and technology support services.

Fund Features

While a fund can be established as either a UCITS or an AIF, investment funds also have a number of structural decisions to make, including, whether to establish a fund as an umbrella fund; a multi-share class fund; or a master-feeder unit.

Umbrella Funds - Segregated Liability

Both a UCITS and an AIF may be established as an umbrella fund or a standalone fund. An umbrella fund is a collective investment scheme which is divided into a number of sub-funds and in which the investors are entitled to exchange rights in one sub-fund for those in another. Generally, the sub-funds pursue different investment strategies and each sub-fund has a separate pool of assets. Every Irish legal fund structure constituted as an umbrella fund must provide for segregation of liability between sub-funds.

Instead of establishing a new fund, an investment manager looking to enter the EU market may seek to use a fund platform. In this scenario, an existing umbrella fund will create a new sub-fund and delegate the portfolio management of that sub-fund to the investment management firm looking to gain entry into the EU. This allows a non-EU investment manager to build up a track record in managing EU domiciled funds, which is likely to be beneficial should it later establish its own fund. Other key attractions of an existing platform include speed to market, access to an established distribution network, the potential for introduction to new capital sources, and lower costs. A platform may also take primary responsibility for a significant portion of the on-going compliance, regulatory, and corporate governance requirements, freeing up the investment manager to concentrate on portfolio management. The disadvantages include a loss of flexibility and control, often including the ability to choose the service providers.

Multi-Share Class Funds

In addition to being able to establish different sub-funds within an umbrella scheme, an Irish fund may also provide for the establishment of different classes of shares or units within a fund or, in the case of an umbrella fund, within each sub-fund. Such classes may, for example, provide for different charging structures or different currencies. Unlike sub-funds, a separate pool of assets is not maintained for each class of shares/units.

Master-Feeder Structures

Under a master-feeder arrangement, investors deposit capital in a “feeder” fund, which in turn invests in a “master” fund. Both UCITS and QIAIFs can be established using a master-feeder structure.

A feeder UCITS is a UCITS or a sub-fund of a UCITS which has been approved to invest at least 85% of its assets in the units of another UCITS or sub-fund thereof.

A RIAIF may invest more than 30% of net assets in another open-ended investment fund. A QIAIF may invest up to 100% of its assets in another investment fund as long as that fund is either authorised by a) the Central Bank; or b) a supervisory authority responsible for the protection of unit holders and which ensures that the relevant fund is subject to investor protection requirements equivalent to those imposed on a QIAIF or alternatively, applies a minimum subscription requirement of €500,000 and discloses the key differences between a regulated QIAIF and the unregulated underlying master fund.

Fund Management Companies

A UCITS or AIF which is established as an ICAV or an investment company does not require a management company and can either be managed directly by its board of directors, or appoint an external manager. Where the UCITS or AIF is managed through its Board of Directors, the fund is referred to as an internally managed or self-managed fund. In contrast, a unit trust and a CCF must always have a management company and an ILP must always have at least one general partner.

A single management company may be authorised to manage both UCITS and AIFs (a so-called “**Super ManCo**”). Establishing a “Super ManCo” makes it possible to obtain access to the passporting regimes for UCITS and AIF products without the need to establish two separately regulated and capitalised entities. The Central Bank has recently streamlined its rules around fund governance, making the establishment of a Super ManCo an attractive option.

Both UCITS management companies and AIFMs incorporated in Ireland are authorised by the Central Bank. Among other things, in order to become authorised as a UCITS management company or AIFM, an applicant must have a detailed business plan/programme of activity setting out its organisational structure, and containing information on how it intends to comply with its legal obligations including the responsibilities of senior management. In addition, it must satisfy certain minimum capital requirements. In the case of a UCITS Manager/AIFM that manages external funds, the manager must have initial capital of at least €125,000, plus 0.02% of the value of the portfolios of the UCITS/AIFs it manages in excess of €250 million, subject to a cap of €10 million.

A self-managed or internally managed UCITS or AIF is subject to a minimum capital requirement of €300,000.

