



IRISH AIFs

A guide to establishing Alternative
Investment Funds in Ireland

irishfunds.ie

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Ten reasons to choose an Irish AIF

1. **No. 1** for hedge fund servicing
2. **Expertise.** Servicing the widest range of strategies and leading best practice through industry guidance
3. **Experience.** Over 25 years of experience as a leading fund centre with over 4,000 professionals dedicated solely to alternative investments
4. **Choice.** 47 fund administrators and 18 depositaries, as well as a range of legal and advisory firms
5. **Distribution.** Access to professional investors via the EU passport, combined with wider international recognition of Irish fund structures
6. **Innovation.** Developing new structures, services, practices and technologies to meet changing market and regulatory requirements
7. **Tax efficiency.** A clear and simple tax framework with no charges at fund level and no tax on non resident investors.
8. **Regulatory excellence.** A clear and practical regulatory framework with certainty around timeframes
9. **Government support** for the funds industry through strategic planning and targeted initiatives
10. **Streamlined** fund re-domiciliation due to a new process introduced in 2009 which enables funds to maintain their track record while changing the seat of incorporation

WHY CHOOSE AN IRISH AIF?

The Irish funds industry is synonymous with alternative investments, providing the fund structuring expertise, servicing capabilities and distribution access you need to launch and run your fund. Irish Alternative Investment Funds (AIFs) cater to the widest range of investment strategies within a robustly regulated framework and competitive tax environment, offering a tried and tested model that is responsive to market developments.

Centre of excellence

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.¹ Over 40% of global hedge fund assets are administered in Ireland and the number of AIFs established in Ireland has grown to over 2,200.² The range of Irish AIFs established spans hedge funds, private equity and real estate funds with fund distribution to over seventy countries.³

Fund managers can rely on a complete suite of services encompassing fund structuring and set-up, fund administration, depositary, compliance and risk management, tax, legal, audit, corporate governance and technology support services.

This 'eco-system' fosters innovation, competitiveness and a responsiveness to evolving market, regulatory and operational requirements. The Irish funds industry has benefited from sustained government support through targeted initiatives designed to promote the ongoing growth and development of the industry.

Tax and regulation

Ireland's tax framework provides certainty, stability and transparency to investors. Ireland's tax neutral regime for globally distributed investment funds has been in place for more than a quarter of a century. This tax transparent and neutral regime seeks to facilitate the appropriate taxation of investors in their home jurisdiction.

Furthermore, the Central Bank of Ireland (Central Bank) takes a pro-active, constructive approach to regulating the environment for investment funds and regularly engages with industry to find regulatory solutions that allow for new market and product developments. The Central Bank has built up significant expertise and experience in approving more sophisticated fund strategies.

The Central Bank also has clear processes and certain timeframes for fund and manager approvals – timeframes which it continuously meets and often exceeds. A 24 hour approval process is available for the Qualifying Investor AIF while other AIFs can be authorised in six to eight weeks. The Central Bank operates an 'open door' policy and is willing to meet with fund promoters and work through practical solutions.

AIFMD leadership

The Alternative Investment Fund Managers Directive (AIFMD), implemented in July 2013, has transformed the EU regulatory landscape in the alternatives space. AIFMD introduced new organisational, operational, transparency and conduct

of business requirements on AIFMs, which in turn impact the funds they manage.

Ireland was the first jurisdiction to provide a regulated framework for AIFs and remains at the forefront of developments with the implementation of AIFMD. The AIFMD framework is in many ways reflective of pre-existing requirements in Ireland relating to supervisory oversight, an independent depositary, corporate governance, valuations and investor disclosure.

The Central Bank has clarified its regime applicable to Irish regulated AIFs, AIFMs and their service providers under the "AIF Rulebook". The Rulebook maintains the essential features and advantages of Ireland's regulated AIF offering while combining these with the new AIFMD framework.

EU AIFMs can now benefit from a new pan-European marketing passport for AIFs distributed to professional investors across the EU⁴. Furthermore, many investors favour AIFMD-compliant funds or may even be subject to rules which require investment in such funds. This is particularly the case for insurance companies under Solvency II as well as sovereign wealth and governmental funds. The Irish Qualifying Investor AIF combines all of its previous advantages and track record with the marketability and brand recognition that comes with AIFMD compliance.

THE IRISH QUALIFYING INVESTOR AIF COMBINES ALL OF ITS PREVIOUS ADVANTAGES AND TRACK RECORD WITH THE MARKETABILITY AND BRAND RECOGNITION OF AIFMD.

1 Source: Irish Funds, 2014

2 Sources: Central Bank of Ireland, HFMWeek Survey and Irish Funds, 2014

3 Source: Irish Funds analysis based on Lipper/Monterey data, 2014

4 The European Union (EU) comprises 28 member states which are: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom. The European Economic Area (EEA) includes the member states of the EU as well as Iceland, Liechtenstein and Norway but not Switzerland. AIFMD, including the marketing and management passports, applies across the EEA. Therefore, where the term EU is used in the publication with reference to AIFMD, it is to be understood as applying within the EEA.

CHOOSING THE RIGHT FUND STRUCTURE

Overview

The decision on the appropriate fund structure will be informed by the investment strategy (e.g. diversified portfolio or single asset, type of assets, level of risk) and distribution requirements (e.g. professional, retail, local market requirements). Some alternative investment type strategies may be accommodated under the longstanding UCITS regime. UCITS permit the use of derivatives subject to strict diversification requirements and robust risk management safeguards. This has enabled UCITS to deploy a diverse range of more sophisticated strategies, with equity long-short, various arbitrage and macro strategies being the most popular hedge fund-

like strategies. However, since UCITS are open to retail investors and are subject to liquidity and eligible asset requirements, the UCITS framework will not be appropriate in all cases. UCITS cannot be established as real estate, private equity or closed-ended funds. The Central Bank's regulatory regime provides that Alternative Investment Funds (AIFs) may be structured as either Qualifying Investor AIFs (QIAIFs) or Retail Investor AIFs (RIAIFs). These funds are subject to the requirements of the EU's AIFMD regime and each AIF must appoint an Alternative Investment Fund Manager (AIFM) to which certain requirements apply, depending on whether the AIFM is located in or outside the EU or whether it meets certain de minimis

criteria (see "AIFMD compliance" on page 11).

