Matheson

Ireland as an International Fund Domicile

Contents

About Matheson

Matheson's primary focus is serving the Irish legal needs of internationally focused companies and financial institutions doing business in and from Ireland. Our clients include the majority of the Fortune 100 companies. We also advise 7 of the top 10 global technology brands and over half of the world's 50 largest banks. We are headquartered in Dublin and have offices in Cork, London, New York, Palo Alto and San Francisco. More than 720 people work across our six offices, including 97 partners and tax principals and over 520 legal, tax and digital services professionals.

Our expertise is spread across more than 30 distinct practice groups within the firm, including Finance and Capital Markets, Corporate, International Business, Mergers and Acquisitions, Technology and Innovation, Digital Services, Intellectual Property, Insolvency and Corporate Restructuring, EU and Competition, Asset Management and Investment Funds, Employment, Pensions and Benefits, Commercial Real Estate, Litigation and Dispute Resolution, Healthcare, Insurance, Tax, Private Client, Energy and Infrastructure, FinTech and Life Sciences. We work collaboratively across all areas, reinforcing a client first ethos among our people, and our broad and interconnected spread of industry and sectoral expertise allows us to provide the full range of legal advice and services to our clients.

ABOUT MATHESON

The Asset Management and Investment Funds Department

Matheson is the number one ranked funds law practice in Ireland, acting for 31% of Irish domiciled investment funds by assets under management as at 30 June 2020. Led by 12 partners, the practice comprises 70 asset management and investment fund lawyers and professionals in total. The department's expertise in UCITS and alternative investment funds is reflected in its tier one ranking by the European Legal 500, Chambers Europe and the IFLR1000, and the team is specifically recognised for its abilities with respect to complex mandates.

We are consistently involved in influencing developments in the asset management and investment funds industry in Ireland and Europe. Our partners and associates hold key industry appointments on various committees and taskforces of the Irish funds industry association (Irish Funds). At European level, a Matheson partner sits on the ESG Standing Committee, the UCITS working group and the ETFs working group of the European Fund and Asset Management Association.

With our asset management legal and regulatory advisers working alongside Matheson taxation, finance and capital markets and commercial litigation departments, we offer a comprehensive service for clients. We are one of the few law firms in Ireland with a specialist derivatives practice, which enables us to provide combined asset management, tax and derivatives advice of the highest calibre to our clients.

Ireland as an International Fund Domicile

This brochure outlines the advantages of Ireland as a domicile for international investment funds. It describes the regulatory framework which applies in Ireland and the available fund vehicles. It also provides an overview of the process of applying for fund authorisation to the Central Bank of Ireland, for listing funds on Euronext Dublin, and a synopsis of the taxation of Irish domiciled funds.

Ireland services alternative investment assets representing approximately

40%

of global hedge fund assets

Ireland services alternative investment assets representing approximately

63%

of European hedge fund assets

Ireland is the domicile for

5.9%

of investment fund assets globally

Ireland is the

3rd

largest global centre for investment funds

Ireland is the

2nd

largest domicile in Europe for investment funds

Irish domiciled ETFs represent approximately

64%

of the total European ETF market

Irish domiciled money market funds represent approximately

40%

of the total European money market fund market

1 Ireland as an International Fund Domicile

Ireland is internationally recognised as one of the world's most advantageous jurisdictions in which to establish international investment funds. Fund vehicles with many different characteristics can be established in Ireland as Irish collective asset-management vehicles (ICAVs), investment companies, investment limited partnerships, unit trusts or common contractual funds.

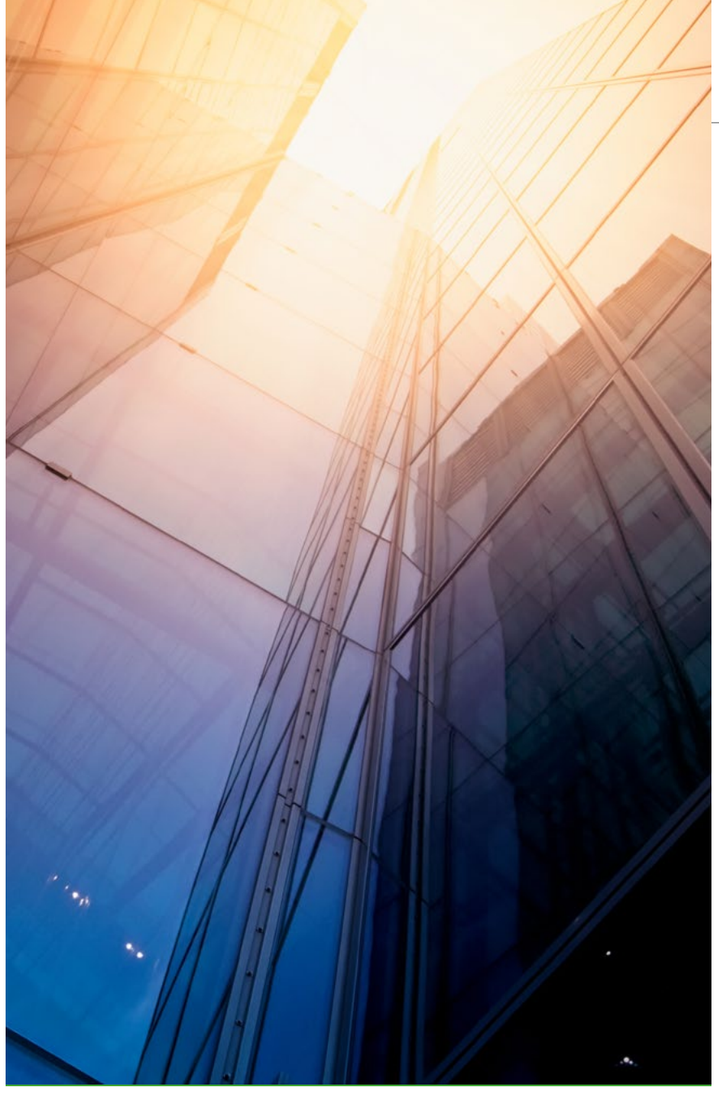
The Central Bank is the regulatory authority responsible for the authorisation and supervision of Irish fund vehicles. The Central Bank has worked closely with the mutual fund industry to tailor its regulations to accommodate a range of investment products with different structural features. The Central Bank's due consideration of developing industry practice, whilst having regard to its duties to protect investors, has been characteristic of the robust and energetic regulatory environment for financial services in Ireland.

Many of the world's most prominent service providers have established substantial operations both in Dublin and throughout Ireland. Following the United Kingdom's decision to leave the European Union, Ireland has been the jurisdiction of choice for many entities relocating operations from the United Kingdom to the European Union in order to retain access to the European market. A tax efficient and sophisticated regulatory framework is supported by an enduring political commitment to facilitate the development of Ireland as a leading centre for international financial services, including investment fund management and administration activities. Continued government impetus to build on the outstanding success of financial services in Ireland to date has sustained the focus on innovation in the international financial services sector, backed by sound and prudent regulation.

Advantages of Ireland as a Fund Domicile

The following factors all play a role in maintaining Ireland's position as a leading fund domicile of choice:

- Ireland has one of the highest number of stock exchange listed investment funds globally, with over 4,000 classes listed
- Ireland achieved a top ranking in a number of categories in the IMD World Competitiveness Yearbook 2020 and was named the **12th** most competitive economy in the world and the **3rd** most competitive economy in the EU
- Ireland is an EU Member State and benefits from the harmonisation of EU financial services regulation. It therefore qualifies as a UCITS and AIF domicile and as a "home" or "host" state for the provision of EU investment services under MiFID. Ireland is a participating member of the Economic and Monetary Union and has the euro as its currency
- Following the United Kingdom's withdrawal from the EU, Ireland holds the important position as the only English speaking gateway to one of the world's largest markets
- Ireland is an OECD member state and has continually confirmed its commitment to its membership of the EU
- Ireland offers a range of tax-exempt fund vehicles (including ICAVs, investment companies, investment limited partnerships, unit trusts and common contractual funds) which can be tailored to suit investor requirements
- Ireland has one of the most developed and favourable tax treaty networks in the world, with a continuously expanding tax treaty network including over **70** countries
- Irish funds can use structured fund vehicles which can access Ireland's network of double tax treaties
- Euronext Dublin is an internationally recognised, regulated exchange for the listing of Irish and non-Irish domiciled investment funds and it is widely regarded as one of the leading exchanges in the world for the listing of investment funds
- Irish investment funds, fund managers, administrators and depositaries enjoy a prudent but practical regulatory environment governed by an approachable Central Bank willing to discuss and if possible work through any issues, with regulatory sensitivity to the needs of international fund managers, service providers and investors
- Ireland was the first regulated jurisdiction to provide a regulatory framework specifically for the alternative investment fund industry and is at the forefront of product innovation, providing opportunities and solutions for this sector
- Ireland was the first EU Member State to introduce a specific regulatory framework for loan originating investment funds
- Ireland does not operate banking secrecy and was the only international funds centre to appear on the original OECD white list of countries that are in compliance with internationally agreed tax standards
- Ireland has signed bilateral Memoranda of Understanding with **40** jurisdictions including the United Kingdom, China, Japan, Dubai, Hong Kong, Isle of Man,



Jersey, South Africa, Switzerland, Taiwan, UAE and USA and cooperates with all EU Member States through the EU legislative framework

- Ireland has signed AIFMD co-operation agreements with **40** regulatory authorities, including the Securities and Exchange Commission, the Commodity Futures Trading Commission and the Securities and Futures Commission of Hong Kong
- Ireland has a well-developed infrastructure with sophisticated telecommunications networks and local availability of highly educated labour, the resilience and strength of which were demonstrated by Ireland's very successful adaptation to remote working during the Covid-19 pandemic when minimal disruption to services occurred
- Ireland's professional services infrastructure is well developed and experienced, with specialist legal, tax and accounting skills
- A wide range of languages is supported in the Irish funds industry and with approximately **12.7%** of Ireland's resident population coming from abroad (as at April 2019 – Central Statistics Office), the Irish funds industry has access to a workforce which includes many native speakers of

European and Asian languages

- Ireland has direct daily flights to and from the US and all of Europe's major financial centres and transport hubs
- Ireland is in the same time zone as London and business can be conducted with Japan, Hong Kong and Australia in the morning and North and South America in the afternoon
- In an independent global survey of 200 asset managers commissioned by Matheson and conducted by the Economist Intelligence Unit ("**EIU**"), **71%** of the managers surveyed said that they would choose Ireland as one of their top three European fund domiciles. Respondents to the survey had the opportunity to select which, in their view, are the best performing European fund domiciles under each of the following distinct categories:
  - best regulatory conditions (such as regulatory sophistication, accessibility and responsiveness);
  - best legal and tax framework; and
  - best non-regulatory and non-tax business conditions (such as ease of doing business, service culture, local expertise in complex products).

The survey findings demonstrated that Ireland is regarded by global asset managers as the best European domicile for investment funds when compared to its competitor European jurisdictions, with Ireland's performance in the EIU survey placing it far ahead of its nearest rivals. Germany and Luxembourg came in joint second place in the survey, with 45% of managers selecting those jurisdictions as top three European fund domiciles. The United Kingdom came in third place, with 33% of managers voting it a top three domicile.

2 Regulatory Framework

The specific regulations applied by the Central Bank to an investment fund will depend on the type of investors to whom the fund is to be sold and the specific investment policies of the fund. The regulatory framework in Ireland is divided between UCITS and AIFs, both of which are governed by legislation as well as the rules and guidance issued by the Central Bank. The primary difference in the regulation of each relates to the nature of the investments which they are permitted to make, and to the particular investment rules and borrowing restrictions imposed by the Central Bank under the applicable Irish legislation.

In common with all EU funds, Irish domiciled funds are also subject to more general EU legislative requirements such as sustainable finance legislation, EMIR, the SFTR, the PRIIPs Regulation and the Market Abuse Regulation. Initiatives at European level to encourage particular forms of investment have also led to the introduction of legislation governing various sub-categories of funds, including ELTIFs, EuVECAs and EuSEFs, which are dealt with in further detail in section 4 (Customising your Fund Vehicle).

2.1 UCITS

UCITS are diversified, limited leverage, open ended investment funds whose object must be to invest capital raised from the public in transferable securities and other liquid asset classes. UCITS are open ended insofar as investors must generally be entitled to redeem their shares or units on request at least twice per month at regular intervals. There are restrictions on UCITS' investment and borrowing policies and on their use of leverage and financial derivative instruments. The advantage of establishing a fund as a UCITS is that it can generally be sold without any material restriction to any category or number of investors in any EU Member State, subject to the filing of appropriate documentation with the relevant regulatory authority in the EU Member State(s) where it is to be sold. The UCITS brand has gained global recognition, with UCITS regarded as well regulated funds with robust risk management procedures and a strong focus on investor protection. UCITS are widely accepted for sale in Asia, the Middle East and Latin America.

EU Marketing Passport

One of the primary objectives of the UCITS Directive is to facilitate the harmonisation of financial services across EU Member States by introducing an investment vehicle which can be established and regulated in one EU Member State and which can avail of an "EU passport", enabling its units or shares to be marketed and sold in all other EU Member States to all investors. At present, this is the advantage in selecting the UCITS regulatory framework over an AIF vehicle for an Irish domiciled investment fund; although an EU passport is available under the AIFMD, it is limited to marketing to professional investors.

In principle, by authorising funds as UCITS, all EU Member States must operate in accordance with the same conditions derived from the UCITS Directive. In practice, however, there has been divergence between different EU Member States in their interpretation of the UCITS Directive. As the regulator in a leading domicile for UCITS, the Central Bank has a sophisticated understanding of the market and of the requirements of fund promoters, service providers and investors.