Key Requirements

The Central Bank has published guidance for Fund Management Companies (“**FMCS**”) regarding its key

requirements in the areas of governance, compliance and supervisability. The term “**FMC**” includes UCITS management companies and AIFMs as well as self-managed UCITS and AIFs. Some of these requirements are set out in more detail in the table below.

Functions

A UCITS Management Company is responsible for collective portfolio management which in the context of the UCITS regime includes investment management, administration and marketing. However it is possible for a UCITS management company to delegate some or all of these functions provided it does not become a letter box entity.

An AIFM must, at a minimum, be responsible for the investment management function which includes portfolio management and risk management with respect to the AIFs to which it is an appointed AIFM. An AIFM may also be authorised to provide administration and marketing services in respect of the AIFs to which it is appointed AIFM. Similar to the UCITS regime, an AIFM may delegate part of the investment management function provided it does not fall foul of the letter box test set out in Article 82(d) of the level 2 AIFM regulations.

Both the UCITS Management Company and AIFM regimes permit those entities to apply to be licensed to undertake certain additional MiFID-type services such as individual portfolio management, investment advice and receipt and transmission of orders.

Passporting and Third Countries

Irish authorised UCITS Management Companies and AIFMs are entitled to manage funds in other EU member states on a passporting basis, subject to notification requirements.

The Central Bank also permits a non-EU AIFM to manage Irish authorised QIAIFs and to market both EU and non-EU AIFs to professional investors in Ireland.

Key Requirements for FMCS

Directors	An FMC must have at least two directors. The Central Bank treats high level of directorships combined with high aggregate levels of annual professional commitments as a supervisory risk indicator. The risk indicator is currently set at having more than 20 directorships and an aggregate professional time commitment in excess of 2,000 hours.
Designated Managerial Functions	An FMC must appoint a designated person for each of six designated managerial funds, namely: regulatory compliance, fund risk management, operational risk management, investment, capital and finance management and distribution. Individual directors may be designated persons.
Organisational Effectiveness role	One of an FMC's independent directors should undertake an 'organisational effectiveness' role, the purpose of which is to ensure that the FMC continues to be organised and resourced in an appropriate manner, on an on-going basis.
Residency	An FMC must have at least two Irish resident directors and at least half of its directors must be EEA resident. In addition half of an FMC's managerial functions must be performed by at least two designated persons resident in the EEA. Where an FMC is viewed by the CBI as being 'medium risk' from a supervisory perspective, it must have either three Irish resident directors, or, alternatively, at least two Irish resident directors and one designated person in Ireland.
Delegation	An FMC board may delegate certain tasks which form part of its management functions to a third party, as long as it does not delegate to such an extent that it becomes a letterbox entity. An FMC board retains ultimate responsibility for any tasks delegated. In addition, it must take all major strategic and operational decisions affecting the FMC and any investment funds it manages.

Other Service Providers

Along with a management company, the principal service providers to an investment fund are the investment manager, the administrator, the depositary, and, for hedge funds, the prime broker. While an investment manager and prime broker may be located outside of Ireland, the administrator and depositary must be located in Ireland.

A UCITS/AIF will need to ensure that agreements with its key service providers contain certain provisions stipulated by the Central Bank.

Ireland's position as one of the world's premier global locations for establishing and administering investment funds is largely attributed to its open, transparent and well-regulated legal environment combined with a well-developed and experienced professional services infrastructure.

Investment Manager

The function of the investment manager is to take the day-to-day decisions in relation to the fund. EEA-based investment management companies that meet certain requirements (*eg* MiFID authorisation) are not subject to an approval process. The Central Bank will, however, require confirmation from the home state regulator that the investment company has the appropriate regulatory status. For non-EEA investment management companies, the Central Bank will normally apply a review and approval process. The main criteria relates to the level of regulation and supervision to which that investment manager is subject in its home jurisdiction. The Central Bank will not approve any investment manager located

in a jurisdiction which the Central Bank considers does not provide an equivalent level of authorisation and ongoing supervision.