The RIAIF can avail of increased investment flexibilities in comparison with UCITS, while the QIAIF offers the widest range of investment flexibilities. Property fund managers also have the option of setting up a Real Estate Investment Trust (REIT) which must be listed on the main market of a recognised stock exchange. However, REITs are not regulated by the Central Bank but would typically meet the EU definition of an AIF and therefore require the appointment of an AIFM. This publication focuses on AIFs regulated directly by the Central Bank, namely QIAIFs and RIAIFs.

Qualifying Investor AIF (QIAIF)

The Qualifying Investor AIF is a regulated investment fund suitable for well-informed and professional investors. As the QIAIF is not subject to any investment or borrowing restrictions, it can be used for the widest range of investment purposes.

QUALIFYING INVESTOR AIFS: INVESTMENT POSSIBILITIES

Hedge	Property	Fund of funds	Private equity
Venture capital	Commodities	Single asset	Infrastructure
Emerging markets	Single country	Sovereign wealth	Loan funds

Key advantages

- **Investment flexibility:** The Central Bank does not apply investment restrictions and requirements regarding leverage and diversification, making the QIAIF suitable for the broadest range of investment strategies
- **Speed to market:** The QIAIF can be authorised in as little as 24 hours provided a completed application is received before 3pm on the previous day and the parties to the fund are pre-approved
- **Distribution:** The QIAIF can avail of the EU marketing passport when managed by an EU-based AIFM in order to distribute freely to professional investors across the EU. The QIAIF can be distributed on a private placement basis when managed by a non-EU AIFM and is a widely recognised fund structure
- **Transitional arrangements:** Non-EU portfolio managers can avail of generous transitional arrangements for two years after launch, enabling them to comply with AIFMD on a more limited basis
- **Tax efficient:** The fund is not subject to Irish taxation on its income or gains nor are non-Irish investors on payments pertaining to their units.
- **Tried and tested:** The QIAIF has a proven track record as a regulated and flexible solution for alternative investment managers

Qualifying investors

QIAIFs require a minimum initial subscription per investor of €100,000 (or equivalent) with no limit on subscriptions thereafter. QIAIFs are open to professional or well-informed investors who must fall into one of three categories:

1. A professional investor within the meaning of Annex II of the Markets in Financial Instruments Directive (MiFID)
2. An investor who receives an appraisal from an EU credit institution, a MiFID firm or a UCITS management company that they have the appropriate level of expertise
3. An investor who certifies that they are an informed investor by providing written confirmation

A QIAIF may provide for the issue of partly paid units or commitment arrangements in its constitutional documents.

Capital

Following implementation of AIFMD, the Central Bank removed its previous fund promoter regime and the associated capital requirement of €635,000 in net shareholder funds. The Central Bank relies instead on the capital requirements applicable to authorised AIFMs.

Owing to the “start-up period” for smaller AIFMs and the transitional arrangements for non-EU AIFMs, a

QIAIF may not always be required to have an authorised AIFM (see “AIFMD compliance” on page 11). Where this is the case, the Central Bank applies capital requirements to the QIAIF’s management company or the QIAIF itself, in line with its requirements prior to AIFMD as outlined below.

For QIAIFs with an authorised AIFM:

An authorised AIFM appointed to a QIAIF must hold initial capital of €125,000 or capital amounting to one quarter of the previous year’s expenditure, whichever is higher. If the QIAIF is an “internally managed” AIF, i.e. does not appoint a separate AIFM, the initial capital requirement is €300,000. Additional capital must be held equaling 0.02% of the amount by which the net asset value of the funds under management exceeds €250 million. The maximum initial capital requirement is capped at €10 million.

For QIAIFs which do not appoint an authorised AIFM:

If the QIAIF has an Irish AIF management company (e.g. QIAIFs structured as unit trusts require a management company), this management company must hold initial capital of €125,000 or capital amounting to one quarter of the previous year’s expenditure, whichever is higher.

If the QIAIF does not employ the services of an Irish AIF management company or an authorised AIFM, it must have a minimum paid up share

capital equivalent to €125,000 within 3 months of authorisation.

Liquidity options

QIAIFs offer the broadest flexibility in terms of liquidity options and may be structured as open-ended, open-ended with limited liquidity or closed-ended. Open-ended QIAIFs must provide redemption facilities at least on a quarterly basis while those with limited liquidity may provide redemption facilities on a less than quarterly basis. Closed-ended QIAIFs must provide for a finite closed-ended period, the duration of which must be provided for in the prospectus as a material part of the investment policy.

Valuations and redemption prices

The rules for valuation should be clearly laid out in the constitutional documents. These rules should clearly and unambiguously define an expected method of valuation and should set out a framework for variation from this method of valuation. The assets must be valued and the net asset value per share calculated at least once a year. For open-ended AIFs, such valuations and calculations should be carried out at a frequency which is both appropriate to the assets held by the AIF and its issuance and redemption frequency.

The Central Bank does not require QIAIFs to make public the issue and redemption prices of their units, however, these must be made available to unitholders on request.

Enhancements for property and private equity funds

The Central Bank has taken the implementation of AIFMD in Ireland as an opportunity to consolidate and remove certain local rules with maximum reliance on the AIFMD framework. This approach, combined with new changes, has led to significant enhancements for QIAIFs structured as property and private equity funds including:

- Removal of the old property and private equity fund guidance and restrictions for QIAIFs
- Permitting an initial offer period of up to two and a half years for property and private equity/venture capital funds
- Removal of the minimum viable size rule which previously applied to property funds
- Greater flexibility in the use of QIAIF share classes to permit different liquidity and economic terms for investors
- The ability for QIAIFs to purchase and immediately side pocket distressed or illiquid assets
- Permission to engage in bridge financing
- New flexibilities on the issue of partly paid units to investors

Investment in unregulated funds

A QIAIF may invest up to 100% of its net assets in other investment funds subject to a maximum of 50% of net asset value (NAV) in any one unregulated investment fund. The 50% limit may be disapplied if the QIAIF has a minimum subscription requirement of €500,000 and details in the prospectus the obligations and conditions which do not apply to the underlying unregulated investment fund and its manager but apply to the QIAIF and its AIFM.

Share classes

Under the AIF Rulebook, the Central Bank has extended greater flexibility in relation to the use of share classes. The AIF Rulebook provides for the concept of “fair treatment” between different share classes, replacing the previous concept of “equal treatment”. This change permits the use of “exclude or excuse” share classes so that all investors do not have to participate in the same pool of investments. It also facilitates the establishment of share classes with different dealing frequencies and/or different rights to information. Share classes may also be differentiated based on subscription/redemption procedures, distribution policies, hedging policies and other criteria clearly disclosed in the prospectus and permitted by the constitutional document.