In terms of the procedure for activating permitted cross-border sales and marketing, a UCITS authorised in one EU Member State cannot be prohibited from selling or promoting the sale of its shares or units to the public in any other EU Member State once it has complied with the relevant notification requirements. A UCITS must comply with local marketing and advertising requirements in the host Member State. A change to the UCITS marketing rules (effective from August 2021) removed the ability of host EU Member States to require a UCITS to have a physical presence in that Member State or to appoint a third party representative, further simplifying the process for the passporting of UCITS across the EU and reducing costs.

Eligible Investments

The successful implementation in Ireland of various different European UCITS reform measures has meant that it is possible to pursue a broad range of investment strategies through UCITS.

The criteria used in determining eligible investments for UCITS are set out in detail in the Eligible Assets Directive. In summary, a UCITS must invest at least 90% of its assets in transferable securities or liquid financial assets listed or traded on recognised exchanges or markets. These include shares in companies (and other securities equivalent to shares), bonds and other forms of securitised debt, and other negotiable securities which carry the right to acquire any such transferable securities. They also include money market instruments, deposits, units in other collective investment funds and exchange traded or OTC financial derivative instruments. A UCITS can use these derivative instruments for investment purposes as well as for efficient portfolio management purposes.

Subject to protections in respect of risk management and global exposure, a UCITS can engage in certain strategies which would traditionally have been regarded as alternative investment strategies, for example certain long / short strategies or structured product strategies (including funds whose strategies are linked to eligible indices, funds which use systematic trading models and / or funds that have capital protection features). The range of eligible investments for UCITS continues to evolve and future European developments may affect the variety of investments that can be made by UCITS.

As a means of ensuring investors are adequately protected, where a UCITS proposes

to use certain eligible investments as part of its investment strategy, the Central Bank applies an enhanced scrutiny process, whereby a submission relating to the proposed use of the relevant investments by the UCITS is requested by the Central Bank. Such investments may include contracts for difference, contingent convertible bonds, collateralised loan obligations and binary options. The enhanced scrutiny process typically involves providing to the Central Bank a model portfolio, evidence of the due diligence carried out on the proposed portfolio and evidence to support the suitability of the proposed portfolio.

Investment and Borrowing Restrictions

A UCITS must invest in accordance with the investment and borrowing restrictions which derive from the UCITS Directive. Conditions are also imposed on the use of various instruments and techniques for efficient portfolio management.

The Central Bank may grant a derogation from certain fund investment limitations for up to six months following authorisation, provided that the UCITS continues to observe the principle of risk spreading. Otherwise, if investment limitations are exceeded for reasons beyond the control of a UCITS, or as a result of the exercise of subscription rights, the UCITS must take steps to remedy the situation, taking due account of its investors' interests.

A UCITS may borrow up to 10% of the net asset value of the fund, provided that the borrowing is on a temporary basis.

Risk Management Process

Where financial derivative instruments are utilised by a UCITS, whether for investment purposes or for efficient portfolio management, the Central Bank requires a UCITS to have a risk management process with respect to the engagement and ongoing use of financial derivative instruments. This means that a UCITS must establish an extensive system of risk limitation in order to ensure that the risks involved in using financial derivative instruments are properly managed, measured and monitored on an ongoing basis. This involves designing, implementing and documenting a risk management process in order to meet key requirements of investor protection.

A UCITS must provide the Central Bank with details of its proposed financial derivative instruments activity and risk assessment methodology, including information in relation to:

- permitted types of financial derivative instruments, including embedded derivatives in transferable securities and money market instruments;
- the underlying risks;
- relevant quantitative limits and how these will be monitored and enforced; and
- methods for estimating risks.

A UCITS must submit, with its annual report, a report to the Central Bank on its financial derivative instrument positions, including information under the different categories identified above.

Measurement of Risk

In terms of measurement of risk, exposure through the use of financial derivative instruments can be calculated through a commitment, absolute VaR (value at risk) or relative VaR approach. It is the responsibility of the UCITS to select an appropriate methodology to calculate global exposure, although in certain circumstances (including, for example, a UCITS using significant or complicated financial derivative instruments strategies), a UCITS must use a VaR approach. A UCITS using the commitment approach must ensure that its global exposure does not exceed its total net asset value (ie, it may not be leveraged in excess of 100% of net asset value). In the case of a UCITS using the relative VaR approach, the VaR of the UCITS portfolio may not be greater than twice the VaR of an appropriate reference portfolio; the VaR of a UCITS using the absolute VaR approach cannot exceed 20% of its net asset value.

Key Investor Information Document and Key Information Document

Each UCITS must produce a Key Investor Information Document or KIID, which is a pre-contractual investor communication in a prescribed format that must be made available in a durable medium to investors in EU Member States. The purpose of the KIID is to summarise the key features of the UCITS so as to provide retail investors with sufficient information in respect of the investment product and its risks, thereby allowing them to make an informed investment decision.

The requirement to produce a KIID will soon be replaced by a requirement to produce a PRIIPs Key Information Document or KID. Similar to the KIID, the KID is pre-contractual disclosure document in a prescribed format intended to assist retail investors in understanding the UCITS and comparing it with different investment products in advance of any potential investment.

Cross-Border Mergers of UCITS

The EU framework for fund mergers supports fund rationalisation and makes it easier for the fund management industry to exploit business opportunities across the EU through the efficient restructuring of funds. The UCITS merger rules harmonise UCITS merger authorisation and investor information requirements. These measures facilitate greater economies of scale, associated cost savings and assist with the appropriate consolidation of funds within the EU, whilst at the same time ensuring investor protection.

UCITS Management Companies

Each UCITS is required to have either a UCITS management company or to be self-managed. Details regarding UCITS management companies and self-managed UCITS are set out in section 6.3. UCITS management companies can manage UCITS funds on a cross-border basis by virtue of the UCITS management company passport. This means that a UCITS authorised in one EU Member State may be managed by a UCITS management company established and authorised in another EU Member State. It also means that an Irish UCITS management company may manage UCITS authorised in other EU Member States.

2.2 AIFs

There is also a range of AIF vehicles in Ireland to facilitate fund sponsors who wish to establish funds with features that do not adhere to the restrictions imposed by the UCITS Directive. The regulatory regime governing AIFs offers greater flexibility than the UCITS regime with respect to investment

strategies and restrictions and can facilitate the creation of funds focused on real estate, private equity or commodity investments. AIFs managed by authorised AIFMs can currently avail of an EU cross-border passport for marketing to professional investors. A cross-border passport for marketing AIFs to retail investors is under consideration by the European Commission and may be available at a future date.

AIFs fall into two categories, retail investor alternative investment funds ("**RIAIFs**") and qualifying investor alternative investment funds ("**QIAIFs**"), and both are governed by the Irish AIFM Regulations, which implement the AIFMD in Ireland.

QIAIFs

The Central Bank does not impose any investment concentration or leverage restrictions of any nature on QIAIFs, save in the case of QIAIF investment companies, which must observe the general principle of risk-spreading. This risk-spreading requirement derives from company law and so does not apply to ICAVs, ILPs, unit trusts or CCFs.

To qualify as a QIAIF, a fund must:

- have a minimum initial subscription requirement of €100,000. The aggregate of an investor's investments in the sub-funds of an umbrella fund can be taken into account for the purposes of meeting this requirement;
- sell its shares, partnership interests or units to qualifying investors. Qualifying investors are defined to include:
  (1) an investor who is a professional client under MiFID; or
  (2) an investor who receives an appraisal from an EU credit institution, a MiFID firm or a UCITS management company that the investor has the appropriate expertise, experience and knowledge to adequately understand the investment in the scheme; or
  (3) an investor who certifies that they are an informed investor by confirming that: (a) they have such knowledge of and experience in financial and business matters as would enable the investor to properly evaluate the merits and risks of the prospective investment; or (b) that the investor's business involves, whether for its own account or the account of others, the management, acquisition or disposal of property of the same kind as the property of the QIAIF; and
- qualifying investors must certify that they meet the definition of qualifying investor set out above and that they are aware of the risks involved in the proposed investment and of the fact that inherent in such investment is the potential to lose all of the sum invested.

Exemptions from the minimum subscription and qualifying investor criteria may be provided under certain conditions to the management company, the investment manager, a director of any of those entities or, subject to certain further conditions, an employee of any of those entities. It is worth noting that, although a QIAIF can be sold to qualifying investors, where it uses the EU marketing passport, it can currently only do so in the context of marketing to professional investors, which is a slightly narrower range of investors. Furthermore, any QIAIF which is marketed in the EU to persons other than professional investors will be subject to the requirements under the PRIIPs Regulation to provide a KID to such investors.

The absence of Central Bank-imposed investment restrictions has resulted in QIAIFs becoming attractive vehicles for the establishment of highly leveraged funds, funds pursuing investment policies which involve high concentrations of investments in individual issuers, private equity or venture capital funds, property funds and emerging market funds.

A QIAIF can be authorised by the Central Bank within 24 hours of a single filing of documents. Authorisation can be granted on the day following the date of filing of appropriate QIAIF documentation provided that: (i) the Central Bank receives a completed application by 3.00 pm on the filing date (or 5.00 pm where the Central Bank's online filing system, is used); (ii) all relevant parties to the QIAIF (eg, directors and service providers) have been approved in advance of the application; and (iii) the fund certifies that it complies with certain agreed parameters codified in the Central Bank's QIAIF application form.

This fast-track procedure is long-established (since February 2007) and is a significant factor in the attractiveness of QIAIFs. It should be noted that certain QIAIFs may not avail of the fast-track procedure and must make a pre-submissions to the Central Bank, as further detailed in section 2.2 below.

RIAIFs

Retail investor alternative investment funds are, as the name suggests, available to the widest pool of investors. They can be effectively classed as funds which have no regulatory minimum subscription. The Central Bank has set out general investment and borrowing restrictions for all RIAIFs. In practice, because of the similarities between the investment limitations imposed on RIAIFs and UCITS, the majority of fund sponsors seeking to establish open ended retail funds in Ireland elect for UCITS status in order to benefit from the cross-border marketing advantages of a UCITS (which can be marketed to retail investors using an EU passport, whereas RIAIFs can currently only be marketed to professional investors on a passporting basis). Details regarding RIAIF funds of hedge funds are contained in section 4 (Customising your Fund Vehicle) of this brochure under the heading Fund of Funds.

EU Marketing Passport

Similar to the UCITS Directive, one of the primary objectives of the AIFMD is to facilitate the harmonisation of financial services across EU Member States by giving an AIF managed by an authorised AIFM an "EU passport", enabling its units, shares or partnership interests to be marketed and sold in all other EU Member States. While the UCITS passport permits marketing on a passporting basis to all investors, the AIFMD passport is currently restricted to marketing to professional investors only.

In terms of the procedure for activating permitted cross-border sales and marketing, an AIF authorised in one EU Member State and managed by an authorised AIFM cannot be prohibited from selling or promoting the sale of its shares, partnership interests or units to professional investors in any other EU Member State, provided that the competent authorities in the AIFM's home EU Member State have been notified of its intended activities and the notification file has been sent to the competent authorities in the EU Member State in which the AIF is to be marketed. The AIF may, however, be required to comply with local marketing and advertising requirements.

The AIFMD passport is currently not available to AIFs managed by non-EU AIFMs, non-EU AIFs managed by EU AIFMs and EU AIFs feeding into a non-EU master fund. The marketing of these AIFs is governed by the national regimes in place in each EU Member State. The European Commission may at a future date adopt legislation extending the passport to non-EU AIFs and non-EU AIFMs, but this is subject to the receipt of positive advice from the European Securities and Markets Authority in respect of a sufficient number of non-EU jurisdictions.

AIFMs

All AIFs are required to either appoint an AIFM or to be a self-managed AIF. Details regarding AIFMs and self-managed AIFs are set out in section 6.3. An authorised EU AIFM can manage EU AIFs on a cross-border basis by virtue of the AIFMD management passport. This means that an AIF established in one EU Member State may be managed by an AIFM established and authorised in another EU Member State and that an Irish AIFM may manage AIFs authorised in another EU Member State.

2.3 Corporate Governance

The Central Bank has published guidance for fund management companies ("**FMCs**"), which applies to the board of directors of UCITS management companies, AIFMs, AIF management companies, self-managed UCITS investment companies and internally managed AIFs incorporated and authorised in Ireland. Under Central Bank rules, managerial functions must be discharged by a designated person (who may or may not be a director) on behalf of the relevant fund management company and the Central Bank has provided extensive guidance on the discharge of each of these managerial functions. The Central Bank's guidance also addresses delegate oversight, organisational effectiveness, directors' time commitments, operational issues and procedural matters. The final consolidated guidance was published in December 2016 and has applied to all FMCs since 2018.

The Central Bank continues to build on its new framework for FMCs and shortly after its introduction, the Central Bank conducted a thematic inspection of FMCs to assess their implementation of the framework. In October 2020, the Central Bank issued a 'Dear Chair' letter outlining its findings following the thematic review, where it concluded that, when applied correctly by FMCs, the new guidance provided a framework of robust governance, management and oversight arrangements. While the Central Bank has indicated confidence in the framework for FMCs (and so major revisions are not expected), it continues to focus on specific areas for improvement for FMCs such as board diversity, scrutiny by FMCs of the independence of independent non-executive directors, as well as board level succession planning.

A senior executive accountability regime ("**SEAR**"), based on the Senior Managers and Certification Regime in the United Kingdom, is currently going through the Irish legislative process and is expected to be introduced in Ireland in the short term. The primary purpose of SEAR is to impose transparency requirements regarding the responsibilities of key individuals as a way of minimising conduct risk and reducing the likelihood of harm being done to stakeholders. The regime will initially apply to credit institutions, insurance undertakings, investment firms and third country branches of the these firms. The scope of the legislation may be extended in time to include additional sectors, including FMCs. SEAR will form part of the Individual Accountability Framework, which will also introduce new conduct standards and enhancements to the Central Bank's Fitness and Probity and enforcement regimes.