Once an investment manager has been approved by the Central Bank, it does not need to undergo the approval process again each time it is appointed as investment manager to additional funds.

Whereas an investment manager (or sub-investment manager) which retains the discretionary investment management function need to be approved by the Central Bank, an investment adviser with no discretion is not required to be approved by the Central Bank.

Fund Administrator

The administrator of an Irish-authorized fund must be incorporated in Ireland. The administration of collective investment schemes (whether Irish or non-Irish) is a regulated activity under the Investment Intermediaries Act 1995 (as amended) and any firm carrying out such activities in Ireland must be authorised by the Central Bank under that Act.

Irish-authorized funds normally outsource administrative activities to a third party fund administrator, (unless undertaken by the fund's AIFM or

UCITS management company). The outsourced activities typically include:

- calculation of net asset value and dealing price, including pricing of the underlying securities;
- maintenance and updating of accounting records;
- preparation of annual and semi-annual financial statements;
- reconciliation of investment and cash positions with custody records;
- maintenance and servicing of investor register; and
- correspondence with investors, including maintenance and issue of subscription and redemption documents.

Frequently, a separate division of the fund administrator (often referred to as ‘transfer agency’ or ‘shareholder services’) deals with the issue and redemption of shares/units and investor queries, although these can also be outsourced to a separate company.

In relation to Irish based fund administrators, the Central Bank imposes requirements on the outsourcing of administrative activities which are intended to promote greater consistency of approach and certainty in relation to the Central Bank’s principles on outsourcing.

Depositary

A UCITS investment/management company and an AIFM must appoint a single depositary, in respect of each UCITS/AIF it manages. To be eligible for appointment, a depositary must fulfil certain requirements. In particular, it must be:

- a credit institution authorised in the State in accordance with the European Union (Capital Requirements) Regulations 2014 or a branch established in the State of a credit institution authorised under the Capital Requirements Directive 2013/36; or
- authorised under the Investment Intermediaries Act 1995.

An AIFM may also appoint a MiFID authorised firm as a depositary.

The Irish UCITS and AIFM Regulations also impose a number of obligations on a depositary, including monitoring cash flow, safe-keeping of assets and detailed oversight, verification and monitoring obligations.

A depositary is subject to a strict liability standard in respect of the loss of a financial instrument held in custody, subject to certain, limited exceptions. Additionally, the depositary is liable to the UCITS/AIF and its investors for all losses suffered by them as a result of the depositary’s negligent or intentional failure to properly fulfil its obligations under the Irish UCITS/AIFM Regulations.

A depositary is also subject to stringent rules regarding delegation and must comply with specified, minimum ongoing monitoring requirements in relation to its delegates (including, in the case of AIFs, prime brokers).

Taxation

All Irish investment funds authorised by the Central Bank which are available to the public are exempt from tax on their income and gains irrespective of where their investors are resident. No Irish stamp, capital or other duties apply on the issue, transfer or redemption of shares/units in a fund.

An exit tax regime applies to funds set up as an ICAV, investment company, a unit trust or an ILP. Under this regime, no withholding tax applies on payments to non-Irish resident investors and certain Irish resident investors once certain declarations have been put in place or the fund has received approval in respect of ‘equivalent measures’.

Funds set up as a CCF are treated as tax transparent entities and as such the income and gains of a CCF are treated as if they directly accrue to the investors from the underlying assets. No withholding tax applies on any payments made by a CCF. There is no Irish tax for investors that are not within the scope of Irish tax. Note, however, that individuals are not permitted to invest in CCFs.

VAT

Certain services supplied to a fund are VAT exempt activities. The principal exemptions relate to discretionary investment management services, administration services (including corporate administration) and marketing services. Custodial services are also generally exempt from VAT. Other services provided to a fund may create a VAT cost. VAT recovery is, however, available to the extent that the fund has either non-EU assets or non-EU investors.