Side pockets

Side pockets may be used for assets which are illiquid or hard to value. The AIF Rulebook permits QIAIFs to purchase illiquid or distressed assets and immediately place these in side pockets, with no limit on the amount of assets that may be side-pocketed in

this manner. QIAIFs that place assets into side pockets upon purchase must be classed as either “open-ended with limited liquidity” or “closed-ended”.

In specie subscriptions and redemptions

In specie subscriptions may be accepted as long as these are compatible with the QIAIF’s investment objectives, policies and restrictions. The depositary must be satisfied that the terms of any exchange are not likely to result in any material prejudice to the existing unitholders of the QIAIF. Redemption in specie is possible at the discretion of the QIAIF and with the consent of the redeeming unitholder.

Distribution of income

The Central Bank does not require funds to distribute income and accordingly funds can be established either as distributing funds or accumulating funds or with separate distributing and accumulating classes. Where a fund distributes income, it is free to determine how it will do this but must disclose the income distribution policy in its prospectus. Distributions out of capital may be made, subject to appropriate disclosure.

Fees

The QIAIF must set out in its constitutional documents the maximum annual fee charged by the AIFM/ management company/ general partner. The maximum annual fee shall not be increased without approval on the basis of a majority of votes cast at a general meeting. Verification of performance fees may either be carried out by the depositary or by a competent person appointed by the AIFM and approved for the purpose by the depositary.

Loan originating QIAIF

Irish QIAIFs were always permitted to acquire debt securities but now may additionally originate loans. In September 2014 Ireland became the first major European fund domicile to publish a dedicated regulatory regime for loan funds. Managers authorised under AIFMD will be able to avail of the new structure in order to market loan origination funds under the AIFMD passport framework. Additional product specific requirements apply to the Loan Originating QIAIF (L-QIAIF) and relate to:

- **Credit granting, monitoring and management.**
The L-QIAIF must have documented policies and procedures in place which are aligned with banking rules under the Capital Requirements Directive (CRD).
- **Due diligence by investors.** Once an L-QIAIF decides to provide access to its records or staff, this facility must be transparently available so that any unitholder will have been aware of the due diligence possibility. The onus is on the unitholders to pursue this opportunity.
- **Diversification /eligible investments.** Exposure to any one issuer or group must be limited to 25% of net assets. The L-QIAIF is prohibited from lending to natural persons, financial institutions/those performing investment activities and related parties, such as the depositary and the management company.
- **Skin in the game rules for banks.** Credit institutions that partner

with L-QIAIFs (either through an exposure correlated with the L-QIAIFs performance or through the provision of administration, credit assessment or credit monitoring) must retain a net economic interest of at least 5% of the nominal value of the loan. This applies only in the context of a bilateral arrangement with the credit institution and not if the loan is acquired at arm's length on the secondary market.

- **Stress-testing and reporting.** The L-QIAIF must employ a comprehensive stress testing programme modelled on banking

requirements. The results of the stress testing must be provided to the Central Bank on at least a quarterly basis.

- **Liquidity and distributions.** The L-QIAIF must be established for a finite period, taking the closed-ended form. It may, however, provide a schedule of redemption dates during its life-cycle. Distributions are permitted from unencumbered cash or liquid assets, subject to compliance and liquidity requirements.
- **Leverage.** The L-QIAIF must not have gross assets of more than

200% of net asset value. In the event that the L-QIAIF breaches the limit it must, within 30 days, secure the approval of the Central Bank for a formal plan to bring the L-QIAIF into compliance with the leverage ratio.

- **Disclosure.** Various prospectus disclosure requirements apply and periodic reporting must include certain details on loan performance. Disclosure in periodic reports can be provided on an aggregate basis as long as information on each relevant exposure on a loan by loan basis is reported directly to the Central Bank.

Retail Investor AIF (RIAIF)

The Retail Investor AIF has replaced the previous non-UCITS retail regime with a more flexible framework. The updated RIAIF framework allows for the creation of an investment fund which is subject to less investment and eligible asset restrictions than the UCITS regime but is more restrictive than the QIAIF regime. Consequently, the RIAIF could provide an attractive alternative for managers who need to set up a more highly regulated fund but whose investment strategies do not easily fit within UCITS.

As the RIAIF is a retail fund product, it cannot avail of the automatic right to market across Europe under the AIFMD marketing passport, which is

only for professional investors. Access to individual markets may, however, be granted on a case by case basis. Furthermore, with retail investor protection in mind, the Central Bank has stipulated that a RIAIF may only have a fully authorised AIFM. Non-EU managers (that do not have a fully authorised, EU-based AIFM) and sub-threshold AIFMs are therefore prevented from managing a RIAIF.

Capital

As a RIAIF must always have an authorised AIFM, the Central Bank relies on the capital requirements applicable to authorised AIFMs, who will be able to manage RIAIFs without maintaining separate capital for these funds. See previous QIAIF section for the capital requirements applicable to authorised AIFMs on page 4.

Liquidity options

RIAIFs may be structured as open-ended, open-ended with limited liquidity or closed-ended. Open-ended RIAIFs must provide redemption facilities at least on a monthly basis while those with limited liquidity provide for a period of greater than 30 days between the dealing deadline and payment of redemption proceeds. Closed-ended RIAIFs must provide for finite closed-ended period, the duration of which must be provided for in the prospectus as a material part of the investment policy.

THE RIAIF COULD PROVIDE AN ATTRACTIVE ALTERNATIVE FOR MANAGERS WHO NEED TO SET UP A MORE HIGHLY REGULATED FUND BUT WHOSE INVESTMENT STRATEGIES DO NOT EASILY FIT WITHIN UCITS.

Key investment restrictions

- Investment in unlisted securities up to 20% of NAV (previously 10%)
- Investment in securities issued by the same institution up to 20% of NAV (previously 10%)
- Index tracking RIAIFs are subject to a raised limit of 35% investment in securities by the same institution
- Investment of no more than 20% of any class of security issued by a single issuer (does not apply to investment in other open-ended funds)
- Investment of more than 20% and up to 100% of NAV in government-backed securities requires prior approval of the Central Bank
- A limit of 10% of NAV applies to deposits with any one institution (this may be raised to 30% for EEA or certain other credit institutions or the depositary of the RIAIF)
- Investment of up to 30% of NAV in any one open-ended regulated fund (previously 20%). This rule may be disapplied for certain categories of regulated funds
- A RIAIF investing over 30% of NAV in other investment funds must ensure that the investment funds in which it invests are prohibited from investing more than 30% of NAV in other investment funds
- Investment of up to 20% in unregulated, open-ended funds (previously 10%). This limit may be disapplied subject to further conditions

A RIAIF may derogate from the above investment restrictions for the first six months following the date of launch, provided it observes the principle of risk spreading.