3 Fund Vehicles

A broad variety of public tax-exempt investment fund vehicles can be established in Ireland. They are regulated by and require the authorisation of the Central Bank. As described above in section 2 the regulatory framework is divided between UCITS and AIFs.

A UCITS may be established through any one of the following vehicles:

- an ICAV;
- an investment company (public limited company or plc);
- a unit trust; and
- a common contractual fund.

An AIF may be established through any one of the following vehicles:

- an ICAV;
- an investment company;
- an investment limited partnership;
- a unit trust; and
- a common contractual fund.

The choice of an appropriate vehicle through which to constitute an investment fund will depend on a number of factors. A summary of the key features of these legal forms is set out below.

An overview of some of the factors and strategy considerations relevant when selecting a regulatory framework and appropriate fund vehicle and structure are discussed in section 5 below.

ICAV

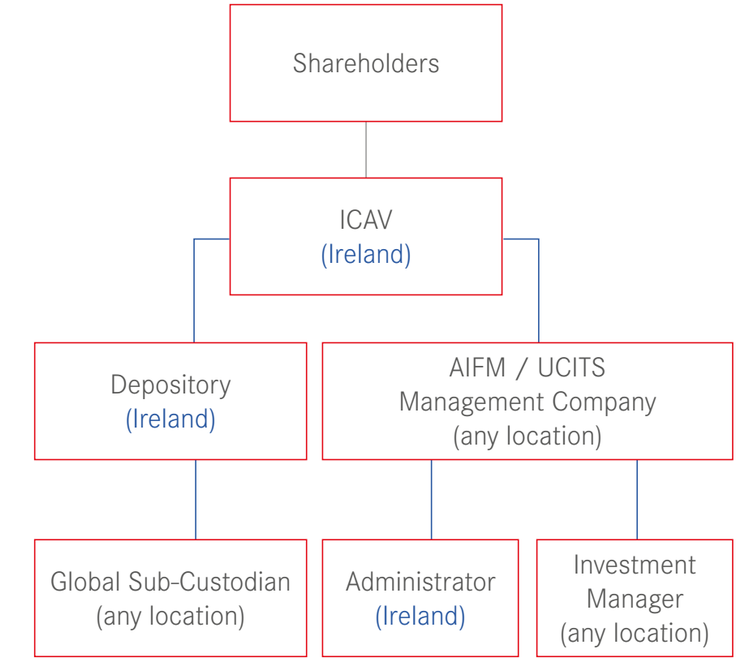
The ICAV sits alongside the investment company or plc structure, which was, prior to the introduction of the ICAV in 2015, the most successful and popular of the existing Irish fund structures. The ICAV structure modernises and streamlines the investment company fund structure and is designed specifically with the needs of investment funds in mind. The ICAV may be regarded as similar to a "SICAV" or an "OEIC".

The ICAV is registered (incorporated) with the Central Bank and provides a tailor-made fund vehicle that is available as a corporate structure to both UCITS and AIFs as umbrella or standalone funds. One of the primary advantages of the ICAV is that it is a corporate entity that can elect its classification under the US check-the-box taxation rules. The ICAV has its own legislative regime, which assists in ensuring that the ICAV is distinguished from ordinary companies and therefore avoids those aspects of company law legislation that would not be relevant to a collective investment scheme. This separate legislative regime also offers the benefit of future adaptation to meet the evolving requirements of investment funds.

The ICAV is governed by the ICAV Act 2015. The constitutional document of an ICAV is the instrument of incorporation. The ICAV is capable of being established as an umbrella structure with a number of sub-funds and share classes and may be listed on a stock exchange. Investors own shares in the ICAV and the ICAV is able to issue and redeem shares continually. An ICAV must have a board of directors to govern its affairs. Similar to an investment company, the ICAV may either be managed by an external management company or be a self-managed entity.

The ICAV offers a range of potential benefits which reduce costs for ICAV investors and, as a result, the ICAV has become the vehicle of choice for corporate structures, regardless of the domicile of the investor base. An ICAV is not required to spread risk, unlike an investment company, which facilitates a broader range of investment strategies for a QIAIF established as an ICAV. An ICAV has the ability to dispense with the requirement to hold an annual general meeting, and it is permitted to prepare separate accounts at sub-fund level. In addition, prior investor approval for changes to an ICAV's instrument of incorporation is not required once the ICAV's depositary certifies that the changes do not prejudice investors' interests and the Central Bank has not otherwise mandated that the change is of a type that must be approved by the members. ICAV shareholders have limited liability.

Typical ICAV Structure



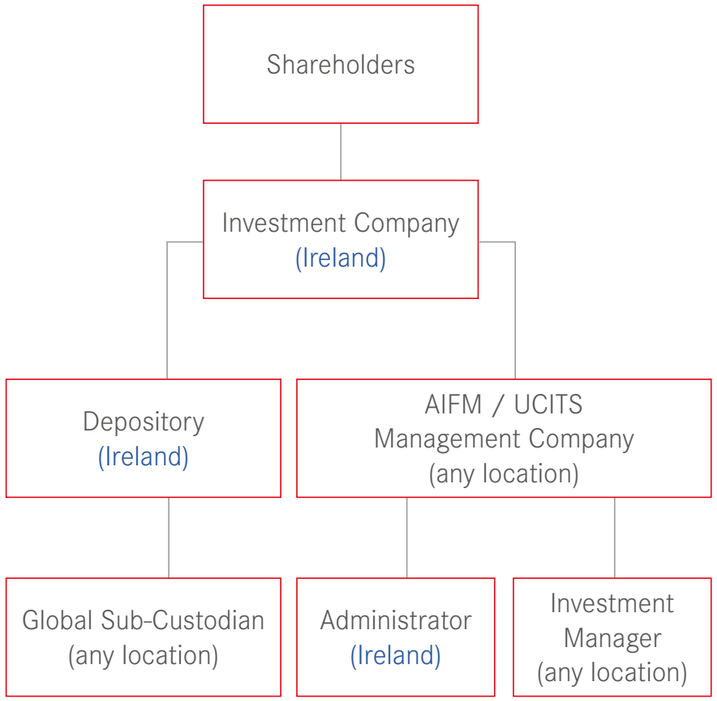
Investment Company

An investment company is an entity with distinct legal personality that is managed and controlled by its board of directors and can enter into contracts in its own name. The assets are the property of the company, and each investor holds shares in the company. A depositary is appointed to safe-keep the assets on behalf of the company. An investment fund established as a company may be self-managed or appoint a management company. It must operate on the principle of risk spreading.

The paid up share capital of the company must at all times equal the net asset value of the company, the shares of which have no par value. An investment company may be structured as a stand-alone fund or an umbrella fund.

In terms of applicable Irish company law, AIFs which are established as investment companies are governed by Part 24 of the Companies Act 2014. For UCITS established as investment companies, the provisions of the Companies Act 2014 apply, save to the extent that these are amended by the UCITS Regulations. The constitutional document of an investment company is the memorandum and articles of association. Shareholders in a UCITS or an AIF established as an investment company have limited liability.

Typical Investment Company Structure



Investment Limited Partnerships

Ireland now has a 'best-in breed' regulated partnership vehicle building on Ireland's position as the domicile of choice for asset managers wishing to establish European investment funds. Recognising the demand among fund managers to utilise a regulated partnership vehicle in Ireland, in late 2020, a number of important enhancements were made to Ireland's ILP vehicle. The enhancements to the ILP vehicle demonstrate Ireland's commitment to the funds' industry and ensuring that Ireland offers a suitable fund vehicle for ILPs when compared to other jurisdictions.

An AIF can be established as an ILP whereas a UCITS cannot be structured as an ILP.

ILPs can be established under the ILP Act for investment in property or securities of any kind

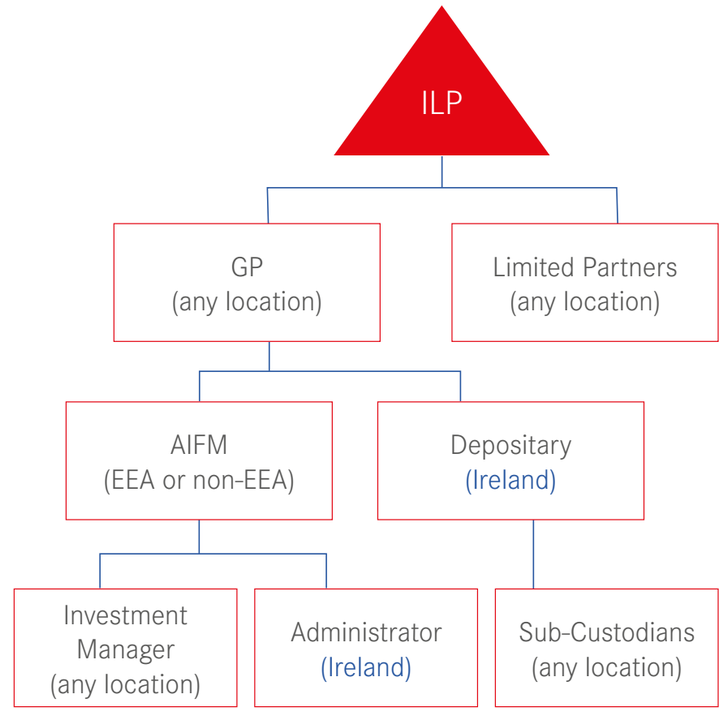
with the authorisation of the Central Bank. An ILP is created by contract between the general partner(s) and one or more investors who participate as limited partner(s), and are subject to the AIF Rulebook. The ILP incorporates standard private equity and real asset fund features such as: closed-ended structures; excuse and exclude provisions; capital accounting; commitments, capital contributions and drawdowns; defaulting investor provisions; distribution waterfalls and carried interest; and advisory committees.

The ILP is not incorporated and is not a separate legal entity. An ILP does not therefore have power to enter contracts in its own name. The general partner usually enters into contracts for the account of the ILP. The general partner is typically an Irish corporate, but it does not have to be a corporate and it does not have to be domiciled in Ireland. The general partner of an ILP is responsible for the management of its business and is liable for the debts and obligations of the ILP. As with each of the investment fund vehicles referred to in this note, a depositary must be appointed to safe-keep the ILP's assets. The ILP is tax transparent for Irish tax purposes.

There is no requirement under the ILP Act for an ILP to operate on the principle of risk spreading. ILPs can be dedicated investment vehicles or offered on a private placement or public basis. There is no limit on the number of limited partners permitted for an ILP.

The general partners of an ILP are responsible for the management of its business and are liable for the debts and obligations of the ILP. In general, a limited partner's liability will not exceed the amount of its capital contribution or commitment to the ILP. However, a limited partner who participates in the conduct of the business of an ILP in its dealings with third parties may be liable on the insolvency of the ILP for debts incurred by the ILP in the period during which it participated

Basic ILP Structure



in the conduct of its business, as if such limited partner had been a general partner during this period. A limited partner's liability in this regard is limited to debts or obligations incurred by the ILP in favour of a third party who, at the time that the debt or obligation was incurred, reasonably believed, based upon the conduct of the limited partner, that the limited partner was a general partner. The ILP Act specifies certain activities (the "white list") which will not be deemed to constitute participation by a limited partner in the business of an ILP.

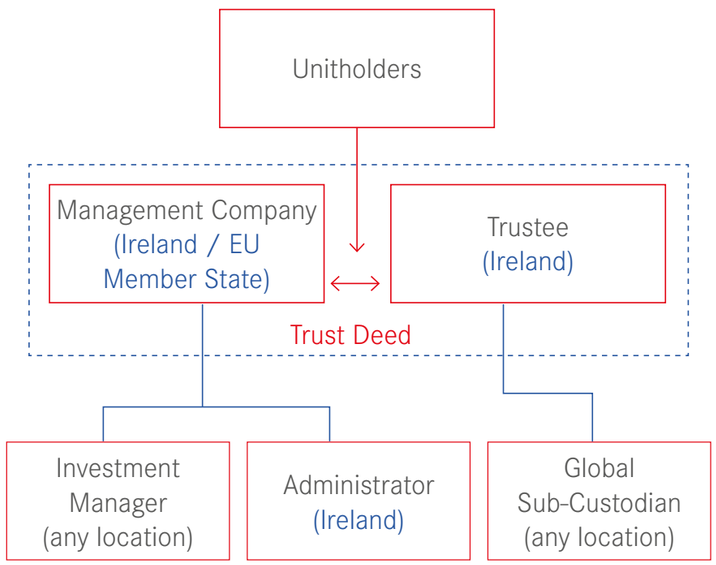
For more information on the ILP, see our "Establishing an Irish Investment Limited Partnership" briefing note on our website.

Unit Trust

A unit trust is created by a trust deed entered into by the trustee and the manager of the fund and the use of a management company in this structure is a necessity. A unit trust is a contractual arrangement and the trust is not a separate legal entity, with the result that a unit trust does not have power to enter into contracts in its own name. In general, the manager or trustee enters into contracts for the account of a unit trust. The trustee is registered as the legal owner of the assets on behalf of the investors, who receive units, each of which represents a beneficial interest in the assets of the unit trust. A unit trust may be structured as a stand-alone fund or an umbrella fund.

As distinct from an AIF formed as an investment company, there is no requirement for an AIF unit trust to operate on the principle of risk spreading. A UCITS unit trust is governed by the UCITS Regulations and an AIF unit trust is governed by the Irish AIFM Regulations and the Unit Trusts Act 1990, and each is governed by the relevant rules and guidance issued by the Central Bank.