Treaty Access

Ireland has an extensive network of double taxation agreements (“DTAs”). Access by a fund to these treaties can, however, be restricted because of the tax exempt nature of Irish funds. Treaty benefits have been obtained from a number of Ireland’s treaty partners, and each jurisdiction should be reviewed on a case by case basis to determine whether DTA access is possible.

Tax Residence

It is important to ensure that an Irish-authorized fund is resident in Ireland for the purposes of Irish taxation.

A fund established as an ICAV or investment company will be regarded as tax resident in Ireland if its central management and control is exercised in Ireland.

An Irish unit trust is generally regarded as tax resident in Ireland on the basis that the trustee is resident in Ireland.

An Irish ILP is treated in Ireland, as well as in many other jurisdictions, as being tax transparent, in which case it is the residence of the individual limited partners which will be relevant in determining tax status.

An Irish CCF is tax transparent and, therefore, does not have a ‘residence’ for the purposes of Irish tax.

Authorisation Process

Every investment fund, UCITS management company and AIFM established in Ireland must be authorised by the Central Bank in accordance with the requirements set out in the Central Bank’s UCITS Regulations or AIF Rulebook, as appropriate.

Fund Authorisation Process and Timing

The Central Bank has made a general commitment to authorise funds within six to eight weeks from the date of initial submission of an application to the Central Bank, provided the application is complete.

The fund’s legal advisers will prepare, in consultation with the investment manager and other relevant parties, the following documentation in connection with the application:

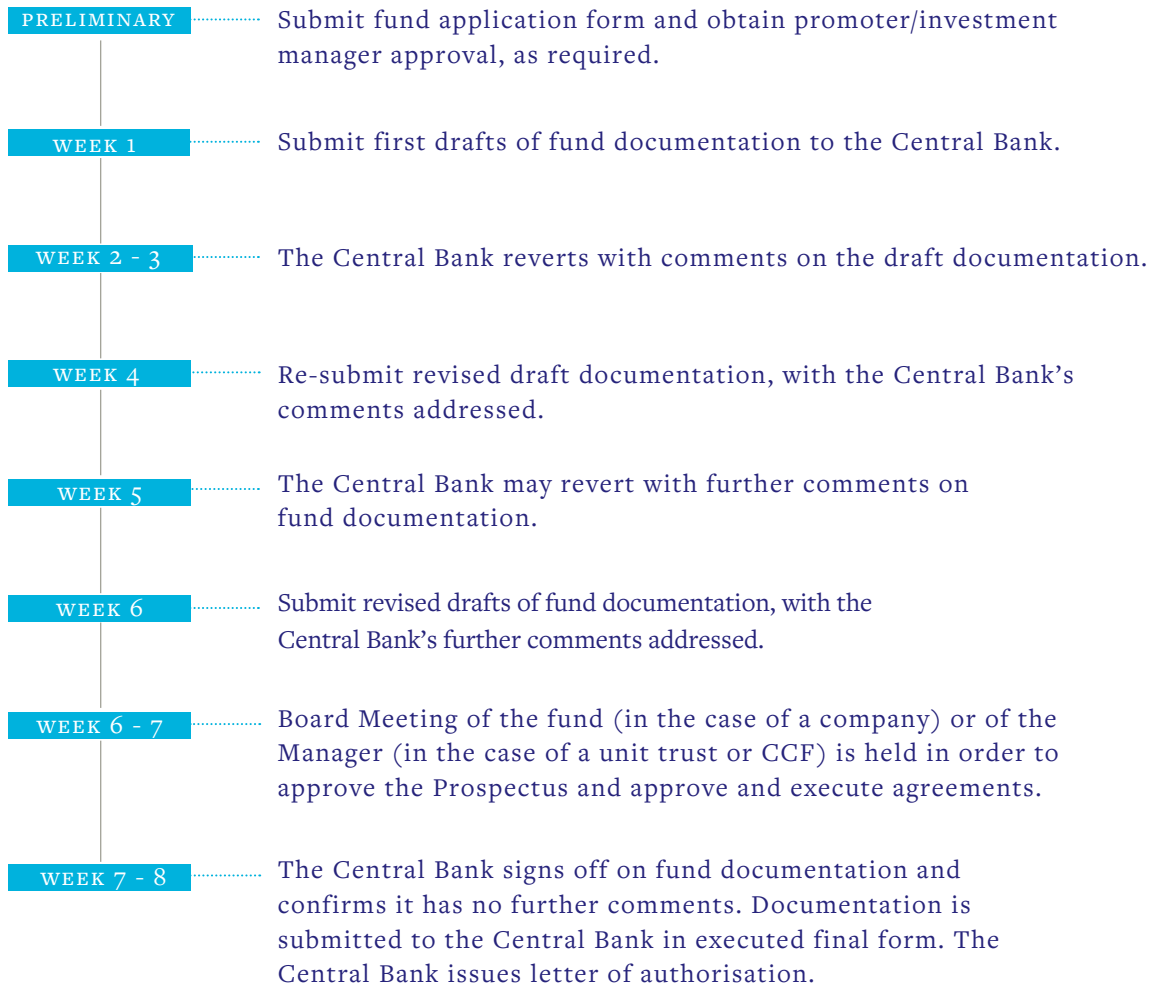
- the Central Bank Application Form;
- Prospectus or Offering Memorandum: this is the principal document which sets out all of the key information relating to the fund;
- the constitutive documents of the chosen fund vehicle;
- UCITS Management Agreement/ AIFM Agreement, Investment Management Agreement, Investment Advisory Agreement and Distribution/Paying Agency Agreement.