Borrowing

A RIAIF may borrow up to 25% of NAV. This compares with 10% of NAV under UCITS. The RIAIF should not offset credit balances (e.g. cash) against borrowings when determining the percentage of borrowings outstanding. Repurchase / reverse repurchase (repo) contracts, securities borrowing or securities lending do not constitute borrowing for the purposes of the 25% limit.

Valuation

The Central Bank has outlined specific valuation requirements in relation to:

- Securities which are listed or traded on a regulated market
- Securities which are listed or traded on a regulated market where the market price is unrepresentative or not available and unlisted securities
- Investment funds
- Cash
- Exchange traded derivatives
- OTC derivative contracts
- Short-term money market funds and money market funds

Investment in commodities

RIAIFs are permitted to gain exposure to any commodity through financial derivative instruments. Unlike UCITS, RIAIFs may also invest directly in gold. The Central Bank is open to

permitting RIAIFs to invest directly in other commodities subject to specific proposals addressing matters such as liquidity, custody and valuations.

Financial Derivative Instruments (FDIs)

A RIAIF may invest in FDIs subject to requirements aligned with the UCITS framework, including implementation of a risk management process and reporting, calculation of counterparty and global exposure and cover requirements. The RIAIF may not have a risk exposure of greater than 10% of NAV where the counterparty is a relevant institution (EEA or deemed equivalent) and of 5% of NAV in any other case. Investment in OTC derivatives is permitted, subject to counterparty eligibility conditions.

Efficient Portfolio Management (EPM)

Detailed requirements apply to the use of EPM transactions relating to repo contracts and securities lending. The rules cover the quality, receipt, safe-keeping and reinvestment of collateral.

Fees

The same conditions apply in relation to the setting of fees as apply to QIAIFs. Additional conditions in relation to directed brokerage services apply.

Additional product-specific rules

Product-specific requirements apply to RIAIFs established as either fund of unregulated funds, venture capital/development capital/private equity funds, real estate or money market funds.

Disclosure and reporting

AIFs regulated by the Central Bank must publish a prospectus, an annual report (and a semi-annual report in some cases) and meet certain periodic statistical reporting requirements.

Prospectus

The minimum content requirements for both RIAIFs and QIAIFs are set out in the AIF Rulebook and cover areas such as investment objectives, applicable

tax system, capital, base currency, distribution policy, fees, dealing, unitholder rights and obligations, information on the manager, service providers and key personnel such as directors, authorisation status, conflicts of interest, umbrella funds/sub-funds/share classes, wind-up procedures etc. Additional disclosure requirements apply in the case of RIAIFs as well as certain product-specific disclosure requirements.

A description of the AIFM's remuneration policies and practices pursuant to AIFMD must be included in the prospectus of both RIAIFs and QIAIFs.

Authorised AIFMs or AIFMs marketing their AIFs in the EU must additionally comply with the AIFMD investor disclosure requirements, much of which is aligned with the above.

Annual and semi-annual reports

Both the QIAIF and the RIAIF must publish an independently audited annual report for each financial year. Following the implementation of AIFMD, the deadline for the publication of the annual report of an AIF is within six months of year-end, where previously the requirement was within four months in an Irish context. QIAIFs structured as Unit Trusts and all RIAIFs must additionally prepare a half-yearly report and publish it within two months.

Listed closed-ended AIFs subject to the Transparency Directive (2004/109/EC) will continue to have a 4 month deadline for filing their annual report.

Central Bank reporting

Both QIAIFs and RIAIFs must report NAV, units in issue, subscription/redemption, profit/loss, fee and expenses data to the Central Bank on a monthly basis. A quarterly return and an Annual Survey of Liabilities must also be submitted to the Central Bank. If a QIAIF or a RIAIF employs the services of a management company

(see “Legal structures” below), it must publish an annual report within four months of period end and will be subject to service provider regulatory reporting requirements.

Authorised AIFMs and non-EU AIFMs managing and/or marketing AIFs in the EU are subject to periodic regulatory reporting requirements under AIFMD including investment profile, portfolio concentrations and risk metrics. A lighter reporting regime applies to smaller AIFMs (see “AIFMD compliance” on page 11).

Legal structures

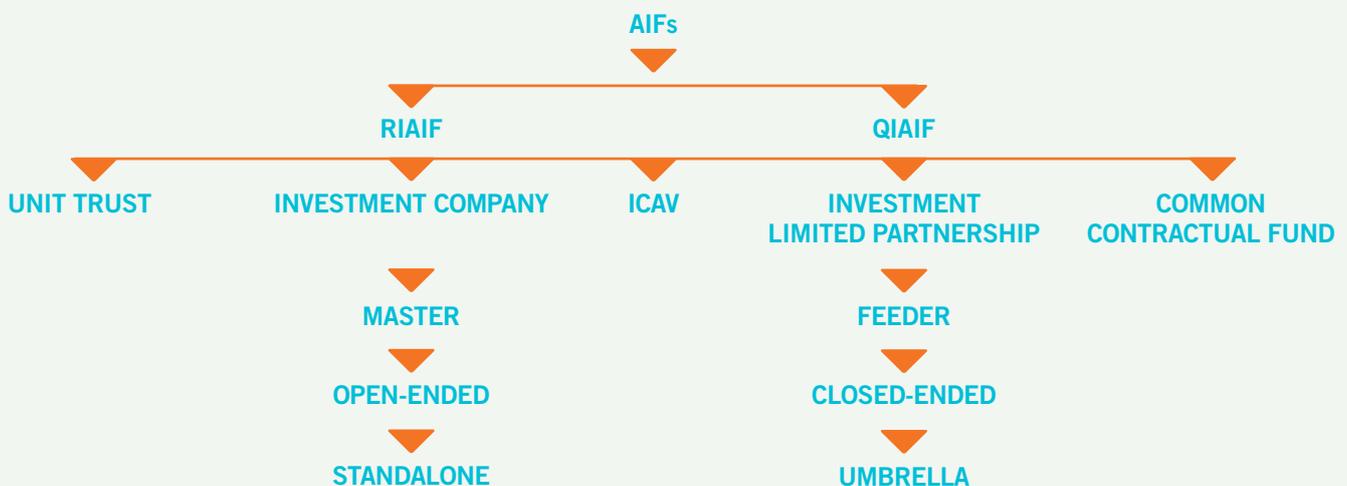
QIAIFs and RIAIFs can be constituted in various legal forms. A range of factors can influence the choice of legal vehicle, including tax treatment, risk spreading requirements, local market requirements and preferences,

operational requirements and willingness to set up a separate Irish management company.