Typical Unit Trust Structure



Common Contractual Fund

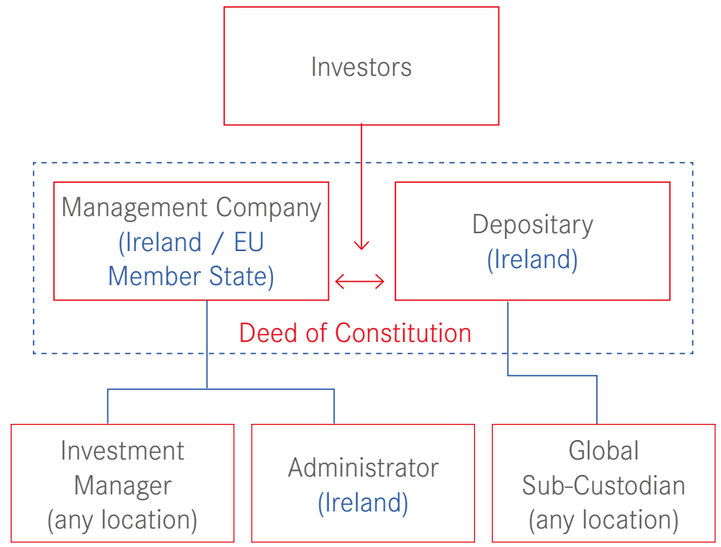
A CCF is an unincorporated body established by a manager pursuant to which the investors, through contractual arrangements, participate and share in the assets of the fund as co-owners; each investor holds an undivided co-ownership interest as a tenant in common with the other investors. The CCF has a similar structure to FCPs (Fonds Commun de Placement) established in Luxembourg.

The CCF is constituted under contract law (and not company law or trust law) by way of deed of constitution executed under seal between the manager and the depositary and does not therefore have a distinct legal personality. Accordingly, the CCF cannot assume liabilities and, in the same way as for a unit trust, the manager and the depositary enter the various agreements for and on behalf of the CCF. The assets of the CCF are entrusted to a depositary for safe-keeping. A CCF may be structured as a stand-alone fund or an umbrella fund. There is no requirement for an AIF CCF to operate on the principle of risk spreading.

The main feature which differentiates CCFs from other investment funds (excluding ILPs) is that a CCF is totally tax-transparent. This means that investors in a CCF are treated as if they directly own a proportionate share of the underlying investments of the CCF rather than shares or units in an entity which itself owns the underlying investments. This is of particular interest to investors such as pension schemes, charities and life insurance schemes which have preferential tax rates on their investments and can retain these rates while obtaining the benefit of pooled investment management of their assets.

UCITS established as CCFs are governed by the UCITS Regulations, and AIF CCFs are governed by the Investment Funds Act 2005 and the Irish AIFM Regulations, and each is governed by the relevant rules and guidance issued by the Central Bank.

Typical CCF Structure



4 Customising Your Fund Vehicle

As described above, an Irish domiciled fund may be regulated as a UCITS or AIF and promoters have a choice of a wide range of fund vehicles including ICAVs, investment companies, ILPs, unit trusts and CCFs. Each of these vehicles may be structured in ways that best suit the investment policy or distribution intentions of a fund promoter or investment manager. For example, a fund may be structured as a separate stand-alone fund or as an umbrella fund with multiple sub-funds. All funds may be structured to have different share classes to accommodate different currency denominations, distribution policies, charging structures, uses of financial derivative instruments or, in the context of AIFs, other types of different treatment. Funds can also be established as feeder funds or, in the case of AIFs, hybrid asset allocation vehicles.

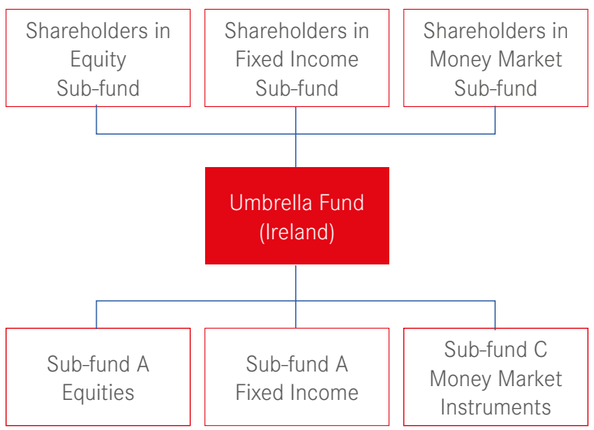
A review of some of the various structures and special features or strategies that may be availed of are described below. Further information in relation to certain of the structures is available in dedicated brochures on our website.

4.1 Umbrella Funds

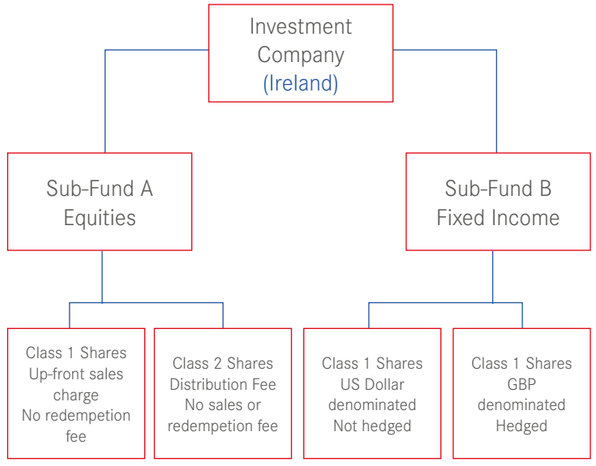
It is possible to constitute both UCITS and AIFs as umbrella funds comprising a number of separate sub-funds with different investment policies. Each sub-fund of an umbrella fund must be approved by the Central Bank. In the case of a UCITS umbrella fund, each sub-fund must comply with the requirements of the UCITS Regulations while sub-funds of an AIF umbrella fund must comply with the AIF Rulebook.

Each sub-fund within an umbrella fund is represented by a different series of shares, partnership interests or units. The fund may be structured so that one sub-fund of the umbrella can invest in another sub-fund of the same umbrella, which facilitates fund promoters seeking to avail of economies of scale within their own investment fund complexes and to rationalise fund offerings. The exchange of shares or units between sub-funds of an umbrella fund does not incur any Irish tax liability.

Umbrella Fund



Multi-Class Fund



Segregated Liability between Sub-Funds

The Companies Act 2014 and the ICAV Act 2015 provide for segregation of liability for sub-funds of an umbrella fund which is constituted as an investment company / ICAV and the liabilities of a sub-fund are discharged solely from the assets of that sub-fund. For investment fund companies and ICAVs, there will be implied into every contract, agreement, arrangement or transaction entered into by an umbrella fund availing of segregated liability, a term that any parties contracting with the umbrella fund shall not seek to have recourse to any assets of any sub-fund in discharge of any liability which was not incurred on behalf of that sub-fund. The sub-fund of an umbrella fund is not a separate legal person but the fund may sue and be sued in respect of a particular sub-fund, and may exercise the same rights of set-off between sub-funds as apply at law in respect of companies. ILPs, unit trusts and CCFs are normally structured to provide for segregated liability between sub-funds.

4.2 Multi-Class Funds

UCITS and AIFs may be established with multiple classes of shares or units. In the case of an umbrella fund, these multiple classes of shares and units can be established within each sub-fund of the umbrella fund. These share or unit classes may be differentiated on the basis of currency, distribution policies or charging structures. They may also be used for the purpose of hedging currency or, in the case of an AIF, interest rate risk and other exposures (including through the use of derivative instruments). The use of derivative instruments at share or unit class level is also permitted to provide a different level of capital protection or participation in the performance of an underlying portfolio or index. For AIFs, it is also possible to create share classes with different dealing cycles or liquidity or which use derivative instruments (for reasons such as the generation of a leveraged return or to provide an additional add-on exposure to that generated from the underlying portfolio).

4.3 Master-Feeder Funds

A master-feeder structure may be used where it is desired to create separate investment vehicles for different categories of investors, which are then pooled into a centralised vehicle known as a master fund. This structure improves economies of scale and enhances operational efficiencies, thereby reducing costs.

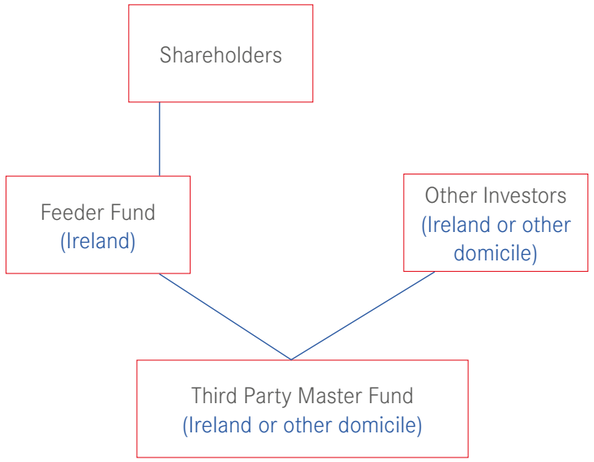
A UCITS fund can be structured as a feeder fund if it invests at least 85% of its assets in units of another UCITS and the remaining 15% of its assets are invested subject to certain restrictions in addition to the usual UCITS investment restrictions. In addition, the master UCITS may not itself be a feeder fund and may not invest in feeder funds and there must be a written agreement between the feeder UCITS and the master UCITS setting out matters such as dealing arrangements and access to information. Where the master UCITS and the feeder UCITS are managed by the same management company, this agreement may be replaced with internal conduct of business rules.

A RIAIF may invest more than 30% of net assets in another investment fund and a QIAIF may invest up to 100% of net assets in another investment fund provided the underlying fund is authorised either by the Central Bank or by a supervisory authority responsible for investor protection in the jurisdiction where the master fund is domiciled and providing, in the Central Bank's opinion, equivalent investor protection to that provided in Ireland for similar funds. For QIAIFs, this requirement is dis-applied where the QIAIF has a minimum subscription limit of €500,000 (or its foreign currency equivalent) and where the QIAIF's prospectus details those regulatory obligations and conditions which apply to the QIAIF but which do not apply to the underlying unregulated fund.

The prospectus for the feeder fund must contain sufficient information relating to the master fund to enable investors to make an informed judgement of the investment proposed to them. The feeder fund prospectus must also contain appropriate disclosures regarding the relationship between the feeder fund and the master fund, including comprehensive information relating to charges and expenses in respect of the master fund.

A master UCITS may not charge subscription or redemption fees to its feeder UCITS. In the case of AIFs, the periodic reports of the master fund must be attached to the periodic reports of the feeder AIF.

Feeder Fund



4.4 Fund of Funds

A fund of funds holds a portfolio of other investment funds, providing the investor with an alternative to investing directly into the underlying individual funds. This structure allows access to the expertise of multiple underlying investment managers and allows investors to gain an exposure to funds with a high minimum subscription that they may not be able to meet if investing directly in the individual fund. Both UCITS and AIF retail funds may be established as a fund of funds investing in shares or units of other underlying investment funds.

UCITS Fund of Funds

UCITS are permitted to invest up to 100% of net assets in units of other UCITS. Not more than 20% of the net assets of a UCITS may be invested in any one underlying fund (each sub-fund of an umbrella fund may be regarded as a separate scheme for the purpose of applying this limit). To prevent layering of structures, any fund in which a UCITS invests must not be permitted to invest more than 10% of its net assets, in aggregate, in other funds. Where the underlying fund is managed by the same manager, or an affiliated manager, as the UCITS fund of funds, subscription or redemption fees must be waived by the underlying fund.

A UCITS is also permitted to invest up to 30% in aggregate of its net assets in shares or units of AIFs, subject to the requirements that:

(a) the underlying fund is authorised under laws which provide for supervision considered equivalent to that provided under EU law and co-operation between the supervisory authorities must be ensured;

(b) the relevant regulations to which the underlying fund is subject provide for an equivalent level of shareholder protection to that provided under the UCITS Directive (in particular, segregation of assets, borrowing, diversification requirements and uncovered sales); and

(c) the underlying fund produces half yearly and annual reports.

AIF Fund of Funds

An AIF can be structured as a fund of regulated or unregulated funds.

QIAIFs may invest without limit in regulated or unregulated funds, however, any investment in a single underlying fund representing more than 50% of a QIAIF's net assets will be regarded as a feeder-type investment and will be subject to the requirements discussed at 4.3 above.

A RIAIF fund of regulated funds may not invest more than 20% of its net assets in unregulated funds and 30% of its net assets in any single underlying fund.

A RIAIF fund of unregulated funds (ie, a RIAIF fund of funds which invests more than 20% of net assets in unregulated funds) may not invest more than 20% of its net assets in any one unregulated fund. There are certain requirements which dictate the eligibility of underlying funds for investment and the RIAIF must include additional disclosures in its documentation. The RIAIF must submit information to the Central Bank to demonstrate that it has appropriate controls and systems in place to constantly monitor the activities of the underlying investment funds, their managers and risk assessment procedures. Further, where the RIAIF invests more than 40% of net assets in unregulated funds managed by the same management company, or by an associated or related company, the RIAIF must submit quarterly reports to the Central Bank on the extent to which the underlying investment funds are diversified as between trading strategies. The Central Bank also imposes limits on the RIAIF's redemption policy.

Where the underlying fund of a RIAIF fund of funds is managed by the same manager, or an

affiliated manager, as the RIAIF fund of funds, subscription or redemption fees must be waived by the underlying fund. Furthermore, any commission received by the RIAIF's AIFM must be paid into the assets of the RIAIF.

4.5 Closed Ended Funds

Where a fund does not provide any facilities for the redemption of units at the holder's request, it will be regarded as a closed ended fund. Closed-ended funds may be attractive to promoters and investors with a long term investment horizon. They can offer funds to investors seeking the potential for capital growth and income through investment performance, dividends and distributions without the need to provide regular redemption facilities. UCITS cannot be established as closed ended funds. If an AIF is established as truly closed ended, the Prospectus Regulation may apply to it; however, it is relatively straightforward to structure the AIF such that the Prospectus Regulation does not apply.

