Group Briefing

How to establish a UCITS fund in Ireland

INTRODUCTION

There are two broad categories of regulated investment funds in Ireland. The first category comprises undertakings for collective investment in transferable securities ("UCITS"). The second category essentially comprises all non-UCITS funds and which are defined as alternative investment funds ("AIFs"). UCITS are subject to the regulations in Ireland implementing the EU's UCITS Directive. This briefing sets out the main steps involved in establishing a UCITS in Ireland.

UCITS STRUCTURES

Umbrella or Single Fund and Classes of Shares

A UCITS may be established in Ireland as a single fund or as an umbrella fund comprising one or more sub-funds, each with a different investment objective and policy. UCITS are typically established as umbrella funds and the segregation of liability between sub-funds is achieved either by law (as is the case for an investment company or ICAV) or by contract. A sub-fund may comprise different classes of units. Typically classes of units are issued to allow for different fee arrangements, different subscription amounts and/or different currencies within the same sub-fund.

Legal Structure

UCITS can take one of four forms: investment companies, unit trusts, common contractual funds ("CCFs") and Irish collective asset management vehicles ("ICAVs"). Various factors impact on the choice of fund structure, the principal ones being the potential distribution channels for the UCITS and the profile and location of prospective investors and their preferences.

A comparison of the different structures is set out in the table below.

	Investment company	Unit trust	CCF	ICAV
Structure	Variable capital investment company incorporated as a public limited company	Unit trust constituted by a trust deed entered into between a management company and a trustee	An unincorporated body constituted under contract by a deed of constitution between a management company and a depositary	A corporate entity with a similar structure to the SICAV or OEIC
Single stand-alone fund or umbrella fund	Yes	Yes	Yes	Yes
Separate legal personality	Yes	No	Yes	Yes
Board responsible for management	Board of directors of investment company or management company	Board of directors of management company	Board of directors of management company	Board of directors of ICAV or management company
Segregation of liability	By law	By contract	By contract	By law
Other notable features	Unlike the structures opposite, is subject to a statutory obligation to diversify risk		Tax transparent; unitholders are treated for tax purposes as if they directly own a share of the underlying investments Investment in CCFs is limited to institutional investors	Meets the U.S. "check the box" taxation rules Not subject to many of the type of rules applicable to Irish public limited companies which apply to investment companies

Management Companies

A UCITS management company must be appointed in respect of all Irish unit trusts and common contractual funds. A UCITS established as an investment company or an ICAV may also appoint a management company in the fund structure. Alternatively, a UCITS established as an investment company or an ICAV can be structured without a management company in which case it is called a self-managed UCITS.

All management companies must at all times maintain a minimum capital requirement of €125,000 or one quarter of its preceding year's fixed overheads, whichever is the greater. However, additional capital requirements apply to a UCITS management company which manages assets in excess of €250 million where the management company must maintain additional capital of 0.02% of the value of the assets under management in excess of €250 million, subject to a maximum level of capital of €10 million.

All references in this briefing to UCITS refer to a UCITS management company or a self-managed UCITS, as the case may be.

Constitution of Board

A UCITS is required to have a minimum of two Irish resident directors appointed to its board and must comprise at least three directors. The size of a UCITS depends on the requirements of the promoter - boards would typically comprise four or more directors.

The Central Bank must approve all appointments to the board of directors in advance but will only do so once it is satisfied that a proposed director meets the fitness and probity standards. These standards require that the proposed director is fit and proper in terms of (i) competence and capability, (ii) honesty, integrity, fairness and ethical behaviour and (iii) financial soundness.

Letters of appointment must be put in place with each director setting out the terms of their engagement.

The Central Bank must also be notified of all resignations from a board of directors.

NATURE OF A UCITS

Permitted Investments

A UCITS can invest in a diverse range of investments such as transferable securities, bank deposits, money market instruments, financial derivatives and units of other funds either as a fund of funds or a feeder fund. A UCITS cannot invest in real estate or invest directly in commodities although may be able to gain exposure to commodities using derivatives.

Investment Restrictions

A UCITS is subject to the following investment restrictions:

a. a UCITS may invest no more than 10% of its net assets in unlisted securities;

b. a UCITS is precluded from investing more than 10% of its assets in any one issuer. Where the fund invests more than 5% of its assets in any issuer the maximum amount of such holdings in excess of 5% is limited to 40% of the net asset value of the UCITS;

c. a UCITS may invest up to 35% of its net assets in any one security issued by a government or public international body;

d. a UCITS may invest up to 100% of its assets in transferable securities and money market instruments issued or guaranteed by an EU member state, its local authorities, a non-EU member state or public international body of which one or more EU member states are members provided that equivalent protections are in place to that of a UCITS, and provided further that the UCITS holds securities from at least six different issues with securities from any one issue not exceeding 30% of the net assets of the UCITS;

e. a UCITS may not invest more than 20% of its net assets in any one collective investment scheme and the schemes in which a UCITS invests must be UCITS or AIFs with the essential characteristics of a UCITS. Furthermore, investment in AIFs may not, in aggregate, exceed 30% of the its net assets;

f. the risk exposure of a UCITS to a counterparty to an OTC derivative may not exceed 5% of net assets. This limit can be raised to 10% in certain circumstances;

g. not more than 20% of the net assets of a UCITS may be invested in deposits made with the same credit institution. Deposits with any one credit institution held as ancillary liquidity must not, subject to exceptions, exceed 10% of net assets;

h. a UCITS may not acquire any units carrying voting rights which would enable it to exercise a significant influence over the management of the issuer.

Dealing Frequency

A UCITS can be open for dealing daily, weekly or any other frequency provided that it is open for redemption at least twice a month (at regular intervals).