The structuring options include an Investment Company, a Unit Trust, an Investment Limited Partnership (ILP), a Common Contractual Fund (CCF) and

the Irish Collective Asset-management Vehicle (ICAV). All of these vehicles allow for the creation of umbrella funds, sub-funds with segregated liability and individual share classes. Master-feeder structures are also permitted, subject to the investment restrictions outlined above for QIAIFs and RIAIFs.

Available Structures



Investment Company

As a corporation, an Investment Company is a separate legal entity, managed and controlled by its board of directors, which can enter into contracts in its own name. This facilitates the creation of an internally managed fund (see below). Many jurisdictions recognise a corporate fund structure more readily than a contractual vehicle and using a corporate fund structure can facilitate

better access to double taxation treaties.

Investment Companies are Variable Capital Companies (VCCs) with public limited liability formed under Part XIII of the Companies Act 1990. Investment Companies are therefore subject to company law, except where sections are specifically disappplied. Consequently, Investment Companies must hold an AGM and changes to

constitutional documents require shareholder approval.

Investment Companies are subject to a statutory requirement under Part XIII of the Companies Act to spread risk. The board of the fund is left to determine compliance with this requirement but it is accepted that an Investment Company's portfolio cannot comprise of a single asset.

Self-managed Investment Company (SMIC)

The SMIC structured under Part XIII of the Companies Act is historically a popular choice of investment vehicle because of its operational simplicity. With its own legal personality and board of directors, an Investment Company can act as the management entity without the need to set up a separate management company. The SMIC structure, also known as an “internally managed fund”, therefore enables the fund itself to act as the AIFM whereby the board of the fund assumes responsibility for compliance decision-making. A SMIC cannot manage any other funds. An Investment Company may also designate a separate AIFM, which can be used to manage other AIFs and UCITS.

Irish Collective Asset-management Vehicle (ICAV)

The ICAV is a new corporate investment fund vehicle designed specifically for investment funds under bespoke legislation. The ICAV offers all the advantages of a corporate vehicle but, as it is not formed under the existing Companies Acts, several requirements more appropriate to trading companies do not apply to the ICAV. Under the proposed legislation it is envisaged that:

- The ICAV is not subject to those aspects of company law legislation which are not relevant or appropriate to a collective investment scheme
- The Board is able to elect to dispense with the need for an AGM by notifying shareholders
- Financial statements may be prepared at sub-fund level
- The ICAV is not subject to the risk spreading rules currently applicable to VCCs and can consequently be structured as a single asset fund under the AIFMD framework
- Certain routine changes to the fund's constitutional documents may be made without shareholder approval where it is proven that these changes do not prejudice the interests of investors

A key feature of the ICAV is that, unlike the existing VCC structure, it has the ability to elect to be taxed as a partnership for US federal tax purposes. Eligibility to elect to be taxed as a partnership means that the US investor is placed in the same tax position as if they had invested directly in the underlying investments of the ICAV.

Existing Investment Companies can remain under the Part XIII of the Companies Acts or can opt to convert to an ICAV. The ICAV framework provides for the migration of funds domiciled outside Ireland to the ICAV structure.

Unit Trust

A Unit Trust is a contractual fund structure constituted by a trust deed between a trustee and a management company (manager) under the Unit Trusts Act, 1990. A Unit Trust is not a separate legal entity and therefore the trustee acts as legal owner of the fund's assets on behalf of the investors. Since the Unit Trust does not have legal personality, it cannot enter into contracts. A separate management company is therefore always required and managerial responsibility rests with the board of directors of the management company. This separate management company can be used to manage other AIFs and UCITS.

Unit Trusts are not required to hold an AGM and routine changes to the trust deed can be made without unitholder approval, provided the trustee and the management company certify that the change does not prejudice the interests of investors.

Unit Trusts are favoured in certain jurisdictions such as Japan, where the local regulatory environment and investors are more familiar with a contractual investment structure.

Common Contractual Fund (CCF)

The CCF enables non-taxable investors such as pension funds to pool their investments in a tax efficient manner and also to facilitate asset pooling

generally. The CCF is an unincorporated body established by a management company under a contractual deed whereby the investors participate as co-owners of the assets of the fund. Its characteristics are therefore closely aligned to that of a Unit Trust.

The CCF is available to institutional investors only. CCFs are tax transparent, meaning that income and gains are treated as accruing directly to each investor, as if the income or gains had never passed through the fund. On that basis, double taxation treaty reliefs between the investor's home jurisdiction and the jurisdiction in which the underlying investments are based should be available.

Investment Limited Partnership (ILP)

An ILP may be formed in Ireland pursuant to the Investment Limited Partnership Act 1994. The partnership must consist of at least one Irish general partner and at least one limited partner. The partnership does not have legal personality, which rests with the general partner. The main attraction of the partnership structure is that all of the assets, liabilities and profits belong jointly to the individual partners and are allocated according to the proportions agreed in the partnership deed.

Partnerships are a popular structure across the alternative investments space and are frequently used in the US and UK. Following changes in Finance Act 2013, ILPs authorised after 13 February 2013 will be treated as tax transparent. Instead of tax being charged to the partnership itself, tax will now be imposed on the relevant income and gains of partners in an ILP in proportion to the value of their investment. This has the effect of removing a layer of taxation that previously applied, thereby making the ILP transparent for tax purposes. This change is part of a reform package to make the Irish ILP structure more attractive in light of the implementation of AIFMD.

AIFMD COMPLIANCE

Available Options

A fund manager seeking to establish an AIF in Ireland will need an AIFM to take responsibility for the management of the fund and compliance with AIFMD. This presents a number of options for both EU and non-EU managers:

1. Appoint an authorised AIFM
2. Appoint a sub-threshold or “registered AIFM”
3. Designate a non-EU AIFM
4. Set up an EU AIFM
5. Partner with a third party AIFM

1. Appoint an authorised AIFM

EU-based AIFMs must comply in full with AIFMD and submit an application for authorisation under AIFMD. These “authorised AIFMs” are in return permitted to manage AIFs located anywhere in the EU under a management passport, involving a streamlined regulator-to-regulator notification process. EU AIFMs are also permitted to market their EU AIFs to professional investors across the EU under a marketing passport. This EU marketing passport provides for

automatic access to each market in the EU following a streamlined regulator-to-regulator notification process.