4.6 Property Funds

The Central Bank has established rules for the authorisation of RIAIFs as property funds, including diversification, valuation and asset type requirements (eg, limits on vacant or development properties). These rules and limits do not apply in the context of QIAIFs. UCITS cannot be established as property funds.

Property investing is a common investment strategy in Ireland, in part due to the tailored tax regime introduced by the Irish government in 2016 for Irish investment funds that invest in Irish real estate or assets deriving their value from Irish real estate.

4.7 Hedge Funds

Traditional hedge funds are generally established as AIFs although the evolution of UCITS has allowed the structuring of some hedge fund strategies within UCITS (sometimes referred to as "**liquid alternatives**"). The nature of the investment policy followed also

means that they are generally established as QIAIFs.

QIAIFs may enter into prime broker relationships. Where the prime broker holds assets of the fund that can be held in custody (other than as assets which have been pledged, lent, hypothecated or otherwise utilised by the prime broker for its own purposes), the prime broker will be treated as a delegate of the depositary.

It should be noted that it is possible to appoint a prime broker to a UCITS. However, the range of investment restrictions and limits on leverage and borrowings for UCITS and on the reuse of assets by the prime broker means that many of the functions that would normally be associated with a prime broker may be limited or prohibited.

4.8 Exchange Traded Funds

In Europe, exchange traded funds (ETFs) are generally established as UCITS. The benefit of using UCITS for ETFs is the availability of a passport that enables the ETF to be registered for public retail distribution throughout the EU, as this greatly simplifies the process of listing the ETF on stock exchanges throughout the EU and facilitating the transfer of shares to retail investors. The use of the UCITS structure also ensures that the fund will be managed in accordance with investment restrictions and operating conditions common to all EU Member States.

4.9 Money Market Funds

Subject to certain conditions, a fund may be categorised as a money market fund, certain of which may value their assets using an amortised cost valuation method. The principal conditions to be met are that the fund's primary investment objective must be to maintain the principal of the fund while providing a return in line with money market rates. In addition, the fund's investments must be restricted to high quality money market instruments. Money market funds must comply with the requirements of the EU Money Market Fund Regulation, under which money market funds may be authorised as public debt constant net asset value money market funds ("**Public Debt CNAV MMFs**"), low volatility net asset value money market funds ("**LVNAV MMFs**") or variable net asset value money market funds ("**VNAV MMFs**").

4.10 ELTIFs

ELTIFs are available to both retail and professional investors throughout the EU on a passported basis and subject to harmonised EU rules relating to authorisation, investment policies and operating conditions. ELTIFs are primarily used to create a source of funding for infrastructure and other long term projects, as an alternative to bank lending or raising capital on the stock exchange. Only EU AIFs are eligible to apply for authorisation as an ELTIF and the ELTIF manager will have to comply with the requirements of the AIFMD.

4.11 EuVECAs and EuSEFs

The EU has introduced a harmonised set of rules for qualifying venture capital and social entrepreneurship funds manged by AIFMs to market those funds under the designation of "EuVECA" and "EuSEF" throughout the EU pursuant to a passport, without opting into full compliance with the AIFMD. The applicable legislation prescribes which AIFMs and which venture capital and social entrepreneurship funds qualify for the new regime; the permitted investments; eligible investment instruments and techniques; eligible investors; and organisation, conduct and transparency requirements for AIFMs managing funds under the brand EuVECA or EuSEF.

4.12 Loan Originating Funds

Ireland was the first EU Member State to introduce a specific regulatory framework for loan originating investment funds. The Central Bank's AIF Rulebook sets out a number of requirements applicable to loan originating QIAIFs ("**L-QIAIFs**") over and above the general requirements imposed on all QIAIFs. The additional requirements are principally designed to combat the regulatory and systemic risks which the Central Bank considers to be associated with loan originating investment funds.

An L-QIAIF must appoint an authorised AIFM or itself be the AIFM. It must be closed-ended, but may invite requests for redemptions from unitholders either at dates determined at the authorisation date, or at dates approved by the QIAIF's AIFM. An L-QIAIF may engage in loan origination and participation in loans on the secondary market, as well investing in debt or credit instruments and activities arising exclusively therefrom, such as handling assets which are realised security, treasury management and the use of derivatives for hedging purposes. The Central Bank imposes: (a) restrictions the persons to whom the loan originating QIAIF may originate loans; (b) diversification requirements; (c) restrictions on leverage; (d) stress testing requirements; and (d) disclosure requirements. L-QIAIFs can be marketed throughout the EU pursuant to the AIFMD marketing passport.

4.13 Subsidiaries

Both UCITS and AIFs may set up subsidiaries whose sole object reflects the investment objectives and policies of its parent. Generally a subsidiary is used to reduce liability to withholding tax on interest payments under double tax treaties between Ireland and other countries. However, subsidiaries can be used for a number of other purposes including to allow for containment of liability risks attached to a single investment (such as a property or real-estate investment) or to facilitate lending to the fund by an institution which may only lend to a certain category of entity.

A subsidiary is subject to certain conditions laid down by the Central Bank. The principal conditions are that: (i) the directors of the fund must form a majority of the board of directors of the subsidiary and they must maintain full control over the activities of the subsidiary; (ii) the shares of the subsidiary must be held by the fund's depositary on behalf of the fund; and (iii) the fund's administrator must confirm that it will value the underlying assets of the subsidiary in accordance with the Central Bank's requirements. In addition, the prospectus or any supplement of the fund must disclose the name of the subsidiary and the fact that the subsidiary is owned by the fund. The subsidiary's constitutional documents must also include certain required provisions.

5 Selecting the Appropriate Vehicle and Structure

The decision as to which regulatory framework, fund vehicle or structure is most appropriate for any particular sponsor will be dependent upon a variety of considerations, some of which are set out below.

5.1 Investment Strategy

The choice of fund vehicle and structure is generally dictated by: (i) the nature of the assets in which the fund intends to invest; (ii) the markets on which those assets are traded or if not listed or traded, the markets in which the issuers are located and the nature of the securities or instruments; (iii) whether investments will be diversified or highly concentrated; and (iv) whether the fund will engage in shorting or will employ other leverage techniques. For example, highly leveraged funds and funds having an investment strategy which involves the possibility of a high concentration in the securities of a single issuer or investing directly in real estate or commodities must be established as AIFs. The ICAV, unlike the investment company, is not subject to the requirement to spread risk and accordingly is a suitable vehicle for property funds. The ELTIF, with its focus on long-term holdings, may be attractive to pension funds, large insurance companies and other entities which have longer-term liabilities and accordingly are seeking to generate long-term returns within a regulated fund structure. The ILP may provide investor familiarity and tax efficiencies in the case of private equity strategies.

The investment strategy to be pursued may also help to determine whether a fund should be established as an open ended, closed ended, or hybrid vehicle. Many funds pursuing private equity strategies require an initial period where there are no redemptions (sometimes for as long as ten years or more) with a view to allowing the investment manager to concentrate on a long-term strategy for the fund.

5.2 Future Product Development Plans

Where a fund sponsor ultimately intends to offer a variety of investment funds, consideration should be given to the establishment of an umbrella fund, even if only one fund will initially be offered to investors. Future sub-funds can be added to an umbrella fund in a short timeframe and there may be administrative savings to be made in maintaining an umbrella fund as opposed to a series of stand-alone funds. It is not possible to mix UCITS and AIF sub-funds in the one umbrella fund structure or to appoint different administrators, depositaries or auditors to sub-funds within the umbrella.

An umbrella fund also allows sponsors the ability to offer investors the flexibility of switching easily between sub-funds with different investment objectives and strategies in the event of changing market conditions or as the investor's risk profile evolves. Many umbrella funds, for example, include liquidity or money-market options in addition to equity and fixed-income sub-funds.

In addition, a promoter may wish to structure a fund so that one sub-fund of the umbrella fund can invest in another sub-fund of the same umbrella fund. This could facilitate fund promoters seeking to avail of economies of scale within their own investment fund complexes and to rationalise their fund offerings. Conversely, there may be reasons to structure funds as stand-alone funds, including for example where, as between the various funds, different regulatory statuses or categorisations are sought or where different UCITS management companies or AIFMs need to be appointed.

5.3 Foreign Taxation Considerations

Taxation considerations for investors in various markets may also affect the choice of structure. For example, the ability of the ICAV to elect its classification under the US check-the-box taxation rules may be attractive to promoters targeting US investors, while the CCF and ILP structures are specifically designed as tax-transparent vehicles to provide investors with the benefits of double tax treaties between their home country and the country where the investment assets are located.

5.4 Target Market

If the fund is to be sold widely within the EU, or to a broad range of investors within one country in the EU, then it is preferable to establish a UCITS or an AIF with an authorised AIFM / a self-managed authorised AIF. The advantage of establishing a fund as such is that it can generally be sold without any material restriction, subject to filing appropriate documentation with the relevant regulatory authority in the EU Member State(s) where it is to be sold. This avoids the burden of having to accommodate sales activity within private placement regimes, which can be arbitrary and widely divergent between various countries – and which are likely to be phased out at a future date under the AIFMD. For UCITS, there are no restrictions as regards the category of investors to whom the fund may be sold, whereas currently AIFs may only be sold to professional investors (unless the given EU Member State provides for wider marketing in its national rules).

The UCITS regulatory regime has been in place for over 30 years and as a result is widely recognised globally, both by investors and regulators. It can therefore be relatively straightforward to register a UCITS in a non-EU jurisdiction for distribution to investors there. It is hoped that as the AIFMD regime matures, it will enjoy similar international recognition.

Investors in given jurisdictions or market sectors may also be more familiar with a particular type of fund vehicle. For example, many Asia investors are familiar with unit trusts structures, while these structures are less familiar in continental European markets. ILPs are the most familiar type of fund vehicle for private equity investors.

5.5 Proposed Distribution Network

Closely linked to the considerations relevant to the target market are those relevant to the proposed distribution network. Where funds are distributed through various agencies and channels in different geographic markets, it is often necessary to tailor the pricing structure accordingly. Multi-class funds allow promoters to offer a range of shares best suited to individual categories of investors, with different fee levels applying across the various classes. This allows promoters to offer shares with various combinations of front-end loads, contingent deferred sales charges or other sales or redemption charges, management fee arrangements or total expense ratios within the same sub-fund. It also allows promoters to set up retail distribution review (RDR) share classes alongside non-RDR share classes in the same fund.

5.6 Speed of Authorisation

The authorisation process for QIAIFs allows authorisation in one day, subject only to the various advance approvals of the relevant parties to the fund and the certifications to be given in respect of compliance with the Central Bank's requirements. The speed of this authorisation process is a material consideration for fund promoters in terms of rapid response to market demand and speed to market of a regulated product.

Where a proposed QIAIF intends to hold uncommon asset types or has unusual features, authorisation in one day will not be possible, as it will be necessary to file a pre-submission with the Central Bank. Examples of funds that are required to file a pre-submission include funds with high levels of leverage, property funds, life settlement funds and loan originating funds. The purpose of the pre-submission is to provide the Central Bank with an overview of the proposed QIAIF, as well as its proposed liquidity.

Both UCITS and AIFs are required to be self-managed or to put a management company in place. The time needed to complete the authorisation / registration (as applicable) process, where a suitable entity is not already in place, should also be considered in this regard.

In some cases, a fund sponsor may wish to retain the services of a "third party management company" which is an existing Irish AIFM or UCITS management company which can provide relevant management company services to an AIF for an annual fee.

6 Central Bank Authorisation Process

The Central Bank is the regulatory authority responsible for the authorisation and supervision of investment funds established in Ireland, and for fund administration companies, trustees and depositaries located in Ireland providing services to Irish and / or non-Irish domiciled funds.

6.1 Fund Authorisation Process – UCITS and RIAIFs

Approval of Fund Documentation

The first step in the fund authorisation process is obtaining approval for the investment manager of an Irish authorised fund (see section 6.4 in this regard). Once the investment manager has been approved by the Central Bank, the following documentation must be filed with the Central Bank for its review:

(i)	Central Bank application forms appropriate to the fund;
(ii)	directors' letter of application for authorisation of the fund;
(iii)	fund prospectus (and supplements as appropriate); and
(iv)	trust deed / deed of constitution (if the fund is established as a unit trust or CCF)

The following documentation is filed with the Central Bank, along with various confirmations furnished by the legal advisers and service providers to the fund, on the day of the fund's authorisation:

(i)	instrument of incorporation where the fund is an ICAV, memorandum and articles of association where the fund is established as a company;
(ii)	certification of registration (ICAV) / certificate of incorporation (investment company) (not required for an ILP, unit trust or CCF);
(iii)	management agreement where the fund is established as an externally managed ICAV / investment company;
(iv)	depositary agreement;
(v)	investment management agreement;
(vi)	administration agreement;
(v)	distribution agreements;
(vi)	prime brokerage agreement (note that while a UCITS or RIAIF can appoint a prime broker the investment restrictions and limits on leverage and borrowings mean that many of the functions normally associated with prime brokers may be limited or prohibited) and sub-custody agreement (as necessary);
(vii)	in the case of UCITS, the KIID;
(viii)	in the case of UCITS utilising financial derivative instruments, the risk management process; and
(ix)	various confirmations from Matheson and the service providers.

Where the fund is a self-managed UCITS or is appointing a UCITS management company which requires approval, the UCITS management company / self-managed UCITS approval process can take place simultaneously with the fund authorisation process.

Matheson can prepare these documents in conjunction with the relevant service providers while the Central Bank is reviewing the applications for approval of the investment manager (if necessary) and directors.

Turnaround Time

The Central Bank will generally provide initial comments on the documents comprising the application within a two to four week period, on the basis that a completed application has been filed and draft documents submitted on application are in substantially agreed and final format and subject only to non-material amendments made in response to comments issued by the Central Bank.