The fund’s legal advisers will negotiate the depositary agreement and administration agreement with the relevant service providers and will submit the negotiated drafts to the Central Bank as part of the application process.

Only the Central Bank application form, draft prospectus and depositary agreement are reviewed by the Central Bank. For all other documents, the Central Bank requires the fund’s legal advisers to certify compliance with the relevant regulations and the documents are filed with the Central Bank immediately prior to authorisation of the fund.

The diagram below outlines the authorisation process for funds other than QIAIFs, together with the timing associated with each stage.

Basic Timeline



One-day Authorisation Process for QIAIFs

QIAIFs are subject to a self-certification approval process. Provided the Central Bank receives a complete application for the authorisation of a QIAIF before 3.00pm on a particular day, a letter of authorisation for that QIAIF can be issued on the following business day.

A prerequisite to the QIAIF fast-track authorisation process being available is that the Central Bank has approved in advance the QIAIF's investment manager, depositary, administrator and all of its directors. Furthermore, any policy issues relating to the QIAIF must be cleared in advance with the Central Bank.

It should be noted, also, that the prospectus for a closed-ended fund that will be issued pursuant to the Prospectus Directive will continue to be subject to approval in the usual way.

The fund or management company, as appropriate, is required to certify that all of the fund documentation complies, in all material respects, with the AIF Rulebook. In addition, the depositary of the QIAIF must provide a similar confirmation in relation to the provisions of the depositary agreement (or trust deed, in the case of a QIAIF established as a unit trust).

Fund Managers Authorisation Process and Timing – Applicable to UCITS and RIAIFs

The authorisation process for an Irish UCITS Management Company and/or AIFM involves a preliminary meeting with the Central Bank to discuss the Fund Manager's proposed business, followed by the submission of the application itself. The application documents are:

- a completed application form, together with relevant supporting documentation; and
- a completed Individual Questionnaire in respect of each director and senior manager (where relevant).

An applicant seeking authorisation as Fund Manager must also submit a detailed business plan/programme of activity. Furthermore, the business plan/programme of activity must comply with the provisions of the Central Bank's new Fund Management Company Governance guidelines which detail the relevant managerial functions which must be undertaken by an FMC and how they must be discharged. The application process for a Fund Manager should typically take 3 - 4 months.

Stock Exchange Listing

Every investment fund, UCITS management company and AIFM established in Ireland must be authorised by the Central Bank in accordance with the requirements set out in the Central Bank’s UCITS Regulations or AIF Rulebook, as appropriate.