Non-EU fund management groups with EU-based operations could structure their office in any EU location to gain authorisation as an EU AIFM, which could manage and market an Irish AIF on an EU passporting basis as outlined above.

Authorised AIFMs – key compliance areas

Authorisation	Risk Management	Remuneration	Investment in Securitisation Positions
Control Disclosures and Asset Stripping	Organisational Requirements	Conduct of Business	Conflicts of Interest
Delegation	Regulatory Reporting	Liquidity Management	Capital
Valuations	Investor Disclosures	Annual Report	Depositary

2. Appoint a sub-threshold or “registered AIFM”

AIFMD provides a lighter regime for AIFMs with regulatory assets under management (AuM) not exceeding €100 million with leverage or €500 million unleveraged with a five year lock-up period. These sub-threshold or “registered AIFMs” must register with their home regulator and adhere to minimum disclosure and reporting requirements. RIAIFs must have an authorised AIFM but a QIAIF can appoint a registered AIFM subject to conditions as outlined below. As registered AIFMs cannot manage AIFs via the EU management passport, the registered AIFM would need to be established in Ireland to manage a QIAIF. The QIAIF could be structured as an internally managed AIF for operational simplicity, with the board of the AIF acting as the governing body of the AIFM.

Registered AIFMs also do not have access to the EU marketing passport and must therefore rely on national private placement regimes, where these exist, in order to conduct marketing. Some EU member states will allow sub-threshold AIFMs to market in their territory subject to the minimum registered AIFM requirements, while other member states apply their full private placement requirements, regardless of regulatory AuM.

The Central Bank has imposed additional requirements on QIAIFs which have a registered AIFM. A QIAIF authorised on or after 22 July 2013 which is managed by a registered AIFM must appoint a fully authorised AIFM within two years of its launch date. During this “start-up period”, the QIAIF will be subject to similar requirements as under the pre-existing QIF regime with limited provisions of AIFMD

applying. Such “start-up QIAIFs” will additionally be subject to the new AIFMD depositary rules but without strict depositary liability applying. The registered AIFM will need to comply with the AIFMD annual report requirements with the exception of the remuneration disclosure.

Grandfathering is available for pre-existing sub-threshold QIAIFs. Such QIAIFs may operate indefinitely under the registered AIFM regime with limited provisions of AIFMD applying but must adhere to the full AIFMD depositary requirements, including the rules on strict depositary liability.

AIFMD – compliance for QIAIFs with a registered AIFM during the two year ‘start-up phase’

AIFM Authorisation	Risk Management	Remuneration	Investment in securitisation positions
Control disclosures and asset stripping	Organisational Requirements	Conduct of business	Conflicts of interest
Delegation	Regulatory reporting	Liquidity management	Capital
Valuations	Investor disclosures	Annual report	Depositary

 AIFMD compliance area

 Approximate level of applicability under the transitional arrangements for Irish QIAIFs

3. Designate a non-EU AIFM

A QIAIF may designate a non-EU AIFM, which will be subject to lighter compliance requirements during a transitional period but will not have

access to the EU passport until 2015 at the earliest. The implementation of this passport is dependent on a positive opinion from the European Securities and Markets Authority (ESMA) and

the European Commission and would require authorisation of the non-EU AIFM and full compliance with AIFMD.

AIFMD timeline



Key requirements applicable to non-EU AIFMs managing QIAIFs during the transitional period

NATIONAL PRIVATE PLACEMENT
If marketing in EU member states, additionally comply with local regimes where national private placement has been provided for.



- NON-EU AIFM REQUIREMENTS**
- Qualifying investor criteria
 - Minimum capital of €125,000
 - Prospectus and investor disclosure requirements
 - Central Bank reporting
 - Valuation requirements, policies and procedures
 - Consistency between the investment strategy, liquidity profile and redemption policy
 - Requirements regarding inducements and certain conduct of business requirements

4. Set up an EU AIFM

Some non-EU fund managers with a significant interest in the EU market and/or in using EU-regulated fund structures to distribute their product, may decide to set up an authorised AIFM from scratch. This solution will require the most investment and effort but is possible to achieve by using an Irish management company or internally managed AIF, supported by reliance on local management company service providers. It will involve the appointment of Irish-resident directors and staff or “designated persons” with the appropriate skills in portfolio and/or risk management. Core managerial functions will need to be retained by the Irish AIFM which will monitor and control the non-EU fund manager as an approved portfolio management delegate.

A QIAIF or a RIAIF may be structured as an internally managed AIF for operational simplicity, with the board of the AIF acting as the governing body of the AIFM. Such internally managed AIFs will be able to market freely across the EU but will not be able to manage other AIFs.

Non-EU portfolio managers operating as portfolio and/or risk management delegates to Irish fund management companies are permitted, subject to requirements in relation to delegation. Cooperation arrangements between the Central Bank and the home regulator of the delegate must be in place following the end of the transitional arrangements.

5. Partner with a third party AIFM

Portfolio managers that want to access EU markets but are not committed to setting up an EU AIFM may choose to partner with a third party AIFM, which will assume responsibility for compliance and perform core activities relating to portfolio/risk management. The portfolio manager is then appointed as a delegate to AIFM. There are a number of AIFM platforms providing such services in the Irish marketplace. While this model involves a loss of control and ultimate responsibility, it can be an attractive option for managers who need access to the EU market at a lower cost.

AIFMD - COMPLIANCE OPTIONS SUMMARY

Number	Option	Passport Available
1	Appoint an Authorised AIFM	
2	Appoint a Sub Threshold or “Registered AIFM”	
3	Designate a Non-EEA AIFM	
4	Set up an EEA AIFM	
5	Partner with a Third Party AIFM	

Appointing the key parties

AIFM

As noted above, an Irish AIF (which is not an internally managed) must have an AIFM that will need to be approved by the Central Bank in advance of the AIF application for authorisation. This must be an authorised AIFM in the case of a RIAIF and may be an authorised AIFM, a non-EU AIFM or a registered AIFM in the case of a QIAIF. An authorised AIFM may be an Irish AIFM or an AIFM authorised in another EU member state which has passported its services into Ireland.