On the basis that initial comments are addressed with outstanding issues negotiated and agreed and revised documents submitted to the Central Bank for further review, the Central Bank's authorisation generally issues within eight to ten weeks of the filing date. This timeframe is dependent on the speed with which responses to any Central Bank queries are provided. Additional factors which can impact upon the precise time taken for authorisation would include the complexity or degree of novelty associated with the proposed fund, whether the fund proposes to invest in instruments that fall under the Central Bank's enhanced scrutiny review process (as discussed in section 2.1), the volume of documentation in respect of other projects filed with the Central Bank for review, and the number of issues in respect of which derogations from the Central Bank's policy need to be negotiated.

The fund cannot commence business until the letter of authorisation issues. However, prior to the Central Bank authorisation, the fund can produce a "red herring" draft prospectus, with appropriate qualification, for marketing purposes. These are employed to determine investor interest prior to launch.

Prior to the submission of a new fund application with the Central Bank, the Central Bank expects boards to have carried out robust discussion in relation to the proposed new fund strategy and structure, and their attendant risks. Once the Central Bank has confirmed that it has no further comments on the documentation or once it is clear that any material issues have been agreed with the Central Bank, a fund launch board meeting must be held. At that point, the relevant documentation can be approved and executed on behalf of the fund. Original documents must be filed with the Central Bank by 12.00 noon on the day on which authorisation is required and if the fund is listing, the documentation required pursuant to the listing must be submitted to Euronext Dublin. The review of the prospectus by Euronext Dublin takes place during the Central Bank's review process so that approval should be forthcoming from Euronext Dublin at the same time.

6.2 Fund Authorisation Process – QIAIFs

As noted above in section 5.6, the approval procedure for QIAIFs is a streamlined one day process (subject to the requirement for certain funds to make a pre-submission to the Central Bank). Authorisation can be granted on the day following the date of filing of appropriate QIAIF documentation once the Central Bank receives a completed application by 3.00 pm on the filing date (or 5.00 pm when using the Central Bank's online filing system) and the fund certifies that it complies with certain agreed parameters codified in the Central Bank's QIAIF application form.

6.3 UCITS Management Company / AIFM

An ILP, a unit trust and a CCF must have a management company. An ICAV or investment company may appoint an external management company or operate on a self-managed basis. All of the requirements applicable to a UCITS management company or AIFM authorised in Ireland derive from EU regulation and will therefore apply in all EU Member States. The same entity may be authorised as both a UCITS management company and an AIFM, offering economies of scale to promoters with both UCITS and AIFs in their portfolios. A summary of the Central Bank's requirements for the approval of a management company or a self-managed investment company is set out below.

UCITS Management Companies

UCITS management companies are regulated under the UCITS Regulations and the Central Bank UCITS Regulations. At the core of any application for a UCITS management company is the requirement for a business plan. This is essentially a governance document or a regulatory compliance plan, setting out how the company will be run on a day-to-day basis and how it intends to comply with the Central Bank's requirements in relation to certain key managerial functions. Where a UCITS management company delegates activities related to key managerial functions, the business plan must include procedures pursuant to which reports specific to these delegated managerial functions are received and reviewed by designated directors. The business plan also describes in summary the various policies and procedures the UCITS

management company has in place to address various requirements, for example the conflicts of interest policy or the anti-money laundering policy.

A key requirement of the business plan is to demonstrate that the mind and management of the UCITS management company is in Ireland. The board of directors of the UCITS management company must ensure that it is actually operated and carries out its business on the basis of the model set out in the business plan. Irish UCITS management companies hold periodic board meetings in Ireland, conduct their delegate oversight functions from Ireland and are tax resident in Ireland.

A UCITS management company may also be authorised to engage in investment management and provision of administrative functions to the fund (including accounting services, valuation and pricing, regulatory compliance monitoring, maintenance of the unit-holder register, distribution of income, unit issues and redemptions and contract settlements). In addition, the management company may be authorised to provide discretionary investment management services, and, as ancillary services, investment advisory and custody services.

Irish UCITS management companies generally delegate a large proportion of their day-to-day functions to third parties. However, the Central Bank requires that all UCITS management companies have a minimum of three suitably qualified and appropriately senior full time equivalent employees. In addition, half of the managerial functions must be performed by at least two designated persons resident in the EEA.

As noted above in section 2 (Regulatory Framework), the Central Bank has published detailed guidance for fund management companies, including UCITS management companies, on delegate oversight, the organisational effectiveness role, directors' time commitments, managerial functions, operational issues and procedural matters.

"Self-managed" UCITS

ICAVs and investment companies may opt to be "self-managed" and dispense with the appointment of an external UCITS management company. In such a case, they will need to comply with the requirements outlined above regarding the discharge of managerial functions, the submission of a business plan and the requirement to have at least three suitably qualified full time employees. The application of these requirements to "self-managed" UCITS generally make this a less attractive option to ICAVs and investment companies in comparison to appointing a UCITS management company. However, opting to be self-managed remains available as an option and may be more suitable in certain circumstances.

Minimum Capital

A UCITS management company must have a minimum level of financial resources equivalent to one quarter of its preceding year's total expenditure (as set out in its most recent audited accounts) or €125,000 plus an "additional amount", whichever is greater. The additional amount of capital must be equal to 0.02% of the amount by which the net asset value of the funds under management exceeds €250,000,000. The required total of €125,000 plus the additional amount shall not, however, exceed €10,000,000. A UCITS management company need not provide up to 50% of this additional amount if: (i) it benefits from a guarantee of the same amount given by a credit institution or insurance undertaking; and (ii) the form of guarantee is approved by the Central Bank.

A "self-managed" UCITS ICAV / investment company is not subject to the same restrictive capital compliance regime as a UCITS management company. The minimum capital requirement for a self-managed ICAV / investment company is €300,000. This initial capital may be removed from the fund once it has received subscriptions from investors of at least €300,000.

AIFMs

AIFMs are regulated under the AIFMD and the AIF Rulebook of the Central Bank. They may be fully authorised under the AIFMD or simply "registered". Authorised AIFMs are subject to the full requirements of the AIFMD but are permitted to: (i) use the AIFM management passport described below; and (ii) market the AIFs they manage throughout the EU using the AIF passport described in section 2.2. Registered AIFMs, on the other hand, are only subject to some AIFMD requirements but are not permitted to use either the AIFM passport or the passport for marketing AIFs. Where an AIFM manages AIFs with assets of greater than €100 million (or €500 million in the case of closed-ended, unleveraged AIFs), the AIFM must apply for authorisation under the AIFMD.

In the context of QIAIFs only, there is a third category of AIFM, namely a non-EU AIFM. Non-EU AIFMs are, at present and until legislative changes are introduced at an EU level, not capable of becoming authorised under the AIFMD. Accordingly, they cannot use the AIFM passport or market the AIFs they manage using the AIF passport (although they can use private placement regimes). The management of QIAIFs by non-EU AIFMs is governed by the Central Bank's requirements as set out in the AIF Rulebook.

At the core of any application for authorisation as an AIFM is the requirement for a programme of activity. Like the business plan for UCITS management companies, this is essentially a governance document or a regulatory compliance plan, setting out how the AIFM will be run on a day-to-day basis and how it intends to comply with the Central Bank's requirements in relation to certain key managerial functions, including in particular portfolio management and risk management. The programme of activity also describes in summary the various policies and procedures the AIFM has in place to address various requirements, for example the conflicts of interest policy or the anti-money laundering policy.

Irish AIFMs generally delegate certain functions to third parties, hold periodic board meetings in Ireland, conduct their delegate oversight functions from Ireland and are tax resident in Ireland. The Central Bank requires that all AIFMs have a minimum of three suitably qualified and appropriately senior full time equivalent employees and the AIFMD sets out detailed requirements regarding the functions that can be delegated and the parties to whom they are delegated. A key requirement of the programme of activity is the necessity to demonstrate that the AIFM is not a "letter box" entity. The board of directors of the AIFM must ensure that it is actually operated and carries out its business on the basis of the model set out in the programme of activity. Further details regarding delegation by AIFMs is available on our website.

As noted above in section 2 (Regulatory Framework), the Central Bank has issued guidance for fund management companies, including AIFMs and AIF management companies, on delegate oversight, organisational effectiveness, directors' time commitments, managerial functions, operational issues and procedural matters.

"Self-managed" AIFs

ICAVs and investment companies may opt to be "self-managed" and dispense with the appointment of an AIFM. Like AIFMs, they may be authorised or registered and, broadly speaking, the same requirements will apply to self-managed AIFs as apply to externally managed AIFs. The main exception is that self-managed AIFs cannot use the AIFM passport (or indeed manage any AIFs other than the self-managed AIF itself). They can themselves still use the AIF passport to market the AIF

in other EU Member States, as described in section 2.2. Authorised self-managed AIFs must also have at least three suitably qualified full time employees.

Minimum Capital

AIFMs and self-managed AIFs must have a minimum level of financial resources equivalent to one quarter of its preceding year's total expenditure (as set out in its most recent audited accounts) or €125,000 (for an AIFM) / €300,000 (for a self-managed AIF) plus an "additional amount", whichever is greater. The additional amount of capital must be equal to 0.02% of the amount by which the net asset value of the funds under management exceeds €250,000,000. The required total of the €125,000 and the additional amount shall not, however, exceed €10,000,000.

6.4 Approval of the Investment Manager

The Central Bank must be satisfied with the experience, expertise, reputation and resources of the investment manager(s) responsible for investing the assets of the fund.

An investment manager is the entity with discretionary authority to invest and manage the assets of the fund pursuant to the investment objective and policy of the fund as described in the fund's prospectus. Where the AIFM or UCITS management company will also act as investment manager, there is no need for a separate investment manager application process; this is included as part of the AIFMD / UCITS approval process.

In determining the suitability for approval, the Central Bank relies on a detailed application form, which must be completed and filed via the Central Bank's online filing system prior to the filing of any fund documentation. This application form requires applicants to provide the Central Bank with the following information:

- type of investment fund it intends to establish, promote or manage;
- applicant's ownership structure and regulatory status, as well as the regulatory status of any other group companies;
- applicant's activities, countries of operation, relevant experience, track record and the value of assets which the applicant has under discretionary management;
- curriculum vitae for the directors or relevant senior managers of the applicant;
- details of the applicant's reporting structure and information in relation to the personnel to be involved in portfolio management on behalf of the fund; and
- details of the distribution plans for the investment fund.

In addition to filing a signed application form, applicants are required to provide the Central Bank with the following documentation:

- a chart detailing the applicant's group structure; and
- latest audited accounts of the applicant and its parent company.

It may be possible for the applicant to avail of a fast-track same day approval process where it holds an authorisation under MiFID implementing legislation in an EEA Member State or is a credit institution regulated within the EEA and can provide the necessary information as required by the Central Bank's fast-track checklist together with an up to date confirmation of regulatory status. In other cases, the approval process generally takes approximately four to six weeks (the timing depends significantly on the speed with which responses to the Central Bank's queries are provided). The Central Bank has approved investment managers from a broad range of non-EU jurisdictions, including the UK, Australia, Brazil, Dubai, Hong Kong, Japan, Singapore, South Africa, USA and others. The approval process for investment managers is very similar to the process in place in the UK and as a result, UK authorised investment managers in particular, can generally be approved by the Central Bank without delay.

6.5 Approval of Directors

The board of directors of Irish domiciled funds established as ICAVs or investment companies must include at least two Irish resident directors. The same requirement applies to Irish UCITS management companies and AIFMs and general partners of ILPs (where the general partner is a corporate based in Ireland).

All directors of Irish domiciled ICAVs / investment companies, and directors of any company acting as a "manager" of an Irish fund or as a general partner of an ILP, must be pre-approved by the Central Bank as part of its fitness and probity regime. Sufficient information in respect of all directors must be submitted to the Central Bank by the directors themselves via the Central Bank's online filing system. The directors are required to demonstrate, via an application form and the submission of supporting documents, that they are competent and capable; honest, ethical and able to act with integrity; and are financially sound.

In addition to the Central Bank's requirements relating to directors, a corporate governance code (the "Code") applies to Irish investment funds and management companies. The Code is voluntary but operates on a "comply or explain" basis so that, where the board of any company decides not to comply with any provision of the Code, the reasons for non-compliance should be set out in its directors' report or on its website. The Code provides that:

- the board of directors must have a minimum of three directors; a majority of non-executive directors; at least one independent director (who may not be an employee of any service provider firm receiving professional fees from the fund); and at least one director who is an employee of the promoter or investment manager;
- each director must have sufficient time to devote to the role of director and associated responsibilities;
- there should be an informal annual review of the board membership and a formal review every three years;
- the board must appoint a non-executive chairperson;
- board meetings must take place at least quarterly depending on the nature, scale and complexity of the fund or management company (for AIFs, the Code provides that the board may meet less frequently if it believes this is justified, but this must be disclosed in the "comply or explain" statement in the annual report); and
- conflicts of interest should to be taken into account in making appointments to the

board and there should be documented procedures for dealing with conflicts, with an annual review of compliance with these procedures.

6.6 Appointment of Depositary and Administrator

Irish domiciled funds must appoint a Central Bank-approved depositary for the safe-keeping of their assets and a Central Bank-approved administrator which is responsible for maintaining the books and records of the fund, calculating the net asset value of the fund and maintaining the shareholder or unitholder register. All of the world's leading depositaries and administrators are Central Bank-approved and have a presence in Ireland.

No single company may act as both management company, administrator or general partner on the one hand and depositary on the other, although affiliated companies of the same group may and regularly do perform these functions independently.

Depositary's Duties

The depositary of an Irish domiciled fund is responsible not only for the safe-keeping of the fund's assets and the settlement of trades, but also has trustee duties which require it to supervise the fund's investment activities 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. The depositary must have a designated officer with specific responsibilities for ensuring the discharge of these functions.

