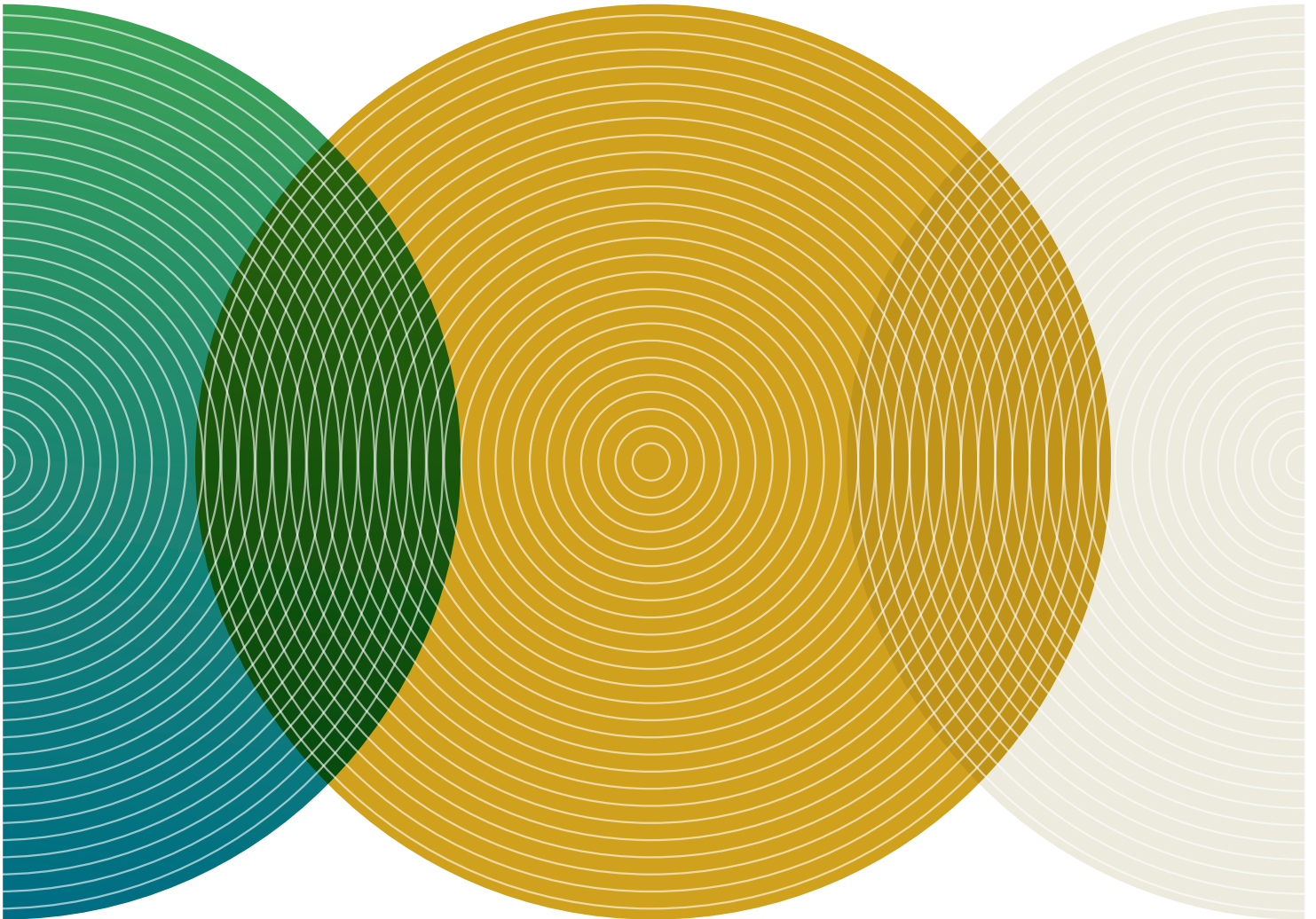

A Guide to
**Asset Management and
Investment Funds in Ireland**

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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.

Regulatory Framework – UCITS and AIFs

In Ireland, a collective investment scheme is usually established as either a UCITS or an Alternative Investment Fund (“AIF”).

UCITS offer a robust and consistent level of investor protection and regulatory compliance combined with a high level of acceptance by regulators and investors worldwide. The statutory framework for UCITS is set out in the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011, as amended which transpose the UCITS Directives into Irish law. These Regulations have been recently amended to transpose the provisions of UCITS V.

In contrast to UCITS, the EU's regulatory framework for AIFs (which includes hedge funds, private equity and real estate funds) focuses on the regulation and oversight of Alternative Investment Fund Managers (“AIFMs”) rather than on the funds themselves. The statutory framework is set out in the European Union (Alternative

Investment Fund Managers) Regulations 2013 (“AIFMD Regulations”), which transpose the Alternative Investment Fund Managers Directive (“AIFMD”) into Irish law.