For entities seeking authorisation as an AIFM, the application process should take no longer than three months. The Central Bank requires submission of a

detailed application for authorisation as an AIFM covering legal ownership, authorised activities, capital, financial and business information, organisational structure and regulatory background. The application must be accompanied by a “programme of activity” detailing how compliance with each of AIFMD’s requirements will be achieved by the AIFM on a day-to-day basis.

Directors

The board of directors of Irish domiciled funds established as Investment Companies or ICAVs must include at least two Irish resident directors.⁵ The same requirement applies to Irish AIFMs, management companies of Irish domiciled funds and general partners of ILPs. Directors

must be pre-approved by the Central Bank as part of its Fitness and Probity Regime. Directors are required to complete an “Individual Questionnaire” (IQ) for approval. The Central Bank does not prescribe the experience and expertise required of each director, however, the fitness and probity standards require that a director must:

- be competent and capable;
- act honestly, ethically and with integrity; and
- be financially sound.

Depending on the response from the directors’ referees and any regulating bodies, the Central Bank usually takes five business days to approve a fund director.

Investment managers and investment advisors

The Central Bank must be satisfied with the experience, expertise, reputation and resources of the investment manager(s) and any investment advisor(s) responsible for investing the assets of the QIAIF. While an investment manager has discretionary authority over the assets, an investment advisor has no such control, acting purely in an advisory capacity.

The AIFM will be approved to manage the AIFs assets but if the AIFM proposes to delegate functions

of portfolio management or risk management, it must demonstrate that it will only select entities which are authorised or registered for the purpose of asset management and subject to prudential supervision. Where that condition cannot be met, the use of portfolio and risk management delegates is subject to prior approval of the Central Bank. In approving an investment manager or investment advisor the Central Bank will request:

- Information on ownership structure
- Information on background, track record, countries of operation

- Experience and expertise
- AuM and financial statements
- Regulatory status

EEA managers regulated under the MiFID framework and EEA credit institutions can avail of a fast-track one week approval process. In other cases, the approval process generally takes approximately three to five weeks but the timing is largely dependent on the speed with which responses to the Central Bank’s queries are provided.

⁵ The Central Bank issued a consultation (CP 86) on 19 September 2014 in relation to “Fund Management Company Effectiveness – Delegate Oversight”. This consultation proposes changes to director residency requirements. Firstly, the consultation proposes to define Irish residency for a director as spending at least 110 working days in the State per annum. Secondly, it will be possible to replace one Irish resident director with a director who has the necessary competencies and who commits to making themselves available to the CBI if needed.

Depository and fund service providers

Each Irish AIF must appoint an independent depository which must be approved by the Central Bank and located in Ireland. The depository is responsible for the safekeeping of fund assets, oversight of the fund and monitoring of cash flows. Depositories generally provide security settlement, income collection, corporate action processing, cash management and securities lending services. The depository's oversight duties require it to supervise the investment activities of the fund and to report to the shareholders or unitholders on an annual basis as to whether the fund has operated in accordance with

its prospectus and the applicable regulations. Since AIFMD, the depository has strict liability throughout the custody network for financial instruments held in custody and has more prescriptive oversight and cash flow monitoring duties.

The AIFM may perform the fund administration and transfer agency functions, e.g. maintenance of the books and records of the fund, calculation of the net asset value of the fund and maintenance of the shareholder register. However, these activities are frequently outsourced to a fund service provider. The fund service provider must also be approved

by the Central Bank of Ireland and the Central Bank has set out requirements governing the outsourcing of fund administration activities.

All of the world's leading depositories have a presence in Ireland and are Central Bank approved. No single company may act as both management company, administrator or general partner on the one hand and depository on the other, although affiliated companies of the same group may and regularly do perform these functions independently.

Prime brokers

AIFs are permitted to use prime brokers, who will need to be appointed by the AIF's depository on a sub-custody basis. Following the implementation of AIFMD, the Central Bank has removed its previous prime broker guidance and OTC counterparty credit rating rules in favour of reliance on AIFMD requirements. The new regime provides that:

- Both the AIFM and the depository must exercise due skill, care and diligence in the selection and appointment of the prime broker
- The extent to which assets may be reused or transferred to the prime broker must be disclosed to investors
- Assets may not be reused without the prior consent of the QIAIF and without prior notification to the depository
- For the delegation of safekeeping duties relating to financial instruments held by the depository in custody, the prime broker must

be subject to effective prudential regulation, including minimum capital requirements, and supervision in the jurisdiction concerned as well as subject to an external periodic audit

- The prime broker must segregate the assets of the depository's clients from its own assets and from the assets of the depository in such a way that they can at any time be clearly identified as belonging to clients of a particular depository

Additional requirements

Professional advisors

Each AIF must appoint an auditor to perform the statutory audit and will typically appoint a tax advisor to advise on product structuring and undertake the local tax registrations. Irish funds are served by all of the major international auditing and tax firms. An AIF will also require legal representation and a listing sponsor if it is intended to list the fund on the Irish Stock Exchange (see section on "ISE listing" on page19).

Money Laundering Reporting Officer (MLRO)

The MLRO is responsible for overseeing the adequacy of the work undertaken by the administrator in relation to compliance with anti-money laundering (AML) legislation. The MLRO will be required to report and liaise with the authorities regarding money laundering issues, consider any suspicions of money laundering and ensure all decisions taken in respect of AML activity are documented. This role may be performed by an external provider.

Company Secretary

Company secretarial services are generally included under the administration agreements and include coordination of filings with the Central Bank, the Companies Registration Office (CRO) and the Irish Stock Exchange. Company secretaries also typically arrange and host the board meetings and prepare the board packs. This role may be performed by an external provider.

FUND APPROVAL

Approval of key parties

Setting up an Irish regulated AIF firstly involves identification of the key parties to the fund, who must be approved by the Central Bank (see “Appointing the key parties” on page 15). The AIFM, directors, investment manager/advisor, fund administrator, depositary and auditor must all be pre-cleared by the Central Bank. The service providers located in Ireland will generally have already been authorised/approved by the Central Bank, meaning that the focus will be on approving any managers or delegates located outside of Ireland who have not previously been approved.

Fund application

A detailed application form must be submitted to the Central Bank, filed together with the prospectus, the constitutional documents of the fund and the material contracts with the various parties to the fund, e.g. Depositary Agreement, Administration Agreement etc.

Fund approval timeframes

The QIAIF can be authorised in as little as 24 hours, provided a completed application is received before 3pm on the day of filing. In order to avail of the 24 hour turnaround, the parties to the fund must be pre-approved and the fund must certify that it complies with the QIAIF requirements. Other funds can be approved in as little as six to eight weeks.