The Central Bank regards the depositary as a central party in safeguarding investors' interests and a depositary of an Irish domiciled fund has particular responsibilities and duties pursuant to the Central Bank's requirements. These include:

- ensuring that the sale, issue, repurchase, redemption and cancellation of shares, partnership interests or units effected by or on behalf of a fund are carried out in accordance with the Central Bank's requirements and the fund's constitutive documents;
- ensuring that the value of shares, partnership interests or units is calculated in accordance with the Central Bank's requirements and the fund's constitutive documents;
- ensuring that, in each transaction involving the fund's assets, any consideration is remitted to it within time limits which are acceptable market practice in the relevant market;
- ensuring that the fund's income is applied in accordance with its constitutive documents;
- enquiring into the conduct of the fund in each annual accounting period and reporting thereon to the investors in the form of a trustee's report stating whether, in the depositary's opinion, the fund has been managed in that period in accordance with its constitutive documents and the relevant regulations (including any investment or borrowing restrictions) and, if it has not been so managed, in what respects it has not been so managed and the steps which the depositary has taken in respect thereof; and
- notifying the Central Bank promptly of any material breach of relevant regulations, conditions imposed by the Central Bank or provisions of the fund's prospectus.

In the case of both UCITS and AIFs, the liability of the depositary is such that where financial instruments held in custody are lost, the depositary is obliged (subject to certain exceptions) to return identical financial instruments or the corresponding amount to the fund without undue delay; in all other cases, the depositary will be liable for all other losses suffered by the fund or its investors as a result of the depositary's negligent or intentional failure to perform its obligations.

The relevant legislation places restrictions on how and when safe-keeping functions can be delegated and, in particular, the liability standards to which the depositary will be held when delegating.

In February 2021, the Central Bank established a framework for the authorisation of QIAIF depositaries for assets other than financial instruments ("**DAoFI**"). The Central Bank expects a QIAIF in respect of which a DAoFI is appointed to materially invest in illiquid assets and for these assets to be physical assets which do not qualify as financial instruments under AIFMD or could not be physically delivered to the depositary. DAoFI's can safe-keep a large range of assets including real estate, ships, commodities, intellectual property and income therefrom, art and wine. DAoFIs can only be appointed to QIAIFs which have no redemption rights exercisable for at least five years from the date of the initial investment and which generally do not invest in financial instruments that can be held in custody. The Central Bank approval process for DAoFIs is more straightforward than the approval process for regular depositaries given the limited range of assets that can be safe-kept by DAoFIs.

Administrator's Duties

It is necessary to appoint a Central Bank-approved administrator which is responsible for maintaining the books and records of the fund, calculating the net asset value of the fund and maintaining the shareholder register. The administrator must be located in Ireland. There is a vast wealth of administrator knowledge in Ireland, with over 40% of global alternative investment assets administered in Ireland, making it the largest hedge fund administration centre in the world.

The Central Bank has set out requirements governing the outsourcing of administrative services. Some of the key provisions in the outsourcing rules include the following: (i) core management functions (which include setting the risk strategy and risk policy of the administrator) and maintenance of the shareholder register cannot be outsourced; (ii) outsourcing shall not affect the administrator's full and unrestricted responsibilities under fund legislation and the Central Bank's requirements; (iii) administrators must put in place a policy that covers all aspects of outsourcing; (iv) the outsourcing service provider must have the ability, capacity and any necessary regulatory approvals to perform the outsourced functions reliably and professionally; and (v) the outsourcing relationships must be fully documented by a formal contract or service level agreement between the parties which must contain certain mandatory provisions.

6.7 Re-domiciliation

It is possible for investment funds established and operating in certain jurisdictions other than Ireland to re-register in Ireland. This framework seeks to avoid the imposition of unnecessary procedural hurdles and expressly recognises that, for Irish law purposes, a migrating fund will not be treated in Ireland as a new entity, so that its existing identity and track-record will be preserved. The process also ensures that the administrative aspects of creating a new fund are eliminated, as are any tax issues that previously may have arisen on moving assets between funds. The procedure to authorise a re-domiciling fund will follow many of the procedures outlined above.

7 Taxation of Irish Domiciled Funds

7.1 Taxation of Funds

Irish domiciled funds are exempt from Irish tax on income and gains derived from their investment portfolios and are not subject to any Irish tax on their net asset value. Irish residents may invest in an Irish domiciled fund without affecting the tax-exempt nature of the fund. Individuals may not invest in a CCF (investment is limited under Irish tax legislation to institutional investors and companies only).

7.2 Taxation of Investors

Investors who are not Irish tax resident may receive distributions from Irish domiciled funds without the deduction of any Irish withholding tax. Similarly, redemptions and transfers of units by such investors may take place without the imposition of any Irish tax. Funds must normally obtain declarations from investors confirming their non-resident status. These declarations can be incorporated in the fund's standard application form. However, investor declarations are not required where funds are not marketed to Irish investors and certain approved measures are put in place. ILPs and CCFs are not required to obtain investor declarations (due to their tax transparent nature) but will seek detailed information as to the tax status of investors in order to be able to evidence the correct treatment to relevant tax or other authorities in jurisdictions of investment.

Irish withholding tax is generally deducted by funds (other than CCFs) from distributions to Irish tax resident investors and on disposals and redemptions of units by Irish tax resident investors. The rate of withholding tax is currently 41%. However, exemptions from this withholding tax are available for certain categories of Irish investors such as pension funds, life assurance companies and other Irish domiciled funds.

7.3 Treaty Access

The Irish tax authorities consider that Irish domiciled funds (other than ILPs and CCFs) are generally entitled to the benefits of Ireland's extensive and expanding tax treaty network. However, the availability of treaty benefits in any 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.

Because ILPs and CCFs are tax transparent under Irish law, the Irish tax authorities do not view them as capable of benefitting from the Irish tax treaty network. As a result, the relevant tax treaty is likely to be between the source country (where the ILP's / CCF's investments are located) and the unitholder's or partnership interest holder's country. It is generally advisable to obtain a specific tax ruling from the source country prior to making any investment where treaty benefits will be sought.

7.4 VAT and Transfer Taxes

The provision of management and administration services to an Irish domiciled fund is exempt from Irish VAT. However, other services (such as legal and accounting services) can result in an Irish VAT liability for Irish domiciled funds. Irish funds may not recover such VAT unless, in some circumstances, the nature of the fund's assets and the location of the assets permit recovery. For non-Irish resident unitholders, no Irish transfer taxes apply to the transfer, exchange or redemption of units in Irish domiciled funds. No capital duty is payable on the issue of fund units.

8 Euronext Dublin Listing

8.1 Overview

Euronext Dublin (formerly the Irish Stock Exchange or ISE) is internationally recognised as a leading regulated exchange for the listing of Irish and non-Irish domiciled investment funds. A stock exchange listing on a recognised exchange in an OECD jurisdiction, such as Euronext Dublin, can be particularly important for the profile of a fund, attracting certain categories of institutional investors or investors in certain jurisdictions who are prohibited or restricted from investing in unquoted securities.

In addition to the recognised regulatory status of Euronext Dublin, other factors such as speed and efficiency of listing, and comparative cost effectiveness, have contributed to the development of Ireland as a premier international centre for the listing of investment funds domiciled in Ireland and elsewhere. The Global Exchange Market or GEM is an exchange regulated multilateral trading facility for investment funds listed on Euronext Dublin. Investment funds can choose to list on either the regulated market of Euronext Dublin or the GEM. Investment funds listed on GEM will not be subject to the Prospectus Regulation, the Transparency Directive or the Statutory Audit Directive.

The listing process can normally be completed within four weeks of submission of relevant documents and, in the case of Irish domiciled funds, it can be completed contemporaneously with the Central Bank's authorisation process. The listing of a closed-ended fund can take longer.

Euronext Dublin is prepared to list Irish and non-Irish domiciled open ended and closed ended funds, whether constituted as ICAVs, investment companies, ILPs, unit trusts or CCFs.

Umbrella funds may be listed, through the approval by Euronext Dublin of the umbrella fund and the shares in each sub-fund, or each class of shares within each sub-fund, as the case may be, can be listed as required. The Euronext Dublin Investment Fund Listing Rules require that listing particulars or an equivalent offering document be prepared for the purposes of listing. The listing requirements for Irish domiciled funds which are authorised by the Central Bank have been substantially streamlined and, in the case of QIAIFs, many of the listing requirements are dis-applied.

With respect to an application for listing on behalf of a fund established as a closed ended fund, there are additional conditions and disclosure requirements. Since 2005, closed ended funds listing on the regulated market must be compliant with the requirements of the Prospectus Regulation and the related domestic regulations and rules. Such listings require a dual review process by both Euronext Dublin and the Central Bank. The Central Bank is responsible for carrying out the review

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under the Prospectus Regulation.

In the absence of a specific derogation from Euronext Dublin, funds domiciled in unregulated jurisdictions which apply for a Euronext Dublin listing must be confined to sophisticated investors, ie, investors whose initial subscription is not less than US$100,000. Jurisdictions such as the Cayman Islands and the British Virgin Islands are regarded as "unregulated jurisdictions". There is no such requirement for funds domiciled in regulated jurisdictions such as an EU Member State, Bermuda, Guernsey, Isle of Man, Jersey or a fund which has been authorised in Hong Kong by the Securities and Futures Commission.

Euronext Dublin requires that the trustee or depositary of the fund has suitable and relevant experience and expertise in the provision of custody services. A further condition is that the fund's depositary or trustee must be a separate legal entity to the investment manager and any investment adviser, although it can be an affiliated entity.

8.2 Listing Particulars

As Euronext Dublin does not regard the listing particulars as a marketing document, it will not allow the inclusion of what it considers to be marketing information, except to the extent necessary to facilitate investors in making a fully informed assessment as to the nature of the fund and the quality of its manager and investment adviser.

In assessing a fund's application for listing, the majority of the matters which must be addressed in the listing particulars will be addressed in the fund's prospectus in any event and the prospectus can often be used as a base from which to produce listing particulars. Where a fund has commenced operations prior to its listing application, both audited and unaudited financial information must form part of its listing particulars.

Euronext Dublin must be satisfied with the particular investment policy and restrictions of the fund and in this regard, as a general rule, the listing particulars must state that:

- legal or management control of underlying investments will not be taken. This does not preclude the fund from investing in the form of partnership arrangements, participations, joint ventures and other forms of non-corporate investment. Euronext Dublin may permit derogations in the case of feeder funds, venture capital or property funds; and
- no more than 20% of the value of the gross assets of an applicant may be lent to or invested in the securities of any one issuer (including the issuer's subsidiaries or affiliates). The 20% rule does not apply to investment in securities issued or guaranteed by a government, government agency or instrumentality of any EU Member State or OECD member state or by any supranational authority of which one

or more EU or OECD member states are members, and any other state approved for such purpose by Euronext Dublin. In addition, the rule does not apply to index tracker funds or any Irish domiciled fund.

Euronext Dublin will list multi-adviser funds provided that the manager of the fund undertakes to monitor the portfolio to ensure compliance with Euronext Dublin diversification requirements. Euronext Dublin will require that no more than 40% of the gross assets of a fund be allocated to any one trading adviser or fund. This restriction does not apply to Irish-domiciled funds.

8.3 Ongoing Requirements

As regards continuing obligations of a fund listed on Euronext Dublin, the general principle is that any information necessary to enable shareholders to appraise the position of the fund or which might reasonably be expected to have a material effect on market activity in, and prices of, shares or units in the fund must be notified to Euronext Dublin. In addition, there are specific continuing obligations, including for example:

- the fund must consider its obligations under the Market Abuse Regulation and other applicable European legislation;
- the fund must prepare an annual report and audited accounts within six months of the end of the financial period to which they relate and this annual report must be sent to shareholders, with a copy sent to Euronext Dublin;
- drafts of all circulars and other communications to shareholders and seeking their approval for a given matter (other than standard business at the annual general meeting) must be sent to Euronext Dublin for prior approval;
- the fund must provide notification to Euronext Dublin of (and in some cases obtain prior approval for) various matters, including:

(a) any change in the directors, sponsor, registrar, auditor, transfer agent, manager, trustee or depositary, investment manager, prime broker or administrator of the fund;

(b) any proposed or actual material change in:

(i) the general character or nature of the operation of the fund;

(ii) the investment policy and / or objective of the fund;

(iii) investment, borrowing and / or leverage restrictions; or

(iv) the fund's constitutional document.

(c) any change in the frequency of calculation of the net asset value or any material change in the fund's redemption policy;

(d) any material change in the fees payable by the listed fund or material change in its material contracts;

(e) any intention to renew, vary or terminate the fund;

(f) any other information necessary to enable the shareholders to appraise the position of the fund and to avoid the establishment of a false market in shares or units in the fund;

(g) the net asset value of the fund units must be calculated at least annually and notified to Euronext Dublin immediately. Any suspension of such calculations must also be notified to Euronext Dublin; and

(h) details of dividend decisions must be notified to Euronext Dublin.

9 Sustainable Finance

By far the most significant and notable development in relation to investment funds in Europe in recent years is the Commission's focus on sustainable finance as one element of the EU's Green Deal, aiming to achieve net zero emission by 2050. The Commission's 2018 Action Plan on Financing Sustainable Growth ("**Action Plan**") (supplemented by its Strategy for financing the transition to a sustainable economy in July 2021) sets out objectives and key actions to promote a reorientation of private capital flows towards sustainable investments. The action plan aims to:

- reorient capital flows towards sustainable investment to achieve sustainable and inclusive growth;
- manage financial risk stemming from climate change, natural disasters, environmental degradation and social issues; and
- foster transparency and long-termism in financial and economic activity.