Irish domiciled UCITS and AIFs are also regulated by rules established by the Central Bank of Ireland (“CBI”) which is the regulatory authority responsible for the authorisation and supervision of all collective investment schemes established in Ireland. In general, the regulatory framework applicable to both UCITS and AIFMs reflects requirements imposed at EU level without any significant national additions or ‘gold plating’.

AIFs can be established in Ireland either as qualifying investor alternative investment funds (“QIAIFs”) or, less commonly, retail investor alternative investment funds (“RIAIFs”). All investment and borrowing restrictions which apply to retail funds (including UCITS and RIAIFs) are automatically disapplied in the case of a QIAIF. In addition, a considerable number of the normal requirements applicable to retail funds are disapplied by the CBI. In

that sense, QIAIFs are ideal for hedge fund, credit/loan strategies, real estate, private equity and infrastructure strategies.

QIAIFs are limited to subscription by persons who certify that they are 'Qualifying Investors'. Each Qualifying Investor must also make an initial minimum investment of €100,000 (although there is no on-going minimum holding requirement). A separate briefing on QIAIFs is available on our website.

Types of Fund Vehicles/Legal Structures

Ireland offers a range of fund vehicles including investment companies, unit trusts, common contractual funds and, in the case of AIFs only, investment limited partnerships ("ILPs"). A new corporate fund vehicle, the Irish Collective Asset-management Vehicle ("ICAV"), was introduced into Irish law in March 2015 and has proven very popular as a fund vehicle with managers and promoters. One of the ICAV's primary advantages is that it has its own legislative regime, which means that unlike the traditional investment company, it 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). 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. It is also worth noting that an ICAV authorised as a QIAIF is not subject to the risk-spreading/diversification requirements which currently apply to investment companies. Finally, umbrella ICAVs can produce audited financial statements on a per sub-fund basis (unlike an umbrella investment company which must produce a single set of audited financial statements at umbrella level) which is attractive particularly for operators of managed account platforms.

All Irish UCITS and AIFs can be established as umbrella funds with each sub-fund pursuing a different investment strategy. Each sub-fund has a separate pool of assets and as a matter of Irish law, all Irish legal fund structures have segregated liability between sub-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, distribution policies, different currencies and, in the case of QIAIFs, different liquidity terms. Unlike sub-funds, a separate pool of assets is not maintained for each class of shares/units.

Taxation Regime

General

All Irish investment funds authorised by the CBI 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 CCFs 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 must 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.

Passporting and Third Countries

One of the key advantages of a UCITS is that once it is authorised in an EEA member state, such as Ireland, it can be freely marketed on a retail basis throughout the EU (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 AIFMD Regulations provide for a marketing passport and a management passport. Under the marketing passport, an EU AIFM is permitted to market the units or shares of any EU AIF that it manages to professional investors in the AIFM's home member state as well as in other EU member states. Under the AIFMD management passport, an EU AIFM can manage EU AIFs established in another member state either directly or by establishing a branch in that member state. Both types of passports are subject to notification requirements.

EU AIFMs marketing non-EU AIFs and non-EU AIFMs managing or marketing AIFs within the member states are subject to national private placement rules. The CBI permits a non-EU AIFM to manage Irish qualified investor AIFs ("QIAIFs") and to market

both EU and non-EU AIFs to professional investors in Ireland.

Authorisation Process for UCITS Management Companies and AIFMs

The authorisation process for Irish UCITS Management Companies and AIFMs ("FMCs") involves a preliminary meeting with the CBI to discuss the FMC'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 an FMC must also submit a detailed business plan/programme of activity. Furthermore, the business plan/programme of activity must comply with the provisions of the CBI's fund management company guidance. The application process for an FMC should typically take 3 - 4 months.

Fund Authorisation

Every investment fund established in Ireland must be authorised by the CBI in accordance with the requirements set out in the CBI UCITS Regulations or AIF Rulebook, as appropriate. The CBI UCITS Regulations and AIF Rulebook set out detailed regulations and policies for all categories of funds, including (in the case of UCITS and RIAIFs only) investment and borrowing restrictions, covering both initial authorisation and on-going supervision.

In addition to setting out the requirements for the authorisation of investment funds, the CBI UCITS Regulations and AIF Rulebook 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.

Process and Timing

UCITS

The CBI has made a general commitment to authorise funds within six to eight weeks from the date of initial

submission of an application to the CBI, 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 CBI 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; and
- 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 CBI as part of the application process.

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

One-Day Authorisation Process For QIAIFs

As mentioned in the QIAIF briefing, QIAIFs are subject to a self-certification approval process. Provided the CBI 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 self-certification process being available is that the investment manager, depositary, administrator and all of the directors of the QIAIF must be approved in advance by the CBI. Furthermore, any policy issues relating to the QIAIF must be cleared in advance with the CBI.

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).

Further Information is Available from:



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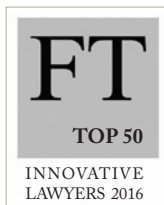
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