The main reason for obtaining a stock exchange listing for a fund is to facilitate the marketing of its shares/units to specific categories of investors. Institutional investors, in particular, are often restricted or prohibited from investing in unlisted securities or in securities which are not listed on a recognised or regulated stock exchange. For other categories of investors, also, a listing on a recognised stock exchange will often mean that the shares/units qualify as an eligible security for investment purposes.

Since 1989, the Irish Stock Exchange (the “Exchange”) has maintained a successful track record in the listing of investment funds. The Exchange is a recognised EU stock exchange and has been recognised by the marketing authorities in all of the main jurisdictions, including the US and Japan.

The Exchange has a detailed set of rules of listing investment funds. These rules vary to some extent depending on the fund’s domicile. The Exchange has developed listing rules that provide a streamlined approach

for the listing of investment funds that are authorised by the Central Bank. In general, an open-ended fund that is authorised in Ireland by the Central Bank and prepares combined listing particulars within the initial prospectus will be deemed to have complied with all of the Exchange’s listing requirements. In the case of a closed-ended fund, certain additional requirements may apply by virtue of the application of the EU Listing Directives.

Before a fund can be listed on the Exchange, it must appoint an approved Listing Sponsor which is registered at the Exchange. The Listing Sponsor is responsible for ensuring the fund’s suitability for listing prior to submission of an application, for submission of the listing application and for dealing with the Exchange on all matters in relation to the application. In the case of an Irish-domiciled fund, an application for listing will usually run in parallel with the Central Bank authorisation process.

McCann FitzGerald

McCann FitzGerald is one of Ireland’s premier law firms, with approximately 500 people, including over 350 lawyers and professional staff in our offices in Dublin, London, New York and Brussels.

Spear-headed by our Investment Management Group, McCann FitzGerald offers a one-stop shop to Irish authorised funds, their promoters, directors, managers, administrators and custodians, for legal, regulatory, stock exchange listing, tax and business advisory expertise. We advise on all aspects of investment management and have in-depth, specialist experience in areas including UCITS, structured products, ETFs, alternative investment funds (both retail and qualified), money market funds, managed account platforms, hedge funds, closed-ended funds, private equity funds and real estate funds (including REITs).

Our Investment Management Group is at the forefront of developments in the funds industry: our “firsts” include being one of the first Irish law firms to advise on:

- Complex UCITS funds
- Irish-domiciled ETFs
- Alternative investment fund manager authorisations
- Managed account platforms
- The redomiciliation of a Cayman Island fund by way of continuation
- Closed-ended funds
- Investing by an Irish fund in China A-shares

We provide a full investment funds listing service in addition to a dedicated investment funds company secretarial service.

Recent Directory Comments

Boasts significant experience of investment funds and financial services work, offering expertise in the legal and regulatory aspects to a range of hedge funds and investment firms. Knowledgeable of complex funds-related tax issues.

CHAMBERS EUROPE 2016

“Great market advisers with practical minds. The firm helped us through the necessary procedures and its subject matter expertise was top-notch.”

CHAMBERS EUROPE 2016

“The individuals in the team are very responsive, have good knowledge of the market, and are pragmatic in their advice.”

CHAMBERS EUROPE 2015

Sources say, *“The quality is excellent and lawyers here add value to our business. This firm has great staff retention, which brings consistency.”* *“The lawyers are very attuned to finding solutions, and understand what you need and how to achieve it for you. I always feel confident you can ring up and get a road map to where you want to be.”*

CHAMBERS 2014

This Irish heavyweight maintains its strong reputation for funds mandates, benefiting from its lengthy experience in the domestic market. *“Polished and professional, with a strong knowledge of the funds industry.”*

CHAMBERS 2013

Key Contacts



Mark White

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He advises a wide variety of clients who are engaged in the promotion and management of all types of investment funds, including UCITS funds, money market funds, ETFs, hedge funds, real estate funds, infrastructure/real assets and private equity funds.