In order to achieve the objectives set out in the Action Plan, a number of legislative proposals have been progressed, including the following legislative measures of particular relevance to investment funds:

- a regulation on disclosures relating to sustainable investments and sustainability risks (the "Disclosures Regulation" or "SFDR");
- a regulation on the establishment of a framework or taxonomy to facilitate sustainable investment (the "Taxonomy Regulation");
- a regulation on EU Climate Transition benchmarks and EU Paris-aligned benchmarks (the "Low Carbon Benchmarks Regulation"); and
- amendments to level 2 requirements under the UCITS Directive, the AIFMD and MiFID II regarding the integration of sustainability risks and factors in decision making.

The SFDR

The SFDR requires AIFMs and UCITS management companies (amongst others, but for the purposes of this note, we focus on investment funds and their managers) to consider and disclose in a consistent and harmonised manner how ESG factors are adopted in their decision making processes. It aims to harmonise disclosure standards among EU Member States to facilitate the comparability of different financial products and services. Many of the provisions of the SFDR apply to all asset managers, whether or not they have an express ESG or sustainability focus. The SFDR applies different requirements and implementation timeframes in respect of disclosures on websites, in prospectuses and in periodic reports, depending on whether the fund promotes environmental or social characteristics (known as Article 8 or Light Green Funds), has sustainable investment as its objective (known as Article 9 or Dark Green Funds) or does neither, although the fund may take into account sustainability risks (known as Article 6 funds).

The main provisions of the SFDR apply from 10 March 2021, although the detailed level 2 measures providing templates for the purposes of the pre-contractual, website and periodic report disclosures and for the Principal Adverse Impact Statement, which funds may choose to provide, have been delayed and are expected to apply from 1 July 2022.

The Taxonomy Regulation

The proposal to create a sustainability taxonomy was devised to provide market clarity on what economic activities should be considered "sustainable". To date, a fragmented approach has been adopted by EU Member States to this issue, giving rise to a range of interpretations as to what may be considered to be a sustainable investment. The proposal is also designed to prevent "greenwashing", or the marketing of financial products as "green" which do not in fact meet basic environmental or sustainability standards in order to garner a competitive advantage over other products.

The Taxonomy Regulation aims to develop a taxonomy for climate change and environmentally sustainable activities so that the classification system can be used with respect to labels, standards and benchmarks recognising compliance with environmental standards across the EU. Standardising the concept of environmentally sustainable investment across the EU is expected to facilitate investment in environmentally sustainable economic activities, both nationally and in more than one EU country, and enable economic operators to attract investment from abroad more easily.

Importantly, the Taxonomy Regulation does not establish a label for sustainable financial products. It sets out criteria for determining if an activity (not a company or asset) is environmentally sustainable, including whether the activity contributes to, or does not significantly harm, one or more specified environmental objectives.

The Taxonomy Regulation will apply, with respect to activities that substantially contribute to climate change mitigation and adaptation, from 1 January 2022. The regulation will apply with respect to activities that substantially contribute to the other environmental objectives from 1 January 2023.

Low Carbon Benchmarks Regulation

The Low Carbon Benchmarks Regulation amends the existing EU Benchmark Regulation by introducing two new types of benchmarks:

- EU Climate Transition benchmarks; and
- EU Paris-aligned benchmarks.

In addition to the introduction of these new benchmarks, the amendments required benchmark administrators to update all

Taxonomy Regulation Enviromental Objectives

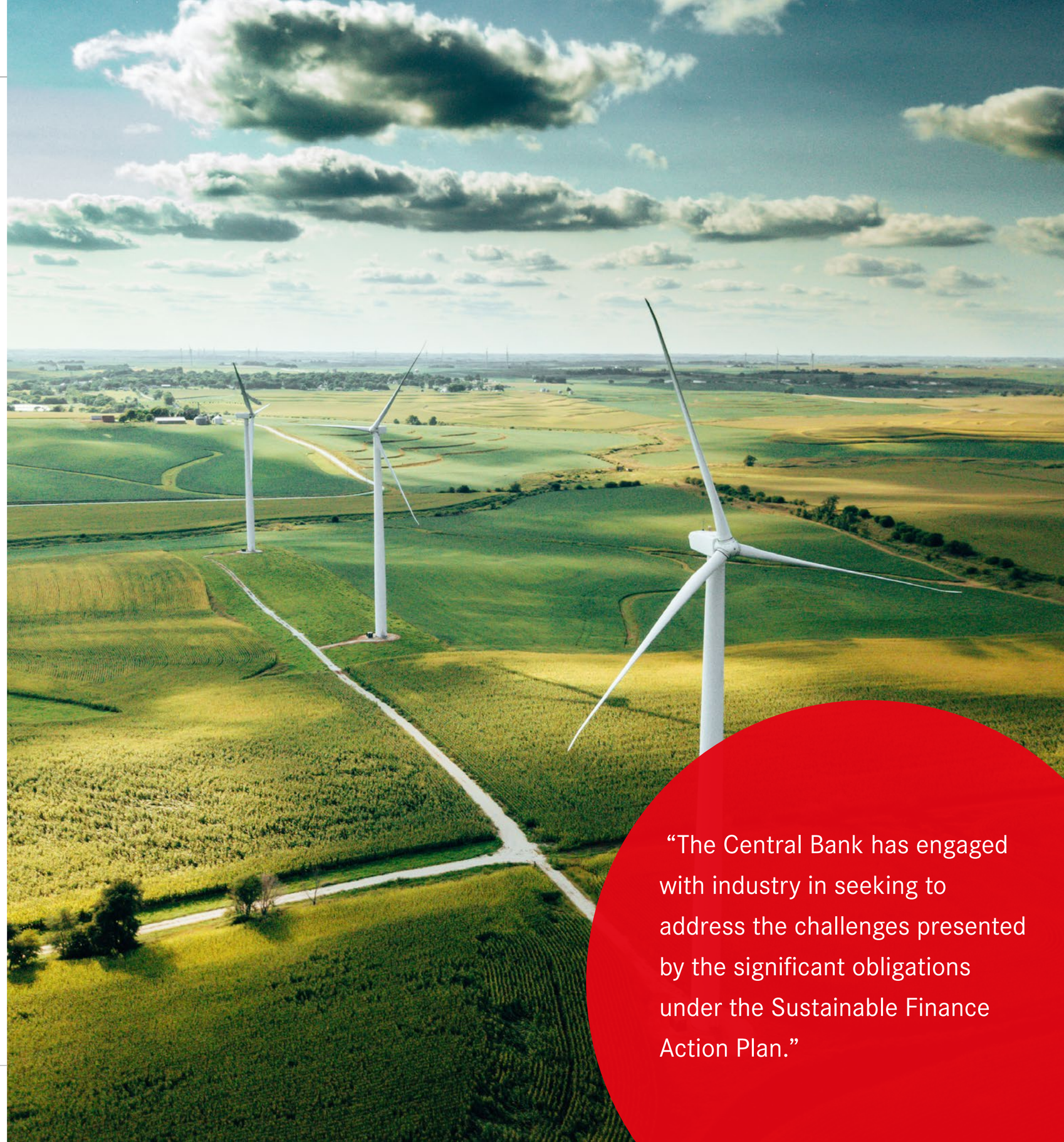
- Climate change mitigation
- Climate change adaptation
- Sustainable use and protection of water and marine resources
- Transition to a circular economy (including waste prevention and recycling)
- Pollution prevention and control
- Protection of health ecosystem

benchmark statements (excluding those relating to interest rate and currency benchmarks) by 30 April 2020 to include "...how ESG factors are reflected in each benchmark ...". For benchmarks that do not pursue ESG objectives, it will be sufficient "... to clearly state in the benchmark statement that they do not pursue such objectives". Benchmark administrators that pursue ESG objectives will be required to publish key elements of their methodologies. The Commission will adopt delegated acts to provide further detail on the minimum standards for each of the new benchmarks and the requirements applicable to benchmark administrators. Administrators of significant benchmarks ie, benchmarks that are above a certain threshold in terms of usage, will be required to disclose the degree of "Paris alignment" of those benchmarks and must endeavour to provide a Transition benchmark by 1 January 2022. The Low Carbon Benchmarks Regulation entered into force on 10 December 2019.

Irish Implementation

The Central Bank has engaged with industry in seeking to address the challenges presented by the significant obligations introduced under the Action Plan and in particular the timing issues arising due to the staggered application of the requirements. Prior to the 10 March 2021 filing deadline, the Central Bank introduced a fast track procedure for UCITS to facilitate the large volume of filings arising from the new disclosure obligations. The Central Bank has also indicated that it may introduce a fast track procedure to facilitate filings in advance of the application of the Taxonomy Regulation on 1 January 2022. There is ongoing engagement between industry and the Central Bank to ensure an efficient implementation that prioritises investor protection.

To read more about the various legislative initiatives under the Action Plan and their impact on investment funds, please see our Sustainable Finance webpage.



"The Central Bank has engaged with industry in seeking to address the challenges presented by the significant obligations under the Sustainable Finance Action Plan."

10 Continuing Obligations

An Irish domiciled fund must submit monthly statistical reports to the Central Bank. In addition, half-yearly and annual reports must be submitted to the Central Bank, containing certain prescribed financial information on the fund including a detailed statement of assets and liabilities and a detailed analysis of the portfolio. The annual reports must be audited. QIAIFs established as investment companies, ICAVs or ILPs are not required to prepare half yearly reports.

Irish authorised AIFMs are required to report on a regular basis to the Central Bank, to varying degrees depending on their own authorisation / registration status. The frequency of the reporting depends on the size of the assets under management (the greater the assets, the more frequent the reporting). The content of the reporting is standardised and set out in the AIFMD and its supporting legislation.

Irish domiciled fund management companies must submit half-yearly financial and annual audited accounts to the Central Bank. The annual audited accounts of the shareholders of an Irish authorised management company or of the sponsor of an investment company, together with annual audited accounts of the investment manager, must also be submitted to the Central Bank.

There are certain other matters of which the Central Bank must be notified in advance, and which the Central Bank must approve. These include any proposed changes to the constitutive documents of an Irish fund, any proposed material changes to the prospectus, any proposed changes to the composition of the board of directors and any proposed increases in the fees payable out of the assets of the fund.

A number of filings are done through the Central Bank's online reporting system for investment funds. Access to the system is granted to system administrators as part of the fund authorisation process and the system sends automated reminders to administrators regarding upcoming filing deadlines.

AIF	means an alternative investment fund;
AIFMD	means the Alternative Investment Fund Managers Directive (Directive 2011/61/EU), transposed into Irish law in July 2013;
AIF Rulebook	means the rulebook issued by the Central Bank, which sets out the Central Bank's specific requirements in relation to AIFs;
CCF	means a common contractual fund, an unincorporated body established by a manager pursuant to which the investors, by contractual arrangements, participate and share in the property of the collective investment fund as co-owners of the assets of the fund;
Central Bank	means the Central Bank of Ireland, the body with responsibility for authorisation and ongoing supervision of investment funds and service providers in Ireland;
Central Bank UCITS Regulations	means the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investment in Transferable Securities) Regulations 2019;
EEA	means the European Economic Area, comprised of all EU Member States and Iceland, Liechtenstein and Norway;
EEA Member State	means a member state of the EEA;
Eligible Assets Directive	means EU Directive 2007/16/EC;
ELTIF	means a European Long Term Investment Fund established under Regulation (EU) 2015/760 on European long term investment funds;
EMIR	means Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories;
EU	means the European Union;
EU Member State	means a member state of the EU;
EuSEF	means a European Social Entrepreneurship Fund established under Regulation (EU) 346/2013 on European social entrepreneurship funds;
EuVECA	means a European Venture Capital Fund established under Regulation (EU) 345/2013 on European venture capital funds;
ICAV Act 2015	means the Irish Collective Asset-management Vehicles Act 2015;
Investment Funds Act 2005	means the Investment Funds, Companies and Miscellaneous Provisions Act 2005, as amended;
ILP	means an investment limited partnership, formed under the ILP Act;
ILP Act	means the Investment Limited Partnership Act 1994, pursuant to which investment funds are established as investment limited partnerships;
Irish AIFM Regulations	means the European Union (Alternative Investment Fund Managers) Regulations 2013, the regulations which transpose the AIFMD into Irish law;
Market Abuse Regulation	means Regulation (EU) 596/2014 on market abuse;
MiFID	means the EU Markets in Financial Instruments Directive 2004 (Directive 2004/39/EC);

Money Market Fund Regulation	means Regulation (EU) 2017/1131 on money market funds;
OECD	means the Organisation for Economic Co-operation and Development, an international body which works to address economic, social and governance matters, including financial stability, trade and investment, sustainable economic growth, technology, innovation, employment and development;
PRIIPs Regulation	means the EU regulation on key information documents for packaged retail and insurance-based investment products (Regulation (EU) No 1286 / 2014);
Prospectus Regulation	means the EU Prospectus Regulation 2017 (Regulation (EU) No 2017/1129);
QIAIF	means a qualifying investor AIF, an investment fund with a minimum initial subscription requirement of €100,000 and which can only sell its shares or units to qualifying investors;
RIAIF	means a retail investor AIF, an investment fund with no minimum initial subscription or restrictions on the type of investor to whom it may be sold;
SFTR	means Regulation (EU) 2015/2365 on transparency of securities financing transactions and of reuse;
Statutory Audit Directive	means the EU Statutory Audit Directive of 2014 (Directive 2014/43/EU);
Transparency Directive	means the EU Transparency Directive of 2004 (Directive 2004/109/EC);
UCITS	means Undertakings for Collective Investment in Transferable Securities, a creation of the UCITS Directive, implemented in Ireland by the UCITS Regulations;
UCITS Directive	means the EU Directive of 2011 (Directive 2009/65/EC);
UCITS Regulations	means Irish domestic regulations implementing the UCITS Directive; and
Unit Trusts Act 1990	means the principal legislation pursuant to which investment funds are established as unit trusts.

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