Company incorporation

Corporate fund vehicles and management companies will need to register with the Companies Registration Office (CRO). A meeting of the board will be convened to formally review and approve the draft documentation, incorporate the company and appoint the service providers. The Company Secretary will then be able to make the necessary filing with the CRO.

AIF Setup Checklist

Please check relevant box	
Appointment Of Key Parties	
AIFM	
Management company	
Depositary	
Fund administrator	
Transfer agent	
Investment manager / sub-investment manager	
Investment adviser	
Prime broker	
Legal Advisor	
Auditor	
Company secretary	
Money laundering reporting officer (MLRO)	
Directors	
Material Contracts	
Management agreement	
AIFM agreement	
Investment management agreement	
Depositary agreement	
Administration agreement	
Transfer agent agreement	
Investment advisory agreement	
Distribution/paying agent/representative agent agreement	
Prime broker agreement	
Sub-Depositary agreement	
Documents	
Director's letter of application	
Completed application form	
Prospectus (plus any supplements)	
Constitutional documents of the fund	
Certificate of incorporation	
Tax Registration	
Corporation tax registration	
VAT Registration	
Director/employee PAYE registration	

TAXATION

A transparent framework

For more than a quarter of a century, Ireland has been a leading regulated domicile for internationally distributed investment funds. The Irish tax regime has, and continues to be, one of the key growth drivers of the fund industry in Ireland.

Ireland's tax regime, as well being highly efficient, clear and certain, is open, transparent and fully compliant with OECD guidelines and EU law. The Irish framework is legislation-based and does not rely on rulings.

Ireland has the highest rating in the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes.

Ireland was the first international fund domicile to sign an Intergovernmental Agreement (IGA) with the US in respect of the implementation of FATCA.

Ireland was also one of the early adopter jurisdictions of the OECD's Common Reporting Standard (CRS) regime.

Ireland is guiding best practice in international tax developments and this demonstrates Ireland's commitment to international tax transparency and administrative co-operation. This commitment is vital to protecting Ireland's reputation as a responsible, regulated, on-shore jurisdiction and ensuring Ireland's tax neutral regime facilitates tax efficient investments.

Tax efficient

Ireland's tax neutral regime for globally distributed investment funds has been in place for over 25 years.

Fund level

Irish regulated funds are exempt from Irish tax on income and gains derived from their investments and are not subject to any Irish tax on their net asset value. There are additionally no net asset, transfer or capital taxes on the issue, transfer or redemption of units owned by non-Irish resident investors.

Investor level

Non-Irish investors are not within the charge to Irish taxation on their

investment and do not incur any withholding taxes on payments from the fund.

VAT exemption

As provided under EU law, the provision of management, administration and custody services to an Irish regulated fund is exempt from Irish VAT. Other services, such as legal and accounting services, can result in an Irish VAT liability, but may be offset, depending on the fund's VAT recovery position.

Tax treaty network

Spanning over 70 countries across the EU, Middle East, Asia and South America, Ireland has one of the most developed and favorable tax treaty networks in the world. The availability of treaty benefits in a particular case will ultimately depend on the relevant tax treaty and the approach of the tax authorities in the treaty country. Consequently, treaty access needs to be reviewed on a case-by-case basis.

IRELAND'S TAX NEUTRAL REGIME
FOR GLOBALLY DISTRIBUTED
INVESTMENT FUNDS HAS BEEN IN
PLACE FOR OVER 25 YEARS.

ISE LISTING

The Irish Stock Exchange (ISE) is recognised worldwide as the leading centre for listing investment funds with approximately 2,200 funds listed.

Why list on the ISE?

Investment managers from over 40 global locations list their funds on the ISE to:

- Meet investor requirements
- Increase visibility and enhance transparency
- Publish NAVs and announcements
- Increase tax efficiency
- Benefit from third party oversight
- Feature in an investor information portal - ISEFundHub
- Access ETF trading

Listing particulars

The fund must publish listing particulars, approved in advance by the ISE, which include all the information which is relevant and necessary to

allow a potential investor to make an informed assessment of the fund. The same document can be used for regulatory approval and listing approval.

The listing particulars should contain information on:

- Persons responsible for the listing particulars, the auditors and other advisers
- Units/shares for which the application is being made
- The fund's investment policy
- The fund's directors and service providers
- The fund's assets and liabilities and financial position

The ISE published a revised version of its Code of Listing Requirements and Procedures to bring its requirements into line with AIFMD and provide for a greater reliance on existing regulation.

Consequently, investment managers that are approved to act under the AIFMD regime will be automatically suitable to act for listed funds.

Ongoing requirements

The principal 'continuing obligations' are:

- An annual report and audited accounts must be sent to the ISE and unitholders within six months of the period end
- Notification to the ISE of the net asset value, upon calculation
- Details on controlling shareholders', directors' or investment managers' interests must be notified to the ISE
- An annual fee is payable to the ISE

THE ISE IS THE WORLD'S LEADING EXCHANGE FOR THE LISTING OF INVESTMENT FUNDS.

FUND RE-DOMICILIATION

Ireland offers the advantage of an onshore, recognised, AIFMD-compliant domicile with an appropriate regulatory and tax framework and the right expertise. Ireland checks all the boxes from an international promoter perspective and introduced a new streamlined fund re-domiciling process in 2009.

Streamlined fund re-domiciling process

The Companies (Miscellaneous Provisions) Act 2009 introduced a new, efficient fund redomiciling process that ensures minimal disruption to day-to-day management and distribution of the fund.

This process ensures no adverse Irish tax consequences and provides a mechanism to potentially reduce

foreign tax consequences that could ordinarily arise on a redomiciling process. Funds domiciled in the following jurisdictions can avail of the new re-domiciling framework:

- Bermuda
- British Virgin Islands
- Cayman Islands
- Guernsey
- Jersey
- The Isle of Man

Key advantages

- Ability to retain the fund's performance track record post migration
- Manage and mitigate adverse tax consequences for investors that might otherwise arise under a merger of an offshore fund with a new onshore fund
- Prevent a charge to transfer taxes that might otherwise arise from the transfer of assets under a fund merger
- Removal of the administrative burden of moving assets to a new fund
- Upon authorisation, qualification is assured for the tax exemptions available for Irish regulated investment funds
- Simultaneous authorisation (by the Central Bank) and registration (by the Companies Registration Office) to avoid delays and ease the administrative burden
- No requirement for a general meeting of shareholders of the migrating company in Ireland



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