He works with some of the largest fund managers in the domestic and international funds market, as well as with large

institutional and seed investors, such as pension schemes, and many of the leading prime brokerage houses. Mark also provides advice on investment business regulation and financial services law.

Mark was formerly a member of the Council of Irish Funds and is currently Chair of the Private Equity Working Group and also Chairs the UCITS V Remuneration Group.



Iain Ferguson

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Iain has significant expertise in structuring, establishing and advising on a wide range of UCITS/AIFs including structured products, hedge funds, ETFs, loan/credit funds, real estate funds, private equity funds and infrastructure funds. Iain has also practiced in a leading international asset management and investment banking business. He Chairs the Irish Funds' Front Office Steering Group

and is a member of the Irish Funds' ETF Working Group and Real Estate Working Group.

He advises major global fund promoters and asset managers, investment banks, wealth managers, family offices, custodians and international prime brokers in connection with their Irish authorised fund activities.



Tony Spratt

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Tony advises clients on the structuring and establishment of every type of Irish fund, particularly in the alternative fund sector. He provides advice on the regulatory and structural issues related to the establishment process of investment funds, including alternative investment funds, UCITS (using both traditional and alternative strategies) and structured products.

As head of our Listing Department, Tony is an expert in the listing of debt and derivative securities and investment funds on the Irish Stock Exchange.

Tony is the Chair of the AIFMD Working Group of Irish Funds, the Irish funds industry association.



Hugh Beattie

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Hugh is the lead partner in our London office.

He specialises in investment funds, debt capital markets, restructuring, structured finance, secured lending and enforcement, bank/financial services regulation,

securitisation and corporate treasury.

During his career, Hugh has acted for or advised many of the banks, investment firms and major capital markets participants who have dealt in the Irish market.



Darragh Murphy

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Darragh specialises in advising on regulatory and commercial matters relevant to financial services businesses, including insurance undertakings, investment management operations, fund promoters, banking entities and payment service providers.

Darragh's practice covers all aspects of carrying on regulated financial services and consumer credit related activities in Ireland whether in relation to the authorisation of entities in this sector, their ongoing business requirements (customer, counterparty and/or regulator facing) and/or problem resolution..

He advises extensively on the regulated activities of insurance and reinsurance undertakings and has worked on many significant transactions. He also helps banks and other financial institutions to deal with payment services and other FinTech matters, such as SEPA payment systems, credit cards, payment instruments and e-money.

Darragh actively participates in a number of industry bodies. In particular, he is a member of the IFSC Funds Legislative Sub-group and Chairman of Irish Fund's Legal & Regulatory Working Group.



Judith Lawless

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Judith is an expert in OTC and exchange-traded derivatives (across asset classes), repos, securities lending, related collateral arrangements and the regulatory environment within which they are transacted. She advises a wide range of buy-side and sell-side clients including banks, dealers, corporates, investment funds, insurance companies and pension funds. Judith also counsels clearing houses, exchanges and other market participants on

issues relating to trading, clearing, settlement and custody. Judith's work as Irish counsel in respect of many industry-standard derivatives, collateral, repo and securities lending transaction documents enhances her position as an adviser in those markets.

More generally, Judith has broad experience in financial and treasury services and structured finance, advising on related transactional and regulatory issues.



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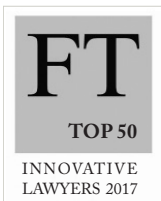
Eleanor has specialised in taxation law and practice since 1992 and has led the expansion of our firm's Finance Tax practice since 2001. She has particular expertise in international tax structuring through Ireland. She advises on the taxation of capital markets products and on the establishment in Ireland of

investment funds and other tax-efficient investment products. Familiar assets classes include real estate, renewables, commodities and an array of financial products. She has expertise and experience in contentious and non-contentious tax dispute resolution in her sectors of expertise.



Useful Websites

McCann FitzGerald	www.mccannfitzgerald.com
Central Bank of Ireland	www.centralbank.ie
Irish Stock Exchange	www.ise.ie
Irish Funds (IF)	www.irishfunds.ie



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