A UCITS can be closed for subscription at any time following the initial offer period.

Borrowing

A UCITS may not borrow money, grant loans or act as guarantor on behalf of third parties although it may borrow up to 10% of its net asset value for temporary convenience purposes such as, for example, to meet redemption requests.

SERVICE PROVIDERS TO A UCITS

Administrator and Custodian

A UCITS must appoint an Irish administrator who is primarily responsible for calculating the UCITS net asset value and who also typically acts as the registrar and transfer agent.

A UCITS must also appoint an Irish depositary. The depositary is responsible primarily for safekeeping the UCITS assets, ensuring that the cash flows are properly monitored and carrying out oversight in relation to the management of the UCITS.

Approval of a Discretionary Investment Manager

A UCITS must appoint an investment manager who manages the investments made by a UCITS.

The discretionary investment manager does not need to be located in Ireland and, for the most part, is typically not located in Ireland.

Any investment manager (and discretionary investment adviser) to be appointed by a UCITS must be approved to act as such by the Central Bank. Essentially the Central Bank must be satisfied that the discretionary manager is authorised by an appropriate regulatory authority and is subject to ongoing supervision.

If a UCITS proposes to appoint either a UCITS management company, MiFID firm, EU bank authorised to provide portfolio management under MiFID or an EU-authorised AIFM to act as its discretionary investment manager then this involves only a notification to the Central Bank to enable the Central Bank to verify the authorisation status of the proposed investment manager. Any other entity to be appointed as an investment manager which is not listed above would need to seek Central Bank approval to act as such. This approval process is straightforward and involves submitting to the Central Bank an application form which includes sufficient background information to enable the Central Bank to be satisfied that the applicant has the appropriate personnel, experience, financial resources and regulatory status to perform the role. This approval process typically takes 2 to 3 weeks. Once approved to act as a discretionary investment manager of a UCITS, and which remains subject to regulation in its home state, the entity has no further obligations to the Central Bank, other than to notify it in advance of any change in its regulatory status, name and registered address.

Service Provider Agreements

A UCITS will need to ensure that agreements with the key service providers (i.e., depositary, administrator and delegate investment manager) contain certain provisions prescribed by the Central Bank.

PROCESS FOR THE AUTHORISATION OF A UCITS

Authorisation, Supervision and Fund Documents

The Central Bank is the regulatory authority responsible for the authorisation and supervision of all regulated investment funds in Ireland. In order for a UCITS to be authorised by the Central Bank various fund documents need to be put in place which meet the Central Bank's requirements. Some of the fund documents are reviewed by the Central Bank in advance of the application being made for authorisation of the UCITS. The principal documents which are reviewed by the Central Bank in advance of the UCITS authorisation are the prospectus and the depositary agreement, along with the business plan and the risk management process, if required. Other fund documents (such as the investment management, distribution and administration agreements) are not reviewed by the Central Bank but executed versions of the agreements are filed with the Central Bank for noting on the day the filing is made seeking authorisation of the UCITS.

Timing of Authorisation

Once draft fund documentation is filed with the Central Bank for review a UCITS is typically approved by the Central Bank within six to eight weeks from the date of submission of the documents to the Central Bank, depending on its complexity. The review process typically involves two or three drafts of the principal fund documents being submitted to the Central Bank for review. A UCITS is authorised once the fund documents are cleared of comment and the prospectus and signed fund documents are filed with the Central Bank seeking its authorisation on that day.

Any amendments to the fund documents are subject to prior approval by the Central Bank.

KIIDs

A UCITS is required to publish and offer to potential investors prior to any subscription a Key Investor Information Document ("a KIID"). The KIID contains summary information on the objectives and policies of the UCITS, a synthetic risk and reward indicator ("SRRI"), the costs and charges, past performance and certain practical information in relation to the UCITS. The rules on the length and content of, and language used in, the KIID are prescriptive. The KIID must be updated on a regular basis if the ongoing charges figure and/or SRRI indicator in the KIID changes and it must be updated in any event at least annually in mid-February.

BUSINESS PLAN

Each UCITS is required to adopt a business plan setting out its organisational structure, the responsibilities of its senior management and information on how the UCITS intends to comply with its obligations under Irish UCITS Regulations. Under the business plan, the board of the UCITS is responsible for the six key managerial functions:

» decision making;

» investment management;

» regulatory compliance;

» fund risk management;

» operational risk management;

» capital and financial management; and

» distribution.

The business plan must identify the board member or other individual ("designated person") who will, on a day-to-day basis, monitor and control each of the individual activities relating to each management function.

Any material changes to the business plan need to be cleared by the Central Bank.

RMP

A UCITS which uses financial derivative instruments is required to adopt a risk management process ("RMP") which documents the measures used by the UCITS to manage and control risks relating to the use of derivatives.

A report on the use of derivatives is required to be filed on an annual basis with the Central Bank.

Any material changes to the RMP need to be cleared by the Central Bank.

OTHER COMPLIANCE OBLIGATIONS

The UCITS will need to adopt policies and procedures required under Irish UCITS Regulations, including, policies relating to the following: order handling and aggregation; best execution; remuneration; conflicts of interest; risk management; liquidity management; business continuity; accounting policies and procedures; compliance; personal transactions; cyber security; anti-money laundering and valuation.

PASSPORT

Once a UCITS is approved in one EU country, application may be made to register the UCITS for marketing to the public in any other EU country. The registration issues within ten working days of the date of application. It is not necessary to obtain any further authorisation. It is also a straightforward process to register UCITS for public distribution in other non-EU jurisdictions, such as Hong Kong, Switzerland and Taiwan.

KEY CONTACTS

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